

Job Creation Act of 2012, Pub. L. No. 112–96.

2. Amend section 1.80 by adding new paragraph (a)(6), redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(7) and (b)(8), and by add new paragraphs (b)(5) and (b)(6) to read as follows:

#### **§ 1.80 Forfeiture proceedings.**

(a) \* \* \*

(6) Violated any provision of section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule, regulation, or order issued by the Commission under that statute.

\* \* \* \*

(b) \* \* \*

(5) If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than \$100,000 per incident nor more than \$1,000,000 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(6) If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012, the monetary penalty for contacting such a telephone number shall be not less than \$10,000 per call nor more than \$100,000 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

\* \* \* \*

### **PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

#### **Subpart L—Restrictions on Telemarketing and Telephone Solicitation**

1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620 and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112–96 unless otherwise noted.

2. Amend Subpart L by adding new section 64.1202 to read as follows:

#### **§ 64.1202 Public safety answering point do-not-call registry.**

(a) As used in this section, the following terms are defined as:

(1) *Operators of automatic dialing or robocall equipment.* Any person or entity who uses an automatic telephone dialing system, as defined in section 227(a)(1) of the Communications Act of 1934, as amended, to make telephone calls with such equipment.

(2) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive emergency calls and route them to emergency service personnel pursuant to section 222(h)(4) of the Communications Act of 1934, as amended. As used in this section, this term includes both primary and secondary PSAPs.

(b) An operator of automatic dialing or robocall equipment is prohibited from using such equipment to contact any telephone number registered on the PSAP Do-Not-Call registry. This prohibition on using automatic dialing equipment to contact numbers on the PSAP Do-Not-Call registry encompasses both voice and text calls. Such Do-Not-Call registrations must be honored indefinitely, or until the registration is removed by a designated PSAP representative or the Commission or its designated registry administrator.

(c) An operator of automatic dialing or robocall equipment may not obtain access or use the PSAP Do-Not-Call registry until it has first provided to the Commission or its designated registry administrator contact information that includes the operator's name and all alternative names under which the registrant operates, a business address, a contact person, the contact person's telephone number and email address, and a list of all outbound telephone numbers used for autodialing, and thereafter obtained a unique identification number from the Commission or its designated registry administrator. All information provided to the Commission or its designated registry administrator must be updated within 30 days of making any change to such information. In addition, an operator must certify during each use, under penalty of law, that it is accessing the registry solely to prevent autodialed calls to numbers on the registry.

(d) An operator of automatic dialing or robocall equipment that accesses the PSAP Do-Not-Call registry shall, to prevent such calls to any telephone number on the registry, employ a version of the PSAP Do-Not-Call registry obtained from the registry administrator

no more than 31 days prior to the date any call is made, and shall maintain records documenting this process.

(e) No person or entity, including an operator of automatic dialing equipment or robocall equipment, may sell, rent, lease, purchase or use the PSAP Do-Not-Call registry, or any part thereof, for any purpose except to comply with this section and any such state or Federal law enacted to prevent autodialed calls to telephone numbers in the PSAP registry. Any party granted access to the registry is prohibited from disclosing or disseminating the registered numbers to any other person or entity.

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### **DEPARTMENT OF THE INTERIOR**

#### **Fish and Wildlife Service**

##### **50 CFR Part 17**

**[Docket No. FWS-R4-ES-2012-0018; 4500030113]**

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Black-Capped Petrel as Endangered or Threatened**

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

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the black-capped petrel, *Pterodroma hasitata*, as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat in U.S. waters and territories in the South Atlantic and Caribbean region. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing of the black-capped petrel may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the black-capped petrel is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before August

20, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After August 20, 2012, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

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

(1) **Electronically:** Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R4-ES-2012-0018.

(2) **By hard copy:** Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2012-0018; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Marelisa Rivera, Deputy Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone at 787-851-7297; or by facsimile at 787-851-7440. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the black-capped petrel from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

- (1) The species' biology, range, and population trends, including:
  - (a) Habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(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.

If, after the status review, we determine that listing the black-capped petrel is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species," within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are "essential for the conservation of the species;" and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES**

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

Information and supporting documentation that we received and used in preparing this finding is available for you to review at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

#### Petition History

On September 13, 2011, we received a petition dated September 1, 2011, from Mark N. Salvo, WildEarth Guardians (WEG), requesting that the black-capped petrel be listed as endangered or threatened, and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the

petitioner, required at 50 CFR 424.14(a). In a September 27, 2011, letter to Mark N. Salvo, we acknowledged receipt of the petition. This finding addresses the petition.

#### *Previous Federal Action(s)*

The black-capped petrel was included as a category 2 candidate species in the **Federal Register** notice dated November 15, 1994 (59 FR 58982). Category 2 candidates were taxa for which information was available indicating that listing was possibly appropriate, but insufficient data were available regarding biological vulnerability and threats. In the February 28, 1996, Notice of Review (61 FR 7595), we discontinued the use of multiple candidate categories and removed category 2 species from the candidate list, which removed the black-capped petrel from the candidate species list.

#### *Species Information*

The black-capped petrel (*Pterodroma hasitata*) is a seabird that ranges between 35–40 centimeters (cm) (14–16 inches (in)) in size, with mostly dusky to black upperparts and white patches on the rump, hindneck, and forehead; the crown is black and in sharp contrast with the white neck (del Hoyo *et al.* 1992, p. 238; Raffaele *et al.* 1998, pp. 216–217). The black-capped petrel is the only extant gadfly petrel (one of about 30 species of petrel in the genus *Pterodroma*) known to breed in the Caribbean basin (Haney 1987, p. 153). It is a colonial nesting species that nests in crevices or burrows in steep, forested mountain cliffs (Raffaele *et al.* 1998, p. 217). The black-capped petrel is nocturnal and arrives at its nesting site after sunset (Raffaele *et al.* 1998, p. 217). The black-capped petrel occurs widely in the West Indies away from its breeding grounds. It is believed to feed on squid and fish (Raffaele *et al.* 1998, p. 217).

Imber (1985, entire) recognized four subgenera within *Pterodroma*, and based on morphological characteristics, he placed *P. hasitata* within the largest subgenus, *Pterodroma*. Included in this subgenus were all other species of *Pterodroma* that breed in the North Atlantic (Bermuda petrel (*Pterodroma cahow*), Zino's petrel (*Pterodroma madeira*), Fea's petrel (*Pterodroma feae*)), as well as petrel species that breed in the South Atlantic, the South Pacific, and the southern Indian Ocean (Farnsworth 2010, p. 5).

Farnsworth (2010, p. 5) states that Howell and Patteson (2008, entire) suggested that variation in black-capped petrels may reflect multiple cryptic species, as evidenced by different

plumage characteristics and different molt sequence and timing. Their discussion is the most extensive and comprehensive taxonomic evaluation to date for this species, but even they suggest that additional information is needed to understand whether this variation is a function of subpopulations, geographic variation, multiple cryptic species, molt timing, or some combination of these (Farnsworth 2010, p. 5).

We accept the characterization of the black-capped petrel as a species because Jesús *et al.* (2009, entire) investigated the phylogenetics (evolutionary relatedness) of North Atlantic gadfly petrels using both morphological characters (form and structure of the species) and mitochondrial DNA sequences, largely confirming the monophyly (descent from a single ancestor) of this group. Within this assemblage, *Pterodroma hasitata* is ancestral to *P. cahow* and *P. feae* (Jesús *et al.* 2009, pp. 207–209). While all descended from a common ancestor, this supports separate species designations. During a recent meeting of the Black-capped Petrel Working Group (Black-capped Petrel Working Group Notes 2011, p. 2), Marcel van Tuinen stated that he and his colleagues had managed to extract and amplify DNA from over 20 black-capped petrels caught off the coast of the Outer Banks of North Carolina in the 1980s. They found fixed genetic differences between dark and light morphs of this seabird in terms of the size of the black cap, with intermediate morphs mostly falling with the light morphs. This genetic evidence points out the possibility of two distinct breeding populations of black-capped petrel; although the genetic differentiation is not large enough to consider these morphs different species, it is possible to consider them as separate populations and, perhaps, subspecies (Black-capped Petrel Working Group Notes 2011, p. 2).

Black-capped petrel populations declined throughout the 19th and 20th centuries (IUCN 2010, p. 1; Birdlife International 2011, p. 2) and were thought to be extinct in the early 1900s (Bent 1922, p. 106). Currently, there are only 13 known breeding colonies and an estimated 600–2,000 breeding pairs (Schreiber and Lee 2000, p. 6; Birdlife International 2011, p. 1). While historically the black-capped petrel had breeding colonies throughout the Caribbean region, current breeding populations are known only on the island of Hispaniola (Haiti and the Dominican Republic), and possibly Dominica and Martinique (Lee and

Haney 1999, pp. 14–17; Raffaele *et al.* 1998, p. 217).

Existing black-capped petrel breeding colonies are located in Haiti (Rimmer *et al.* 2006, pp. 8–9) and the Dominican Republic (Collar *et al.* 1992, p. 6; Simons *et al.* 2002, p. 1; Rupp *et al.* 2011, pp. 8–10) within national park boundaries. The known breeding locations in Haiti are in the Parc National Pic Macaya in the Massif de la Hotte mountain range and the Parc National La Viste in the Massif de la Selle mountain range. The known breeding location in the Dominican Republic is within the Parque Nacional Sierra de Bahoruco. The Massif de la Selle and the Sierra de Bahoruco are in adjacent parks along the Haitian-Dominican border (WEG 2011, p. 4–7; Collar *et al.* 2002, pp. 1–2, 3).

There may still be breeding populations of black-capped petrels breeding on Dominica, as suggested by the report of a female black-capped petrel with a brood patch in 2007. The breeding female that was found in Dominica in 2007 was a few kilometers (km) southwest of Morne Micotrin, one of the taller mountains within Morne Trois Pitons National Park, which is a Birdlife International Important Bird Area. However, subsequent visits to Dominica have failed to find nesting birds (Black-capped Petrel Working Group 2011, p. 17), and only a few black-capped petrels have been reported off of this island in recent years (Raffaele *et al.* 1998, p. 217).

It is believed that black-capped petrels historically bred in the southeastern coastal slopes of the Sierra Maestra mountain range in Cuba (Simons *et al.* 2006, p. 1). After dark, continued vocalizations from the birds indicated that at least some of the petrels flew ashore near a narrow stream valley up the steep mountainside towards the Sierra Maestra peaks (Simons *et al.* 2006, p. 1). An additional 25 birds were sighted at the same location on February 9, 2004, and the birds' behavior of massing just offshore and then flying inland at dusk was consistent with breeding in other *Pterodroma* species (Simons *et al.* 2006, p. 2). The authors considered that this behavior strongly suggested that black-capped petrels were nesting near Sierra Maestra; however, we have no evidence confirming that the birds are nesting in this location.

The nonbreeding (foraging) range of the black-capped petrel is centered in the South Atlantic Bight between North Carolina and Florida in the United States. It appears that black-capped petrels migrate from West Indies breeding colonies, north and east of the

Bahamas, via the Antilles Current, rather than through the Straits of Florida (Haney 1987, p. 164). The seasonal abundance patterns of black-capped petrels suggest that the species is widely distributed during the midsummer near the Gulf Stream to 36 degrees North latitude, and perhaps farther north to 40–45 degrees North latitude (Haney 1987, p. 165). Black-capped petrels may occur farther north along the continental shelf than present records suggest, especially where the Gulf Stream meanders, and warm core rings occur near the edge of the continental shelf; however, surveys of northwest Atlantic marine habitats beyond the continental shelf have not identified the species (Haney 1987, p. 165).

Black-capped petrels have been observed relatively close to shore in the West Indies. For example, during an expedition to search for the Jamaica petrel (*Pterodroma caribbaea*), Shirihai *et al.* (2010, pp. 5–6) observed 46 black-capped petrels off Jamaica, whose behavior suggested that they were breeding in the John Crow Mountains of Jamaica. Furthermore, while conducting observations of tubenoses (shearwaters (*Puffinus* species) and petrels) off the coast of Guadeloupe, Levesque and Yesou (2005, p. 674) observed three confirmed black-capped petrels in early 2004 (7 and 14 January, 4 February) and four gadfly petrels (*Pterodroma* species) in the same period that were also most likely black-capped petrels. Prior to 2004, black-capped petrels had not been reported near Guadeloupe in recent history, since breeding ceased to be reported in the 18th century or early 19th century.

#### Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

- (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.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the black-capped petrel, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

##### Information Provided in the Petition

The petition claims that the “socio-economic realities of Haiti and the Dominican Republic threaten the destruction of its remaining breeding sites” (WEG 2011, p. 1). In addition, the petition claims that “offshore oil development off the U.S. Atlantic coast could destroy the primary foraging area of the species” (WEG 2011, p. 1).

Lee and Haney (1999, p. 43) noted that local human populations in Haiti were encroaching towards the black-capped petrel’s breeding colonies around 1980, and agricultural clearings extended both above and below the colonies. The human population of Haiti is expected to increase from approximately 9.7 million in July 2011, to close to 11.2 million by 2025 (United States Census Bureau 2011a, p. 1; CIA World Fact Book, p. 1; WEG 2011, p. 9). Similarly, in the Dominican Republic,

the human population is expected to increase from 9.9 million in 2011, to 11.7 million by 2025 (United States Census Bureau 2011b, p. 1; WEG 2011, p. 10). In the Dominican Republic, there is also evidence of illegal selective logging and charcoal-burning within the section of Sierra de Bahoruco National Park near the single known breeding colony of black-capped petrel in the park, and while some improvement in the situation has occurred in recent years, the park administration still faces challenges (Williams *et al.* 1996, p. 29; WEG 2011, p. 14–15), which are discussed further under Factor D, below.

According to the petition, “Reintroduction of the species to its former range in Guadeloupe and Martinique seems unlikely due to heavy deforestation on these islands (Lee and Haney 1999, p. 44, WEG 2011, p. 9). Only 14,600 hectares of suitable breeding habitat remains on Guadeloupe, and all of the forest habitats on Martinique are heavily affected by human activity (Lee and Haney 1999, p. 44, WEG 2011, p. 9).”

Although the petition includes electrical and communication towers as threats to the black-capped petrel under Factor A, we believe that discussion of these potential threats is more appropriate under Factor E.

#### Evaluation of Information Provided in the Petition and Available in Service Files

Based on our review of the information provided in the petition and available in our files, it is likely that deforestation and habitat modification as a result of human encroachment upon the black-capped petrel’s habitat in Haiti will continue.

The black-capped petrel’s narrow foraging habitat at sea is impacted by offshore energy development (Lee and Haney 1999, p. 2), particularly as this species is attracted to oily surfaces to feed (Lee and Haney 1999, p. 48). An oil spill in its feeding range could affect the remaining black-capped petrel population.

In summary, we find that the information provided in the petition, as well as other information available in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to habitat destruction associated with human encroachment (including those resulting from deforestation and agriculture) and offshore oil developments in the species’ foraging grounds.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

##### Information Provided in the Petition

The petition claims that human overutilization extirpated the black-capped petrel from two of its former breeding grounds, Guadeloupe and Martinique, due to extensive hunting. The petition also claims that destructive hunting practices continue within the species' remaining breeding areas and that without protection from overutilization, the black-capped petrel could be extirpated in Haiti and the Dominican Republic (WEG 2011, p. 11–12), as well.

##### Evaluation of Information Provided in the Petition and Available in Service Files

Despite its inclusion under Factor B in the petition, hunting information is not relevant to Factor B, because hunting of black-capped petrels on these islands is for subsistence rather than commercial purposes. Therefore, hunting of black-capped petrels is addressed under Factor E below. We have no information that black-capped petrels are collected or overutilized for commercial, recreational, scientific, or educational purposes. We find that the remaining information provided in the petition and available in our files does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

#### C. Disease or Predation

##### Information Provided in the Petition

The petition claims that “one of the most serious threats to the black-capped petrel, both historically and currently, is predation from introduced mammals” (WEG 2011, p. 12), including dogs (*Canis familiaris*), cats (*Felis catus*), Virginia opossums (*Didelphis virginiana*), and potentially mongoose (*Herpestes auropunctatus*) and rats (*Rattus norvegicus* and *R. rattus*). For instance, the petition states, “\* \* \* researchers have noted that feral dogs, cats, and mongoose are becoming more abundant in the nesting areas, and have observed dogs digging petrels from burrows” (Collar *et al.* 1992, p. 5). Lee and Haney (1999, p. 46) observed the presence of feral house cats at the base of the single nesting cliff in Sierra de Baoruco in the Dominican Republic (WEG 2011, p. 13). The petition goes on to state that “with an estimated population of only 600–2000 breeding

pairs and 13 known breeding colonies, the proximity of introduced predators is an important threat to the black-capped petrel” (WEG 2011, p. 13). Finally, the petition mentions that pre-Columbians living on the eastern part of Hispaniola imported the coati (*Nasua nasua*), although the coati's impact on nesting black-capped petrels is unknown (WEG 2011, p. 15).

##### Evaluation of Information Provided in the Petition and Available in Service Files

Based on the information provided in the petition and available in our files, we concur with the petition that predators are encroaching upon the remaining breeding grounds of the black-capped petrel. In addition to the information submitted by the petitioner, we found information in our files to indicate that guards often have several dogs on site that act as sentries at a telecommunication tower site in Loma de Toro, Sierra de Bahoruco, Dominican Republic. The dogs roam freely at night and could prey upon petrel adults or nestlings (Black-capped Petrel Working Group 2011, p. 8).

In summary, we find that the information provided in the petition and available in our files provides substantial scientific or commercial information indicating that the petitioned action may be warranted due to predation. However, neither the petition nor our files present information on the impact of disease to the black-capped petrel.

#### D. The Inadequacy of Existing Regulatory Mechanisms

##### Information Provided in the Petition

The petition claims that only cursory protection exists for the black-capped petrel's remaining breeding habitat. Although at least 11 of the 13 known breeding colonies in Haiti and the Dominican Republic are located in national parks, according to the petitioner, these national park designations have done little to protect the species. The single breeding colony of petrels in the Dominican Republic is located within the Sierra de Bahoruco National Park (Collar *et al.* 1992, p. 6), and it is one of the three core zones of the Jaragua-Bahoruco-Enriquillo Biosphere Reserve. This Reserve contains both protected and unprotected properties (WEG 2011, p. 14). Additionally, the petition states that a 1,152-square kilometer (284,665 acres (ac)) area within the reserve is designated as a Key Biodiversity area, which allows activities, such as research, conservation, recreation, and

ecotourism, to take place. According to the petition, although park infrastructure has improved significantly, chronic understaffing, communication problems between the different ranger stations, lack of adequate transportation, and insufficient fuel supplies make park administration difficult (WEG 2011, p. 14–15).

As noted by the petition, in Haiti, nine breeding colonies are located within the La Visite National Park in Massif de la Selle and another is located in the Pic Macaya National Park in Massif de la Hotte (Collar *et al.* 1992, pp. 1, 6). The petition asserts that “Massif de la Hotte has been designated as a priority for conservation action,” and it is largely encompassed by the 2,000-hectare (4,942-ac) Parc National Pic Macaya, which is a Key Biodiversity Area and is within a UNESCO Biosphere Reserve (WEG 2011, p. 14).

The petition also claims that there is no stated protection for the species' foraging areas, and no regulatory mechanisms exist that protect the black-capped petrel's narrow foraging range (WEG 2011, p. 15).

##### Evaluation of Information Provided in the Petition and Available in Service Files

Activities that threaten the species and its habitat (e.g., forest clearings, selective logging, charcoal-burning, fires, nonnative mammals) continue to occur around Sierra de Bahoruco and other national parks in Hispaniola. However, we currently have no information, either from the petition or in our files, on any existing regulatory mechanisms that would provide specific protections for the black-capped petrel in the national parks of Hispaniola.

Based on the information provided in the petition and available in our files, we currently have no information that any regulatory mechanisms exist to protect the petrel's foraging habitat.

In summary, we find that the information provided in the petition and in our files does not provide substantial scientific or commercial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms. However, as we proceed with the 12-month status review, we will further investigate this factor to determine what, if any, regulatory mechanisms exist to protect the species and whether or not these mechanisms are inadequate.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

##### Information Provided in the Petition

The petition claims that “other biological and anthropogenic factors threaten the black-capped petrel’s continued existence, including slow recruitment, pollution and bioaccumulation of heavy metals, and climate change” (WEG 2011, p. 16). “One breeding pair must successfully breed for three consecutive years to ensure population growth. This aspect of the species’ ecology only intensifies the effects of the other threats to the birds. The loss of a few breeding birds could lead cause a significant decline in the population” (WEG 2011, p. 16).

With regard to heavy metals, the petition states, “Whaling et al. (1980) reported that black-capped petrels contain seven to nine times more mercury contamination than other similar seabirds, although he was unclear as to the reason. Oil drilling and other activities in the petrel’s key foraging area off of North Carolina could release mercury and other heavy metals into marine waters and the food chain, and thus increase toxic loads in petrels (Lee and Haney 1999, p. 2, 48; Black-capped Petrel Working Group 2011, p. 19).”

Additionally, the petition asserts that electrical and communication towers pose immediate collision threats to the black-capped petrel on high mountain ridges at breeding locations, because during nightly courtship flights the birds fly in groups at high speed at varying heights, making them vulnerable to fatal collisions with the towers or the stabilizing guy wires (Black-capped Petrel Working Group 2011, p. 8; WEG 2011, p. 10).

The petition claims that extensive hunting is known to have occurred in Guadeloupe back to at least the mid-17th century and is thought to have resulted in near extirpation of this population (Collar et al. 2002, p. 6; WEG 2011, p. 12; see also the discussion under Factor B, above). In Haiti, local people are known to hunt this bird using the practice of “sen sel” (Wingate 1964, pp. 154–155). “Sen sel” is a method of capturing the birds at breeding colonies by lighting a fire on a cliff top above a colony (Wingate 1964, pp. 154–155). Birds flying near the fire become disoriented and crash directly into the fire or into nearby vegetation (Wingate 1964, p. 154). This practice continues today in Haiti, and as Haiti’s population grows and continues to encroach on the 12 remaining breeding colonies, hunting is likely to have an increasingly negative effect on the

species (Lee and Haney 1999, pp. 42–43).

The petition claims that climate change is expected to have significant impacts in the Caribbean region, including sea level rise, higher temperatures, changes in rainfall patterns, and increased intensity of hurricane and other storm activity (Black-capped Petrel Working Group 2011, p. 5; WEG 2011, p. 16). In addition, the petition states that impacts specific to black-capped petrels could include changes in habitat suitability, loss of nesting burrows washed out by rain or flooding, increased petrel strandings inland during storm events, and increased risk from vector-borne disease.

##### Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files supports the claim in the petition that the species is threatened by other natural and manmade factors.

Birdlife International (2011, p. 1) indicates that a telecommunications mast with stay wires erected in 1995 on Loma de Toro in Sierra de Bahoruco (the only known nesting locality in the Dominican Republic) poses a collision hazard to the black-capped petrel. The Black-capped Petrel Working Group (2011, p. 12) reports that lighting of the towers with light fixtures in a color other than red can attract petrels and increase risk of fatal collision. At some black-capped petrel breeding sites (e.g., Loma del Toro), towers are fitted with bright white lights at the base to assist guards with security surveillance. A watchtower for fire control was placed on Loma del Toro, which allows fires to be spotted quickly (Black-capped Petrel Working Group 2011, p. 12). However, this tall, new structure, when combined with the already existing communication towers, presents additional hazards for flying petrels (WEG 2011, p. 15). Also, at some towers, security guards maintain an open fire throughout the night for warmth and light; the fire may attract petrels, and could be potentially fatal. These open fires also have the additional impact of forest clearing and greatly increases danger of forest fires (Black-capped Petrel Working Group 2011, p. 12).

According to Lee and Haney (1999, p. 48), artificial lights on oil rigs may result in mortality of black-capped petrels from collisions because they are attracted to the lights, particularly when nights are foggy. Due to the high speed flight of the species, collisions with rigging would most likely prove fatal (Lee and Haney 1999, p. 48).

In addition to the practice of ‘sen sel,’ described by the petitioner, other types of fires may have the same effect on the species. For instance, agricultural clearings now extend to areas just above and below nesting colonies on cliffs; it is standard practice to burn cleared vegetation, which Lee and Haney (1999, p. 43) state has been reported to have a “sen sel”-type effect on the black-capped petrel.

The Black-capped Petrel Working Group (2011, p. 18) notes that projections for climate change, particularly regionally, are accompanied by substantial uncertainty. “The Gulf Stream and its associated water masses in the western North Atlantic are key foraging areas for the black-capped petrel, and effects in that system (e.g., stoppage or reversal) would likely significantly impact the species” (Black-capped Petrel Working Group 2011, p. 18). However, there is currently little evidence of these effects, nor information that these effects may be specifically impacting the black-capped petrel; therefore, the risk associated with them for the petrel is low (Black-capped Petrel Working Group 2011, p. 18).

The Black-capped Petrel Working Group noted that, “although they are likely long-lived ( $\geq 40$  years), high adult survival rates are likely critical to balance strong limits that low reproductive rate and limited nest site availability exert on population growth and expansion.” Therefore, it is likely that the ecology of this species may exacerbate other threats.

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to the presence of telecommunication infrastructure, local consumption of black-capped petrels, the impacts of fires and artificial light sources, pollution and heavy metals, slow recruitment, and the impacts of structures associated with oil rigs. We do not find substantial scientific or commercial information in the petition or in our files that the petitioned action may be warranted due to the impacts of climate change. However, we will further investigate this in our 12-month finding.

#### Finding

On the basis of our evaluation of the petition and other readily available data under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information indicating that listing the

black-capped petrel throughout its entire range may be warranted. This finding is based on information provided under factors A, C, and E. We find that the information provided under factors B and D are not substantial.

Because we have found that the petition presents substantial information indicating that listing the black-capped petrel may be warranted, we are initiating a status review to determine whether listing the black-capped petrel under the Act is warranted.

The “substantial information” standard for a 90-day finding differs from the Act’s “best scientific and commercial data” standard that applies

to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act’s standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

#### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this notice are the staff members of the Caribbean Ecological Services Field Office.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 7, 2012.

**Daniel M. Ashe,**

*Director, U.S. Fish and Wildlife Service.*

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