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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2018-0043; FF09E21000 FXES1111090FEDR 245]

RIN 1018–BD13

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Black-capped Petrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the black-capped petrel (*Pterodroma hasitata*), a pelagic seabird species that nests on the island of Hispaniola and spends the rest of its life at sea. The species forages in high concentration off the coast of North Carolina; however, the marine range extends across much of the western Atlantic (Nova Scotia to Venezuela) and into the Caribbean Sea and northern Gulf of Mexico. This rule extends the protections of the Act to the black-capped petrel.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov*. Comments and materials we received are available for public inspection at *https://www.regulations.gov* at Docket No. FWS-R4-ES-2018-0043.

Supporting materials we used in preparing this rule, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS-R4-ES-2018-0043.

FOR FURTHER INFORMATION CONTACT: José Cruz-Burgos, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office; email: caribbean_es@fws.gov; telephone: 786–244–0081. 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.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq*.), a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the black-capped petrel meets the Act's definition of an endangered species; therefore, we are listing it as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq*.).

What this document does. This rule lists the black-capped petrel (*Pterodroma hasitata*) as an endangered species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other

natural or manmade factors affecting its continued existence. We have determined that the black-capped petrel is an endangered species due to the following threats: habitat loss due to deforestation and forest fires (Factor A) and predation by nonnative mammals (Factor C). Other factors that affect the species now to a lesser degree or could affect the species in the future include development (Factor A), offshore oil and gas infrastructure and activities (Factor E), offshore and coastal wind energy infrastructure and activities (Factor E), collisions with communication towers (Factor E), and disorientation and grounding due to artificial lighting (Factor E). The effects of climate change are also expected to affect the species through increased storm intensity and frequency, resulting in flooding of burrows and erosion of suitable nesting habitat (Factor E). Historically, human predation for consumption (Factor B) and natural disasters (Factor E), such as earthquakes and volcanic eruptions, affected the viability of the species.

Previous Federal Actions

On October 9, 2018, we published in the *Federal Register* (83 FR 50560) a proposed rule to list the black-capped petrel as a threatened species with a rule issued under section 4(d) of the Act. Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species.

On May 2, 2023, we published in the *Federal Register* (88 FR 27427) a document reopening the comment period on the October 9, 2018, proposed rule as a result of significant new information we received after the publication of the 2018 proposal that is relevant to our consideration of the status of the black-capped petrel. That document described the new information and requested comments on it, as well as on all other aspects of our proposal to list the black-capped petrel.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the black-capped petrel. The SSA team was composed of Service biologists, in consultation with

other black-capped petrel experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the *Federal Register* on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the 2018 black-capped petrel SSA report. We sent the 2018 SSA report to three independent peer reviewers and received responses from all three; we incorporated the results of that review into the SSA report, as appropriate. More recently, we solicited independent scientific review of the 2023 black-capped petrel SSA report. We sent the 2023 SSA report to five peer reviewers and received responses from three; we incorporated the results of the peer review into the 2023 SSA report, as appropriate. The peer reviews can be found at *https://www.regulations.gov*. In preparing the proposed rule and this final rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule (version 1.1, Service 2018) and this final rule (version 1.3, Service 2023).

Summary of Changes from the Proposed Rule

We considered all relevant substantive comments we received on the October 9, 2018, proposed rule, and we incorporate new information into this final rule that was not available when the proposed rule published. We discussed the new information in the document we published on May 2, 2023 (88 FR 27427); that document made the new information available to the public and reopened the comment period on the proposed listing of the black-capped petrel.

After reviewing the new information we made available in the document we published on May 2, 2023 (88 FR 27427), we have determined that the black-capped petrel meets the Act's definition of an endangered species. Information provided during the public comment periods on the October 9, 2018, proposed rule and new science made available after the proposal's publication in 2018 provided additional data that were analyzed and considered in the updated SSA report (version 1.3, Service 2023). The new information demonstrates that the threats acting on the species are more imminent, thus indicating a lower overall viability, i.e., current condition, of the species.

Updated habitat suitability models indicate there is 70 percent less available nesting habitat than was calculated for the October 9, 2018, proposed rule (Satgé et al. 2021, entire). Additionally, the loss of primary forests on Haiti is accelerating at a greater rate than previously described (Hedges et al. 2018, entire).

In this rule, we also provide updated information on the conditions of nesting areas on Hispaniola and the more rapid declines in nesting activity and reproductive success than were described in the October 9, 2018, proposed rule. Further, we present information that shows the nesting population of the Pic Macaya, Haiti, area is now extirpated.

We have new information on the threats acting on the species on Hispaniola, including more documented occurrences of predation by nonnative species; impending development near Pedernales, Dominican Republic; and terrestrial mining of rare earth minerals (Service 2023, pp. 60–61). These threats are contributing to a reduction in the resiliency of the nesting populations on Hispaniola.

New information gathered and evaluated since the publication of the October 9, 2018, proposed rule includes confirmed occurrences of black-capped petrels in the northern Gulf of Mexico, which extends the known range to include the northern Gulf of Mexico (Jodice et al. 2021, entire). In addition, recent records of individual black-capped

petrels in the central and northeastern Gulf of Mexico show greater use of this marine region by the species than was previously documented, resulting in a larger range than previously described (Jodice et al. 2021, entire). Further, recent satellite tracking studies of individual black-capped petrels identified near-shore areas off the northern coast of Central and South America as areas where the species forages during the breeding season, and these areas may have previously been overlooked or underestimated (Leopold et al. 2019, entire).

Additionally, in the October 9, 2018, proposed listing rule, we determined the designation of critical habitat for the species to be not prudent. After considering public comments we received, new information on the threats acting on the black-capped petrel at sea, and our regulations at 50 CFR 424.12(a) regarding when the Secretary of the Interior (Secretary) may, but is not required to, determine that a critical habitat designation would not be prudent (see 84 FR 45020; August 27, 2019), we now find that designating critical habitat for the black-capped petrel is prudent, but not determinable at this time. Critical habitat is not determinable because the data sufficient to perform the required consideration of economic impacts are lacking at this time.

Finally, since we are listing the black-capped petrel as an endangered species, the rulemaking process to establish regulations that are necessary and advisable to provide for the conservation of a threatened species under section 4(d) of the Act no longer applies. When a species is listed as an endangered species, protections are automatically extended to that species under section 9 of the Act.

Summary of Comments and Recommendations

In our October 9, 2018, proposed rule (83 FR 50560), we requested that all interested parties submit written comments on the proposal by December 10, 2018. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal.

Newspaper notices inviting general public comment were published in the Primera Hora (Puerto Rico), and Virginia Pilot (Virginia-Carolinas). We did not receive any requests for a public hearing. Later, on May 2, 2023, we published in the *Federal Register* (88 FR 27427) a document reopening the proposed rule's comment period and providing new information received since the publication of the proposed rule. We published this document to allow the public the opportunity to review the new information and provide comments prior to our final determination on the proposed action. We requested comments to be submitted on the new information by June 1, 2023. All substantive information received during both comment periods has been incorporated directly into the SSA report or this final determination, or is addressed below.

Peer Reviewer Comments

As discussed above under **Peer Review**, peer reviewer comments were incorporated into version 1.1 of the SSA report as appropriate, which served as the foundation for the October 9, 2018, proposed rule (83 FR 50560).

After revising version 1.1 of the SSA report to include new information, we provided version 1.3 of the SSA report to five independent peer reviewers and received responses from three. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in version 1.3 of the SSA report.

The peer reviewers generally concurred with our methods and conclusions and provided support for thorough and descriptive narratives of assessed issues, additional information, clarifications, and suggestions to improve the final SSA report. Peer reviewer comments are incorporated into version 1.3 of the SSA report (Service 2023, entire) and addressed below.

(1) Comment: One peer reviewer provided input regarding an increased risk from activities associated with offshore wind energy development in the Central Atlantic, as

more areas have been proposed for offshore wind energy development. The peer reviewer stated there are several areas off the coast of North Carolina and Virginia, if developed, that would pose substantial collision risks to the petrels that may use this area outside the breeding season.

Our response: Impacts of wind energy development and infrastructure were included in the SSA report (version 1.3, Service 2023) and considered in the evaluation for this final listing rule.

(2) Comment: One peer reviewer sought clarification regarding the definition of the exclusive economic zone (EEZ) and noted that Federal jurisdiction does not extend beyond the EEZ.

Our response: The U.S. EEZ includes waters that are no more than 200 nautical miles (nmi) (370.4 km) from the territorial sea baseline; it begins at the 12 nmi (22.2 km) territorial sea of the U.S., its Territories, and Commonwealths. U.S. jurisdiction to manage resources is within the EEZ but does not extend beyond the 200 nmi border. However, under Section 9 of the Act (codified at 50 CFR 17.21), it is unlawful for any person subject to the jurisdiction of the United States to (A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; and (C) *take any such species upon the high seas* (emphasis added). Therefore, while U.S. jurisdiction to manage resources extends only to the edge of the U.S. EEZ, the Act's prohibition of take applies to any person subject to the jurisdiction of the U.S. on the high seas.

(3) Comment: One peer reviewer noted that the impacts to black-capped petrels by a large oil spill in the Gulf of Mexico would be difficult to document, such as in the case of the Deepwater Horizon spill in 2010. If petrels expired at sea, oceanic currents, tidal regimes, and wind regimes would make shoreline deposition and carcass detection difficult.

Our response: We recognize the difficulty of recovering and documenting animals in the offshore environment due to variable environmental and oceanographic influences. With the black-capped petrel's range now including a portion of the northern Gulf of Mexico, the risk of an accidental oil spill affecting the species is dependent on the amount of offshore petroleum structures and activities. The effects of an accidental oil spill depend on the timing of the spill, location of the spill, type of product spilled, and amount of product spilled. The severity and magnitude of the effects of accidental oil spills on the black-capped petrel cannot be quantified for this assessment due to the variable nature of each spill event. Accidental oil spills can be catastrophic but are not considered a persistent threat acting on the species due to the variable nature of an individual spill. In version 1.3 of the SSA report, we address the potential impact to the species from contact with oil and include a discussion of the species' overlap with the Deepwater Horizon oil spill's footprint in the northern Gulf of Mexico (Service 2023, pp. 29–30). We also include the information provided by the commenter in version 1.3 of the SSA report (Service 2023, pp. 29–30).

(4) Comment: One peer reviewer noted that the marine fisheries section in the SSA report seems to focus on mortality to petrels from fisheries, but asked why there was not a discussion about a reduction in or change of prey due to fisheries. They noted that this has been documented for the Hawaiian petrel (*Pterodroma sandwichensis*) (Wiley et al. 2013, entire).

Our response: While the Hawaiian petrel and black-capped petrel are congeners and may share similar responses to environmental changes, the best available information does not indicate that there is prey reduction or a change in prey due to fisheries in the black-capped petrel's range.

(5) Comment: One peer reviewer suggested we include information indicating it is likely the species breeds in Dominica and possibly in Guadeloupe.

Our response: We recognize the potential for the species to breed on Dominica and Guadeloupe, and we are aware of ongoing surveys to determine the species' occurrence on additional Caribbean islands other than Hispaniola. At this time, however, there is no confirmed evidence the black-capped petrel is nesting on Dominica or Guadeloupe, and the species is considered extirpated on both islands.

Comments from States on the Proposed Rule

(6) Comment: The North Carolina Wildlife Resources Commission (NCWRC) offered collaboration opportunities for data and support if the species is listed. The agency also noted the importance to the species of the offshore areas between Cape Lookout and Nags Head, North Carolina, with peaks in usage during the spring and fall.

Our response: We value our partnerships and continued cooperation with State agencies to improve the science and recovery of listed species. The information regarding the area of high concentration for foraging off the coast of North Carolina is included in the SSA report describing the marine habitat of the black-capped petrel (Service 2023, pp. 4–8). The report emphasizes the importance of this area off the eastern United States for black-capped petrel foraging.

Public Comments

(7) Comment: Two commenters requested justification for the threatened status when black-capped petrel abundance is much lower than several similar species that were listed as endangered species, such as the Hawaiian petrel, band-rumped storm-petrel (*Hydrobates castro*), Bermuda petrel (*Pterodroma cahow*; listed with the common name "cahow"), and whooping crane (*Grus americana*).

Our response: Determinations of whether or not a species warrants listing as an endangered or a threatened species under the Act are species-specific. They are based on the best available science, after considering the species' life history and the factors listed in section 4(a)(1) of the Act that may impact the species as well as how the species may

respond to those factors. Accordingly, we can reach different determinations for similar species, depending on the circumstances. However, after review of new information, we have determined that the black-capped petrel meets the Act's definition of an endangered species.

(8) Comment: One commenter noted that species' representation was described in the SSA report, version 1.1, as having a 43 percent reduction in geographic representation. The commenter provided information that densities of nests are much lower today than historically and that change in density should be factored into the current condition analysis.

Our response: We did not consider nest densities in the representation analysis, but we applied the available information regarding nest densities in our analysis of the species' resiliency. We assessed representation as the limited current distribution on a single island compared to historically, when the species was geographically represented more broadly across at least three other islands in the Caribbean (Dominica, Guadeloupe, and Martinique) (Service 2023, pp. 53–61).

(9) Comment: Several commenters stated that the Service did not consider current threats related to major shipping lanes that overlap with the species' foraging habitat, which currently exposes individuals to the presence of contaminants from the shipping industry (Halpern et al. 2008, entire).

Our response: We discuss the effects of certain contaminants under *Offshore Oil and Gas* on black-capped petrel below, however, we did not specifically identify contaminants from the shipping industry as a threat to the species. Future updates to the SSA report could include this factor if more information becomes available.

(10) Comment: One commenter noted information in the proposed rule described the species' specific needs and preferences for the offshore habitat elements as relatively flexible, plentiful, and widely distributed, and as stated there are no habitat-based threats

to the species in the foraging range. The commenter was concerned the importance of specific areas in the offshore range was not recognized. They noted that the SSA report mentions that the offshore region from southern Florida to Cape Hatteras, North Carolina, is the only marine area where regular and sizable concentrations of the species occur. They add that Simons et al. (2013, p. S23) specify that "apparently most of the world's population of black-capped petrels forages off the coast of the southeastern [United States], making this area important for the survival of the species." The commenter notes that other possible concentrations do not diminish the importance of the foraging area off the southeastern United States.

Our response: We did not intend to diminish the importance of the species' foraging area off the southeastern United States. We recognize the importance of this area for prey and foraging. We describe a core foraging area along the outer continental shelf off Cape Hatteras, North Carolina, where there is a steep shelf that contributes to nutrient-rich waters from upwelling that contain a concentration of prey. While this is the primary foraging area of the species, this is not the only area where the species forages, as black-capped petrels have been found in waters off the eastern coast of North America from latitude 40° N (approximately New Jersey) south to latitude 10° N (approximately northern South America). Additionally, new information associated with the species' occurrence at sea indicates an expansion of the species' range within the northern Gulf of Mexico.

(11) Comment: One commenter noted the proposed rule states that the impact of terrestrial wind farms on nesting petrels is unquantified. The commenter indicated that while there are problems with quantifying the impacts of terrestrial wind farms, the impact on nesting petrels has been quantified. They provided the example of multiple terrestrial wind energy habitat conservation plans in Hawaii where the Service

participated in quantifying the numbers of nesting Hawaiian petrels and Newell's shearwaters (*Puffinus newelli*) allowed to be taken by incidental take permits.

Our response: We have included the information regarding impacts from wind energy on the Hawaiian petrel in the SSA report (Service 2023, p. 26) and considered the relevant information in our analyses presented in this final rule.

(12) Comment: One commenter mentioned that entities under U.S. jurisdiction (i.e., Texas Petroleum Company for Chevron Texaco Petroleum Company) use the high seas and the southern Caribbean waters (such as Colombia) for oil extraction. The commenter questioned whether regulations implementing the Act apply in the U.S. EEZ.

Our response: Presidential Proclamation 5030 (48 FR 10605; March 14, 1983) from 1983 defines the United States' jurisdictional waters as the EEZ of the United States. The EEZ Proclamation confirms U.S. sovereign rights and control over the living and non-living natural resources of the seabed, subsoil and superjacent waters beyond the territorial sea but within 200 nautical miles of the United States coasts. NOAA's Office of Coast Survey, U.S. Maritime Limits and Boundaries website provides a detailed description (NOAA 2023, entire). The northern portion of the Gulf of Mexico is within U.S. jurisdiction; however, the southern Gulf of Mexico and the high seas are outside of that EEZ boundary. The protections of the Act apply in the EEZ, with the Service responsible for the management of bird species within U.S. jurisdiction, including the U.S. EEZ. Additionally, the prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take endangered wildlife within the United States or on the high seas.

(13) Comment: One commenter expressed concern that we did not include a description of survival of the different life stages of the black-capped petrel, including juveniles and immature petrels. They describe the survival of younger birds at sea as being lower in the first few years of life.

Our response: We were unable to quantify or describe the species' survival at sea based on age and concur with the commenters statement that younger seabirds in general do have a lower survival at sea than mature birds due to lack of foraging experience (Beauchamp 2022, entire). We did represent survival of the age classes in the nest success and nesting survival rate (Service 2023, p. 13).

(14) Comment: One commenter requested clarification regarding the age of maturity and generation times that were used in the SSA report. They expressed concern that our description of 5 years to maturity contradicts other papers that provide a range of 5 to 8 years. The commenter asserted that the age of maturity and generation times vary among sources and that these nuances are not discussed in the proposed rule.

Our response: We describe the age of sexual maturity, or first breeding, for black-capped petrels at 5 to 8 years based on the best available science (Goetz et al. 2012, p. 5; Simons et al. 2013, p. S22; Service 2023, p. 52). This is consistent with information that describes the age of sexual maturity is 5.3 years for the order Procellariiformes, in general (Hamer et al. 2002, p. 247).

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the black-capped petrel (*Pterodroma hasitata*) is presented in the SSA report (Service 2023, entire); available at *https://www.fws.gov/program/southeast-region* and at *https://www.regulations.gov* under Docket No. FWS-R4-ES-2018-0043.

The black-capped petrel is a pelagic seabird that is in the order Procellariiformes, family Procellariidae. It is a medium-sized seabird in the *Pterodroma* or gadfly genus with long slender wings and markings of a black cap and dark mantle separated by a white collar. The wings are black or darker in color on the top surface as well as the edges of the underwing. Certain morphological characteristics may vary across the

species with “black-faced,” “white-face,” and “intermediate” variations of the species having different plumage coloration and patterns (Howell and Patteson 2008, p. 70).

The estimated breeding population size for black-capped petrels is between 500 to 1,000 breeding pairs (Simons et al. 2013, p. S22; BirdLife International 2022, unpaginated). Petrels tend to maintain a strong relationship with their breeding grounds and return to the same nesting areas each year (Warham 1990, pp. 231–234). This site fidelity of nesting birds tends to isolate breeding populations and can influence genetic, behavioral, and morphological variation due to limited genetic exchange.

Black-capped petrels currently breed only in the highest elevations on the island of Hispaniola; recent nesting areas included three sites in Haiti (Pic Macaya, Pic La Visite, and Morne Vincent) and three sites in Dominican Republic (Sierra de Bahoruco/Loma del Toro, Valle Nuevo National Park, and Loma Quemada). The Pic Macaya site is likely extirpated. The Morne Vincent and Loma del Toro sites are physically contiguous areas and ecologically the same nesting area but are on different sides of the border between Haiti and Dominican Republic. In the proposed rule, the Loma Quemada site was included with the Loma de Toro site, as they are both within the Sierra de Bahoruco. Therefore, effectively, there are only four current active nesting sites. Historically, the species also nested in Martinique, Dominica, Guadeloupe, and, possibly, Cuba (Simons et al. 2013, pp. S11–S19). Currently, nearly 50 percent of the known nests are found within Parc National La Visite (Pic la Visite) in the Massif de la Selle mountain range in Haiti (Goetz et al. 2012, p. 5).

Based on recent habitat suitability modelling for the species, there are an estimated 563 square kilometers (km^2) (139,120 acres (ac)) of potentially suitable nesting habitat (suitability indices > 0.65) throughout Hispaniola, with only about 167 km^2 (41,267 ac) considered “highly suitable” with indices > 0.9 (Satgé et al. 2021, p. 581)., The occupied area of currently known nest sites only includes approximately 2 km^2 (494

ac) of that highly suitable habitat (Wheeler et al. 2021, pp. 73–82).

Black-capped petrels spend most of their time at sea in the northwestern Atlantic. The at-sea geographic distribution (marine range) of the species includes waters off the eastern coast of North America from latitude 40° N (approximately New Jersey) south to latitude 10° N (approximately northern South America) and includes waters of the countries of Aruba, Bahamas, Bermuda, Bonaire, Canada, Colombia, Cuba, Curacao Caymans, Dominica, Dominican Republic, Guadeloupe, Guyana, Haiti, Jamaica, Nicaragua, Panama, St. Lucia, St. Vincent, Trinidad and Tobago, Turks and Caicos, United States, Venezuela and beyond to areas in the high seas (Goetz et al. 2012, p. 4; Jodice et al. 2015, entire). Off the eastern coast of the United States, petrels forage primarily in the Gulf Stream, from northern North Carolina to northern Florida, in areas of upwelling; off the coast of North Carolina, the species is most commonly observed offshore seaward from the western edge of the Gulf Stream and in areas of deeper waters. Near-shore waters off the northern coast of Central and South America also serve as foraging areas for some black-capped petrels during the breeding season (Jodice et al. 2015, pp. 26–27).

New information associated with the species' occurrence at sea indicates an expansion of the species' range within the northern Gulf of Mexico. Recent sightings of individual black-capped petrels in the central and northeastern Gulf of Mexico show greater use of this marine region by the species than previously documented, resulting in a confirmed range expansion (Jodice et al. 2021, entire). Additionally, recent satellite tracking studies of individual black-capped petrels identified near-shore areas off the northern coast of Central and South America as areas where the species forages during the breeding season, and these areas may have previously been overlooked or underestimated (Leopold et al. 2019, entire).

Black-capped petrels feed mostly at night and pick their food from the water

surface either solitarily or in close proximity to other foraging seabird species. The diet of black-capped petrels is not fully understood; however, stomach content studies found squid, fish, crustaceans, and *Sargassum* or marine algae (Haney 1987, pp. 163–164; Simons et al. 2013, p. S30). The plant materials in the stomach suggest the species may forage around *Sargassum* mats, which tend to attract prey species and lead to the ingestion of the algae materials while the petrels feed on their preferred prey. The limited amount of algae found within digestive tracts further suggests that petrels may only be incidentally foraging at the *Sargassum* (Moser and Lee 1992, p. 67).

Black-capped petrels are ground-nesters that use existing cavities under rocks or vegetation in areas of high elevation (greater than or equal to 1,500 meters (4,921 feet)). The nesting habitat is described as montane forests with steep slopes and rocky substrate, with or without vegetation or humus cover that provides underground pockets and cavities for excavating nests. They may also burrow at the base of native arborescent ferns (Brown and Jean 2021, p. 5). The nesting season begins around January, with high parental investment in the nest and chick rearing. The female lays only one egg each season, with an alternating male and female incubation period of 50 to 53 days, followed by shared parenting of the chick for a minimum of 80 days. Adults that are raising young may travel 500 to 1,500 kilometers (km) (310 to 932 miles (mi)) to obtain food for the young and have been found foraging in the Caribbean Sea (Jodice et al. 2015, pp. 26–27). Chicks fledge between May and July, and head out to sea to feed on their own (Simons et al. 2013, pp. S21–S22). When adult birds leave the nesting areas, they may migrate up to 2,200 km (1,367 mi) from the breeding grounds to primary offshore foraging areas off the mid-Atlantic and southern coasts of the United States (Jodice et al. 2015, p. 23).

The adults travel from nests to marine feeding areas during foraging bouts for the young, which generally occur at night; this makes visual observations difficult. The nests are also in rugged montane areas that are not easily accessed, and burrows are difficult to

detect. The species was historically used as a food source for the island inhabitants, as the young chicks are easily captured once a burrow is located. The petrels were also drawn in using manmade fires (Sen Sel) intended to disorient the birds, causing them to fly towards the light of the fire and ultimately crashing into the land nearby where they were captured for food (Wingate 1964, p. 154).

Due to the high elevation and rough terrain of the nesting habitat, the species was rarely observed and thought to be extinct until it was rediscovered by Wingate in 1963, in the Massif de la Selle mountain range in Haiti. The estimated population at that time was around 2,000 pairs, based on potential occupied suitable habitat; however, there is some uncertainty of the accuracy of this estimate due to the methods used to extrapolate and it has been suggested that the population may have been even higher (Wingate 1964, p. 154).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened

species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term "foreseeable future" extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological

response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the black-capped petrel's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current

condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS-R4-ES-2018-0043 on *https://www.regulations.gov*.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. We provide an overview of the main threats impacting the black-capped petrel's viability, both in its terrestrial breeding habitat and its marine range. Most threats are the result of anthropogenic activities, and the species' apparently finite availability of suitable breeding areas presents a major limiting factor in its ability to maintain viability. We include not only factors negatively affecting the species or its habitat, but also include conservation efforts that have a positive effect on the species. Additional details regarding the threats can be found in the SSA report (Service 2023, entire).

We reviewed the threats that are affecting the black-capped petrel now, and potentially into the future. Due to the pelagic nature of the species, and its dependency on both terrestrial and marine habitats during different life stages, threats act on the species during breeding/nesting/chick rearing and also at sea when not on the nesting grounds. The primary threats to the species on the breeding grounds (terrestrial life stages and habitat) are habitat loss and degradation due to deforestation, anthropogenic forest fires, and development (Factor A) and depredation by introduced mammals (Factor C);

additional factors affecting the species for both terrestrial and marine life stages and/or its habitat include collisions with communication towers (Factor E) and artificial lighting that causes disorientation (grounding and collisions) (Factor E). At sea, the species uses areas that may overlap with coastal and offshore wind infrastructure and development (Factor E), and offshore oil and gas development (Factor E). In addition, marine fisheries bycatch may occur when black-capped petrels are incidentally caught in fishing gear and the artificial lighting on fishing vessels may cause disorientation (Factor E). The effects of climate change are also expected to affect the species through increased storm intensity and frequency, resulting in flooding of burrows and erosion of suitable nesting habitat (Factors A E). The predicted increase in strong Atlantic storms or hurricane frequency due to climate change is also expected to lead to an increase in land strandings (Factor E). We discuss each of these factors in more detail below, however, additional information on the threats can be found in the SSA report (Service 2023, pp. 15–37).

Deforestation

Deforestation, and associated loss and degradation of nesting habitat, is considered one of the most significant threats to the black-capped petrel (Goetz et al. 2012, entire; Wheeler et al. 2021, pp. 12–16). Many of the Caribbean islands where petrels were historically reported have experienced extremely high rates of forest conversion and loss since European colonization (Goetz et al. 2012, entire; Simons et al. 2013, p. S31). Urbanization, agricultural development, charcoal production, and tree fern harvesting are driving the changes in the forested areas where the petrels breed.

On Hispaniola, where all known currently active black-capped petrel nesting sites occur, estimates of deforestation range from nearly 90 percent of primary forests removed in the Dominican Republic portion to more than 90 percent removed in the Haitian portion (Castro et al. 2005, p. 7; Simons et al. 2013, p. S31; Churches et al. 2014, entire). Recent quantitative assessments also indicate that the rate of deforestation in and

around petrel nesting colonies and areas of suitable nesting habitat has accelerated in recent years, ranging from 3.8 percent to 56 percent from 2000 to 2018 in areas known or likely to contain petrel nests (Lloyd and Leon 2019, p. 5; Satgé et al. 2021, p. 583).

Deforestation in the Haitian nesting areas is particularly significant for the black-capped petrel given that 50 percent of all active nest sites of the species may occur there (Goetz et al. 2012, p. 5; Wheeler et al. 2021, p. 10). Although deforestation in petrel nesting areas of the Dominican Republic has been comparatively lower, recent increases in forest clearing for subsistence agriculture and charcoal production in the Sierra de Bahoruco and other areas adjacent to the Haitian border have resulted in concomitant increases in nesting habitat loss and degradation there (Checo 2009, entire; Grupo Jaragua 2011, entire; Goetz et al. 2012, p. 7; Simons et al. 2013, p. S31).

Charcoal, along with firewood, is used for cooking and is one of the primary sources of energy in Haiti. The overwhelming dependence on wood-based cooking fuels in parts of Hispaniola has resulted in substantial deforestation and forest conversion in both Haiti and adjacent regions of the Dominican Republic.

Recently, the harvesting of tree ferns to sell as substrate for ornamental plants has been increasingly occurring in black-capped petrel nesting areas of Haiti. The harvesting of these ferns disrupts and destabilizes soil in the vicinity of the nest burrow. At least 14 active nests were destroyed due to this activity during the 2020–2021 nesting season (Brown and Jean 2021, p. 4).

Anthropogenic Fires

The frequency and intensity of fires in and around petrel nesting areas has increased in recent years, further exacerbating, and contributing to deforestation and habitat degradation in the region (Batlle and Ramon 2021, p. 36; IBPCG 2021, p. 1). Effects to the terrestrial habitat from fire may be significant and potentially long-term, as fires set to clear land for agricultural development can result in substantial loss and

conversion of forested nesting habitat. Moreover, fires during the incubation and brooding phase can cause injury or mortality for adults and nestlings within nest burrows.

The frequency and intensity of fires in and around black-capped petrel nesting areas has increased in recent years, further exacerbating and contributing to deforestation and habitat degradation in the region (Batlle and Ramon 2021, p. 36; International Black-capped Petrel Conservation Group (IBPCG) 2021, p. 1). Natural fires resulting from lightning strikes also occur, but these tend to occur mainly during the wetter summer months (Robbins et al. 2008, entire). Naturally occurring fires may help maintain open, pine savannahs at higher elevations, which may be more accessible to petrels (Simons et al. 2013, p. S31). In contrast, most anthropogenic fires occur during the winter dry season, when black-capped petrels are actively nesting (Simons et al. 2013, p. S31) and thereby constitute more of a direct threat. Dry season fires also tend to be more intense, delaying or inhibiting forest recovery due to destruction of seed banks and organic humus layers (Rupp and Garrido 2013, entire).

Fires indirectly affect black-capped petrel nesting habitat by increasing erosion and mudslides following elimination of previously existing vegetation and ground cover. In the Massif de la Selle in Haiti, deliberately set fires likely caused increased erosion of cliffs used for nesting by black-capped petrels; the fires were set to facilitate clearing of land and for fuel wood harvesting (Woods et al. 1992, pp. 196–205; Simons et al. 2013, p. S33). For years, such fires have also denuded large swaths of forest cover in the black-capped petrel nesting areas of Pic Macaya in the Massif de la Selle of Haiti (Sergile et al. 1992, pp. 5–12). In the black-capped petrel nesting areas of the Dominican Republic, fires are also at times deliberately set in retaliation for actions taken by government officials to evict or otherwise deter Haitian migrants engaged in illegal land-clearing activities (Rupp and Garrido 2013, entire).

Development

As a Caribbean Island, Hispaniola has desirable coastal property with high potential for recreational and tourist development. Although the high-elevation areas where the black-capped petrel nests are currently among the most remote and sparsely populated areas of Hispaniola, the government of the Dominican Republic has initiated long-term plans to promote major tourism development in the region (Ministerio de Turismo 2012, entire; Dirección General de Alianzas Público Privadas (DGAPP) 2021, entire). These plans are focused immediately south of the petrel nesting areas in the Sierra del Bahoruco, on the coastal area of Pedernales/Cabo Rojo, and include several major resort hotels, apartment complexes, golf courses, a major international airport, and a large marina (DGAPP 2021, entire). The airport is expected to become the second largest in the Dominican Republic in terms of passenger traffic, with an estimated 1.6 million passengers per year at project completion (DGAPP 2021, pp. 89–107). According to official statements and published plans by the Dominican government, this development will consist of a major international airport, large marina or cruise ship terminal, luxury apartment buildings, and several major resort hotels. The area under development is not directly affecting the nesting habitat, as it is not in the highest elevation areas, but it is located along petrel flight paths between the nesting areas in the Sierra del Bahoruco and foraging in the Caribbean Sea, which could affect petrels heading out to sea for foraging bouts. These foraging bouts are important for sustaining brooding adults incubating the nests and returning food to the chicks on the nests. While likely needed for the economic welfare of the local citizens, the infrastructure associated with such developments also inevitably results in a substantial increase in artificial lighting, including that of commercial and private aircraft during nighttime arrivals and departures. Indeed, concerns have recently been raised by local residents over the potential for environmental damage and degradation resulting from this development project (DRS 2022, unpaginated). Concomitant with this development will be an increase

in human presence and electric power needs. Wind turbines, as well as a new 138-kilovolt electrical transmission grid parallel to the coast, will be installed to supply power to the region (DGAPP 2021, pp. 57–64). In Hawaii, powerline collisions are a main threat that have contributed to the decline of the Newell's shearwater and Hawaiian petrel (L. Nagatani 2022, pers. comm.). The significant increase in local human population, and associated increases in artificial lighting, will be located between petrel nesting areas in the Sierra del Bahoruco and Caribbean Sea, which also align with petrel flight paths to and from such areas. This could result in direct or indirect mortality of black-capped petrels.

The recent discovery of economically significant sources of Rare Earth Elements (REE) in the southern Sierra del Bahoruco prompted the Dominican government to set aside a large tract of land near current petrel nesting areas for the exploration and extraction of these resources, which are critical components in solar and cellular communication technologies.

Depredation by Introduced Mammals

Like most native Caribbean species, the black-capped petrel evolved in the absence of mammalian ground predators. However, following European colonization, many Caribbean islands quickly became host to populations of introduced black rats (*Rattus rattus*), Norway rats (*Rattus norvegicus*), domestic dogs (*Canis familiaris*), feral pigs (*Sus scrofa*), and domestic cats (*Felis domesticus*). In the late 1800s, the deliberate introduction of the small Indian mongoose (*Herpestes javanicus*) resulted in apparently uncontrollable mongoose populations on all islands (except Dominica) where the black-capped petrel is known or suspected to nest or once nested (Barun et al. 2011, pp. 19–20; Simons et al. 2013, p. S31).

The primary cause of nest failure is predation by nonnative species (Wheeler et al. 2021, p. 16). Recent surveys at nesting areas have also found higher rates of predation

than previously known. For instance, the Loma del Toro nesting area is in the Sierra de Bahoruco of the Dominican Republic and is approximately 370 ac (150 hectares (ha)) (Wheeler et al. 2021, p. A2-77). Since 2018, cumulative monitoring of 95 black-capped petrel nesting attempts suggests that overall success rates (53 percent) are lower than the nearby Morne Vincent nesting area in Haiti (IBPCG 2018, entire; IBPCG 2019, entire; IBPCG 2020, entire; IBPCG 2021, entire). During the recent black-capped petrel nesting season (2021–2022), nest success estimated from the 23 nests monitored in this colony declined to 22 percent (5 successful nests and 18 unsuccessful) (E. Rupp, Grupo Jaragua, in litt.), and severe nest predation by stray dogs has occurred in this nesting area (IBPCG 2021, p. 1). Historical (i.e., prior to the introduction of exotic mammals into black-capped petrel habitat) estimates of nest success in this area are unavailable.

Valle Nuevo National Park, Dominican Republic, was a suspected nesting area prior to 2017, when nesting was confirmed. To date, 13 black-capped petrel nests have been identified within an area of approximately 35 ac (14 ha) (Wheeler et al. 2021, p. A2-81; IBPCG 2021, p. 4). As with all other black-capped petrel nesting colonies, black-capped petrels nesting in Valle Nuevo face the threats of agricultural activities, habitat loss, and communication towers (Goetz et al. 2012, p. 5; Wheeler et al. 2021, pp. 12–16), all of which exacerbate predation by invasive mammals. This is in addition to the increasing threat posed by encroachment of invasive ferns, which block access to nest sites (Wheeler et al. 2021, p. 14; Davis 2019, p. 58). All nests at Valle Nuevo failed to fledge young during both the 2020 (n=13) and 2021 (n=17) nesting seasons, and predation by the invasive mongoose is believed to be the cause (IBPCG 2021, p. 4; E. Rupp, Grupo Jaragua, in litt.).

New information shows the threat of depredation is affecting the reproductive success of the species and is more widespread than previously described. The documented loss of black-capped petrels to mammal depredation at three of the four

nesting sites has a significant negative impact to the overall reproduction of the species. Each breeding pair lays one egg per nesting season. In 2021, it was documented that one single dog predated at least 19 black-capped petrels. During the 2020 to 2021 period, at Pic La Visite, 54 percent of the nests were lost to mammal depredation, with adult black-capped petrels also lost to mammal depredation. Similar declines in nest success were documented at Loma del Toro, where 85 percent of the nests were lost to mammal depredation, and at the Valle Nuevo area, where all nests were lost to mammal depredation (in addition to the loss of adults) during the 2019–2020 and 2020–2021 periods.

Communication Towers and Artificial Lighting

Recent years have seen the proliferation of telecommunication towers throughout the Caribbean islands. These towers are typically located on high mountain ridges, hills, and other prominent topographic features, and the structures extend several meters above canopy level. Many of the tallest are also secured by numerous guy wires (Longcore et al. 2008, entire; Simons et al. 2013, p. S32). Petrels, particularly inexperienced fledglings and juveniles, are especially sensitive to artificial lighting, likely due to a dependence on visual cues such as moonlight and starlight for nocturnal navigation (see Imber 1975, p. 304; Le Corre et al. 2002, p. 390; Rodriguez and Rodriguez 2009, p. 303; Rodriguez et al. 2017a, p. 989; Rodriguez et al. 2017b, p. 68). Petrels that nest in burrows or cavities are more affected by artificial lighting than ground-nesting species due to their inherent nature to associate light with food (Imber 1975, p. 305). Because of the black-capped petrel's nocturnal activity, combined with the high speed at which they fly, they are highly vulnerable to aerial collisions with these unseen structures, especially on foggy nights typical of the petrel nesting season (Goetz et al. 2012, p. 8; Longcore et al. 2013, entire; Simons et al. 2013, p. S32). There have been numerous documented cases of black-capped petrel mortality and injury from aerial collisions with lighted structures in

or near their breeding areas (Goetz et al. 2012, p. 8; Simons et al. 2013, p. S32), as well as groundings of adults and fledglings (Rodriguez et al. 2017a, p. 989).

Wind Energy

Infrastructure associated with offshore, coastal, and upland wind energy projects can cause collision risks for black-capped petrels at sea or on their breeding areas on Hispaniola. The increasing use of wind farms on and near Caribbean islands may constitute a potential threat to flying petrels (Simons et al. 2013, p. S32). As with communication towers, land-based wind farms tend to be located on high ground, where winds are higher and more constant. Threats are not only associated with collisions with fan blades, but also disorientation from associated lights with which such structures are equipped. Recent construction of inland wind farms near black-capped petrel nesting areas on Hispaniola constitute an additional and unquantified threat.

For offshore wind energy sites, not only are there risks associated with collisions and lighting impacts, but wind farms can change the local hydrodynamics and species distribution. For example, turbidity is affected and influences predator and prey interactions, where predators may be attracted to and prey may avoid the area affected (Van Berkel et al. 2020, pp. 113–114).

In the United States, as of 2022, the only offshore areas that have operating wind farms are off the coasts of New Jersey and Virginia. While existing offshore wind energy areas are outside of the black-capped petrel's range, some future potential wind energy areas off the Atlantic coast of the United States do overlap with small portions of the species' core areas (primary foraging area) and home ranges (Satgé et al. 2022, p. 14). On August 1, 2023, the Bureau of Ocean Energy Management (BOEM) identified wind energy areas off the coast of Delaware, Maryland, and Virginia in a Notice of Intent to Prepare an Environmental Assessment (88 FR 50170); however, these areas are closer

inland than black-capped petrels normally forage and would likely only affect individual petrels that are blown off their normal areas in high wind situations.

In the northern Gulf of Mexico, there have been studies to determine offshore wind potential. The BOEM proposed wind energy lease areas in October 2022 off the coast of Louisiana and Texas (BOEM 2022, entire). However, these areas are 40–50 mi (64.4–80.1 km) from documented black-capped petrel locations (Jodice et al. 2021, entire). There are also plans to develop wind energy areas off the coast of Colombia, South America that may affect the black-capped petrel.

Wind energy impacts on the black-capped petrel are not well-studied; however, we are aware that take of other petrel species has occurred due to wind farm activities. For example, the Service has issued incidental take permits to several wind farms in the State of Hawai‘i. The effect of nesting petrel mortality caused by wind turbines (or any other factors) could be effectively doubled as the single chick would likely die within the nest burrow from subsequent starvation due to the lack of biparental care (Hamer et al. 2002, pp. 238–243).

Offshore Oil and Gas

Activities associated with offshore oil and gas infrastructure and operations could pose a threat to black-capped petrels or their habitat. Some of the hazards include collisions, disorientation from lighting/flaring, and exposure to petroleum products and other discharged wastewater products.

Offshore oil and gas operations are ongoing in many areas of the species' marine range. In the U.S. waters, there is ongoing and planned oil and gas activity in the northern Gulf of Mexico that overlaps with the black-capped petrel's range (Jodice et al. 2021, p. 60). There is also oil and gas production off the coasts of Cuba, Colombia, and Venezuela. Black-capped petrels were observed foraging in the southern Caribbean Sea in Colombian lease areas under evaluation or exploration, or open for concession;

minimum distances to an active lease area and a well in production were 7 km (4.3 mi) and 24 km (15 mi), respectively (Satgé et al. 2019, pp. 40–41). In addition, petrels occurred 34 km (21.1 mi) from an active lease area, and 50 km (31 mi) from a well in production, near Venezuela (Satgé et al. 2019, p. 12). Black-capped petrels utilizing these areas for foraging or resting could be exposed to hydrocarbon releases during accidental oil spills, as well as to increased concentrations of contaminants from uncontrolled seepage. This could result in direct mortality (i.e., external oiling); indirect mortality (ingestion of crude oil through prey or preening); or sublethal effects on reproduction, such as hormone suppression, impaired egg formation, or increases in malformations (Helm et al. 2015, pp. 431–453).

Marine Fisheries

The range of the black-capped petrel overlaps with international industrial fishing fleets and squid fisheries, with squid fishing occurring in the Caribbean Sea. The vessels targeting squid use very bright lights to attract their catch, which could cause disorientation of, and increase the number of collisions with, black-capped petrels; however, there is little information from foreign fishing fleets regarding the impacts from fisheries (Simons et al. 2013, p. S33). There has been at least one incident of black-capped petrel collision with a fisheries research vessel in the northern Gulf of Mexico in U.S. waters (Satgé et al 2023, p. 57). The collision occurred at night and the vessel was lighted, which likely contributed to attraction and disorientation of the petrel.

Aside from lighting, petrels can become entangled in fishing lines, nets, and hooks during their foraging bouts. There are several methods of commercial fishing practiced in the species' range, including pelagic long line fishing, gillnet use, and trawling. Marine fisheries may entangle seabirds in clear monofilament fishing lines or hooks and increase opportunity for collisions with vessels (Furness 2003, p. 34; Li et al. 2012, p. 563). It is difficult to conclusively determine the direct and indirect impacts to

black-capped petrels from marine fisheries based on the available information. It was estimated that between 8 to 24 black-capped petrels were affected by pelagic longline fishing in the U.S. Atlantic waters between 1992 to 2016; this analysis was based on the relationships between seabird bycatch likelihood and the surface-scavenging behavior of species, such as petrels, resulting in a higher chance of interaction with longline fishery gear (Zhou et al. 2019, p. 1332).

Climate Change

The black-capped petrel faces potential impacts from climate change effects on both foraging and breeding areas through differing mechanisms (Simons et al. 2013, p. S33). Regarding the marine range where the species is found (when not in breeding status), there is a strong association with the Gulf Stream current and upwellings off the southeastern U.S. coast that influences the species' vulnerability to climate-induced changes. Increases in temperature affect the intensity and track of the Gulf Stream current and associated changes in marine primary productivity, as well as the abundance and diversity of marine nekton (i.e., actively swimming aquatic organisms), which are essential food sources for the black-capped petrel (Chávez et al. 2011, p. 230; Bakun et al. 2015, pp. 85–86; Saba et al. 2016, p. 131; Siqueira and Kirtman 2016, pp. 3965–3966; Kimball et al. 2020, p. 936; Zhang et al. 2020, pp. 707–710). For example, in coastal South Carolina, over a 30-year period, the subtidal nekton assemblage transitioned to a state of lower abundance and different composition as a result of increased water temperature and storm events (Kimball et al. 2020, pp. 927–928).

The terrestrial habitat is also impacted by the effects of climate change due to changes in storm and hurricane regimes. Increased intensity and frequency of major (Category 3 to Category 5) Atlantic hurricanes (Bender et al. 2010, p. 456), combined with reduced translation speeds (i.e., the speeds at which hurricanes move), may further

accelerate erosion and degradation of nesting areas (Hass et al. 2012, p. 259; Simons et al. 2013, p. S33; Kossin 2018, p. 104).

Because of the species' highly specific nesting habitat requirements, found only in areas highly sensitive to climatic change, those areas are among the most vulnerable to the adverse effects of climate change (Williams et al. 2007, pp. 5739–5740; Sekercioglu et al. 2008, p. 145; Thurman et al. 2020, p. 520). The species is restricted to the highest elevations on Hispaniola, and should such areas be rendered unsuitable, the species would have no place to go to seek climate refugia, thus increasing the extinction risk.

Conservation Efforts and Existing Regulatory Mechanisms

The black-capped petrel is protected under the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712). Protections from this Act are limited to areas within the United States or its Territories and Commonwealths, and the black-capped petrel does occur within waters of the United States. Permits are required for activities within U.S. jurisdiction that may cause the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding or marking of migratory birds. There are also certain exceptions to permit requirements for public, scientific, or educational institutions, and there are depredation orders that provide limited exceptions to the provisions of the Migratory Bird Treaty Act. See title 50 of the Code of Federal Regulations (CFR) at part 21 for more information about these permit requirements and exceptions.

Ongoing conservation efforts by many organizations include research and public outreach for the conservation of the black-capped petrel. Several nongovernmental organizations (NGOs) are currently working in Haiti and the Dominican Republic to reduce or mitigate the severity of identified threats. These NGOs include international organizations (e.g., BirdsCaribbean, Environmental Protection in the Caribbean, Plant with Purpose, American Bird Conservancy, International Black-capped Petrel

Conservation Group (IBPCG)), as well as local organizations (e.g., Grupo Jaragua, Société Audubon Haiti). Because most of the threats to the black-capped petrel are directly the result of anthropogenic activities (Service 2023, pp. 15–35), these NGOs have been providing technical assistance and education on sustainable agricultural practices, watershed management, and reforestation of previously deforested and degraded areas in the regions where black-capped petrels nest.

Conservation efforts, including environmental education regarding the black-capped petrel, occur at the local level. For example, in Boukan Chat, Haiti (adjacent to the Morne Vincent petrel nesting area), NGOs have developed black-capped petrel educational programs for local schoolchildren, provided financial and technical assistance with construction of freshwater cisterns, and provided tree seeds and technical assistance for local reforestation projects. Some residents of Boukan Chat have been hired specifically to improve community awareness of the black-capped petrel and its plight, and of how sustainable land management can be mutually beneficial to both the community and the petrel.

Building on past and current efforts, the IBPCG recently compiled and published a comprehensive and strategic conservation action plan (hereafter, "Plan") for the long-term conservation of the black-capped petrel (Wheeler et al. 2021, entire). The Plan summarizes recent information relative to species conservation, including nesting habitat modeling and population viability analyses; additionally, the Plan identifies priorities such as promoting petrel conservation through local community involvement, as well as habitat and species conservation measures. The Plan is a guide for current and future black-capped petrel conservation efforts.

Other NGO efforts include recent production of the documentary "Save the Devil," detailing local efforts to save the species, in addition to active monitoring for forest fires near black-capped petrel nesting areas, continued monitoring of petrel nest

success in the Morne Vincent/Sierra del Bahoruco nesting area, continued radar and bio-acoustical monitoring for petrel detections, and working with owners of a local communication tower to reduce nocturnal lighting intensity (Brown 2016, entire; IBPCG 2016, entire; 2017, entire; Wheeler et al. 2021, entire). Additionally, there have been some efforts to trap introduced predators at or near black-capped petrel nest sites, but results have been hindered by the remoteness of field sites and theft of traps. While some efforts are locally successful, they are relatively limited in both geographic scope and funding. There are other areas of Hispaniola which harbor, or may harbor, black-capped petrel nesting colonies (e.g., Pic Macaya, Pic La Visite, Massif de La Selle) that could benefit from similar efforts.

Cumulative and Synergistic Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future conditions of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Current Condition

Below, we provide an overall summary of the species' current condition in terms of resiliency, redundancy, and representation as described in detail in the SSA report

(Service 2023, pp. 37–61) and include new information that indicates the current condition is lower than described in the October 9, 2018, proposed rule (83 FR 50560).

The black-capped petrel's current condition is based on the breeding grounds and the life stages associated with the terrestrial habitat. The nesting areas include three in Haiti (Pic Macaya, Pic la Visite, and Morne Vincent) and three in Dominican Republic (Sierra de Bahoruco/Loma del Toro, Valle Nuevo, and Loma Quemada), with Pic Macaya recently considered extirpated. As noted above, Morne Vincent and Loma del Toro are ecologically the same nesting area but are on different sides of the border between Haiti and Dominican Republic. We identified them separately for purposes of our analysis because of differences in threats. The resiliency of the populations at each breeding area was analyzed using available data associated with demographic factors, including acoustic and radar detections, number of active nests, and new success for each of the populations (Service 2023, pp. 53–55). Each of the demographic factors were compiled for each population and qualified using low, medium, and high descriptions (Service 2023, pp. 53–55). We did not apply habitat factors or threats during the resiliency analyses but considered those factors along with redundancy and representation in the overall current condition and species' viability (Service 2023, pp. 59–61). Principal factors that have adversely affected current conditions include increases in (1) forest fires, (2) predation of nests and adults by nonnative mammals, (3) loss and degradation of nesting habitat, and (4) direct effects of hurricanes and tropical storms.

The species exhibits low resiliency at Loma Quemada and Valle Nuevo, medium resiliency at Morne Vincent and Sierra de Bahoruco/Loma del Toro, and high resiliency at Pic la Visite; it is considered extirpated at Pic Macaya. The current condition of each breeding site reflects the current resiliency based on historical optimal conditions (Service 2023, pp. 52–55).

Resiliency of the populations in the nesting areas are lower than previously described in our 2018 proposed rule, influenced greatly by depredation by nonnative mammals. For example, the Valle Nuevo nesting population in the Dominican Republic has experienced an apparent complete failure of all known nests over two recent (2020, 2021) nesting seasons (IBPCG 2021, p. 1; IBPCG 2022, p. 6), largely because of mongoose predation. The nesting colony at Pic Macaya in Haiti once accounted for 5 percent of the total breeding population; however, the habitat conditions have deteriorated, and no nesting has been detected here in the past 20 years. This site is in the far southwestern point of Haiti where, despite its location within Macaya National Park, the habitat has been heavily impacted by agricultural development and fires (Goetz et al. 2012, p. 5; Wheeler et al. 2021, p. A2-84), with up to 56 percent of total forest cover lost in the period 2000–2018 (Satgé et al. 2021, p. 586). Additional ongoing impacts to the species and its nesting habitat in this area include depredation by introduced mammals (cats, rats, and feral pigs). This site is considered extirpated.

Such threats on the nesting grounds are currently reducing the species' reproductive success in affected breeding populations through direct losses of adult breeding birds. The black-capped petrel is a *k*-selected species, meaning a species whose populations fluctuate at or near the carrying capacity (*k*) of the environment in which they reside. *K*-selected species tend to produce relatively low numbers of offspring and are characterized by more parental investment in nesting and chick-rearing and longer lifespans. For strongly *k*-selected species such as the black-capped petrel, losses of breeding adults exacerbate the ecological effects of lowered reproductive output because of the level of parental care they provide to offspring, and population modeling for similar species has shown that such combined effects—if not controlled—can quickly place the species at risk of extinction (Simons 1984, p. 1071). Even a rather "generic" population viability analysis (PVA) based on composite data from 35 other *Pterodroma*

species predicts a steady decline in population viability for the black-capped petrel during this century, with a nearly 75 percent decrease in total population over the next 50 years (Wheeler et al. 2021, p. 18).

While resiliency at Pic la Visite was considered high, nearly 50 percent of all known active nests are also concentrated in a single area at Pic la Visite within 2.47 ac (1 ha) (Wheeler et al. 2021, pp. 10, A2-73). Recent species-specific habitat modelling (Satgé et al. 2021, entire), demonstrates that the amount and distribution of suitable nesting habitat for the species on Hispaniola is approximately 70 percent less than previously believed (i.e., Service 2019, p. 48), and that such habitats have been severely reduced and fragmented by ongoing forest loss for the past two decades. This limited availability and distribution of suitable high-elevation nesting habitats renders such areas highly vulnerable to slight changes in environmental conditions due to climate change. Recent (2018–2021) trends and data suggest that many of the major threats acting on the species are increasing in both magnitude and biological impact.

Threats related to anthropogenic stress and climate change have caused reduced resiliency of breeding populations, which, in turn, cause low species-level redundancy. This hinders the ability of the species to withstand climate change-induced catastrophic events (e.g., hurricanes), and inflexible breeding habitat requirements would make it difficult for black-capped petrels to move to other geographic areas, should their current terrestrial habitat become unsuitable.

Redundancy reflects the capacity of a species to persist in the face of catastrophic events. This is best achieved by having multiple, widely distributed resilient populations across the geographical range of the species. As described, most known nests (80 to 90 percent) are believed to be within the Pic La Visite and Morne Vincent/Loma del Toro nesting areas (Brown and Jean 2021, p. 2). This means that most nests are within a geographically restricted area, which would hinder the species' ability to face

catastrophic events. Additionally, this geographically restricted area is currently subject to significant and increasing pressure from deforestation and other anthropogenic activities (IBPCG 2019, pp. 2–3; Wheeler et al. 2021, p. A2-74). With the recent extirpation of the westernmost population in Haiti (Pic Macaya) due to habitat loss and degradation, the redundancy on Hispaniola is lower than described in the October 9, 2018, proposed rule (83 FR 50560).

Representation reflects the adaptive capacity of a species in the face of current and future physical (e.g., climatic variations, habitat degradation, and anthropogenic structures) and biological (e.g., novel predators, pathogens) changes in environmental conditions. The species has been confined to a single island for nesting, with the loss of populations on Martinique, Guadeloupe, and Dominica. Because the black-capped petrel has high nesting site fidelity, the loss of these breeding populations on other islands likely has resulted in the loss of unique genotypes and phenotypes, contributing to an overall limited representation. The species' current condition is even lower than described in the October 9, 2018, proposed rule (83 FR 50560) due to lower resiliency across most breeding areas and limited redundancy and representation. Due to the immediate threats – habitat loss and degradation, and depredation – affecting the species and its nesting habitat, the species' overall viability has declined.

Future Condition

In describing the species' viability in the future, we considered the predictive range of existing data and projected threats and the species' response using three plausible scenarios. We assessed the threat of habitat destruction, modification, or curtailment on the nesting grounds in terms of land clearing for charcoal production on Hispaniola as a result of increased human populations and limited insular resource availability. As the human population increases, the demand for charcoal will increase, resulting in more cleared lands and a greater impact on the primary forests. We also

considered the effects of climate change into the future and describe changes in the hurricane regime and temperatures that will affect the black-capped petrel on its nesting grounds and potentially in its marine range. As we have determined that the species meets the Act's definition of an "endangered species" (see **Determination of Black-capped Petrel's Status**, below), the future conditions are not described in detail in this final rule. Instead, details regarding the future conditions analysis and the future resiliency, redundancy, and representation of the black-capped petrel are presented in detail in the SSA report (Service 2023, pp. 62–79), which is available at *https://www.regulations.gov* under Docket No. FWS-R4-ES-2018-0043.

Determination of Black-capped Petrel's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have determined habitat loss and degradation due to deforestation from fires for agricultural development and charcoal

production are currently affecting the species and its nesting grounds on the island of Hispaniola (Factor A). Fires are used to remove forest cover to allow for agricultural crops. Historically, the black-capped petrel also nested on the islands of Guadeloupe, Martinique, Dominica, and possibly Cuba but is now confined to a single island. The species was extirpated from Martinique in pre-Columbian times by island residents that overharvested the petrel for consumption (Factor B). Further, depredation by nonnative mammalian species is a threat to petrels on islands, contributed to the loss and extirpation of the species on the island of Dominica in the late 19th century, and is currently affecting the black-capped petrel (Factor C). Additionally, the species' nesting range is limited to steep, high-elevation areas that can be affected by erosion due to increased hurricane intensity and frequency, reducing available cavities or access to nesting sites (Factor E).

The current resiliency for the black-capped petrel is described as low and is expected to decline in the near future, along with having limited redundancy and representation. The overall species' viability reflects the nature of an island endemic that has a breeding area confined to the highest elevation of a single island. In 1961, the population was estimated to be around 8,000, and it is suggested that it has declined in abundance by 50 to 75 percent over the last 50 years. With an estimated breeding population of 500 to 1,000 breeding pairs (Simons et al. 2013, p. S22; BirdLife International 2022, unpaginated), impacts at any breeding site in any given breeding season have consequences to the species' overall viability. For a species where a breeding pair produces a single egg each year, those consequences include loss of reproductive potential for the affected adults and chicks of that generation.

Due to increasing habitat loss and degradation through deforestation for agricultural development and charcoal production, the recent habitat suitability modeling

for the species (Satgé et al. 2021, entire) found that the suitable breeding habitat is 70 percent less than what we previously estimated in 2018 (Satgé et al. 2021, pp. 583–586).

New information shows the threat of depredation is affecting the reproductive success of the species and is more widespread than previously described. The documented loss of black-capped petrels to mammal depredation at three of the four nesting sites has a significant negative impact to the overall reproduction of the species. Each breeding pair lays one egg per nesting season. In 2021, it was documented that one single dog predated at least 19 black-capped petrels. During the 2020 to 2021 period, at Pic La Visite, 54 percent of the nests were lost to mammal depredation, with adult black-capped petrels also lost to mammal depredation. Similar declines in nest success were documented at Loma del Toro, where 85 percent of the nests were lost to mammal depredation, and at the Valle Nuevo area, where all nests were lost to mammal depredation (in addition to the loss of adults) during the 2019–2020 and 2020–2021 periods.

In addition to depredation, there are other threats to the breeding areas, including development, fires, collisions with communication towers, and artificial lighting, The effects of climate change are also expected to affect the species through increased storm intensity and frequency, resulting in flooding of burrows and erosion of suitable nesting habitat. The degree of impacts from these threats varies from site to site. These threats to the nesting areas are reducing the species' reproductive success and are causing direct losses of breeding animals.

Due to the loss of nesting areas across the historical range of the species, the black-capped petrel is currently only confirmed to be reproducing on the island of Hispaniola. The species' range reduction has led to the loss of redundancy of populations, with only four known nesting colonies remaining, all confined to one island, and 50 percent of the nesting populations within a very small geographical area, making the

species highly susceptible to catastrophic events. This also contributes to the loss of representation; as the species has high fidelity to the same nesting sites each year, there is limited genetic exchange between populations. With the loss of populations on other islands, this reduces the potential for additional genetic lineages to increase genotypic diversity within the species. There is a documented decrease in breeding habitat availability and habitat quality, coupled with a declining breeding population.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that rapidly declining habitat availability and quality, combined with a substantial increase in both the extent and intensity of mammal depredation to nests and adult nesting black-capped petrels between 2019 to 2021, show that the species is in danger of extinction now. Moreover, due to the imminent nature of these threats acting on the species and its habitat along with the species' response to the threats, the species is currently in danger of extinction. Thus, after assessing the best available information, we determine that the black-capped petrel is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the black-capped petrel is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portions of its range. Because the black-capped petrel warrants listing as an endangered species throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020), which vacated the provision of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened

Species" (79 FR 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the black-capped petrel meets the Act's definition of an endangered species. Therefore, we are listing the black-capped petrel as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. The listing of a species results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, NGOs, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, NGOs, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once this species is listed (see **DATES**, above), funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and NGOs. In addition, pursuant to section 6 of the Act, the States of Georgia, North Carolina, South Carolina, and Virginia will be eligible for Federal funds to implement management actions that promote the protection or recovery of the black-capped petrel. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance*.

Please let us know if you are interested in participating in recovery efforts for the black-capped petrel. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

Examples of discretionary actions for the black-capped petrel that may be subject to consultation procedures under section 7 include management and any other habitat-altering activities on Federal waters administered by the Department of Defense or

NOAA; and offshore energy activities of the BOEM and Bureau of Safety and Environmental Enforcement (BSEE).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is the policy of the Services, as published in the *Federal Register* on July 1, 1994 (59 FR 34272), to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions or already excepted through our regulations at 50 CFR 17.21 (e.g., any person may take endangered wildlife in defense of his own life or the lives of others). Also, as discussed above, certain activities that are prohibited under section 9 may be permitted under section 10 of the Act.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized handling or collecting of the species;

(2) Discharge of contaminants into or near foraging areas; and

(3) Use of artificial lights on structures or vessels in or near foraging areas.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the *Federal Register* on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the

use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans,

habitat conservation plans, or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Critical Habitat Prudency

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

In our October 9, 2018, proposed rule (83 FR 50560), we found the designation of critical habitat for the black-capped petrel was not prudent, in accordance with 50 CFR 424.12(a)(1), because destruction of habitat is not a threat to the species in the U.S. portions of the range. However, since the publication of the proposed rule, new information provides evidence that there are threats acting on the species within areas

under U.S. jurisdiction. Those threats include offshore energy development, including petroleum (oil and gas) and renewable sources (wind). These threats currently affect the species' marine habitat to a limited degree; however, those impacts are expected to increase with future offshore energy development. Accordingly, we have determined that the designation of critical habitat for the black-capped petrel is prudent.

Critical Habitat Determinability

Our regulations at 50 CFR 424.12(a)(2) state that the designation of critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

The data sufficient to perform the required consideration of economic impacts are lacking at this time. Therefore, we conclude that the designation of critical habitat for the black-capped petrel is not determinable at this time. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

Required Determination

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 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized 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 no Tribal lands fall within the boundaries of the black-capped petrel's range, so no Tribal lands would be affected by the listing of the species.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Caribbean Ecological Services Field Office.

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. Amend § 17.11, in paragraph (h), by adding an entry for "Petrel, black-capped" to the List of Endangered and Threatened Wildlife in alphabetical order under BIRDS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * * * *				
BIRDS				
* * * * * * *				
Petrel, black-capped	*Pterodroma hasitata*	Wherever found	E	88 FR [INSERT FEDERAL REGISTER PAGE WHERE DOCUMENT BEGINS], [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].
* * * * * * *				

Martha Williams,
Director,
U.S. Fish and Wildlife Service.

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