

## Agenda Item Summary

### BACKGROUND

The Oregon Fish and Wildlife Commission (Commission) received a petition (Petition) on June 26, 2018 from Cascadia Wildlands, Center for Biological Diversity, Defenders of Wildlife, Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, and Oregon Wild (collectively, “Petitioners”) relating to Humboldt marten (*Martes caurina humboldtensis*) in Oregon. In particular, the petition requests that the Commission list the Humboldt marten as “endangered” under the State of Oregon Endangered Species Act (OESA), or should the Commission decline to list as “endangered”, Petitioners request consideration of a “threatened” listing. As defined by the OESA, “endangered species” means any native wildlife species determined by the commission to be in danger of extinction throughout any significant portion of its range within this state, and “threatened species” means any native wildlife species the commission determines is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state.

Recent genetics suggest two species of marten occur in North America: the Pacific marten (*Martes caurina*) and the American marten (*Martes americana*). The Pacific marten species is the only marten species in Oregon and they are found in the Blue Mountains, Cascade Mountains, and Oregon Coast Range. Based on current genetics, three subspecies occur in Oregon and are associated with those landscapes. The Pacific marten subspecies currently found in the coast range belong to the Humboldt marten subspecies (*Martes caurina humboldtensis*). The Humboldt marten subspecies is currently on the Oregon Sensitive Species list (OAR 635-100-0040(2)) and is a Conservation Strategy Species. The OESA is directed at the species level with “species” defined as any group or population of wildlife that interbreeds and is substantially reproductively isolated.

This Agenda Item describes the petition process and requirements, Oregon Department of Fish and Wildlife (Department) initial staff review of the Petition, and next steps if a determination is made by the Commission to accept the Petition for further evaluation.

#### **Petition Process and Requirements:**

The Department maintains a list of threatened and endangered species under the authority of the OESA (ORS 496.172(2)). The Commission has adopted administrative rules (OAR 635-100-0100 to 0130), which provide criteria for listing, reclassifying, and delisting species listed under the OESA.

In Oregon, any person may petition the Commission to list, reclassify, or remove wildlife species on the OESA list. Procedural requirements for submitting petitions are established by ORS 496.176(5) and OAR 635-100-0110. At a minimum, petitions must include information on the

action sought and documented scientific evidence about the species' biological status to support the requested action.

Pursuant to OAR 635-100-0110(2), petitions must include the following key components and supporting scientific evidence:

- Common and scientific names of the species
- Threats to the species' habitat and distribution
- Species' historical and present distribution
- Changes in habitat or population, and the reasons for such changes
- Land use practices affecting the species or its habitat
- Measures that have been or could be taken to alleviate a reduction in the species' habitat or population
- Present population status
- Other natural or human-related factors affecting the continued existence of the species (e.g., climatic, successional, reproductive, or genetic factors, environmental pollution)

Following receipt of a petition, the Commission has:

1. 10 working days to acknowledge receipt of the petition (completed).
2. 90 days to advise the petitioner whether the petition presents substantial scientific evidence to justify proceeding with consideration of the requested action (deadline for the current Petition: September 24, 2018; see also step 2 of Fig. 1).  
“Substantial scientific evidence” is defined in the rules as “that quantum of the best available documented information or evidence that a reasonable person would accept as adequate to support a conclusion” (OAR 635-100-0100(12)).

The Commission may choose to accept the Petition if the petition requirements outlined above (OAR 635-100-0110(2)) are met, and the Petition presents substantial scientific evidence to justify the requested action.

The Commission may also choose to deny the Petition if they believe the petition does not present substantial scientific evidence to justify proceeding with the requested action OAR 635-100-0110 (4).

3. If the Petition is accepted by the Commission, this will initiate the rulemaking process using criteria set forth in OAR 635-100-0105. The rulemaking process includes an assessment of the biological status of the Humboldt marten in Oregon by the Department, and consultation with affected agencies, tribes, organizations, and the public.

A final determination by the Commission would have to be made by June 26, 2019 (12 months from the date of receipt of the Petition) on whether listing of the Humboldt marten is warranted under OAR 635-100-0105; the Commission may extend this deadline for up to 12 additional months if the Commission determines that the information available is limited or other appropriate circumstances require the extension (OAR 635-100-0110(8)).

If the rulemaking process commences, and the Commission subsequently determines that the Petition fails to meet the criteria in OAR 635-100-0105, the Commission can deny the Petition at that time. The Commission would have 10 working days from the date of that decision by which to advise the Petitioners in writing (1) of the denial and (2) the basis for the decision. The OESA listing status of threatened would be retained.

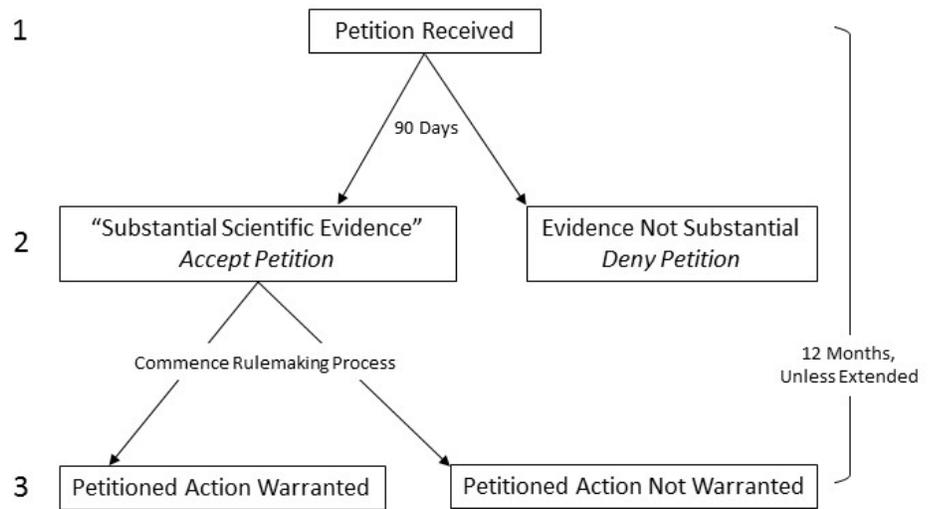


Figure 1. Overview of petition process from receipt to final determination

**Judicial Review of Commission Action:**

The Petitioners have the right to challenge any denial of the Petition, whether at the 90-day mark or later, in circuit court. If the Commission creates rule to list the Humboldt marten under the OESA, that rulemaking action can be challenged in the Court of Appeals.

**PUBLIC INVOLVEMENT**

- Communication with local sporting groups, state and federal agencies, wildlife researchers, Oregon State Police, and other interested parties.
- Questions from interested persons were answered
- Correspondence

## ISSUE 1

Determine whether to accept or deny the Petition.

## ANALYSIS

### **Department Review:**

The Department reviewed the Petition's adequacy in accordance with OAR 635-100-0110(2) and outlined above.

The Petition includes information from most of the published survey findings documenting current and historic Humboldt Marten populations in Oregon. Recent survey findings in Oregon are consistent with (decades) older surveys that identified Humboldt marten population distribution. Recent research suggested these survey efforts have documented marten range stability. The Petition identifies only one research project that estimated current Humboldt marten populations within the Oregon Dunes National Recreation Area along the Oregon coast. No population estimates, changes in populations, or indications of a loss of reproductive potential were demonstrated by the Petition for Humboldt marten across their documented range in Oregon. Additionally there was no information provided to establish that the Humboldt Marten meets the definition of "species" as defined in OESA.

Numerous potential threats to Humboldt marten and their habitats are included in the Petition. Potential threats to Humboldt marten habitat include the loss of forest habitat features due to timber harvest, fire, and fire suppression. The Petition suggests threats to Humboldt marten include human-caused mortalities, isolation, disease, and extreme natural disasters (e.g. tsunamis).

Of the research conducted on Oregon populations, the threats identified by the petitioners were not examined nor were any changes documented. Instead, the majority of scientific information provided in the Petition was conducted in other climates, habitats, states, or provinces and was often from studies of other subspecies and species of marten. Oregon Humboldt marten populations occur in very diverse habitats and landscapes (coastline vs. inland coast range forest), so generic statements regarding Oregon populations are speculative and not comparable especially when attempting to incorporate findings from other geographic areas. These differences put into question the likelihood of these potential threats occurring among Oregon populations and empirical data such as documented trapping and road mortalities indicate those threats are negligible.

The Petition does not present substantial scientific evidence for the required components specified in OAR 635-100-0110(2) to justify proceeding with the requested action to list the Humboldt marten as

Endangered or Threatened under the OESA. Therefore, staff recommends that the Commission deny the Petition.

There are critical research and data needs to address for Humboldt marten populations in Oregon. The Department, along with other collaborators in the Oregon Forest Carnivore Working Group, is actively participating in projects in alignment with strategies identified in the Oregon Conservation Strategy. As with other Sensitive Species, the key objective is to prevent any future listings under the OESA.

## OPTIONS

**Option 1 - Accept the Petition.** If the Commission finds that the Petition presents substantial scientific information to justify proceeding with consideration of the requested action, the Commission may accept the Petition and commence the process of rulemaking using the criteria set forth in rule to determine whether classifying the Humboldt marten as endangered or threatened is warranted (OAR 635-100-0110 and 635-100-0105).

**Option 2 - Deny the Petition.** If the Commission finds that the Petition does not present substantial scientific information to justify proceeding, the Commission may deny the Petition.

## STAFF RECOMMENDATION

Option 2.

## DRAFT MOTION

I move to deny the petition submitted by the Petitioners.