

Agenda Item Summary

BACKGROUND

On March 14, 2006, the Commission received a petition from David L. Peterson requesting that two subspecies of peregrine falcons, American peregrine falcon (*Falco peregrinus anatum*) and Arctic peregrine falcon (*Falco peregrinus tundrius*), be removed from the State List of Threatened and Endangered Species under the requirements of the Oregon Endangered Species Act. On May 12, 2006 the Commission reviewed the petition and determined that substantial scientific information was present to consider delisting both subspecies. The Commission directed the Department to enter rulemaking to consider delisting the species. The rulemaking process has been followed, and the Department now seeks the Commission's final decision as to whether the species should be delisted.

To delist a species under the Oregon ESA, the Commission must make each of the following determinations concerning the status of the species in Oregon:

- the species is not now (and is not likely in the foreseeable future to be) in danger of extinction in any significant portion of its range or in danger of becoming endangered; and
- the species' natural reproductive potential is not in danger of failure due to limited population numbers, disease, predation or other natural or human-related factors affecting its continued existence; and
- most populations are not undergoing imminent or active deterioration of range or primary habitat; and
- overutilization of the species or its habitat for commercial, recreational, scientific or educational purposes is not occurring or likely to occur; and
- existing state or federal programs or regulations are adequate to protect the species and its habitat.

The enclosed "Biological Status Assessment" addresses each of these criteria. To summarize: staff believes that the legal standards for delisting have been satisfied, so long as the conditions specified on page 20 of the Biological Status Assessment are implemented.

PUBLIC INVOLVEMENT

A rulemaking process has been followed to solicit public comments on the proposed delisting. Written comments were received from 12 individuals or agencies. A stakeholders meeting was held January 29, 2007 to discuss concerns raised during the comment period. Rules require the Commission to review "the best available scientific and other data," meaning "documented and verifiable information related to the species' biological status." OAR 635-0100-0112. In addition, the

Commission must consult with federal agencies, other interested state agencies, the Natural Heritage Advisory Council, other states having a common interest in the species, affected cities and counties, affected federally recognized Indian tribes and interested persons and organizations. OAR 635-100-0105(10).

ISSUE 1

Determine whether the legal standards have been met to remove (delist) the American peregrine and Arctic peregrine falcon from the state list of Threatened and Endangered Species.

ANALYSIS

A biological assessment and analysis of the proposed delisting was prepared by ODFW and reviewed by three independent individuals with scientific and technical expertise. In addition, comments were received from other individuals, including some with expertise in peregrine biology and management in Oregon. This review has led to the conclusion that, subject to certain conditions, the criteria outlined under the Oregon Endangered Species Act have been sufficiently met to justify delisting due to:

- Populations in Oregon and North America are continuing to recover with the ban and decline of environmental contaminants (e.g, DDT, DDE) that initially caused the population crash beginning in the 1940s. Both subspecies have been removed from the federal list of threatened and endangered species and recovery plan objectives have been met.
- From a low of 1 known and failing nest site in 1980, peregrines in Oregon have been documented nesting at 131 breeding areas through 2006. In 2006 107 (89%) of 120 areas monitored were occupied. Productivity remains good over the past 5 years at 1.54 young per occupied nest site with known outcome. Much of the state still remains to be surveyed.
- The natural nesting habitat of the species in Oregon, rocky cliffs, are abundant, well distributed throughout the state, and relatively free of impacts and disturbances, although additional work is necessary to address potential impacts of recreation and ongoing land management. Peregrine nesting has expanded to include artificial structures in many locations (i.e., highway bridges).
- The species remains protected under the federal Migratory Bird Treaty Act (prohibits take of birds and nests unless authorized by permit) and Oregon Administrative Rules for protected nongame wildlife. Any scientific take would be controlled under state and federal permits. Federal and state rules are in place should Oregon consider falconry take in the future.
- A national monitoring plan in cooperation with the states, federal agencies and volunteers, was initiated in 2003 and will continue through 2015. Sample sites will be monitored every 3 years assuming continued federal funding. Some egg and feather samples will be collected for contaminant monitoring at a regional scale.
- Policies are in place on federal lands for additional protection of peregrine nest sites at least through the end of the federal

monitoring plan, 2015. Site protections will require monitoring and coordination with affected agencies and landowners.

- In addition to the federal sampling program, the department will implement an enhanced statewide monitoring program during each of the remaining federal sampling years, 2009, 2012, and 2015. The department will continue to work with land managers, private landowners, and the interested public to monitor known sites and locate new nesting areas during interim years.

OPTIONS

1. Determine that the legal standards have been met to remove the American peregrine falcon and Arctic peregrine falcon from the state list of Threatened and Endangered Species.
2. Determine that the data justifies only down-listing one or both subspecies to a threatened status.
3. No action. Leave both species listed as endangered.

STAFF RECOMMENDATION

1. Option 1.

DRAFT MOTIONS

Motion 1: Based on the conditions specified in the Biological Status Assessment, I move to make the following findings concerning the American peregrine falcon and Arctic peregrine falcon:

- the species are not now (and are not likely in the foreseeable future to be) in danger of extinction in any significant portion of their range or in danger of becoming endangered;
- the species' natural reproductive potentials are not in danger of failure due to limited population numbers, disease, predation or other natural or human-related factors affecting their continued existence;
- most populations are not undergoing imminent or active deterioration of range or primary habitat;
- overutilization of the species or their habitat for commercial, recreational, scientific or educational purposes is not occurring or likely to occur; and
- existing state or federal programs or regulations are adequate to protect the species and their habitat.

Motion 2: I move to amend OAR Chapter 635, Division 100 as proposed by staff.

EFFECTIVE DATE

Upon filing