

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-HQ-ES-2023-0027; FXES1113090FEDR-234-FF09E22000]

RIN 1018-BA54

**Endangered and Threatened Wildlife and Plants; Technical Corrections for Eight Species of Endangered and Threatened Fish and Wildlife**

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

**ACTION:** Direct final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), correct the information provided in the “Where listed” column of the List of Endangered and Threatened Wildlife (List) for eight species listed as endangered species under the Endangered Species Act of 1973, as amended (Act). Errors introduced into the List may be interpreted as indicating that only some populations of these species are listed. We are correcting the List to clarify that protections apply to these species wherever found.

**DATES:** This rule is effective December 19, 2023 without further action, unless significant adverse comment is received

by October 20, 2023. If significant adverse comment is received, we will publish a timely withdrawal of the applicable portions of this rule in the **Federal Register**.

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

- *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-HQ-ES-2023-0027, which is the docket number for this rulemaking. Then, click the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Rule to locate this document. You may submit a comment by clicking on “Comment.”

- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-HQ-ES-2023-0027, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041-3803.

See Public Comments under **SUPPLEMENTARY INFORMATION** for more information about submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Maclin, Chief, Division of Restoration and Recovery, U.S. Fish and Wildlife Service, Ecological Services, MS:ES, 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone

703-358-2646. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. For information on a particular species, contact the appropriate person listed in table 1 under **SUPPLEMENTARY INFORMATION**, below.

**SUPPLEMENTARY INFORMATION:**

**Purpose of Direct Final Rule and Next Steps**

The purpose of this direct final rule is to revise the List to reflect the correct geographical scope of the listing of eight endangered wildlife species under section 4 of the Act (16 U.S.C. 1531 *et seq.*). The List is set forth in title 50 of the Code of Federal Regulations (CFR) at § 17.11(h) (50 CFR 17.11(h)). Table 1 shows the species for which we are correcting the information provided in the “Where listed” column of the List, as well as the name, telephone number, and U.S. mail address of the person to contact for additional information on a particular species.

TABLE 1—SPECIES WITH CORRECTED ENTRIES AND CONTACT INFORMATION

Common name	Scientific name	Contact person, phone	Contact person’s U.S. mail address
Margay .....	<i>Leopardus (=Felis) wiedii</i> .....	Rachel London, Branch Chief, 703-358-2491.	U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041.
Condor, California .....	<i>Gymnogyps californianus</i> .....	Ashleigh Blackford, California Condor Coordinator, 916-414-6464.	Pacific Southwest Regional Office, 2800 Cottage Way, Sacramento, CA 95825.
Kite, Everglade snail .....	<i>Rostrhamus sociabilis plumbeus</i> .	Victoria Garcia, 772-562-3909.	Vero Beach Fish and Wildlife Office, 1339 20th Street, Vero Beach, FL 32960-3559.
Parrot, thick-billed .....	<i>Rhynchopsitta pachyrhyncha</i>	Heather Whitlaw, Field Supervisor, 602-242-0210.	Arizona Ecological Services Office, 9828 North 31st Avenue, #C3, Phoenix, AZ 85051-2517.
Rail, light-footed Ridgway’s .....	<i>Rallus obsoletus levipes</i> .....	Lauren Kershek and Sandra Hamilton, 760-431-9440.	Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
Rail, Yuma Ridgway’s .....	<i>Rallus obsoletus yumanensis</i>	Heather Whitlaw, Field Supervisor, 602-242-0210.	Arizona Ecological Services Office, 9828 North 31st Avenue, #C3, Phoenix, AZ 85051-2517.
Topminnow, Gila .....	<i>Poeciliopsis occidentalis</i> .....	Heather Whitlaw, Field Supervisor, 602-242-0210.	Arizona Ecological Services Office, 9828 North 31st Avenue, #C3, Phoenix, AZ 85051-2517.
Skipper, Carson wandering .....	<i>Pseudocopaodes eunus obscurus</i> .	Lara Enders, 775-861-6300 ..	Reno Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502-7147.

We are publishing this rule without a prior proposal because this is a noncontroversial action that, in the best interest of the public, should be undertaken as quickly as possible. This rule will be effective, as published in this document, on the effective date

specified above in **DATES**, unless we receive significant adverse comments on or before the comment due date specified above in **DATES**. Significant adverse comments are comments that provide strong justification as to why

our rule should not be adopted or why it should be changed.

If we receive significant adverse comments, we will publish a document in the **Federal Register** withdrawing this rule for the species in question before the effective date, and we will

determine whether to engage in the normal rulemaking process to promulgate changes to 50 CFR 17.11(h) for that species.

### Public Comments

You may submit your comments and materials regarding this direct final rule by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comments that allows us to verify any scientific or commercial information you include. We will not consider comments sent by email or fax, or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us. Before including your address, phone number, email address, or other personal information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing this direct final rule, will be available for public inspection on the internet at <https://www.regulations.gov> or by appointment, during normal business hours at the U.S. Fish and Wildlife Service. Please note that comments posted to <https://www.regulations.gov> are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. Information regarding this rule is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).

### Background for the Current List

In accordance with 50 CFR 17.11(a), the “Common name,” “Scientific name,” “Where listed,” and “Status” columns of the List provide regulatory information; together, they identify listed wildlife species within the meaning of the Act and describe where they are protected. Under 50 CFR 17.11(d), the “Where listed” column sets forth the geographic area where the species is listed for purposes of the Act.

Except when providing a geographic description of a distinct population segment (DPS) of vertebrate fish or wildlife, an evolutionary significant unit of salmon stock, or an experimental population designation, “Wherever found” is used to indicate that the Act’s protections apply to all individuals of the species, wherever found. If only specific populations of the species are included in the listed entity, then those populations are specifically described in the “Where listed” column and the name of the population listed is included in brackets in the “Common name” column.

We note that in 2016 we revised the format of the List at 50 CFR 17.11(h) and the List of Endangered and Threatened Plants at 50 CFR 17.12(h) (2016 revision; 81 FR 51550, August 4, 2016). Among other things, the 2016 revision changed the former column heading of “Vertebrate population where threatened or endangered” to “Where listed.” Information in this column for non-DPS listings was changed from “Entire” (or “do” for “ditto”) to “Wherever found.” The 2016 revision revised this column heading and its information to reflect their meaning and usage more accurately, but also to provide equivalent information and have the same regulatory effect. For a detailed description of the changes to the format of the Lists, see the 2016 revision.

In this rule, discussion of entries in the List prior to the 2016 revision may reference the column headings and information of the previous format. The columns “Where listed” and “Vertebrate population where endangered or threatened,” and the information “Wherever found” and “Entire” (or “do”), are synonymous.

### Background for the Corrections in This Direct Final Rule

The Service has identified several species that appear in the List as if they are listed under the Act as a DPS even though we listed them as endangered species in their entirety. Information in the “Where listed” column in the List erroneously describes these species as population listings. Review of the listing histories of these species indicates that they are protected in their entirety despite their appearance in the List as DPS listings that protect only certain populations of the taxonomic species or subspecies. These species are the Mexican grizzly bear (*Ursus arctos*), northern swift fox (*Vulpes velox hebes*), margay (*Leopardus wiedii*), California condor (*Gymnogyps californianus*), Everglade snail kite (*Rostrhamus sociabilis plumbeus*), thick-billed parrot

(*Rhynchopsitta pachyrhyncha*), light-footed Ridgway’s rail (*Rallus obsoletus levipes*), Yuma Ridgway’s rail (*Rallus obsoletus yumanensis*), Gila topminnow (*Poeciliopsis occidentalis*), and Carson wandering skipper (*Pseudocopa eunus obscurus*).

In this direct final rule, we are correcting the entries for 8 of these 10 species. We are correcting the List at 50 CFR 17.11(h) by revising the information in the “Where listed” column to “Wherever found” for margay, California condor, Everglade snail kite, thick-billed parrot, light-footed Ridgway’s rail, Yuma Ridgway’s rail, Gila topminnow, and Carson wandering skipper. This action is based on a review of changes to the List made in the 1980s that erroneously altered the listed ranges for these species from “Entire” (equivalent to “Wherever found” in the 2016 revision) to geographically defined DPS listings.

We are not correcting the entries for Mexican grizzly bear (*Ursus arctos*) and northern swift fox (*Vulpes velox hebes*) at this time because we believe they may no longer be valid taxonomic subspecies and, therefore, may warrant delisting as a result. Because removal of Mexican grizzly bear and northern swift fox from the List would require publication of a proposed rule and request for public comment, it would be inappropriate to include those actions in this administrative direct final rule, which merely corrects errors without changing the listed entities or their statuses. Therefore, we will not correct the entries for Mexican grizzly bear and northern swift fox pending further review of their appropriate listing statuses.

Below, we explain the nature and information known about the errors we are correcting in this document.

### Pre-Act Listings

Prior to the Act, two statutes allowed listing of, and certain protections for, endangered species. In 1966, the Endangered Species Preservation Act (ESPA; Pub. L. 89–669, October 15, 1966) provided for the listing of species of native fish and wildlife found to be threatened with extinction (see section 1(c), 80 Stat. 926 (1966)). In 1969, the ESPA was amended and renamed the Endangered Species Conservation Act (ESCA; Pub. L. 91–135, December 5, 1969). The ESCA retained, without change, the ESPA’s standard for listing native species found to be threatened with extinction. In addition, section 3(a) of the ESCA called for the Secretary to list species or subspecies of fish or wildlife deemed to be threatened with worldwide extinction (see Pub. L. 91–

135, section 3(a), 83 Stat. 275 (1969)). The new standard for listing foreign species was codified separately from the standard for listing native species.

Five species (California condor, Everglade snail kite, light-footed Ridgway's rail, Yuma Ridgway's rail, and Gila topminnow) were all listed as endangered native wildlife under the ESPA (32 FR 4001, March 11, 1967; 34 FR 5034, March 8, 1969). These five species listed under the ESPA were transferred to the new list of endangered native fish and wildlife promulgated under the ESCA (35 FR 16047; October 13, 1970). On June 2, 1970, we published a final rule adding the Mexican grizzly bear, northern swift fox, and thick-billed parrot to the list of endangered foreign fish and wildlife under the ESCA (35 FR 8491), and we added the margay on March 30, 1972 (37 FR 6476).

The Service's new regulations implementing the ESCA explained, in particular for species listed under the new authority, that the entire species or subspecies was protected under the ESCA. For foreign species listings, the definition of "Endangered Species List" explained that it included species or subspecies of fish and wildlife found in other countries that are threatened with worldwide extinction (see § 17.2(g) in 35 FR 8491, June 2, 1970). The foreign species list included geographic descriptions for each species in a "Where found" column, but the introduction also explained that this information was a general guide to the native countries or regions where the named animals are found. It was not intended to be definitive. For domestic listings, the definition of "Native Endangered Species List" explained that it included species or subspecies of fish and wildlife native to the United States that are threatened with extinction (see § 17.2(h) in 35 FR 8491, June 2, 1970).

#### *Listings Under the Endangered Species Act of 1973, as Amended*

On December 28, 1973, the current Act (16 U.S.C. 1531 *et seq.*) was enacted and repealed the ESPA. However, section 4(c)(3) of the Act provided that any list of endangered species issued under the ESCA was to be republished, without public hearing or comment, as the initial list of species under the Act (Pub. L. 93–205, section 4(c)(3), 87 Stat. 884, 888 (1973)). (Section 4(c)(3) was repealed in a subsequent amendment of the Act because it had no legal effect once the earlier lists had been republished.) Thus, those species previously listed under the ESPA or ESCA were automatically provided protection under the newly enacted

Endangered Species Act. Accordingly, these species were transferred to the lists of endangered species published pursuant to the Act, with the Service originally keeping separate lists for native and foreign species (see the 1974 issue of the CFR at 50 CFR 17.11 (Endangered foreign wildlife) and 50 CFR 17.12 (Endangered native wildlife)).

One of the major changes between the Act and the prior ESPA and ESCA was that it provided the legal authority for population-based listings. Similar to the ESPA and the ESCA, the Act provided for the listing of species (or subspecies), but the new definition of "species" included any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature (Pub. L. 93–205, section 3(11), 87 Stat. 884, 886 (1973)). (This definition was amended in 1978 to the current statutory language in which species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.) The original lists under the Act did not accommodate this option, with the native endangered species list containing only the scientific and common names of each protected species. The foreign endangered species list continued to include a "Where found" column, now with the further clarification that the information provided there was for the convenience of the public, was not exhaustive, was not required to be given by law, and had no legal significance (see 39 FR 1158, January 4, 1974, p. 1171).

Consistent with the new listing option under the Act, the first unified list of native and foreign wildlife contained a new column, "Population", to provide for population-based listings (see 40 FR 44412; September 26, 1975). In the September 26, 1975, rule, at 50 CFR 17.11(b), the regulations explained that the columns entitled "Common name", "Scientific name", and "Population" defined the "species" of wildlife within the meaning of the Act. Thus, for example, in that rule, the "Population" column indicated that the grizzly bear was listed only in the "USA (48 conterminous States)." The "Population" column read "N/A" (for "not applicable") for the Mexican grizzly bear, northern swift fox, margay, California condor, Everglade snail kite, thick-billed parrot, light-footed Ridgway's rail, Yuma Ridgway's rail, and Gila topminnow, indicating that these were not population-based listings

and each species was listed in its entirety. The September 26, 1975, rule, at 50 CFR 17.11(b), noted that the prohibitions of the Act and regulations apply to all specimens of the "species" listed, wherever they are found, and to their progeny. The September 26, 1975, rule also established a new column, "Known Distribution," with countries or geographic regions included for each listed species similar to the previous "Where found" column; however, the rule explained at 50 CFR 17.11(d) that this column was for informational purposes only and did not imply any limitation on the application of the prohibitions in the Act and 50 CFR part 17.

It is clear, therefore, that all of these listed species were originally listed in their entirety. All were originally listed as endangered under either the ESPA or the ESCA, statutes that did not provide the legal authority for population-based listings. The ESCA and the Service's regulations implementing the statute made it clear, especially for species listed under the ESCA, that listed species were those threatened with worldwide extinction. When the Act was enacted in 1973 (with its authority for population-based listings), the Service's first regulations to accommodate population-based listings (through the addition of the "Population" column to the List) indicated that the listing of these species was not based on the authority for population-based listings (through the use of "N/A," or not applicable, in the "Population" column). The CFR continued to reflect that all these species were listed in their entirety for a number of years. In 1980, the Service adopted the organization of the List (see the 1980 edition of the CFR at 50 CFR 17.11(h)) that immediately preceded the current format adopted in 2016. The "Population" column was removed and a new column—"Vertebrate population where endangered or threatened"—indicated whether a species was listed in its entirety or whether it was a DPS listing.

For six of these species, the Mexican grizzly bear, California condor, Everglade snail kite, light-footed Ridgway's rail, Yuma Ridgway's rail, and Gila topminnow, the 1980 list indicated that all six of the species at issue here were listed in their entirety (*i.e.*, the word "Entire" appears for each one in the "Vertebrate population where endangered or threatened" column of the List) (see the 1980 edition of the CFR at 50 CFR 17.11(h)). Then in the mid-1980s, the information in the "Vertebrate population where endangered or threatened" column was

inadvertently changed from “Entire” (or its equivalent of “do” for “ditto”) for each of the six species to new information that indicated geographically limited listings. The only manner in which the scope of a listed entity (a taxonomic species, subspecies, or DPS) can be changed is through the rulemaking procedures specified in section 553 of the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and section 4(b)(4) of the Act, and those procedures were never undertaken for these six species.

On July 25, 1979, we published in the **Federal Register** (44 FR 43705) a “notification” document announcing that for seven listed species, including the northern swift fox, margay, and thick-billed parrot, with the consolidation of the “foreign” and “native” species lists under the Act, the native populations of these species were not listed as endangered, although the foreign populations were listed and received all the protections of the Act. The document stated that the ESCA requires consultation with States prior to listing native species as endangered, and for the seven species, the Service had failed to consult with the governors of the States with U.S. populations of these species; therefore, the Service concluded that the U.S. populations were not listed under the Act. That July 25, 1979, document went on to say that it has always been the intent of the Service that all populations of those species deserve to be listed as endangered, whether they occur in the United States or in foreign countries; that the status of these native populations is truly endangered; and that it is only as a result of an oversight that the native populations of these species are currently excluded from the protections of the Act.

No rulemakings to change the scope of the northern swift fox, margay, or thick-billed parrot listings that meet the requirements of section 4(b)(5) and 4(b)(6) of the Act were ever promulgated, yet on May 20, 1980, we published a final rule (45 FR 33768) that republished the Lists, and in that rule, the entries for northern swift fox, margay, and thick-billed parrot were amended to indicate that only populations of the species outside the United States were listed under the Act. Specifically, the northern swift fox appeared as a DPS listing in “Canada,” the margay appeared as a DPS listing in “Mexico southward,” and the thick-billed parrot appeared as a DPS listing in “Mexico.” The entries for the other four species addressed in the July 25, 1979, “notification” document (44 FR 43705) have already been corrected in

other rulemakings and are therefore not addressed further in this document.

In an April 30, 2009, memorandum from the Assistant Solicitor for Fish and Wildlife to the Director of the Fish and Wildlife Service, the Solicitor’s Office explained that these species are listed in their entirety despite their appearance as DPS listings in the List at 50 CFR 17.11(h) (DOI 2009). As explained in the 2009 memorandum, the Service did not have the legal authority to change the scope of the listed entity through a **Federal Register** notice. The memo advised us that, without going through the proper rulemaking procedures required under section 553 of the APA and section 4(b)(4) of the Act, the Service had no authority to simply remove the U.S. populations of the northern swift fox, margay, and thick-billed parrot, along with the other species, from their protected status under the Act. As a result, the Solicitor’s Office instructed us that the July 25, 1979, “notification” document (44 FR 43705) was without legal effect, and no other rulemakings consistent with the Act’s requirements occurred to change the listings from the species or subspecies level to DPSs.

Furthermore, we were advised that failure to consult with a State under the ESCA did not invalidate the species’ legal status under the Act. In fact, in 1973, Congress validated the lists under the ESCA by its explicit incorporation of them into the Act through section 4(c)(3) of the Act. Also, for species where there were no populations within the United States at the time of the listing, there were no States with which to consult. This may have been the case with at least two of the species at issue here. For example, the last verified report of the thick-billed parrot in the United States was in the 1930s, decades before it was listed as endangered under the ESCA (see 45 FR 49844, July 25, 1980). The margay was known in the United States from a single specimen taken in Texas, and by 1980, there were almost certainly no resident populations in the United States (see 45 FR 49844, July 25, 1980).

The 2009 memorandum concluded that the changes to the CFR in the 1980s, indicating that only a particular DPS of each of these species is endangered while the remainder of the species is not protected under the Act, are without legal effect because the Service had no authority to change the scope of the listed entity without following the rulemaking procedures required by section 553 of the APA and section 4(b)(4) of the Act. Therefore, these species continue to be listed in their entirety despite their appearance

as DPS listings in the CFR. As such, we are correcting the List to read “Wherever found” in the “Where listed” column for the following species: margay, Everglade snail kite, thick-billed parrot, light-footed Ridgway’s rail, Yuma Ridgway’s rail, and Gila topminnow. Likewise, we are correcting the information in the “Where listed” column of the California condor’s entry to read, “Wherever found, except where listed as an experimental population.” (As noted above, we are not correcting the entries for Mexican grizzly bear and northern swift fox at this time due to the likelihood that they are not valid subspecies.)

The final species with an erroneous entry is the Carson wandering skipper, a subspecies of butterfly, which incorrectly appears as a DPS listing despite being listed in its entirety. The Service listed the Carson wandering skipper as an endangered species on August 7, 2002 (67 FR 51116). The final rule amended the List to indicate “U.S.A., (Lassen County, CA; Washoe County, NV)” in the “Vertebrate population where endangered or threatened” column. However, the Service intended to list the subspecies in its entirety. The rulemaking analyzed the status of the species rangewide and did not include a DPS analysis. In addition, the locations included in the “Vertebrate population where endangered or threatened” column encompassed the entire known range of the species at the time of its listing.

The Service also lacks the legal authority to list a DPS of this or any invertebrate subspecies. The Act’s section 4(a)(1) authorizes the Service to determine whether any species is an endangered species or a threatened species. The term “species,” as defined in the Act (see section 3(16)), includes any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Distinct population segments of invertebrate wildlife do not fall within the Act’s definition of “species.” Accordingly, DPSs of invertebrate wildlife cannot be included on the List. Instead, when the Service determines that a species of invertebrate wildlife is endangered or threatened, the species may only be listed in its entirety.

Because the rulemaking analyzed the species in its entirety and the Service was without legal authority to list a subspecies of butterfly as a DPS, the subspecies is in fact listed in its entirety despite its appearance as a DPS listing in the CFR. Therefore, we are correcting the List by replacing “U.S.A., (Lassen County, CA; Washoe County, NV)” with

“Wherever found” in the “Where listed” column in the entry for the Carson wandering skipper.

**Correction of Listed Range**

The table below summarizes information regarding the entries in the List at 50 CFR 17.11(h) for each of the species, followed by a narrative

description of the changes being made to the entries. Please note that we do not include a narrative description for the Carson wandering skipper, as that description is provided above.

**TABLE 2—LIST OF CORRECTIONS**

Species	Scientific name	Original listing	Date of incorporated error	Current “where listed” information	Corrected “where listed” information
Margay ..... California condor .....	<i>Leopardus (=Felis) wiedii</i> <i>Gymnogyps californianus</i>	37 FR 6476; 3/30/1972 .. 32 FR 4001; 3/11/1967 ..	5/20/1980 (45 FR 33768) 1987 (1987 edition of CFR).	Mexico southward ..... U.S.A. only, except where listed as an experimental population. U.S.A. (FL) .....	Wherever found. Wherever found, except where listed as an experimental population. Wherever found.
Everglade snail kite .....	<i>Rostrhamus sociabilis plumbeus</i> .	32 FR 4001; 3/11/1967 ..	1986 (1986 edition of CFR).	U.S.A. only .....	Wherever found.
Thick-billed parrot .....	<i>Rhynchopsitta pachyrhyncha</i> .	35 FR 8491; 6/2/1970 ....	5/20/1980 (45 FR 33768)	Mexico .....	Wherever found.
Light-footed Ridgway’s rail.	<i>Rallus obsoletus levipes</i>	34 FR 5034; 3/8/1969 ....	1988 (1988 edition of CFR).	U.S.A. only .....	Wherever found.
Yuma Ridgway’s rail .....	<i>Rallus obsoletus yumanensis</i> .	32 FR 4001; 3/11/1967 ..	1988 (1988 edition of CFR).	U.S.A. only .....	Wherever found.
Gila topminnow .....	<i>Poeciliopsis occidentalis</i>	32 FR 4001; 3/11/1967 ..	1988 (1988 edition of CFR).	U.S.A. only .....	Wherever found.
Carson wandering skipper	<i>Pseudocopaeodes eunus obscurus</i> .	67 FR 51116; 8/7/2002 ..	8/7/2002 (67 FR 51116)	U.S.A., (Lassen County, CA; Washoe County, NV).	Wherever found.

**Corrected Species Where Listed**

*Margay (Leopardus (=Felis) Wiedii)*

The margay was originally listed as endangered under the ESCA of 1969 (37 FR 6476; March 30, 1972). Currently, the information in the “Where listed” column for this species reads, “Mexico southward.” As explained above, this current information erroneously indicates that protections are afforded only to a subset of the species as a DPS. We are correcting the margay’s entry in the List at 50 CFR 17.11(h) so that the information in the “Where listed” column reads, “Wherever found.” This correction reflects the intent of the original listing that the species, not a DPS, is in danger of extinction and that protections of the Act extend to all individuals of the species wherever found. Currently, the species is known to occur in Mexico and southward in Central and South America. There is a single record of a specimen taken in United States in Texas, and it is believed that there are no resident margay populations in the United States. Regardless, because the species is listed in its entirety and protections of the Act extend to all individuals of the species wherever found, any individual of the species found in the United States would be afforded the full protections of the Act. This correction does not change the description, distribution, or endangered status of the margay.

*California Condor (Gymnogyps Californianus)*

The California condor was originally listed as endangered under the ESPA of

1966 (32 FR 4001; March 11, 1967). In 1996, a nonessential experimental population of condors was established in Arizona, and special regulations pursuant to that rulemaking apply to the population of California condors found in parts of Arizona, Utah, and Nevada (61 FR 54044; October 16, 1996). Subsequently, another nonessential experimental population of condors was established in the Pacific Northwest, and special regulations pursuant to that rulemaking apply to the population of California condors found in Oregon, and specific portions of northern California and northwest Nevada (86 FR 15602; March 24, 2021).

Currently, in the California condor’s first (original) entry on the List, the information in the “Where listed” column reads, “U.S.A. only, except where listed as an experimental population.” As explained above, this current information erroneously indicates that protections are afforded only to a subset of the species as a DPS. We are correcting that entry’s “Where listed” information to read, “Wherever found, except where listed as an experimental population.” This correction reflects the intent of the original listing that the species, not a DPS, is in danger of extinction and that protections of the Act extend to all individuals of the species wherever found, except as modified by the current nonessential experimental population designations and their associated rules. Currently, the species is known to occur in the United States in California, northern Arizona, southern Utah, Nevada, and Oregon. This correction

does not change the description, distribution, or endangered status of the California condor.

In addition, in the California condor’s first (original) entry on the List, in the “Listing citations and applicable rules” column, we are removing the **Federal Register** citation for the rule establishing the nonessential experimental population of condors in Arizona. The subject rule will continue to be cited under the appropriate entry in the List. This correction ensures consistency in our presentation of citations in the List.

*Everglade Snail Kite (Rostrhamus Sociabilis Plumbeus)*

The Everglade snail kite was originally listed as endangered under the ESPA of 1966 (32 FR 4001; March 11, 1967). Currently, the information in the “Where listed” column for this subspecies reads, “U.S.A. (FL).” As explained above, this current information erroneously indicates that protections are afforded only to a subset of the subspecies as a DPS. We are correcting the Everglade snail kite’s entry in the List at 50 CFR 17.11(h) so that the information in the “Where listed” column reads, “Wherever found.” This correction reflects the intent of the original listing that the subspecies, not a DPS, is in danger of extinction and that protections of the Act extend to all individuals of the subspecies wherever found. Currently, the subspecies is known to occur in the United States in Florida and in Cuba. This correction does not change the

description, distribution, or endangered status of the Everglade snail kite.

In addition, we are making a nonsubstantive correction to the information in the “Common name” column of the Everglade snail kite’s entry to present the standard usage.

*Thick-Billed Parrot (Rhynchopsitta Pachyrhyncha)*

The thick-billed parrot was originally listed as endangered under the ESCA of 1969 (35 FR 8491; June 2, 1970). Currently, the information in the “Where listed” column for this species reads, “Mexico.” As explained above, this current information erroneously indicates that protections are afforded only to a subset of the species as a DPS. We are correcting the thick-billed parrot’s entry in the List at 50 CFR 17.11(h) so that the information in the “Where listed” column reads, “Wherever found.” This correction reflects the intent of the original listing that the species, not a DPS, is in danger of extinction and that protections of the Act extend to all individuals of the species wherever found. Currently, the species is known to occur primarily in Mexico. Historically the thick-billed parrot’s range extended as far north as the mountains of southeastern Arizona and possibly southwestern New Mexico, but whether the species ever bred historically in the United States has not been confirmed. The last confirmed sighting of a naturally occurring flock in the United States was in 1938, in the Chiricahua Mountains of Arizona. However, should individuals of the species be found in the United States in the future, pursuant to the original listing, they will be afforded the full protections of the Act. This correction does not change the description, distribution, or endangered status of the thick-billed parrot.

*Light-Footed Ridgway’s Rail (Rallus Obsoletus Levipes)*

The light-footed Ridgway’s rail was originally listed as endangered under the ESPA of 1966 (34 FR 5034; March 8, 1969). The species name on the List was recently revised to reflect the current scientifically accepted taxonomy and nomenclature (88 FR 49314; July 31, 2023). Currently, the information in the “Where listed” column for this subspecies reads, “U.S.A. only.” As explained above, this current information erroneously indicates that protections are afforded only to a subset of the subspecies as a DPS. We are correcting the light-footed Ridgway’s rail’s entry in the List at 50 CFR 17.11(h) so that the information in the “Where listed” column reads,

“Wherever found.” This correction reflects the intent of the original listing that the subspecies, not a DPS, is in danger of extinction and that protections of the Act extend to all individuals of the subspecies wherever found. Currently, the subspecies is known to occur in the United States in California and in Mexico in Baja California. This correction does not change the description, distribution, or endangered status of the light-footed Ridgway’s rail.

*Yuma Ridgway’s Rail (Rallus Obsoletus Yumanensis)*

The Yuma Ridgway’s rail was originally listed as endangered under the ESPA of 1966 (32 FR 4001; March 11, 1967). Currently the information in the “Where listed” column for this subspecies reads, “U.S.A. only.” As explained above, this current information erroneously indicates that protections are afforded only to a subset of the subspecies as a DPS. We are correcting the Yuma Ridgway’s rail’s entry in the List at 50 CFR 17.11(h) so that the information in the “Where listed” column reads, “Wherever found.” This correction reflects the intent of the original listing that the subspecies, not a DPS, is in danger of extinction and that protections of the Act extend to all individuals of the subspecies wherever found. Currently, the subspecies is known to occur in the United States in Arizona and California and in Mexico. This correction does not change the description, distribution, or endangered status of the Yuma Ridgway’s rail.

*Gila Topminnow (Poeciliopsis Occidentalis)*

The Gila topminnow was originally listed as endangered under the ESPA of 1966 (32 FR 4001; March 11, 1967). Currently, the information in the “Where listed” column for this species reads, “U.S.A. only.” As explained above, this current information erroneously indicates that protections are afforded only to a subset of the species as a DPS. We are correcting the Gila topminnow’s entry in the List at 50 CFR 17.11(h) so that the information in the “Where listed” column reads, “Wherever found.” This correction reflects the intent of the original listing that the species, not a DPS, is in danger of extinction and that protections of the Act extend to all individuals of the species wherever found. Currently, the species is known to occur in Arizona and New Mexico in the United States, and in Sonora in Mexico. This correction does not change the

description, distribution, or endangered status of the Gila topminnow.

**Determinations**

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us to revise this rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations issued pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). Even if NEPA were to apply, this amendment of the regulations is purely administrative in nature, and therefore is categorically excluded under the Department of the Interior’s NEPA procedures in 43 CFR 46.210(i); no exceptional circumstances apply.

*Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretary’s Order 3206 of June 5, 1997 (American Indian Tribal

Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that this rule will not affect Tribes or Tribal lands.

**References Cited**

A complete list of the referenced materials is provided in Docket No. FWS-HQ-ES-2023-0027 at <https://regulations.gov> or is available upon request from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h), in the List of Endangered and Threatened Wildlife, by:

- a. Under MAMMALS, revising the entry for “Margay”;
- b. Under BIRDS, revising the first entry for “Condor, California”, and the entries for “Kite, snail (Everglade)”, “Parrot, thick-billed”, “Rail, light-footed Ridgway’s”, and “Rail, Yuma Ridgway’s”;
- c. Under FISHES, revising the entry for “Topminnow, Gila (incl. Yaqui)”;
- and
- d. Under INSECTS, revising the entry for “Skipper, Carson wandering”.

The revisions read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* * *	* * *	* * *	* * *	* * *
Margay .....	<i>Leopardus (=Felis) wiedii</i> .....	Wherever found .....	E .....	37 FR 6476, 3/30/1972.
BIRDS				
* * *	* * *	* * *	* * *	* * *
Condor, California .....	<i>Gymnogyps californianus</i> .....	Wherever found, except where listed as an experimental population.	E .....	32 FR 4001, 3/11/1967; 50 CFR 17.95(b). <sup>CH</sup>
* * *	* * *	* * *	* * *	* * *
Kite, Everglade snail .....	<i>Rostrhamus sociabilis plumbeus</i> .	Wherever found .....	E .....	32 FR 4001, 3/11/1967; 50 CFR 17.95(b). <sup>CH</sup>
* * *	* * *	* * *	* * *	* * *
Parrot, thick-billed .....	<i>Rhynchopsitta pachyrhyncha</i>	Wherever found .....	E .....	35 FR 8491, 6/2/1970.
* * *	* * *	* * *	* * *	* * *
Rail, light-footed Ridgway’s ....	<i>Rallus obsoletus levipes</i> .....	Wherever found .....	E .....	34 FR 5034, 3/8/1969; 35 FR 16047, 10/13/1970.
* * *	* * *	* * *	* * *	* * *
Rail, Yuma Ridgway’s .....	<i>Rallus obsoletus yumanensis</i>	Wherever found .....	E .....	32 FR 4001, 3/11/1967.
FISHES				
* * *	* * *	* * *	* * *	* * *
Topminnow, Gila (incl. Yaqui)	<i>Poeciliopsis occidentalis</i> .....	Wherever found .....	E .....	32 FR 4001, 3/11/1967.
INSECTS				
* * *	* * *	* * *	* * *	* * *
Skipper, Carson wandering ....	<i>Pseudo copaeodes eunus obscurus</i> .	Wherever found .....	E .....	67 FR 51116, 8/7/2002.
* * *	* * *	* * *	* * *	* * *

**Martha Williams,**  
*Director, U.S. Fish and Wildlife Service.*  
 [FR Doc. 2023–20291 Filed 9–19–23; 8:45 am]  
**BILLING CODE 4333–15–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 230911–0216]

RTID 0648–XC870

**Atlantic Highly Migratory Species; Adjustments to 2023 North Atlantic Albacore Tuna, North and South Atlantic Swordfish, and Atlantic Bluefin Tuna Reserve Category Quotas**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary final rule.

**SUMMARY:** NMFS adjusts the 2023 baseline quotas for U.S. North Atlantic albacore tuna (northern albacore), North and South Atlantic swordfish, and the Atlantic bluefin Reserve category based on available underharvest of the 2022 adjusted U.S. quotas. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action to adjust the quotas is only temporary and will be effective through December 31, 2023. On January 1, 2024, full annual baseline allocations of northern albacore, North and South Atlantic swordfish, and the Atlantic bluefin tuna will be available to the U.S. harvest.

**DATES:** Effective September 20, 2023, through December 31, 2023.

**ADDRESSES:** Supporting documents, including environmental assessments and environmental impact statements, as well as the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, may be downloaded from the Highly Migratory Species (HMS) website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>. These documents also are available upon request from Lisa Crawford or Steve Durkee at the email addresses and telephone numbers below.

**FOR FURTHER INFORMATION CONTACT:** Lisa Crawford (301–427–8503, [lisa.crawford@noaa.gov](mailto:lisa.crawford@noaa.gov)) or Steve Durkee (301–427–8503, [steve.durkee@noaa.gov](mailto:steve.durkee@noaa.gov)).

**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including northern albacore, swordfish, and bluefin tuna fisheries, are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27(e) implements the northern albacore annual quota recommended by ICCAT and describes the annual northern albacore quota adjustment process. Section 635.27(c) implements the ICCAT-recommended quotas and describes the quota adjustment process for both North and South Atlantic swordfish. Section 635.27(a) implements the ICCAT-recommended quota and describes the annual quota adjustment process for bluefin tuna. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Note that, consistent with how the quotas are established, weight information for northern albacore and bluefin tuna below is shown in metric tons (mt) whole weight (ww), and weight information for swordfish is shown in both dressed weight (dw) and ww.

**Northern Albacore Annual Quota and Adjustment Process**

Consistent with the northern albacore quota regulations at 50 CFR 635.27(e), NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT carryover limits and when complete catch information for the prior year is available and finalized. Consistent with ICCAT Recommendation 21–04, on June 1, 2022, NMFS finalized a final rule that implemented a management procedure for northern albacore (87 FR 33049). This management procedure established a total allowable catch (TAC) of 37,801 mt and maintained the 711.5-mt U.S. northern albacore quota for 2022 and 2023. The annual baseline quota of 711.5 mt is codified at § 635.27(e).

Relevant to the northern albacore quota adjustment in this action, and as codified at § 635.27(e)(2), the maximum underharvest that an ICCAT Contracting Party may carry forward from one year to the next is 25 percent of its baseline quota, which equates to 177.9 mt for the United States. For 2022, the adjusted quota was 889.4 mt (711.5 mt plus 177.9 mt of 2021 underharvest). In 2022, U.S. landings of northern albacore were 310.6 mt, which is an underharvest of 578.8 mt of the 2022 adjusted quota. This underharvest exceeds the 177.9-mt underharvest carryover limit allowed under Recommendation 21–04; therefore, only 177.9 mt may be carried forward to the 2023 fishing year. Thus, the adjusted 2023 northern albacore quota will be 889.4 mt (711.5 mt plus 177.9 mt) (Table 1).

TABLE 1—2023 NORTHERN ALBACORE QUOTA

Northern albacore quota (mt ww)	2022	2023
Baseline Quota .....	711.5	711.5
Underharvest from Previous Year .....	573.7	578.8
Underharvest Carryover from Previous Year † .....	(+)177.9	(+)177.9
Adjusted Quota (Baseline + Underharvest) .....	889.4	889.4

† Allowable underharvest carryover is capped at 25 percent of the baseline quota allocation (177.9 mt ww).