

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 10**

[Docket No. FWS–HQ–MB–2018–0047;  
FXMB 1232090000//189//FF09M29000]

RIN 1018–BC67

**General Provisions; Revised List of Migratory Birds**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Revised proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose additions to the November 28, 2018, proposed rule to update the List of Migratory Birds protected by the Migratory Bird Treaty Act (MBTA). The proposed revisions in this document consist of further updates to taxonomy and distribution published in 2019. The net increase of 8 additional species (10 added and 2 removed) to the November 28, 2018, proposed rule would bring the total number of species protected by the MBTA to 1,093. We request public comments on the revisions described in this document, as well as on our November 28, 2018, proposed rule. If you previously submitted comments on our November 28, 2018, proposed rule, please do not resubmit them, as we will fully consider those comments when preparing our final rule.

**DATES:** The comment period for the November 28, 2018, proposed rule (83 FR 61288) is reopened. We will accept comments received or postmarked on or before December 12, 2019. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–HQ–MB–2018–0047, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–MB–2018–0047, U.S. Fish and Wildlife Service,

MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Eric L. Kershner, Chief of the Branch of Conservation, Permits, and Regulations; Division of Migratory Bird Management; U.S. Fish and Wildlife Service; MS: MB; 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–2376.

**SUPPLEMENTARY INFORMATION:****Background**

For background information on our statutory authorities and on the List of Migratory Birds protected by the MBTA (16 U.S.C. 703–712), see our November 28, 2018, proposed rule (83 FR 61288).

**Previous Federal Actions**

On November 28, 2018, we published a proposed rule (83 FR 61288) to revise the List of Migratory Birds protected by the MBTA by both adding and removing species. The List of Migratory Birds (50 CFR 10.13) was last revised on November 1, 2013 (78 FR 65844). Reasons for the changes to the list include adding species based on new taxonomy and new evidence of natural occurrence in the United States or U.S. territories, removing species no longer known to occur within the United States or U.S. territories, and changing names to conform to accepted use. An accurate and up-to-date list of species protected by the MBTA is essential for public notification and regulatory purposes.

**Revised Proposed Changes to the List of Migratory Birds**

The November 28, 2018, proposed rule (83 FR 61288) included revisions to the List of Migratory Birds that would result in a net increase of 59 species (66 added and 7 removed) and would bring the total number of species protected by the MBTA to 1,085. With this document, we propose to revise our November 28, 2018, proposed rule to come into conformance with updates in taxonomy and distribution recently published by the American Ornithological Society (AOS 2019). The revisions, described below under *Revised Provisions*, involve a net increase of 8 additional species (10 added and 2 removed) and would bring the total number of species protected by the MBTA to 1,093.

*Retained Provisions of the November 28, 2018, Proposed Rule*

As set forth in the November 28, 2018, proposed rule (83 FR 61288), we continue to propose to:

(1) Add 16 of the 17 species included in the 2018 proposed rule that qualify for protection under the MBTA but have not been added previously (please note: We are removing one species that was proposed to be added in the November 28, 2018, proposed rule; the European Turtle-Dove, discussed below under *Revised Provisions*);

(2) Correct the spelling of 3 species names on the alphabetized list;

(3) Correct the spelling of 3 species names on the taxonomic list;

(4) Add 22 species based on new distributional records documenting their natural occurrence in the United States or U.S. territories since 2010;

(5) Add one species moved from a family that was not protected to a family now protected under the MBTA as a result of taxonomic changes;

(6) Add 26 species newly recognized as a result of recent taxonomic changes;

(7) Remove 7 species not known to occur within the boundaries of the United States or U.S. territories as a result of recent taxonomic changes;

(8) Revise the common (English) names of 40 species to conform to accepted use; and

(9) Revise the scientific names of 114 species to conform to accepted use.

**Revised Provisions**

The revisions we are proposing to our November 28, 2018, proposed rule (83 FR 61288) in this document consist of:

(1) Removing European Turtle-Dove, *Streptopelia turtur* (AOU 2007), from species that qualify for protection under the MBTA but have not been added previously, based on our review of the evidence available for natural occurrence of the species in the United States;

(2) Correcting the spelling of the species name of White-throated Ground-Dove from *Alopecoenas xanthonura* to *Alopecoenas xanthonurus* on the alphabetized and taxonomic lists;

(3) Correcting the citation for Cackling Goose, *Branta hutchinsii* (AOU 2003) to (AOU 2004);

(4) Revising the citations for Pink-footed Goose, *Anser brachyrhynchus* (AOU 1983) to (AOS 2019), and Nazca Booby, *Sula granti* (AOU 2000) to (AOS 2019);

(5) Adding the following 8 additional species based on new distributional records documenting their natural occurrence in the United States or U.S. territories (AOS 2019):

European Storm-Petrel, *Hydrobates pelagicus*—North Carolina and Florida;  
Great Black Hawk, *Buteogallus urubitinga*—Texas and Maine;  
Thick-billed Warbler, *Arundinax aedon*—Alaska;  
River Warbler, *Locustella fluviatilis*—Alaska;  
European Robin, *Erithacus rubecula*—Pennsylvania;  
Pied Wheatear, *Oenanthe pleschanka*—Alaska;  
Pallas's Rosefinch, *Carpodacus roseus*—Alaska; and  
Black-backed Oriole, *Icterus abeillei*—Pennsylvania, Massachusetts, Connecticut;

(6) Adding the following 2 additional species newly recognized as a result of recent taxonomic changes (AOS 2019):

Stejneger's Scoter, *Melanitta stejnegeri*—formerly considered conspecific with Velvet Scoter, *Melanitta fusca*; and  
Gray-faced Petrel, *Pterodroma gouldi*—formerly considered conspecific with Great-winged Petrel, *Pterodroma macroptera*;

(7) Removing the following 1 additional species not known to occur within the boundaries of the United States or U.S. territories as a result of recent taxonomic changes (AOS 2019):

Great-winged Petrel, *Pterodroma macroptera*;

(8) Revising the common (English) names of the following 4 additional species to conform to accepted use (AOS 2019):

Common Ground-Dove, *Columbina passerina* becomes Common Ground Dove, *Columbina passerina*;  
Ruddy Ground-Dove, *Columbina talpacoti* becomes Ruddy Ground Dove, *Columbina talpacoti*;

Amethyst-throated Hummingbird, *Lampornis amethystinus* becomes Amethyst-throated Mountain-gem, *Lampornis amethystinus*; and  
Blue-throated Hummingbird, *Lampornis clemenciae* becomes Blue-throated Mountain-gem, *Lampornis clemenciae*; and

(9) Revising the scientific names of the following 20 additional species to conform to accepted use (AOS 2019):

White-winged Scoter, *Melanitta fusca* becomes White-winged Scoter, *Melanitta deglandi*;

Bahama Woodstar, *Calliphlox evelynae* becomes Bahama Woodstar, *Nesophlox evelynae*;

Fork-tailed Storm-Petrel, *Oceanodroma furcata* becomes Fork-tailed Storm-Petrel, *Hydrobates furcatus*;

Ringed Storm-Petrel, *Oceanodroma hornbyi* becomes Ringed Storm-Petrel, *Hydrobates hornbyi*;

Swinhoe's Storm-Petrel, *Oceanodroma monorhis* becomes Swinhoe's Storm-Petrel, *Hydrobates monorhis*;

Leach's Storm-Petrel, *Oceanodroma leucorhoa* becomes Leach's Storm-Petrel, *Hydrobates leucorhous*;

Townsend's Storm-Petrel, *Oceanodroma socorroensis* becomes Townsend's Storm-Petrel, *Hydrobates socorroensis*;

Ashy Storm-Petrel, *Oceanodroma homochroa* becomes Ashy Storm-Petrel, *Hydrobates homochroa*;

Band-rumped Storm-Petrel, *Oceanodroma castro* becomes Band-rumped Storm-Petrel, *Hydrobates castro*;

Wedge-rumped Storm-Petrel, *Oceanodroma tethys* becomes Wedge-rumped Storm-Petrel, *Hydrobates tethys*;

Black Storm-Petrel, *Oceanodroma melania* becomes Black Storm-Petrel, *Hydrobates melania*;

Tristram's Storm-Petrel, *Oceanodroma tristrami* becomes Tristram's Storm-Petrel, *Hydrobates tristrami*;

Least Storm-Petrel, *Oceanodroma microsoma* becomes Least Storm-Petrel, *Hydrobates microsoma*;

Tennessee Warbler, *Oreothlypis peregrina* becomes Tennessee Warbler, *Leiothlypis peregrina*

Orange-crowned Warbler, *Oreothlypis celata* becomes Orange-crowned Warbler, *Leiothlypis celata*;

Colima Warbler, *Oreothlypis crissalis* becomes Colima Warbler, *Leiothlypis crissalis*;

Lucy's Warbler, *Oreothlypis luciae* becomes Lucy's Warbler, *Leiothlypis luciae*;

Nashville Warbler, *Oreothlypis ruficapilla* becomes Nashville Warbler, *Leiothlypis ruficapilla*;

Virginia's Warbler, *Oreothlypis virginiae* becomes Virginia's Warbler, *Leiothlypis virginiae*; and

Black-faced Grassquit, *Tiaris bicolor* becomes Black-faced Grassquit, *Melanospiza bicolor*.

#### What scientific authorities are used to amend the list of migratory birds?

Although bird names (common and scientific) are relatively stable, staying current with standardized use is necessary to avoid confusion in communications. In making our determinations, we primarily relied on the American Ornithological Society's (AOS's) Checklist of North American birds (AOU 1998), as amended annually (AOU 1999 through 2016, AOS 2017 through 2019), on matters of taxonomy, nomenclature, and the sequence of species and other higher taxonomic

categories (Orders, Families, Subfamilies) for species that occur in North America. The AOU (now AOS) Checklist of North American birds (Checklist), developed by the AOU Committee on Classification and Nomenclature, has been the recognized taxonomic authority for North American birds since publication of the first edition of the Checklist in 1886. The committee compiles the taxonomic foundation for ornithology in North America; evaluating and codifying the latest scientific developments in the systematics, classification, nomenclature, and distribution of North American birds. Thus, the AOS's Checklist represents the best information available for developing the North American component of this List of Migratory Birds. In keeping with the increasing numbers of study areas on which taxonomy relies, the committee incorporates expertise in phylogenetics, genomics, vocalizations, morphology, behavior, and geographical distribution, as well as general ornithological knowledge. The AOS Checklist contains all bird species that have occurred in North America from the Arctic through Panama, including the West Indies and the Hawaiian Islands, and includes distributional information for each species, which specifies whether the species is known to occur in the United States, and the Committee on Classification and Nomenclature also keeps and updates a list of species known to occur in the United States. The 2019 update of the AOS Checklist made this revised proposed rule necessary, as the 2019 update became available after the publication of our November 28, 2018, proposed rule.

For the species that occur outside the geographic area covered by the AOS Checklist, we relied on the Clements Checklist of Birds of the World (Clements Checklist) (Clements *et al.* 2017), and peer-reviewed literature. The Clements Checklist, originally published in 1974, serves as a comprehensive list of bird species of the world, incorporating updates and advances in taxonomy and distribution published by regional scientific authorities. The Clements Checklist relies on the AOS for North American updates, but for U.S. territories beyond the geographic scope of the AOS, the Clements Checklist relies on other regional scientific authorities.

Although we primarily rely on the above sources, when informed taxonomic opinion is inconsistent or controversial, we evaluate available published and unpublished information and come to our own conclusion regarding the validity of taxa.

### What criteria are used to identify individual species protected by the MBTA?

A species qualifies for protection under the MBTA by meeting one or more of the following criteria:

(1) It occurs in the United States or U.S. territories as the result of natural biological or ecological processes and is currently, or was previously listed as, a species or part of a family protected by one of the four international treaties or their amendments. Any species that occurs in the United States or U.S. territories solely as a result of intentional or unintentional human-assisted introduction does not qualify for the MBTA list, regardless of whether the family the species belongs to is listed in any of the treaties, unless:

- It was native to the United States or its territories and extant in 1918;
- It was extirpated after 1918 throughout its range in the United States and its territories; and
- After such extirpation, it was reintroduced in the United States or its territories as part of a program carried out by a Federal agency.

(2) Revised taxonomy results in it being newly split from a species that was previously on the list, and the new species occurs in the United States or U.S. territories as the result of natural biological or ecological processes. If a newly recognized native species is considered extinct (following the classification of the AOS or, for species not covered by the AOS, the Clements checklist or peer-reviewed literature), that species will still be included if either of the following criteria apply:

- The species resembles extant species included in the list that may be affected by trade if the species is not included; or
- Not including the species may create difficulties implementing the MBTA and its underlying Conventions.

(3) New evidence exists for its natural occurrence in the United States or U.S. territories resulting from new or natural distributional changes and the species occurs in a protected family. Records must be documented, accepted, and published by the AOS committee. For the U.S. Pacific territories that fall outside the geographic scope of the AOS and for which there is no identified ornithological authority, new evidence of a species' natural occurrence will be based on the Clements checklist and then published peer-reviewed literature, in that order.

In accordance with the Migratory Bird Treaty Reform Act of 2004 (MBTRA) (Pub. L. 108-447, 118 Stat. 2809, 3071-72), we only include migratory bird

species that are native to the United States or U.S. territories. A native migratory bird species is one that is present as a result of natural biological or ecological processes. The List of Migratory Birds protected by the MBTA in title 50 of the Code of Federal Regulations (CFR) at part 10, section 13 (50 CFR 10.13), does not include nonnative species that occur in the United States or U.S. territories solely as a result of intentional or unintentional human-assisted introduction(s). A Notice of Availability of a draft list to update the list of all nonnative, human-introduced bird species to which the MBTA does not apply published on November 28, 2018 (83 FR 61161).

### Public Comments

Any final action resulting from our November 28, 2018, proposed rule (83 FR 61288) and this revised proposed rule must be based on the best scientific and commercial data available and be as accurate and as effective as possible. We will address the comments we received during the original comment period on the November 28, 2018, proposed rule (83 FR 61288), as well as any comments we receive during the reopened comment period for this revised proposed rule, in our final rule for this action. During this reopened comment period, we request comments or information from other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning our November 28, 2018, proposed rule (83 FR 61288) and this revised proposed rule.

Please include sufficient information with your submission (such as electronic copies of scientific journal articles or other publications, preferably in English) to allow us to verify any scientific or commercial information you include.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**).

### Required Determinations

We are affirming our required determinations made in our November 28, 2018, proposed rule (83 FR 61288); for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see that proposed rule:

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act of 1995;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and 13771.

### List of Subjects in Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

### Proposed Regulation Promulgation

For the reasons stated in the preamble, we propose to further amend title 50, chapter I, subchapter B, part 10 of the Code of Federal Regulations, as proposed to be amended at 83 FR 61288 (November 28, 2018), as set forth below:

### PART 10—GENERAL PROVISIONS

- 1. The authority citation continues to read as follows:

**Authority:** 16 U.S.C. 668a-d, 703-712, 742a-j-l, 1361-1384, 1401-1407, 1531-1543, 3371-3378; 18 U.S.C. 42; 19 U.S.C. 1202.

- 2. Amend § 10.13, as proposed to be amended on November 28, 2018 (83 FR 61288), as follows:

- a. By revising the introductory text of paragraph (c);

- b. In paragraph (c)(1), by:

- i. Under the entry DOVE, adding, in alphabetical order, the words “Common Ground, *Columbina passerina*” and “Ruddy Ground, *Columbina talpacoti*”;
- ii. Under the entry GRASSQUIT, removing the words “Black-faced, *Tiaris bicolor*” and adding in their place the words “Black-faced, *Melanospiza bicolor*”;

- iii. Under the entry GROUND-DOVE, by:

- 1. Removing the words “Common, *Columbina passerina*”;



■ E. Removing the words “*Oreothlypis ruficapilla*, Nashville Warbler” and adding in their place the words “*Leiiothlypis ruficapilla*, Nashville Warbler”; and

■ F. Removing the words “*Oreothlypis virginiae*, Virginia’s Warbler” and adding in their place the words “*Leiiothlypis virginiae*, Virginia’s Warbler”; and

■ 7. Under entries Family THRAUPIDAE, Subfamily COEREBINAE, removing the words “*Tiaris bicolor*, Black-faced Grassquit” and adding in their place the words “*Melanospiza bicolor*, Black-faced Grassquit”.

The revisions and additions read as follows:

§ 10.13 List of Migratory Birds.

\* \* \* \* \*

(c) *What species are protected as migratory birds?* Species protected as migratory birds are listed in two formats to suit the varying needs of the user: Alphabetically in paragraph (c)(1) of this section and taxonomically in paragraph (c)(2) of this section. Taxonomy and nomenclature generally follow the 7th edition of the American Ornithologists’ Union’s (AOU, now recognized as American Ornithological Society (AOS)) *Check-list of North American birds* (1998, as amended through 2019). For species not treated by the AOS *Check-list*, we generally follow *Clements Checklist of Birds of the World* (Clements *et al.* 2017).

(1) \* \* \*

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DOVE, Common Ground, *Columbina passerina*

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Ruddy Ground, *Columbina talpacoti*

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HAWK, \* \* \*

Great Black, *Buteogallus urubitinga*

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MOUNTAIN-GEM, Amethyst-throated, *Lampornis amethystinus*

Blue-throated, *Lampornis clemenciae*

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ORIOLE, \* \* \*

Black-backed, *Icterus abeillei*

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PETREL, \* \* \*

Gray-faced, *Pterodroma gouldi*

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ROBIN, \* \* \*

European, *Erithacus rubecula*

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ROSEFINCH, \* \* \*

Pallas’s, *Carpodacus roseus*

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SCOTER, \* \* \*

Stejneger’s, *Melanitta stejnegeri*

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STORM-PETREL, Ashy, *Hydrobates homochroa*

Band-rumped, *Hydrobates castro*

Black, *Hydrobates melania*

Black-bellied, *Fregetta tropica*

European, *Hydrobates pelagicus*

Fork-tailed, *Hydrobates furcatus*

Leach’s, *Hydrobates leucorhous*

Least, *Hydrobates microsoma*

Matsudaira’s, *Oceanodroma*

*matsudairae*

Polynesian, *Nesofregetta fuliginosa*

Ringed, *Hydrobates hornbyi*

Swinhoe’s, *Hydrobates monorhis*

Townsend’s, *Hydrobates socorroensis*

Tristram’s, *Hydrobates tristrami*

Wedge-rumped, *Hydrobates tethys*

White-bellied, *Fregetta grallaria*

White-faced, *Pelagodroma marina*

Wilson’s, *Oceanites oceanicus*

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WARBLER, \* \* \*

River, *Locustella fluviatilis*

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Thick-billed, *Arundinax aedon*

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WHEATEAR, \* \* \*

Pied, *Oenanthe pleschanka*

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WOODSTAR, Bahama, *Nesophlox evelynae*

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(2) \* \* \*

Order ANSERIFORMES

Family ANATIDAE

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Subfamily ANATINAE

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*Melanitta stejnegeri*, Stejneger’s Scoter

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Order PROCELLARIIFORMES

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Family HYDROBATIDAE

*Hydrobates pelagicus*, European Storm-Petrel

*Fregetta grallaria*, White-bellied Storm-Petrel

*Nesofregetta fuliginosa*, Polynesian Storm-Petrel

*Hydrobates furcatus*, Fork-tailed Storm-Petrel

*Hydrobates hornbyi*, Ringed Storm-Petrel

*Hydrobates monorhis*, Swinhoe’s Storm-Petrel

*Hydrobates leucorhous*, Leach’s Storm-Petrel

*Hydrobates socorroensis*, Townsend’s Storm-Petrel

*Hydrobates homochroa*, Ashy Storm-Petrel

*Hydrobates castro*, Band-rumped Storm-Petrel

*Hydrobates tethys*, Wedge-rumped Storm-Petrel

*Oceanodroma matsudairae*,

Matsudaira’s Storm-Petrel

*Hydrobates melania*, Black Storm-Petrel

*Hydrobates tristrami*, Tristram’s Storm-Petrel

*Hydrobates microsoma*, Least Storm-Petrel

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Family PROCELLARIIDAE

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*Pterodroma gouldi*, Gray-faced Petrel

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Order ACCIPITRIFORMES

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Family ACCIPITRIDAE

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Subfamily ACCIPITRINAE

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*Buteogallus urubitinga*, Great Black Hawk

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Order PASSERIFORMES

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Order PASSERIFORMES

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Family ACROCEPHALIDAE

*Arundinax aedon*, Thick-billed Warbler

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Family LOCUSTELLIDAE

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Family LOCUSTELLIDAE

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*Locustella fluviatilis*, River Warbler

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Family MUSCICAPIDAE

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*Erithacus rubecula*, European Robin

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*Oenanthe pleschanka*, Pied Wheatear

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Family FRINGILLIDAE

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Family FRINGILLIDAE

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Subfamily CARDUELINAE

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*Carpodacus roseus*, Pallas’s Rosefinch

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Family ICTERIDAE

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Subfamily ICTERINAE

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*Icterus abeillei*, Black-backed Oriole

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Family ICTERIDAE

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Subfamily ICTERINAE

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*Icterus abeillei*, Black-backed Oriole

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Family ICTERIDAE

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Subfamily ICTERINAE

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Family ICTERIDAE

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Dated: September 26, 2019.

Rob Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019-22978 Filed 11-8-19; 8:45 am]

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