

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Determination of Endangered and Threatened Status for Two Populations of the Roseate Tern

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

**ACTION:** Final rule.

**SUMMARY:** The Service determines the population of the roseate tern (*Sterna dougallii*) that nests in northeastern North America to be endangered and the Caribbean population, including birds that nest in the U.S. Virgin Islands, Puerto Rico, and Florida, to be threatened. This action is being taken because the number of suitable nesting islands for colonies of this species has been greatly reduced by human activity, competition from expanding numbers of large gulls, and predation. Critical habitat is not being designated at this time. The rule implements the protection of the Endangered Species Act of 1973 (Act), as amended, for the roseate tern.

**EFFECTIVE DATE:** December 2, 1987.

**ADDRESSES:** A complete administrative file for this rule is available for inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Nickerson, Endangered Species Coordinator, at the above address (617/965-5100, extension 316 or FTS 829-9316).

**SUPPLEMENTARY INFORMATION:****Background**

The roseate tern is a dove-sized coastal bird, one of several similar-appearing species of terns found in the United States and elsewhere throughout most of the world. All of these terns are graceful, whitish seabirds with black caps and long forked tails. They are strong fliers that feed mainly on small fish, which they capture by plunging headfirst into the water. They nest on the ground, usually on small islands, in dense colonies of hundreds and sometimes thousands of birds. Often, two or more species share the same nesting areas. Although all of the associated species face similar problems, the roseate tern is particularly vulnerable because its nesting populations in North America and the Caribbean are very small and localized.

Unlike certain other terns, they occur only along marine coasts. Gochfeld (1983) determined a documented world population of this wide-ranging species to be between 20,000 and 30,000 pairs, but estimated that the actual population might be closer to 44,000 pairs, with the largest numbers in the Indian Ocean.

In North America this species can be distinguished from its close relatives by its pale color, mostly black bill, and a slight rosy tint on its breast in summer. In winter, the black cap is largely replaced with a white forehead. The sexes look alike, but immature birds retain a distinctive plumage for their first year. This tern is about 38 centimeters (15 inches) long, including the long tail, and has a wing spread about twice its length. Weight averages 110 grams (3.9 ounces). They usually do not nest until they are 3 or 4 years old, although a few nest at 2 years of age.

Five subspecies are recognized worldwide, but only one, the nominate subspecies (*Sterna d. dougallii*) occurs in the Northern Hemisphere, where widely separated breeding populations occur on the northeastern coast of North America, several islands in the Caribbean Sea and in northwestern Europe (Gochfeld 1983). This subspecies also breeds at locations along the south and east coasts of Africa (Cramp 1985). Other former breeding areas, such as Bermuda, have been abandoned for many decades and recent surveys indicate that numbers nesting in the northeastern United States, adjacent Canada, the British Isles and northwest France have declined sharply (Buckley and Buckley 1984, Kirkham and Nettleship 1985, Cramp 1985).

The size and trend of the island nesting population of roseate terns in the Caribbean Sea, and occasionally the Florida Keys and Dry Tortugas, is less clear due to limited observations in many areas and some confusion between this species and the common tern (*Sterna hirundo*) in the literature. This population nests primarily in Puerto Rico and the U.S. Virgin Islands, where Van Halewyn and Norton (1984) estimate about 2,500 pairs. Sprunt (1984) estimates that 1,000 to 2,000 pairs nest in small colonies on cays and small islands in the Bahamas. In Florida, a few dozen pairs nest every year among vast numbers of other terns at the Dry Tortugas and about 40 pairs have nested on flat, gravelled rooftops in Key West in recent years (Clapp and Buckley 1984).

Roseate terns that nest in the northeastern United States appear to winter primarily in the waters off Trinidad and northern South America

from the Pacific Coast of Columbia to eastern Brazil (Hamilton 1981, Nisbet 1984). Wintering grounds of the Caribbean population are still unknown, but may be the same general areas used by terns from the northeastern United States.

Although its nesting range in North America is often listed as extending from Nova Scotia to Virginia or North Carolina, and the southern tip of Florida (America Ornithologists' Union 1983), the roseate tern was always most common in the central portion of this range (Massachusetts to Long Island) and in recent years has all but disappeared from the edges of this range (Buckley and Buckley 1981, Buckley and Buckley 1984). In 1986, aside from Florida, nesting was known to have occurred only in the northeastern States of Connecticut, Maine, Massachusetts and New York (see table). In 1985, about 100-120 additional pairs nested in the province of Nova Scotia and 2 or 3 pairs on the Magdalen Islands in Quebec (Kirkham and Nettleship 1985).

The nesting population in the northeastern United States was greatly reduced by hunting for the millinery trade in the late 19th century. The population soon recovered when protection was provided and reached a high of about 8,500 pairs in the 1930's (Nisbet 1980). Subsequently, it declined to about 4,800 pairs in 1952 and may have reached a low of less than 2,500 pairs in 1977 (Erwin and Korschgen 1979). The estimated population has fluctuated in the range of 2,500 to 3,300 pairs since then (Nisbet 1980, Buckley and Buckley 1981, Kress *et al.* 1983).

Improved, more complete surveys and censuses that have been conducted in recent years have not indicated sizable changes in the total population, but a decrease in the number of nesting sites used. Improved census techniques often indicate population increases of colonial birds because the previous methods tended to underestimate. In all colonies in northeastern U.S. and Canada, this species nests among common terns (*Sterna hirundo*), which usually greatly outnumber it. An accurate census requires careful count of nests. The nests and eggs of the two species are similar, but roseates tend to conceal their nests under vegetation, boulders, driftwood, etc., making a complete nest count difficult. Also, young birds nesting for the first time tend to nest substantially later than old birds and could be missed on a single census (Spendlow 1982).

ESTIMATED PAIRS AND COLONY SITES, NE  
U.S., 1977, 1984-6.

State	1977	1984	1985	1986	1987
Maine:					
Pairs .....	80	67	26	41	61
Sites .....	3	8	3	3	5
Massachu-					
setts:					
Pairs .....	1,327	1,820	1,618	1,746	1,697
Sites .....	6	8	7	4	6
Rhode					
Island:					
Pairs .....	1	2	0	0	0
Sites .....	1	1	0	0	0
Connecticut:					
Pairs .....	64	210	242	178	165
Sites .....	3	4	5	2	1
New York:					
Pairs .....	861	917	967	873	948
Sites .....	9	5	4	5	5
Total:					
Pairs .....	2,332	3,016	2,853	2,850	2,871
Sites .....	22	24	19	14	17

At least 29 major sites formerly used by roseate terns have been abandoned since 1920. Some of these colonies moved because of repeated predation, primarily by nocturnal-feeding mammals, but nearly half of the sites were abandoned because of competition for nesting space from expanding populations of gulls (Nisbet 1980).

On December 30, 1982, the Service published a notice of review in the *Federal Register* (47 FR 58454) identifying vertebrate taxa, native to the U.S., being considered for addition to the List of Endangered and Threatened Wildlife pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The notice included the roseate tern as a category 2 species (i.e., a species still needing some data before a determination on whether to propose or not could be made). Since then, the Service reviewed further data on the nesting status and biology of the tern on the northeastern coast of the U.S. and on some islands in the Caribbean Sea.

On September 18, 1985, the Service issued a revised notice of vertebrate animal taxa under consideration (50 FR 37958). That notice considered the roseate tern a category 1 species, indicating substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened.

On November 4, 1986, the Service published a proposed rule in the *Federal Register* (51 FR 40047) advising that sufficient information was on file to support a determination that the roseate tern is an endangered and threatened species pursuant to the Act. The proposal solicited comments on the proposed listing from any interested parties, especially concerning threats to this species, its distribution and range, whether or not critical habitat should be

designated, and activities that might impact the species.

**Summary of Comments and Recommendations**

In the November 4, 1986, proposed rule, all interested parties were requested to submit factual information that might contribute to the development of a final rule. Appropriate State resource agencies in the tern's range, county governments, Federal agencies, foreign countries, scientific organizations, and other interested parties were contacted and requested to comment. Notices inviting public comment were published in several newspapers. Comments were received by mail from 20 parties during the public comment period. These included three Federal agencies and six State or territorial departments. Most of the commenters (16) supported the proposed listing, and none opposed listing. A few suggested technical corrections or provided additional information for the proposal. Others recommended recovery measures. Those comments that did not specifically address the issue of listing are not responded to here.

Seven commenters recommended the designation of certain areas as critical habitat. Most of them specified only nesting sites, but two thought that major feeding areas also should be designated. The Service finds that designation of critical habitat at this time would not be prudent for reasons that are discussed in more detail below. However, it should be noted that designation of critical habitat is intended to make agencies of the Federal government aware of areas in which they may be subject to their obligation to not further endanger listed species. It does not actually increase protection from adverse actions of private individuals.

Four commenters noted that mortality on the wintering grounds, possibly due to human predation, may be major cause of low population levels but that no plan is proposed for international cooperation to alleviate or reduce the threat. Although the Service has limited opportunity for a direct management role in foreign countries, there are some opportunities for international educational and research activities under the Endangered Species Act. The Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere is another such vehicle for encouraging conservation in Latin America. Steps will be taken to make the maximum use of these opportunities.

Two commenters questioned the separate designations of threatened and endangered for the two populations. One thought that both populations

should be listed as threatened; the other recommended endangered status for all North American roseate terns. The second commenter thought that the small number of birds nesting in Florida in particular should be listed as endangered. The Service agrees that this tern, which usually nests in dense colonies, but at only a few locations, is at risk wherever it breeds and perhaps even more so on wintering grounds that may be shared by both populations. On the basis of all available information, the Service concluded that the few nesting sites and relatively small nesting population in the northeast warranted designation of that population as endangered. Although less is known about the breeding population in the West Indies, indications of more birds nesting at more sites led to the conclusion that only threatened status was warranted at this time.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, including the comments received, the Service has determined that the population of the roseate tern that nests in northeastern North America should be classified as endangered and the Caribbean population as threatened. Procedures found at section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to roseate terns in the Western Hemisphere are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Almost all important colonies of roseate terns are and have been on small islands, often located at ends or breaks in barrier islands. Nesting habitat for the northeastern North America population has been greatly reduced by housing developments and other human activity on and near the coastal barrier islands. Some roseate terns have attempted to nest with common terns in the salt marshes but with almost no success (Buckley and Buckley 1981).

In southern New England, many traditional nesting sites were abandoned during the 1940's and 1950's when herring (*Larus argentatus*) and great black-backed (*Larus marinus*) gulls rapidly expanded their nesting ranges southward into that region. These large and aggressive gulls not

only preyed on young terns, but gradually took over most of the outer islands that were preferred by nesting terns. The gulls select nesting sites and initiate nesting in early spring, before the terns return from wintering areas. After a few years, when the nesting gulls reach a certain density, the terns are forced to seek other sites. In several instances islands close to shore, or even peninsulas, have been used, but various predators or human disturbance caused the terns to abandon those sites within a few years.

Many of the islands used by nesting terns in recent years were long-time sites of lighthouses with occupied residences. The presence of humans usually discouraged nesting by gulls, but not terns. However, as the lights have become automated and human occupation has been terminated, the gulls have gradually taken over the islands. At one such site in Massachusetts nesting gulls had displaced all terns by 1966. A gull removal program was implemented and the island now supports nearly 80% of all nesting roseate terns in North America as well as large numbers of common terns. Other islands with formerly manned lighthouses or forts now support large tern colonies, but only because nesting gulls have been kept out. In the Caribbean area, almost all of the recorded breeding sites of roseate terns have been on very small islets, usually located off small or medium-sized islands. Although these islets are too small for development and lack competing gulls they are regularly visited by "eggers" who collect large quantities of eggs for food (Van Halewyn and Norton 1984).

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** The roseate tern, as most other terns and many other colonial nesting waterbirds, suffered a drastic population decline in the United States in the late 19th century due to hunting for the millinery trade. However, under protective laws such as the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-711) and changing fashions in the early 20th century, the species staged a rapid comeback. Most existing colonies are on publicly-owned lands and receive some protection.

Some of the larger colonies are the subject of intensive, long-term research that involves nest-trapping, banding, measurements of eggs and young and other activities that can be disruptive. However, high productivity in those colonies suggests that regular presence by humans conducting studies may actually be beneficial by deterring

predation from mammals and birds as well as possible human vandalism. The research activity also habituates the birds to human presence, resulting in less harm from casual human visitation (Nisbet 1981b).

A major cause of the declining population since the 1950's may be the trapping and netting of wintering terns for human consumption along the northeastern coast of South America (Nisbet 1984). In the U.S. Virgin Islands, and elsewhere in the Caribbean, the harvest of eggs for food is a common, although generally illegal, practice.

**C. Disease or predation.** Disease has not been identified as a significant problem in this species in North America, but terns of other species have succumbed to avian cholera, botulism and paralytic shellfish poisoning. An arbovirus was collected from dead roseate terns at a nesting colony in the Seychelles, and probably was transmitted by ticks (Converse *et al.* 1976).

Adult terns are relatively long-lived birds and not highly vulnerable to predators other than humans. On the other hand, eggs and young are vulnerable and predation may completely wipe out production in a given colony (Nisbet 1981a).

In daylight hours roseate terns (and the more aggressive common terns among which they usually nest), are fairly successful in deterring potential nest predators by harassment. Nocturnal predators are more of a problem because they may panic the terns and cause the entire colony to abandon eggs and young and not return until dawn. Although the predator may destroy only a few nests, other eggs and young are exposed to chilling, resulting in delayed hatching of eggs and, under extreme weather conditions, major losses of eggs and young. In some locations, delay at the hatching stage may increase losses of young to ants which enter the hatching egg and kill the chick (Nisbet 1981a).

The main reason most terns use remote, small islands for nesting is the absence of predatory mammals such as foxes, skunks and the exotic brown rats. If mammalian predators do gain access, the terns usually abandon the site, but sometimes only after consecutive years of reproductive failure. Predatory birds, particularly nocturnal feeders such as great-horned owls (*Bubo virginianus*) and black-crowned night-herons (*Nycticorax nycticorax*), pose a greater problem because they can fly to the small islands. Sometimes individuals of these species specialize in preying on terns and return to a colony night after

night. The owls prey on adult terns or nearly-grown young; the night-herons on eggs and recently hatched young. When terns nested on remote outer islands, they had less contact with these predators. However, as gulls took over the preferred nesting islands, the terns were restricted to islands closer to the mainland.

In the Caribbean area, populations may be declining as a result of disturbance and predation by man and introduced mammals, including the brown rat and mongoose (Van Halewyn and Norton 1984; Sprunt 1984).

**D. The inadequacy of existing regulatory mechanisms.** The Migratory Bird Treaty Act protects the roseate tern and its parts, nest, and eggs from taking and trade while it is under United States jurisdiction, but not when in most of its Caribbean or South American wintering grounds. The roseate tern is a State-listed species in Florida, New Hampshire, and Massachusetts (threatened) and in Maine, New York and Connecticut (endangered), but these listings provide little if any additional protection. Although its current major nesting islands in the Northeast are largely protected, pressure from human encroachment and nesting gulls limits any opportunity for expansion or shift to new sites. Most of the current nesting sites are on lands administered by the Service (National Wildlife Refuges), National Park Service, or State or local governments, but the protection of most colonies is by volunteer private interests that are largely self-funded and without long-term institutional commitment. The Endangered Species Act offers additional possibilities for increased protection and management of nesting habitat for the bird.

**E. Other natural or manmade factors affecting its continued existence.** As previously noted, the displacement of roseate terns from their traditional colonies by gulls has been the major factor in reducing the number of nesting colonies in northeastern North America, if not in reducing the population as well. The increase of gulls is primarily attributed to an increased food base provided by human waste, particularly garbage at landfills. Survival of young gulls in the critical first winter is greatly enhanced by the abundant food source. In order to make more nesting habitat available for the terns, it may be necessary to reduce or eliminate gull populations at some locations.

The roseate tern is a specialist feeder on small schooling marine fish, which the tern captures by plunging into the water. In southern New England (and probably in New York), American sand

lance (*Ammodytes americanus*) have comprised 80-100% of the fish eaten by adults or fed to young (Nisbet 1981a). This fish has become extremely plentiful in recent years, which may help account for the relatively high reproductive success among these terns. In other places the terns feed on other small schooling fish. They may fly as far as 10 kilometers (6 miles) from nesting areas to feeding areas (Nisbet 1981a) but utilize nearby tide-rips or inlets if fish are present. If conditions that now sustain the high number of sand lances in the major tern-nesting areas change and fish populations dwindle, the roseate terns may raise fewer young and suffer accelerated population decline.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the population of roseate terns that nests in northeastern North America as endangered. This small, reduced population that nests within a constricted range, at only a few sites, and with nearly 60% of the population confined to one small island off southeastern Massachusetts, warrants endangered status. If gulls are allowed to take over the few remaining major nesting islands, this tern will be in danger of becoming extirpated from this region of North America. The preferred action for the population of roseate terns that nests in the Caribbean, including the U.S. Virgin Islands, Puerto Rico (Culebra), and Florida (Dry Tortugas and Florida Keys), is to list as threatened. This is based on available information that indicates the population is larger and nests in many small colonies at widely scattered sites.

#### Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Although the Service received several comments advocating the designation of critical habitat, it has concluded that there is no demonstrable overall benefit to the roseate tern in designating critical habitat and that such an action is not prudent at this time. This determination has been made for the following reasons:

1. Most nesting colonies of the roseate tern in the U.S. are on lands that are owned and protected by Federal, State or local government agencies who have already been notified of the terns' locations.

2. Localities of some colonies and their feeding areas change over time, so rigidly defining critical habitat boundaries around presently utilized nesting and feeding areas would serve no long-term purpose.

3. Post-breeding dispersal of adult and young birds takes them to coastal locations that may be widely separated from the nesting areas and are difficult to delineate. They subsequently leave the coast and become more pelagic.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State (incl. Puerto Rico and U.S. Virgin Islands), and local governments and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

The Migratory Bird Treaty Act makes it illegal to take, possess, sell, deliver, carry, transport or ship roseate terns or their parts, nests, eggs or young, but provides no protection for their habitat. Section 7(a) of the Endangered Species Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal projects or activities that would require consultation and possible modification because of any likely effect upon this species. However, as previously noted, this tern formerly was more widely distributed but has suffered from habitat losses and disturbances throughout much of that range.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes (including banding and marking), to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Because the roseate tern already is protected from trade under the Migratory Bird Treaty Act, hardship permits are not expected.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

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**Author**

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Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 or FTS 829-9316/829-9379).

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

Endangered and threatened wildlife. Fish. Marine mammals. Plants (agriculture).

**Final Regulation Promulgation**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

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

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

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

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Tern, roseate	<i>Sterna dougallii dougallii</i>	Tropical and temperate coasts of Atlantic Basin and East Africa.	U.S.A. (Atlantic Coast south to NC), Canada (N.F.N.S.O.U), Bermuda.	E	296	NA	NA
Do	do	do	Western Hemisphere and adjacent oceans, incl. U.S.A. (FL,PR,VI), where not listed as endangered.	T	296	NA	NA

Dated: October 22, 1987.  
**Susan Recce,**  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*  
 [FR Doc. 87-25332 Filed 10-30-87; 8:45 am]  
**BILLING CODE 4310-55-M**