U.S. Fish and Wildlife Service
MS: BPHC,
5275 Leesburg Pike
Falls Church, VA
22041-3803
[Attn: FWS-R4-ES-2018-0043]

December 10, 2018

To the U.S. Fish and Wildlife Service,

These are comments on the Proposed Rule: https://www.regulations.gov/document?D=FWS-R4-ES-2018-0043-0001

The USFWS has proposed to list the Black-capped Petrel as a threatened species under the Endangered Species Act; this proposal calls for recovery planning, funds for management and recovery in the U.S., and conference or consultation by Federal agencies whose actions may impact the species. However, the proposal invokes the 4(d) rule, seeking to adopt existing requirements under the MBTA as the appropriate regulatory provisions – that is, incidental take would not be prohibited, and purposeful take would be prohibited unless the activity is authorized or exempted under the MBTA. Finally, the USFWS has determined that designation of critical habitat for the Black-capped Petrel is not prudent at this time.

The International Black-capped Petrel Working Group is comprised of 120 career academics, conservationists, and biologists with expert knowledge of the species. These individuals include those who laid the foundational work for the species, crafted the first Conservation Plan[i], and who are conducting research and conservation activities in the field. Our field reports and meeting notes can be found online at https://www.birdscaribbean.org/our-work/black-capped-petrel-working-group/

The undersigned members have significant concerns regarding the proposal for the Black-capped Petrel to be listed under the Endangered Species Act as “threatened”, and strongly urge the Service to propose the species as “endangered”, based on the most current and relevant information about the species. We also question interpretations of the available information, note assumptions made despite lack of information, and urge that protections include prohibitions against incidental take.

Presented below are our specific concerns which we ask the Service to consider. We refer you also to separate letters submitted by Environmental Protection in the Caribbean, the Atlantic Marine Bird Conservation Cooperative, and the American Bird Conservancy for more detailed presentation of these arguments and supplemental information.

1) We believe the classification of *endangered* (at risk of extinction throughout its range) is more appropriate than the proposed *threatened* (likely to become endangered within the foreseeable future throughout its range).

- As presented in the Service's Species Status Assessment (SSA) for the Black-capped Petrel, all available data suggest the current population is small, fragmented, and declining, and under increasing threat from multiple factors, with low to no resiliency, redundancy or representation.
- Lack of information argues for a conservative approach. Information on number of populations, relative abundance and fecundity is limited and no information is available on adult and juvenile survival – these are the basic parameters for determining resiliency, representation and redundancy.
- As noted in the SSA, the Black-capped Petrel faces a multitude of threats: deforestation, forest fires, introduced mammals, communication towers and artificial lighting, wind farms, offshore oil and gas, pollutants, fisheries and climate change. It is acknowledged that threats are severe and increasing. For example, a recent publication[ii] indicates that Haiti has less than 1% of its primary forest remaining.
- The threat of predation by introduced mammals is pervasive and not well managed. As acknowledged in the SSA, no breeding site is without the threat of known non-native predators. There is currently no predator management in place at any breeding site. Subsequent to the completion of the SSA, the harm caused by introduced species has been documented. In the Valle Nuevo, DR breeding area, camera traps documented the depredation of a nest by a mongoose, and the complete failure of a cluster of nine active nests on Loma del Toro was attributed to the presence of a feral cat[iii] .
- The proposed rule states that the overall nesting success rate of Black-capped Petrels is around 75 percent. While it is true that in years 2012-2017, success across all monitored nests (limited to the border sites except one nest in Valle Nuevo) was greater than 70%. However, the figures vary with breeding site. Moreover, the overall nesting success for 2018 at these same sites was only 56%, much lower than the previous six years[iv]. Also in 2018, nests in LaVisite – where the majority of breeding petrels occur – were monitored for the first time, and success was calculated as 27%[v]
- Nesting success rates determined in the field have a great deal of uncertainty. Limited resources prohibit frequent visits to breeding areas, and limited frequency of visits could overestimate breeding success if early egg or small chick losses are not detected. Additionally, protocols to determine breeding success in Black-capped Petrels have yet to be standardized, thus comparisons across sites or to other species are uncertain.
- The Service quotes the figures of "a current population estimated to be between 2,000 to 4,000 individuals, an estimated 500 to 1,000 breeding pairs" as indicative of retained resiliency. These numbers are quite low compared with other *Pterodroma* listed on the ESA or IUCN Red List. (e.g. Hawaiian Petrel has 22,000 to 30,000 breeding pairs). Moreover, historic reports and fossil evidence would suggest the species was much more abundant and widespread and that current scattered nesting areas are a remnant of previous population.
- The SSA states that "Resiliency, measured at the population-level, is best characterized by the number of individuals per breeding population and nest success" yet the influence diagram (Figure 2.15 in the SSA) depicts Survival as a key determinant of Resiliency. Adult survival in

seabirds such as the Black-capped Petrel has the greatest influence on population growth. Currently, there are no studies ongoing or planned to determine survival or any other vital rate for this species, nor the ability to understand the relative contribution of land-based vs at-sea threats.

2) We are highly concerned that Service is choosing not to list the Black-capped Petrel's primary foraging area as critical habitat, stating that "the best available information indicates that the species' specific needs and preferences for these [foraging, resting, commuting] habitat elements are relatively flexible, plentiful, and widely distributed, and there are no habitat-based threats to the species in the foraging range."

   - The Black-capped Petrel actually has a limited range at sea compared to other Pterodroma listed on the ESA.

   - Any species utilizes only a limited part of its available habitat (i.e. its home range, or foraging range) and the Black-capped Petrel does not use all of the "plentiful and widely distributed habitat" available to it. Also, it is only assumed that the species' needs and preferences are "flexible" since little scientific information on these factors are available.

   - Data that are available show that the Black-capped Petrel is not uniformly distributed throughout its marine range and is only abundant in geographically restricted areas. The SSA acknowledges that the species has a hotspot off the coast of the southeastern U.S. where it is believed the majority of the world's population forages[vi].

   - The SSA states that the "best scientific information available on foraging habitat suggests that where the black-capped petrel is found, it is widely distributed in pelagic waters offshore of the eastern United States down to northern South America" yet also states "…pursuant to section 6 of the Act, the State of North Carolina would be eligible for Federal funds to implement management actions that promote the protection or recovery of the black-capped petrel because North Carolina State waters are the only place in the United States where the species is found aside from vagrant or extralimital occurrences."

   - "Threats" include not only currently occurring phenomena, but also potential or anticipated threats. As described in the SSA, there are several habitat-based threats in the Black-capped Petrel's primary foraging range, including stranding from artificial light, collisions, and contamination from development of offshore energy (wind, oil and gas extraction).

   - Infrastructure with lights in the Black-capped Petrel's foraging area will increase collision risk. Nocturnal seabird species are highly vulnerable to light attraction[vii],[viii] and among these *Pterodroma*, like the Black-capped Petrel are known to be negatively impacted[ix].

3) We disagree with the use of Section 4(d) to rule that adequate protections are provided under the Migratory Bird Treaty Act (MBTA) and the assertion that "the primary stressors to the species are occurring on the breeding grounds in Haiti and the Dominican Republic; therefore, prohibiting incidental take in the United States is not going to contribute meaningfully to the conservation of the species."

- The current interpretation of MBTA protections is that purposeful take is prohibited unless exempted by permit and incidental take is not prohibited. MBTA is therefore not adequate because the threats to the Black-capped Petrel at-sea – occurring in U.S. waters, and acknowledged and described in the SSA – would ALL be incidental. For example, under the proposed 4(d) rule, there will be no protection from incidental take due to light attraction strandings and collisions at offshore energy facilities.

- The MBTA addresses direct take of birds, but does not address habitat concerns, such as the climate-induced changes in hydrology and increases in hurricane and strength, stressors affecting the Black-capped Petrel.

- While threats on the terrestrial breeding grounds are more easily characterized and quantified than those in the marine foraging areas, vital rate information is lacking to the extent that the relative effects of these threats cannot be judged. As stated above, adult survival in seabirds such as the Black-capped Petrel has the greatest influence on population growth, and threats at-sea are to adult petrels.

The International Black-capped Petrel Conservation Group acknowledges that the most urgent and feasible conservation actions apply to the breeding areas in Hispaniola. Listing under the U.S. Endangered Species Act, even as Endangered, with full protections and with critical habitat designated, would only be expected to aid in the conservation of the petrel by warding off threats and addressing stressors in waters under U.S. jurisdiction. However, this is of extreme importance. The U.S. has a high responsibility for the Black-capped Petrel, given that its primary foraging area occurs in U.S. waters (and the species' full use of Gulf of Mexico and U.S. holdings in the Caribbean is still to be ascertained). We believe the Service should revisit its proposals regarding the Black-capped Petrel's place on the ESA and the protections to be applied under the law, based solely on the interests of the species and best available scientific information.

Finally, the Proposed Rule states "please let us know if you are interested in participating in recovery efforts for this species." Members of the International Black-capped Petrel Working Group are currently updating the Conservation Plan for the Black-capped Petrel and are thus very interested participating in any recovery efforts for this species.

Comments prepared by the Co-Chairs of the International Black-capped Petrel Conservation Group: Hannah Nevins, American Bird Conservancy and Jennifer Wheeler, BirdsCaribbean

Signed,

[Signatures compiled electronically by Jennifer Wheeler between December 7 and 10, 2018.]

[i] Goetz, JF, Norris JH, and Wheeler, JA (eds.) 2012. Conservation Plan for the Black-capped Petrel (Pterodroma hasitata). International Black-capped Petrel Working Group.

[ii] Hedges, B.; W. Cohen; J. Timyan, J. and Z. Yange. 2018. Haiti's biodiversity threatened by nearly complete loss of primary forest. Proceedings National Academy of Sciences. www.pnas.org/cgi/doi/10.1073/pnas.1809753115

[iii] Rupp, Ernst. 2018 Report August 2018 -- #709 P -- Black-capped Petrel Conservation. Unpublished report.

[iv] Rupp, Ernst. 2018

[v] Jean, A., T. Louis, R. Jeune, L. Raymond, and A. Brown. 2018. Black-capped Petrel Nest Monitoring in Parc National Naturel La Visite, Haiti: 2018 Breeding Season. Unpublished report.

[vi] Simons, T.R., D.S. Lee, and J.C. Haney. 2013. Diablotin Pterodroma hasitata: a Biography of the endangered Black-capped petrel. Marine Ornithology 41(Special Issue): S 3–S 43.

[vii] Le Corre, O. Ribes, and Jouventin. 2002. Light-induced mortality of petrels: a 4-year study from Réunion Island (Indian Ocean). Biological Conservation 105 (1): 93-102.

[viii]Montevecchi, W. Influences of Light on Marine Birds. Pg.94-105, Chapter 5. *In* Ecological Consequences of Artificial Night Lighting. Catherine Rich, Travis Longcore (eds.) Island Press.

[ix] Rodriguez, A. et al. 2017. Seabird mortality induced by land-based artificial lights. Conservation Biology 31 (5): 986-1001.