

Agenda Item Summary

BACKGROUND

In June 2016, Cascadia Wildlands and five other conservation groups petitioned the Oregon Fish and Wildlife Commission (Commission) to reclassify (uplist) the Marbled Murrelet (*Brachyramphus marmoratus*) from threatened to endangered under the Oregon Endangered Species Act (OESA).

At its September 2016 meeting, the Commission found that the petition contained substantial scientific information to justify proceeding with the requested action and voted to accept the petition for further evaluation. This decision initiated the rulemaking process, which includes (1) consultation with affected agencies, tribes, local governments, other states, various organizations, and the public; (2) a review of the biological status of the Marbled Murrelet in Oregon to determine if circumstances meet legal criteria for reclassification; and (3) peer review of the Oregon Department of Fish and Wildlife's (Department) biological status report.

The Commission directed staff to develop the status review and to carry out the necessary rulemaking process. The Commission is required to make a final determination on whether Marbled Murrelet reclassification is warranted under OAR 635-100-0111(1) within one year from the date of receipt of the petition (i.e., by June 21, 2017). By rule, the Commission may extend this deadline for up to 12 additional months if the Commission finds that the information available is limited or other appropriate circumstances require the extension (OAR 635-100-0110(8)).

Staff will provide an update on consultation with interested and affected parties, progress made on the Marbled Murrelet biological status review, and proposed next steps. Information relevant to the review comes from many disparate sources in Oregon and in other states. Staff has been coordinating with a wide range of entities to gather best available information on the Marbled Murrelet and is working to secure additional data from the Oregon Department of Forestry (ODF) and Oregon State University (OSU) databases. Considerable staff time is required to compile, synthesize, and analyze this material as it relates to the legal criteria for reclassification of a species under the OESA. Staff hereby request Commission approval of a 12-month extension until June 21, 2018 to complete the status review report and associated rulemaking process.

PUBLIC INVOLVEMENT

- Notification of Marbled Murrelet status review and consultation sent to interested and affected parties
- Meetings, calls, and correspondence conducted with interested persons
- Department's Marbled Murrelet webpage launched to help keep the public informed of the status review process and to facilitate public involvement

ANALYSIS**Progress to Date:**

In making a reclassification determination, the Commission is required to consult with affected state and federal agencies, affected cities and counties, affected federally recognized Indian tribes, the Natural Heritage Advisory Council, other states having a common interest in the species, and interested persons who have asked to be consulted and whose names are included on the Commission's mailing list for such purposes (ORS 496.176(4); OAR 635-100-0105(10)). Input from these groups is essential to the review process.

In an effort to consult with the above-listed entities, the Department sent out letters (Attachment 2: Consultation Letter) and an accompanying backgrounder (Attachment 3: Backgrounder) to more than 250 contacts in February 2017. Letters informed these entities of the status review process and requested any relevant scientific information they may have on Marbled Murrelet biology, population trends and demographics, marine and terrestrial habitat conditions, threats, the adequacy of state and federal programs or regulations, or other data pertinent to staff review (see Attachment 4 for a list of interested and affected entities notified and solicited for information). Staff also submitted an information request to the general public via a Marbled Murrelet webpage (http://www.dfw.state.or.us/wildlife/hot_topics/marbled_murrelet.asp). Staff requested information by April 7, 2017, and received many comments in response (Attachment 5: Consultation).

Staff are currently developing the status review report, maintaining communications with the public and interested and affected parties, and archiving public correspondence and other materials as part of the reclassification analysis and rulemaking process. However, staff need more time to prepare a comprehensive document that will include:

1. Consideration of additional data from ODF and OSU databases after transfer to the Department's centralized database (expected summer 2017);
2. In-depth review of best available information on the biological status of the Marbled Murrelet in Oregon;
3. Analysis of the legal criteria for reclassification of a species from threatened to endangered per OAR 635-100-0111(1) and 635-100-0105(6) and a recommendation from staff on whether uplisting is warranted. The reclassification criteria include (1) a determination that the likelihood of survival of the species has diminished such that the species is in danger of extinction throughout any significant portion of

its range within Oregon; and (2) a determination that one or more of the following three factors exist: (a) that most populations of the species are undergoing imminent or active deterioration of their range or primary habitat; (b) that overutilization of the species or its habitat for commercial, recreational, scientific, or educational purposes is occurring or is likely to occur; or (c) that existing state or federal programs or regulations are inadequate to protect the species and its habitat; and

4. Consideration of input from peer reviewers and the public, given the complexity and high level of public interest in this issue.

The status review and associated rulemaking process require extensive staff resources to complete. Staff feel that the additional time is essential to the development of a quality status review report and informed reclassification recommendation.

An extension may also allow the Department to review additional information or analysis from the U.S. Fish and Wildlife Service. That agency initiated a 5-year status review of the Marbled Murrelet across the species' federally-listed range in Washington, Oregon, and California in April 2017 (*Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 138 Species in Hawaii, Oregon, Washington, and California; Notice of initiation of reviews; request for information*, 82 Federal Register 75 (April 20, 2017), pp. 18665-18668).

Timeline and Next Steps:

An overview of steps completed to date as well as the anticipated future timeline are outlined below. This timeline would allow completion of the status review report and associated rulemaking process by June 21, 2018.

Overview of Chronology

2016

June 21: Petition filed

September 2: Petition found to contain substantial scientific evidence and accepted by the Commission

September 9: Petitioners notified of Commission acceptance of petition

2017

January-April: Gathered data and literature relevant to status review; began consultation

April-August: Prepare draft status review report and conduct reclassification analysis; obtain additional data from ODF and OSU; solicit peer reviewers

September: Send out draft status review report for public comment and peer review (allow at least 30 days for input)

October-November: Address comments on draft; develop second draft of status review report

December: Provide notice of final status review report and upcoming Commission meeting to interested and affected parties

2018

February: Present status review report and staff recommendation at Commission meeting

March: Draft survival guidelines (if positive finding*)

June: Final consideration of petition and decision by Commission; rulemaking to uplist Marbled Murrelet and adopt survival guidelines (if positive finding and decision by Commission to uplist Marbled Murrelet*)

*In the event of a positive finding that the Marbled Murrelet warrants reclassification from threatened to endangered under the OESA and a corresponding uplisting decision by the Commission, the Commission would be required to establish survival guidelines for the species at the time of reclassification (ORS 496.182(2), OAR 635-100-0105(9)) and to work with state land owning and managing agencies to determine if state land can play a role in the conservation of the species (ORS 496.182(8), OAR 635-100-0140(1)). Survival guidelines are quantifiable and measurable guidelines necessary to ensure the survival of individual members of the species (OAR 635-100-0100(13)). They may include take avoidance and protecting resource sites such as nest sites or other sites critical to the survival of individual members of the species. They would serve as interim protection until endangered species management plans were developed by applicable state agencies and approved by the Commission.

OPTIONS

Option 1 – Approve the request for extension

Option 2 – Deny the request for extension

**STAFF
RECOMMENDATION**

Option 1 – Approve the request for extension to allow completion of the status review report and associated rulemaking process by June 21, 2018

DRAFT MOTION	I move to approve the request for extension to allow completion of the Marbled Murrelet status review report and associated rulemaking process by June 21, 2018.
EFFECTIVE DATE	June 9, 2017