



Migratory Bird Management Information: List of Protected Birds (10.13) Questions and Answers

What action is the Service taking?

The U.S. Fish and Wildlife Service revised the List of Migratory Birds by both adding and removing numerous species. Reasons for the changes to the list include correcting previous mistakes including misspellings, adding species based on new evidence of occurrence in the United States or U.S. territories, removing species no longer known to occur within the United States, and changing names based on new taxonomy.

Additionally, reasons also include adding species of casual/accidental occurrence (93 species), taxonomic splits (38 species), expanding geographic scope to include territories (28 species), and including resident Hawaiian birds in families covered by the MBTA (24 species). The net increase of 175 species (186 added and 11 removed) brings the total number of species protected by the Migratory Bird Treaty Act (MBTA) to 1007. The purpose of the rule is to inform the public of the species protected by the MBTA and its implementing regulations. These regulations are found in Title 50, Code of Federal Regulations (CFR), Parts 10, 20, and 21.

How does the list help migratory birds?

The Service regulates most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for regulatory purposes.

What changes are being made to the list?

The amendment to the list will:

- (1) add 65 species based on new distributional records documenting their occurrence in the United States since April 1985;
- (2) add 38 species newly recognized as a result of taxonomic changes;
- (3) add 29 species of accidental or casual occurrence documented prior to April 1985, but not included in prior lists;
- (4) add 28 species that occur naturally in the United States only in the Pacific island territories of American Samoa, Baker and Howland Islands, Guam, or the Northern Mariana Islands;
- (5) add 24 species that occur naturally in the United States only in Hawaii;
- (6) remove 10 species based on revised taxonomic treatments not known to occur within the United States;
- (7) add two species covered by the Japanese and Russian Conventions that were mistakenly omitted from previous lists;
- (8) remove one species that is now treated as a subspecies;
- (9) change the scientific names of 66 species to conform with the most recent nomenclatural treatment ;
- (10) change the common (English) names of 48 species to conform with the most recent nomenclatural treatment ;

- (11) change the common and scientific names of seven species to conform with the most recent nomenclatural treatment ;
- (12) revise incorrect or invalid scientific names of four species in the alphabetical list to reflect the most recent nomenclatural treatment and to correct inconsistencies between the alphabetical and taxonomic lists;
- (13) correct misspellings in the scientific names of three species in the taxonomic list; and
- (14) correct misspellings in the common (English) name of two species;
- (15) change the status of one taxon from protected subspecies to non-protected species because there is no known natural occurrence of the newly recognized species in the United States or its territories.

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 four criteria:

- (1) It (a) Belongs to a family or group of species named in the Canadian convention of 1916, as amended in 1996; (b) specimens, photographs, videotape recordings, or audiotape recordings provide convincing evidence of natural occurrence in the United States or its territories; and (c) the documentation of such records has been recognized by the American Ornithologists Union (AOU) or other competent scientific authorities.
- (2) It (a) Belongs to a family or group of species named in the Mexican convention of 1936, as amended in 1972; (b) specimens, photographs, videotape recordings, or audiotape recordings provide convincing evidence of natural occurrence in the United States or its territories; and (c) the documentation of such records has been recognized by the AOU or other competent scientific authorities.
- (3) It is a species listed in the annex to the Japanese convention of 1972.
- (4) It is a species listed in the appendix to the Russian convention of 1976.

In accordance with the Migratory Bird Treaty Reform Act of 2004, we have not listed species whose occurrences in the United States are strictly the result of intentional human introduction(s). For more information:

<http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/MBTAProtectedNonprotected.html>

What Statutory Authority Does the Service Have for this Rulemaking?

The Service has statutory authority and responsibility for enforcing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-711), the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j). The MBTA implements Conventions between the United States and four neighboring countries for the protection of migratory birds, as follows:

- (1) Canada: Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628;
- (2) Mexico: Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-United Mexican States (Mexico), 50 Stat. 1311, T.S. No. 912;
- (3) Japan: Convention for the Protection of Migratory Birds and Birds in Danger of

Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990; and

(4) Russia: Convention for the Conservation of Migratory Birds and Their Environment, United States-Union of Soviet Socialist Republics (Russia), November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073.

What Species Are *Not* Protected by the Migratory Bird Treaty Act?

The MBTA does not apply to species that fall into any of the following categories:

(1) Nonnative species introduced into the United States or its territories by means of intentional or unintentional human assistance. See 70 FR 12710 (March 15, 2005) for a partial list of nonnative human-introduced bird species in this category.

(2) Species that are native *and* belong to families not covered by any of the conventions implemented by the MBTA. These species are managed by the states within which they reside.

Partial lists of the species are available at:

<http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/MBTAProtectedNonprotected.html>

How does this list impact the Muscovy duck?

The addition of Muscovy duck may be controversial because of a various kinds of damages that the birds have been documented to inflict on private properties. The Service has concluded that the Muscovy duck warrants protection under the MBTA because of the recent northward expansion of wild birds into extreme south Texas, where breeding has been confirmed. As a consequence, all Muscovy ducks in the U.S., regardless of their origin and status, will also receive the protection of the MBTA. The Service is enplacing regulations at 50 CFR 21.54 to prohibit sale of Muscovy ducks for hunting, and to authorize a depredation order allowing their removal without a permit in locations in which the species does not occur naturally in the contiguous United States, Alaska, and Hawaii, and in U.S. territories and possessions. However, the Service has made exceptions for ongoing commercial endeavors breeding Muscovy ducks for sale as food.

How does this list impact the Canada goose?

The Service choose to include cackling goose in the listing of Canada goose, rather than as a separate species. In this instance, we seek a higher level of certainty about taxonomic changes before modifying hunting regulations and management plans, and communicating those changes to the public. Some waterfowl specialists do not agree that the data on which the AOU relied warranted the separation into two species. Additional research on Canada/cackling goose taxonomy and breeding distribution is currently being conducted and better techniques for field and harvest identification are in development. We will consider this additional information when it is available, at which time we may reconsider our decision. In any case, we emphasize that, regardless of name, goose subspecies identified as cackling goose by the AOU remain protected under the Migratory Bird Treaty Act as Canada goose.