

Peregrine Petition Findings – May 12, 2006

This is a 90-day finding on a petition to remove the American Peregrine Falcon (*Falco peregrinus anatum*) and Arctic Peregrine Falcon (*Falco peregrinus tundrius*) from the State List of Threatened and Endangered Species.

On March 3, 2006 the Oregon Fish and Wildlife Commission received a letter dated February 28, 2006 with a supporting document entitled “Biological Status Assessment and Petition to Remove the Peregrine Falcon from Oregon’s List of Endangered Species”. The letter and document was submitted by Mr. Dave Peterson, Roseburg, Oregon. On initial review of the documents by the Department of Justice it was determined that additional information was required under the Administrative Procedures Act (APA) to qualify as a petition. Mr. Peterson was informed immediately by phone of the additional information required. On March 14, 2006 we received a revised petition from Mr. Peterson to remove both state listed subspecies of peregrine. The petition met the requirements of the APA and formal review of the petition was initiated. A letter was sent to Mr. Peterson on March 14, 2006 acknowledging the receipt of the petition as required by Oregon Administrative Rule (OAR) 635-100-0110.

State Procedures and Legal Requirements for Delisting

When a petition to remove a species from the list is received, the Commission enters the first phase of what can be a two-phase process. At this phase, the Commission needs to determine only whether the petition presents substantial scientific information to justify proceeding to rulemaking. The Commission has defined 'substantial scientific evidence' to mean 'that quantum of the best available documented information or evidence that a reasonable person would accept as adequate to support a conclusion. This includes information or evidence that may not have been reviewed by a scientific review panel, but that the department considers scientifically reliable.' OAR 635-100-0100(12). In other words, at this phase the Commission merely has to determine whether this petition is 'within the ballpark.' If the Commission determines that it is, then the Commission directs staff to begin a rulemaking process to formally propose removing the species from the list. Through that rulemaking process, the Commission would make findings on the biological factors required by law as prerequisites for delisting a species. In today's agenda item, staff has provided preliminary analysis of the scientific information provided in the petition, tying it to the biological standards that would be applied at the end of any rulemaking process. This preliminary analysis is provided here solely to help the Commission determine whether this petition indeed justifies going forward with rulemaking. If the Commission decides to go forward with rulemaking, the public will have full opportunity to review and comment on these issues.

The Oregon Endangered Species Act (Oregon Revised Statute (ORS) 496.171-496.182) and Oregon Administrative Rules (OAR) 635-100-0080 – 635-100-0113 set out the specific criteria and procedural requirements which must be met before the Commission can add, remove or change the status of a species from the state list of threatened and endangered species. By definition, “species” can mean both a species and subspecies

(ORS 496.004 (15)). When considering whether a petition presents substantial information to remove a species from the state list of threatened and endangered species, the Commission must determine whether the petitioner has addressed the five criteria listed below. State statute requires that documented and scientifically verifiable information addressing those criteria be provided. A summary of the information provided by Mr. Peterson that appears to most closely address each criterion is provided below, however there is some overlap.

1. the species is not, or is not likely to become within the foreseeable future, in danger of extinction or becoming endangered throughout any significant portion Of its range in the state;

Information Provided in the Petition for Factor 1.

There are three subspecies of peregrine falcons in North America and all are likely found in Oregon during some portion of the year. The American peregrine (hereafter American) nests in Oregon and is present all year, the Arctic peregrine (hereafter Arctic) and Peale's peregrine may be present during spring and fall migration and winter. The Peale's, which nests along coastal areas between Alaska and northern Washington, was never federally listed. Populations of both the Arctic and American recovered sufficiently to be removed from the federal list of endangered species in 1994 (Alaska only) and 1999 (both American and Arctic) respectively and continue to increase and reoccupy historical habitats. At the time the American was federally delisted in 1999, about 80 breeding areas were known in the state. By 2005, 124 breeding areas had been documented in Oregon and much of the state remains to be surveyed. The occupancy rate of sites surveyed each year have averaged about 90% for the past five years. In some locations peregrines are now nesting on bridges in urban environments. Nesting productivity for the past five years has averaged 1.55 young per occupied breeding area which is within the range for maintaining a stable population.

Minimum recovery objectives under the Pacific States American peregrine recovery plan (USFW 1982), of which Oregon was a part, have been exceeded for a number of years. Under the recovery plan, delisting in the Pacific region was to be considered after each state contained at least the following number of nesting pairs: California – 120; Oregon - 30; Washington – 30; and Nevada – 5. Productivity was to average 1.5 young per active territory for at least 5 years. Oregon now exceeds those objectives in terms of number of active nest sites by 3-4 times. Washington removed the peregrine from their state list of endangered species in 2002 and now allows falconry take.

The proximal cause for the original decline of the species was introduction of the chemical DDT into the environment after World War II for industrial and agricultural use. Once it was determined that DDT and its metabolites were the primary cause of nesting failure for peregrines and other avian species, the chemical was banned in Canada, the U.S., and other countries in the early 1970's.

The U.S. Fish and Wildlife Service initiated a national monitoring program for peregrines in 2003 as required for delisted species under the federal Endangered Species Act (ESA). Monitoring is undertaken in cooperation with the states and involves tracking nesting occupancy and productivity throughout their range in the United States. Samples of eggs and feathers are also to be collected for contaminant analysis. The monitoring program will continue until 2013 with surveys being conducted every 3 years.

2. The natural reproduction potential of the species remains high and is not in danger of failure due to limited population numbers, disease, predation, or other natural or human-related factors affecting its continued existence;

Information Provided in the Petition for Factor 2.

The Oregon and regional populations continue to recover and increase with near normal nesting success for occupied breeding areas with know outcomes. Regardless of natural or man-caused mortality, the population continues to expand with new breeding areas being discovered each year for the past 10 years. Much of the state with suitable habitat remains unsurveyed. Various diseases and parasites have been identified in peregrines but have not been reported to significantly affect North American populations. More recently, West Nile virus has emerged in this country and Oregon and whether it will adversely affect the peregrine population is unknown.

Because peregrines nest primarily on cliffs, disturbance from land use practices (e.g., logging) or recreation (e.g., climbing) could adversely affect some nest sites. Some climbing organizations are familiar with potential conflicts during the nesting season and have adopted policies to avoid these areas. In some areas where climbing and hiking trails have caused conflicts, seasonal closures have been established to reduce disturbance. Site management plans with seasonal buffers have been established on many national forests to reduce potential conflicts.

3. Most populations are not undergoing imminent or active deterioration of range or primary habitat;

Information Provided in the Petition on Factor 3.

Peregrines nest primary on natural cliffs and are found at sea level to the high Cascades as well as drier climates in eastern Oregon in association with lakes and wetlands. Records are limited on historical nesting populations, however potential nesting habitat is abundant and widespread in the state above and beyond known sites. As indicated under criterion 2 above, the nesting population continues to increase including using man-made structures in urban environments.

Under Criterion 5, below, regulatory mechanisms are in place on both federal, state and private lands for the protection of wetland, nesting habitat, and prey species (migratory birds).

An ongoing national monitoring program is in place in cooperation with the states and federal land management agencies and will continue to 2013.

4. Over utilization of the species and/or its habitat is not occurring, or is not likely to occur, for commercial, recreational, scientific or educational purposes.

Information Provided in the Petition for Factor 4.

Oregon coastal island habitats receive full protection as a national wildlife refuge. Seabird populations [peregrine prey species] are monitored on a regular basis by the U.S. Fish and Wildlife Service. Federal land management agencies have developed nest site management plans over the years for many peregrine nesting areas. The Oregon Department of Transportation developed an endangered species management plan for peregrines nesting on bridges and adjacent to public highways.

Peregrines are used in the sport of falconry which is regulated by both the USFWS and states. Take of peregrines is currently prohibited by ODFW while they remain listed. Should peregrines be allowed to be taken in the future, federal regulations prohibit taking more than 5% of the number of young fledged in the state in the previous year.

The national monitoring plan for American peregrines will continue to track peregrine populations and associated nesting habitat in cooperation with state and federal agencies until 2013.

5. Existing state or federal programs or regulations are adequate to protect the species and its habitat.

Information Provided in the Petition on Factor 5. Also see information in Factor 4 above.

Peregrines and all other migratory birds are protected at the federal level under the Migratory Bird Treaty Act (MBTA). Under the MBTA there are regulations that authorize the take, possession, and transport of raptors for falconry and their propagation. The MBTA does not currently address protection of habitat.

Peregrines also receive continued protection nationally under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This international agreement has been in place since 1975 and has a goal of ensuring that trade in wild animals and plants does not jeopardize the survival of listed species including peregrine falcons.

Habitat for wetland prey species is provided some protection under Section 404 of the Clean Water Act of 1972. Permits must be obtained before placing any fill material into waters of the United States and mitigation is required.

Pesticides must be registered for use with the Environmental Protection Agency. Testing the effects on wildlife prior must occur prior to registration under the authority of the Federal Insecticide, Fungicide and Rodenticide Act.

The American peregrine population must be monitored for a five-year period after federal delisting. This program began in 2003 and will continue at 3 year intervals until 2015 in cooperation with the states including Oregon.

Peregrine nesting sites continue to be given protection on federal lands under the National Forest Management Act (USFS) and Federal Land Management and Policy Act (BLM) and related agency policies for sensitive species. Nesting site plans are in place for a number of areas.

On private forest lands subject to the Oregon Forest Practices Act, seasonal protection can be provided to nesting areas of listed species that may be disturbed by forest operations. Written plans to minimize impacts may be required by the Oregon Department of Forestry.

Peregrines currently receive protection on state lands under ORS 496.171-192 [State Endangered Species Act]. State agencies are required to consult with ODFW when proposed action may be harmful to listed species. Under the OSEA, the Oregon Department of Transportation developed a Peregrine Falcon Management Plan for 2002-2007 that provides protections and management guidance for activities around nesting peregrines [e.g., bridges and highways].

Federal regulations are in place for falconry take of peregrines for states that allow falconry take. The take of peregrines is currently prohibited in Oregon but could be allowed in the future after state delisting. Under the federal regulations the level of take could not exceed 5% of the number of young fledged in the previous year.

Conclusion on sufficiency of information in the Petition

A review of the information provided in the petition indicates that there is sufficient scientific information to justify proceeding with rulemaking to consider removing the Arctic and American peregrine falcons from list of endangered species.

For Criterion 1: The species is not, or is not likely to become within the foreseeable future, in danger of extinction or becoming endangered throughout any significant portion of its range in the state.

The Arctic peregrine was removed from the federal list of endangered species in its breeding habitat (Alaska) in 1994 and lower 48 states and Oregon in 1999 (migratory habitat) along with the American peregrine. Resident nesting American peregrines have been documented at 124 breeding sites in Oregon with productivity adequate to maintain a population and meet recovery plan guidelines. Chemicals that caused the original

decline of the species (e.g., DDT) have been banned or controlled and a national monitoring plan is in place of which Oregon is an active part.

For Criterion 2: The natural reproduction potential of the species remains high and is not in danger of failure due to limited population numbers, disease, predation, or other natural or human-related factors affecting its continued existence.

As summarized under Criterion 1 above, the reproductive potential for both subspecies has recovered along with breeding populations to such a point that both were federally delisted throughout the U.S. in 1999. Disease or predation have not been found to be significant factors with population recovery and maintenance. Potential human caused disturbance of nesting habitats are being addressed through site plan, education and outreach, and agency management plans.

For Criterion 3: Most populations are not undergoing imminent or active deterioration of range or primary habitat.

As indicated under Criterion 1 and 2 above, the known nesting population in Oregon continues to increase within the state including man-made structures in urban environments. Regulatory mechanisms are in place to at the state and federal levels to protect nesting habitats and significant wetlands utilized by resident, wintering and migratory peregrines for foraging. A national monitoring plan has been implemented and Oregon is a active participant.

For Criterion 4: Over utilization of the species and/or its habitat is not occurring, or is not likely to occur, for commercial, recreational, scientific or educational purposes.

Protection of essential nesting habitats occurs through exiting federal and state land management plans and processes. Regardless of past impacts on peregrine habitats, the species continues to reoccupy both historical and previously unknown habitats including man-made structures in urban environments. The “take” of peregrines is prohibited by the Migratory Bird Treaty Act except under federal permit conditions. Peregrines can now be captured for the sport of falconry under federal rules, but is currently prohibited in Oregon.

For Criterion 5: Existing state or federal programs or regulations are adequate to protect the species and its habitat.

Peregrines and/or peregrine habitats are currently protected in various ways under the State ESA, the Migratory Bird Treaty Act and other federal acts, federal falconry regulations, the Convention on International Trade in Endangered Species or Wild Fauna and Flora, U.S. Forest Service and Bureau of Land Management plans and policies, the Oregon Dept. of Transportation Peregrine Falcon Management Plan. A national cooperative monitoring program is in place that will continue until 2013.