

## Agenda Item Summary

### BACKGROUND

The bald eagle has been listed as threatened under the Oregon Endangered Species Act (ESA) (ORS 496.171 through .192) since enactment in 1987. The bald eagle was also listed as threatened in Oregon under the federal ESA. In 2007, the U.S. Fish and Wildlife Service removed (delisted) the bald eagle from the federal list of threatened and endangered species in the lower 48 states due to meeting recovery criteria under the federal ESA. The bald eagle remains a protected species under the federal Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act. Research conducted by Oregon State University demonstrates that the bald eagle breeding population in Oregon has increased substantially over the past four decades and continues to do so.

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 their 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 the bald eagle have been satisfied, so long as the conditions specified on pages 21-26 of the Biological Status Assessment are implemented.

### PUBLIC INVOLVEMENT

A rulemaking process has been followed to obtain public comments on the proposed delisting. The Department received external technical review of the status assessment. Rules require the Commission to review "the best available scientific and other data" which is defined by rule as "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 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 bald eagle from the state list of Threatened and Endangered Species.**

## ANALYSIS

A biological assessment and analysis of the proposed delisting was prepared by the Department and reviewed by two independent individuals with scientific and technical expertise. In addition, comments were received from other individuals, including some with expertise in bald eagle 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 the bald eagle due to:

- The bald eagle is not now, nor is it likely to become within the foreseeable future, in danger of extinction or to become threatened throughout any significant portion of its range within the state.
- The Oregon bald eagle breeding population has increased from 65 known occupied breeding areas in 1978 to a minimum population estimate of 636 nesting pairs by 2010. Population growth rate was exponential overall and averaged 7.3% increase per year in Oregon. The overall nesting success (1978 to 2007) in Oregon was 66%, and productivity was 1.04 young per occupied breeding area and brood size was 1.57 young per successful breeding pair. The distribution of nesting bald eagles has also expanded from four subpopulations in the Cascades, Pacific coast and lower Columbia in 1978 to a more continuous distribution by 2011.
- At the time of listing the U.S. Fish and Wildlife Service noted that the major causes of bald eagle endangerment in the United States, was the use of harmful persistent pesticides, loss of nesting and roosting habitat and persecution from shooting. The use of DDT, PCBs and other harmful organochlorine chemicals has been banned since 1972. Based upon increasing population trends of bald eagles in Oregon and in North America (the eagle population has increased nine-fold in Oregon since 1978), neither the nesting nor wintering habitat of bald eagles appears to be limiting and there is no indication that availability of these habitats will limit the bald eagle population in the foreseeable future. The federal Bald and Golden Eagle Protection Act (Eagle Act) will continue to protect bald eagles and their habitat on all land ownerships in Oregon. Provisions of the Oregon Forest Practices Act and rules will continue to protect bald eagle nest and roost sites on state managed lands and private lands as long as those provisions are

retained. There are also several low level threats that occur to individual bald eagles such as occasional collisions with transmission lines and electrocutions. However, these localized impacts appear to have negligible effects on the state's expanding bald eagle population. Such human-related factors or impacts are unlikely to cause the bald eagle to become threatened or endangered in the foreseeable future in Oregon.

- Should the bald eagle be removed from the state list of threatened and endangered species under the Oregon Endangered Species Act, it will remain a state protected species under Oregon Administrative Rules (635-044-0130 - Nongame Wildlife Protected); and will be classified on the Department administrative sensitive species list as sensitive – vulnerable (635-100-0040 - Sensitive Species List).
- A national post-delisting plan for the bald eagle was published by the U.S. Fish and Wildlife Service in 2010 which samples the population in the contiguous 48 states to determine whether at any time the bald eagle population warrants expanded monitoring, additional research, and/or resumption of federal protection under the ESA. The plan does not monitor individual bald eagle nest sites or roosts needed for forest management activities required by the Eagle Act.

## **OPTIONS**

1. Determine that the scientific and legal standards have been met to remove the bald eagle from the state list of Threatened and Endangered Species.
2. No action. Leave bald eagle listed as threatened, under the Oregon ESA.

## **STAFF RECOMMENDATION**

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 bald eagle:

- 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 their 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.

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

**EFFECTIVE DATE**

Upon filing