

that adopted national standards to control vehicle evaporative emissions, dynamometer test provisions, and labeling requirements. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to today's action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to today's action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5-501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

Today's action is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, today's action does not concern an environmental health or safety risk that we have reason to

believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today's action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104-113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

Today's action references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's action involve the measurement of vehicle evaporative emissions, the allowance for four-wheel dynamometer test capabilities in certification and in-use testing, and labeling requirements revisions.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing today's action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Today's

action will be effective February 6, 2006.

II. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 202 of the Act, 42 U.S.C. 7521. Today's action is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 29, 2005.

Stephen L. Johnson,
Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised 12-Month Finding for the Greater Adams Cave Beetle (*Pseudanophthalmus pholeter*) and the Lesser Adams Cave Beetle (*Pseudanophthalmus cataryctos*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of revised 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce our revised 12-month finding for a petition to list the greater Adams Cave beetle (*Pseudanophthalmus pholeter*) and the lesser Adams Cave beetle (*Pseudanophthalmus cataryctos*) under the Endangered Species Act (Act). After a review of the best available scientific and commercial information, we conclude that these species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. Therefore, we find that proposing a rule to list these species is not warranted, and we no longer consider them to be candidate species for listing. The Service will continue to seek new information on the taxonomy, biology, and ecology of these species, as well as potential threats to their continued existence.

DATES: This finding was made on November 15, 2005. Although no further

action will result from this finding, we request that you submit new information concerning the taxonomy, biology, ecology, and status of the greater and lesser Adams Cave beetles, as well as potential threats to their continued existence, whenever such information becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, 3761 Georgetown Road, Frankfort, Kentucky 40601. Submit new information, materials, comments, or questions concerning this species to us at the above address.

FOR FURTHER INFORMATION CONTACT: Michael A. Floyd, Kentucky Ecological Services Field Office at the address listed above, by telephone at 502-695-0468, by facsimile at 502-695-1024, or by e-mail at mike_floyd@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Act provides two mechanisms for considering species for listing. One method allows the Secretary, on her own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through an assessment process to identify species that are candidates for listing, which means we have on file sufficient information on biological vulnerability and threats to support a proposal to list the species as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions. Using this process we identified the greater and lesser Adams Cave beetles as candidates for listing in 2001 and included them in the Candidate Notice of Review (CNOR) published in the **Federal Register** on October 30, 2001 (66 FR 54808). In subsequent CNORs that we published June 13, 2002 (67 FR 40657) and May 4, 2004 (69 FR 24875), we continued to recognize these two species as candidates for listing based on updated assessments of their status.

A second mechanism that the Act provides for considering species for listing is for the public to petition us to add a species to the Lists of threatened or endangered species. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the extent practicable, whether the petition presents substantial scientific or commercial information that listing may be warranted (a "90-day" finding). If we make a positive 90-day finding, we must promptly commence a status review of the species and under section 4(b)(3)(B), we must

make and publish one of three possible findings within 12 months of receipt of such a petition (a "12-month finding"):

1. The petitioned action is not warranted;
2. The petitioned action is warranted (in which case we are to promptly publish a proposed regulation to implement the petitioned action); or
3. The petitioned action is warranted but (a) the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the Lists.

On May 11, 2004, the Service received a petition from the Center for Biological Diversity to list 225 species we previously had identified as candidates for listing, including the greater and lesser Adams Cave beetles. Our standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding. Pursuant to requirements in section 4(b)(3)(B) of the Act, the CNOR and Notice of Findings on Resubmitted Petitions published by the Service on May 11, 2005 (70 FR 24870), included a finding that the immediate issuance of a proposed listing rule and the timely promulgation of a final rule for each of these petitioned species, including the greater and lesser Adams Cave beetles, was warranted but precluded by higher priority listing actions, and we described those actions as well as the expeditious progress being made to add qualified species to the Lists.

Section 4(b)(3)(C)(i) of the ESA directs that when we make a "warranted but precluded" finding on a petition, we are to treat the petition as being one that is resubmitted annually on the date of the finding; thus the ESA requires us to reassess the petitioned actions and to publish a finding on the resubmitted petition on an annual basis. Although we typically make the annual finding for petitioned candidate species through the CNOR, we need not wait a full year to reassess the status of such a species and may publish a revised petition finding separately from the CNOR. That is what we are doing in this situation.

As a result of new information regarding conservation efforts for the greater and lesser Adams Cave beetles, we completed a reassessment of their status in September 2005 (FWS 2005a). The updated assessment document is available from our Kentucky Ecological Services Field Office (see **ADDRESSES**, above). This resubmitted 12-month finding evaluates new information, as described in the species assessment and

related documents referenced in it, and re-evaluates previously-acquired information.

Species Information

The greater Adams Cave beetle (*Pseudanophthalmus pholeter*) and lesser Adams Cave beetle (*Pseudanophthalmus cataryctos*) were described by Krekeler (1973) based upon specimens collected in Adams Cave by T.C. Barr and S.B. Peck in 1964. The two beetles are eyeless, reddish-brown insects that range in length from 3 to 5 mm. Both species are predatory, feeding upon small cave invertebrates such as spiders, mites, springtails, and millipedes. More detailed information on the taxonomy, biology, and habitat of these species can be found in FWS (2005a).

Both the greater and lesser Adams Cave beetle are restricted to Adams Cave, a large, limestone cave located in the Bluegrass region of central Kentucky. The passageways of Adams Cave vary in height from approximately 5 to 60 feet and extend over 1,500 feet in length. The only known entrance to the cave and part of its underground passages lie within a 1-acre lot of a rapidly developing residential subdivision (Adams Place) located southwest of Richmond, Kentucky.

Conservation Efforts

The Service secured a commitment from the prior landowner to donate the enrolled property to a conservation organization or other non-profit organization to further ensure adequate, long-term protection and conservation of the cave and species inhabiting it. In 2002, the Southern Conservation Corporation (SCC), a non-profit land trust, accepted ownership of 1 acre of land that includes the only known entrance to the cave and a small portion of the 215-acre groundwater basin for Adams Cave. The Service worked with SCC to develop a Candidate Conservation Agreement with Assurances (CCAA) for the greater and lesser Adams Cave beetles (SCC and Service 2005). This CCAA, signed in March 2005, covers the 1-acre area owned by SCC, including the cave entrance. Through the CCAA, SCC committed to implement three conservation efforts specifically designed to further address the primary threats to the species: (1) SCC will maintain the Adams Cave property in a natural state by implementing provisions that ensure an adequate, natural energy flow into the cave is maintained and that development impacts and the probability of a contaminants spill that might impact the cave habitat are minimized; (2) SCC

will maintain the metal gate at the entrance to Adams Cave; and (3) SCC will control/limit access to Adams Cave. Additional information regarding the details of these three efforts is provided in the species assessment and in the CCAA.

Many aspects of the conservation efforts identified in the CCAA are ongoing, such as maintenance of the gate and control of access into the cave, and others are planned. Based on our evaluation of each of the three conservation efforts using the criteria provided in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100), we have determined that each of the three efforts is sufficiently certain to be implemented and effective so as to have contributed to the elimination or reduction of threats to the species (FWS 2005b). Therefore, the Service can consider these conservation efforts in making a determination as to whether either the greater or lesser Adams cave beetle meets the Service's definition of a threatened or endangered species.

Discussion of Listing Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to greater and lesser Adams Cave beetles are summarized below. Additional information that provides the basis for this summary is available in the species assessment and is incorporated by reference.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In our initial assessment of the greater and lesser Adams cave beetles in 2001, we identified these species candidates for listing due to the present and threatened destruction and modification of their habitat (66 FR 54800). The activities contributing to this threat factor have now been addressed, as summarized below.

One of the identified threats was debris and trash in the cave and around the cave entrance. The debris and trash have been removed.

In our 2001 assessment we identified a potential risk of destruction or modification of the cave environment, including the cave food chain, which could occur as a result of polluted runoff from the surrounding residential development or spills of toxic materials

in the watershed in which the cave occurs. We now have determined that the potential risk of polluted stormwater runoff is quite limited because the majority of stormwater flows, the principal means by which pollutants could enter the cave, are diverted away from Adams Cave by a stormwater collection system for Adams Place subdivision. Also, native vegetation plantings now surrounding the cave entrance serve as natural filters for any potential non-point source pollutants that could potentially enter the cave during storm events. Toxic material spills from external sources are improbable because the Adams Cave watershed is not a commercial area where toxic chemicals are produced or stored, nor is there likely to be transport of any significant amounts of toxic materials in the area. Further, one of the conservation efforts in the CCAA prohibits the use of pesticides on the property, and under the CCAA the property cannot be used as a chemical, waste, or debris storage site or facility, and the dumping of debris or potential contaminants on the property is prohibited.

Adams Cave was utilized for camping and other activities for several decades. In an attempt to control access to the cave, the prior owner placed a concrete block wall at the cave entrance. However, this blocked the normal flow of organic material and air that are important components of maintaining the cave ecosystem and food chain. The Service funded and oversaw the removal of the concrete block wall from the cave entrance and the installation of a locked metal gate just inside the entrance of Adams Cave. The metal gate now controls access without limiting the flow of air and various nutrients needed to maintain the cave habitat.

Continued maintenance of the metal gate SCC, coupled with strict control of access to the cave, ensures that human entry into the cave is tightly controlled and restricted. This prevents vandalism and the deposition of trash or other debris that could destroy or modify habitat of the beetles. Routine inspection and maintenance of the cave gate prevents the gate from becoming blocked by fallen rock or other debris, thereby maintaining the natural flow of organic matter from the surface to the cave ecosystem.

We note also that SCC is a non-profit land trust that acquired the site for the purpose of protecting it. As such, no development or other activities that could directly impact the cave habitat are likely to occur under their ownership, as they have committed to,

and have been implementing, the conservation efforts in the CCAA.

Based on the information summarized above, the greater and lesser Adams Cave beetles are not threatened by the present or threatened destruction, modification, or curtailment of their habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no evidence of overutilization of the greater and lesser Adams Cave beetles in the past for commercial, recreational, scientific, or educational purposes, and have no information that suggests such a threat exists in the foreseeable future. Under the CCAA, collection for scientific purposes would be allowed only with the permission of the Service. The cave has been used for recreational purposes by spelunkers and by passive recreationists in the past, but placement of the locked metal gate across the cave entrance a few years ago has effectively eliminated such uses. Further, through maintenance of the metal gate at the cave entrance, as required by the CCAA, all unauthorized access to the cave is prevented. Based on these considerations, overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the species.

C. Disease or Predation

Disease and predation are not known to be threats for either of these species and are, instead, a normal part of their life history. Mortality from disease or predation likely occurs but has not eliminated these species in the past and we have no reason to expect disease or predation to pose a substantial risk to the species in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Although the greater and lesser Adams Cave beetles are listed as endangered in Kentucky by the Kentucky State Nature Preserves Commission, they are not protected under State law. However, there are no foreseeable reasons why specific regulatory mechanisms would be necessary to ensure the survival of these species because the landowner, SCC, is committed to and is implementing various conservation efforts to protect the cave and the greater and lesser Adams Cave beetles. This includes, but is not limited to, strictly controlling access to the cave and the property surrounding the cave opening. The metal gate is effective in preventing unauthorized entry into the cave, and as

described above, SCC has committed to and is implementing measures to strictly control access to the cave.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Populations of each of these two cave beetle species are restricted to Adams Cave and are generally believed to be represented by a small number of individuals. Although this is a natural situation, their limited distribution and numbers make these species vulnerable to extirpation due to effects from various manmade factors, such as spills of toxic substances, non-point source pollutants, and habitat-related damage, as described above under Factor A. As described above, the conservation efforts taken prior to the CCAA, as well as the efforts included in the CCAA, have removed or substantially reduced these habitat-related risks. Small population sizes for these species may also limit the natural interchange of genetic material within the population, which could affect long-term genetic and population viability. However, these are endemic species that have persisted over time despite the risks of limited genetic interchange. For the

reasons described above, the greater and lesser Adams Cave beetles are not threatened by other natural or human-caused factors.

Revised Petition Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the greater and lesser Adams Cave beetles.

We have evaluated the threats to the greater Adams cave beetle and the lesser Adams cave beetle and considered factors that, individually and in combination, presently or potentially could pose a risk to these species and their habitat. We conclude that listing these species under the Endangered Species Act is not warranted because the species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. These species no longer meet our definition of a candidate and are removed from candidate status.

We will continue to monitor the status of the greater and lesser Adams Cave beetles, and to accept additional information and comments from all concerned governmental agencies, the

scientific community, industry, or any other interested party concerning this finding. We will reconsider this determination in the event that new information indicates that the threats to these species are of a considerably greater magnitude or imminence than identified here.

References

A complete list of all references cited herein is available upon request from the Kentucky Ecological Services Field Office, U.S. Fish and Wildlife Service (*see ADDRESSES*).

Author

The primary author of this finding is Michael A. Floyd, U.S. Fish and Wildlife Service (*see ADDRESSES*).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 15, 2005.

Richard E. Sayers, Jr.,

Acting Director, Fish and Wildlife Service.

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