from tests administered by State or local law enforcement personnel may not be used when the employer could have, but did not, conduct its own test. Rather, this amendment applies exclusively to those few instances where the employer is unable to perform a post-accident test. Employers may not rely on State or local law enforcement personnel to conduct post-accident testing. While this provision does not prohibit duplicative post-accident testing (*i.e.,* the employer testing under FTA regulations and State or local officials testing under their own authority), it does not permit employers to ignore their obligation to test.

As was explicitly noted in the September 30, 1997, NPRM, this amendment imposes no requirement on State or local law enforcement personnel to perform post-accident testing. In fact, employers should not assume State or local law enforcement personnel routinely perform post-accident drug and alcohol testing; nor should employers assume such test results will be readily available to them. The FTA knows of no situation in which State or local law enforcement agencies routinely give employers the results from post-accident testing. If an employer knows that a State or local law enforcement agency has, of its own authority, administered a post-accident test, and the employer would like to obtain the test result because it (the employer) was unable to perform a post-accident test in accordance with Federal regulations, the employer must either obtain those results (through, for example, a subpoena) or prepare and maintain a record stating why a post-accident test was not promptly administered, as required by FTA rules. This amendment does not impose an affirmative obligation on an employer to obtain results of a post-accident drug and/or alcohol test administered by State or local law enforcement officials.

Refusal by a safety-sensitive worker to submit to a law enforcement-administered post-accident test shall not constitute ''refusal to submit'' as that term is defined at 49 CFR 653.7 and 654.7. In the event both a law enforcement agency and the employer (proceeding under 49 CFR Parts 40, 653 and 654) conduct post-accident tests, the test results obtained by the employer shall take precedence for purposes of compliance with Parts 653 and 654.

The remaining objections to this amendment involve Federal deference to State and local law enforcement, and their post-accident testing methodology. FTA will accept the results from post-accident drug and alcohol tests performed by State or local law enforcement agencies, under their own authority, in conformity with applicable Federal, State, or local testing requirements, when the employer was unable to conduct a test, even when the test may have been administered in a manner different than that prescribed by 49 CFR Part 40.

II. Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no significant Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities; allowing employers to use the results of a post-accident drug and alcohol test administered by or under the direction of State of local law enforcement personnel is unlikely to significantly increase the costs for employers.

List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, FTA amends Title 49 Code of Federal Regulations, part 653 and 654 as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 653.45 [Amended]

2. Section 653.45 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or urine test for the use of prohibited drugs, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer.

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

3. The authority citation for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.52.

§ 654.33 [Amended]

4. Section 654.33 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or breath test for the misuse of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements to this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the results of the tests are obtained by the employer.

Issued: December 2, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–32478 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; New 12-month Finding for a Petition to List the Florida Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of new 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a new 12-month finding for a petition to list the Florida black bear (*Ursus americanus floridanus*) under the Endangered Species Act of 1973, as amended. After a review of all available scientific and commercial information, the Service finds that listing of the Florida black bear is not warranted at this time. This finding supersedes the previous 12-month finding that found listing of the Florida black bear to be warranted but precluded by higher priority listing actions. Furthermore, because the definition of a candidate species, one for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule, no longer applies to the Florida black bear, we remove this species from the candidate species list.

DATES: The finding announced in this document was made on November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Jacksonville, Florida 32216 (904/232–2580, ext. 106).

SUPPLEMENTARY INFORMATION:

Background

The Florida black bear (*Ursus americanus floridanus*) is a subspecies of the black bear (*Ursus americanus*), which ranges from northern Alaska and Canada south to northern Mexico. According to Hall (1981), historically the Florida black bear was primarily restricted to Florida, but also occurred in coastal plain areas of Georgia, Alabama, and extreme southeastern Mississippi. Following extensive human development, the distribution of the Florida black bear has become fragmented and reduced, perhaps occupying 27 percent of its former range in Florida (Florida Game and Fresh Water Fish Commission (Commission 1993). Population sizes and densities prior to the arrival of the first European colonists are not known and probably varied throughout the different habitats found in this part of the Southeast. The Commission (1993) estimated that possibly 11,500 bears once inhabited Florida. The bear is currently State-listed as a threatened species by the Commission, except in Baker and Columbia counties and in Apalachicola National Forest where it is considered a game species, although there is currently no open season. It is considered threatened by the Florida Committee on Rare and Endangered Plants and Animals (Williams 1978, Maehr and Wooding 1992). The States of Alabama and Georgia consider it a game animal, with no hunt allowed in Alabama and a limited hunt (6 days on 3 weekends in September and October and a 3-day hunt on December 3, 4, and 5, which was added this year) of the Okefenokee population in Georgia.

Service involvement with the Florida black bear began with the species' inclusion as a category 2 species in notices of review published on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). At that time, category 2 species were defined as those for which information in the possession of the Service indicated that listing was possibly appropriate, but for which sufficient data on biological vulnerability and threat were not currently available to support proposed rules. On May 20, 1990, we received a petition from Ms. Inge Hutchison of Lake Geneva, Florida, to list the Florida black bear as a threatened species. The petition cited the following threats: (1) Illegal hunting by beekeepers; gallbladder poachers, and others; (2) loss and fragmentation of critical habitat; (3) hunting pressure; and (4) road mortality. The Service made a 90-day petition finding on October 18, 1990 (55 FR 42223), that the petition presented substantial information. Based on the information received and information in Service files, a 12-month finding was made on January 7, 1991 (56 FR 596), indicating that the Service believed that listing was warranted but precluded by higher priority listing actions. At the time of the finding, we assigned the species a level 9 priority in our listing priority system published on September 21, 1983 (48 FR 43098). That level indicated that the species was subject to imminent but moderate-to-low threats throughout its range. Since we determined that listing was warranted, the species was included as a category 1 candidate in the November 15, 1994, animal review notice (59 FR 58982). At that time, a category 1 candidate (now referred to as a ''candidate'') was one for which the Service had on file sufficient information to support issuance of a proposed rule. Designation of a category system of candidates was discontinued in the February 28, 1996, notice of review (61 FR 7956). The Florida black bear was included as a candidate in that notice with a listing priority number of 12, indicating a species under non-imminent moderate-to-low threat. Since the 12-month finding, the Service's Southeast Region has used its listing resources to process higher priority listing actions.

The processing of this finding conforms to the Service's final listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings. The highest priority is given to handling emergency situations (Tier 1), second highest priority (Tier 2) to processing final decisions on proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and delisting or reclassifying actions, and lowest priority (tier 3) to actions involving critical habitat determinations. The processing of this final rule falls under tier 2. At this time, the Southeast Region has no pending tier 1 actions.

The Service contracted a taxonomic review of southeastern black bears in 1992 (Vaughan *et al.* 1998), to clarify the relationships of the Florida, Louisiana (*U. a. luteolus*), and American black bears. The results indicate that the current taxonomic arrangement remains valid (Kasbohm and Bentzien 1998), and the Florida black bear qualifies as a ''species'' as defined by the Act.

The Service contracted a population ecology study of the Okefenokee-Osceola population with the University of Tennessee in 1994; the work is ongoing in 1998. Studies to determine basic information such as bear population demographics and movement are also underway in southern Alabama, on Eglin Air Force Base, and in the Chassahowitzka area of west central Florida.

On January 21, 1997, the Service entered into a revised settlement agreement in the *Fund for Animals et al.* v. *Babbitt* case (Civil No. 92–0800 SS, U.S. District Court for the District of Columbia). One of the stipulations of the agreement was that we would resolve the conservation status of the Florida black bear by December 31, 1998.

In 1998, we updated the status review of this species (Kasbohm and Bentzien 1998) to include additional information concerning the status of the Florida black bear that had become available since the 1992 assessment.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species (in danger of extinction throughout all or a significant portion of its range) or threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range) due to one or more of the five factors described in section 4(a)(1). The factors and their application to the Florida black bear are as follows:

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

Much of the historical habitat of the Florida black bear has been lost to land clearing and alteration by man. Currently, the bear is found mainly in seven more-or-less separate populations (Kasbohm and Bentzien 1998), some of which are sufficiently isolated by distance or unsuitable habitat that there would be little chance of interchange between them. These, and other Florida black bear populations, are discussed below.

1. In Alabama, the Florida black bear appears restricted to the Mobile River Basin and adjacent areas, including portions of Baldwin, Clarke, Choctaw, Mobile, and Washington counties. About 377 square kilometers (sq km) (93,000 acres (ac)) support an estimated population of less than 50 bears. Bears may also occur occasionally on an additional 6,641 sq km (1,640,327 ac) of

adjacent lands, but not as a resident breeding population. Most of these lands are private, and residential development is expected to continue, significantly affecting primary bear habitat within the next ten years. This population shows morphological indications of excessive inbreeding (Kasbohm *et al.* 1994), including kinked or absent tails, prolapsed (slipping outward) rectums, and no external scrotum or testes. Because of its low numbers, shrinking habitat, and genetic problems, this population could be extirpated in the near future.

2. Eglin Air Force Base (AFB) and surrounding public lands in the western Florida panhandle include about 2,700 sq km (667,000 ac). Eglin AFB contains 1,680 sq km (414,960 ac) of usable bear habitat but only 722 sq km (178,334 ac) are considered of high quality (Cox *et al.* 1994). Based on recent studies, it is estimated that 60 to 100 bears may occur on Eglin AFB. There are an estimated 6,641 sq km (1,640.327 ac) of additional land in the area where bears occasionally occur, and it is possible that numbers and distribution are greater than currently known; Cox *et al.* (1994) estimated that existing Eglin AFB and adjacent conservation lands could support as many as 150 to 210 bears, not including conservation lands north of Interstate 10 (such as Blackwater State Forest) that appear to be suitable bear habitat but which may be severed from the Eglin population by the Interstate and U.S. 90. Cox *et al.* (1994) considered this population to be stable.

Based on human population growth projections (Floyd *et al.* 1996), development in this area will continue to reduce and fragment bear habitat on private lands. Road mortality may be the greatest threat to this population; bears on Eglin AFB have large home ranges due to limited availability of preferred habitat and, therefore, may have to cross roads frequently (Carl Petrick, Natural Resources, Eglin AFB, pers. comm.). Dunbar *et al.* (1996) reported physical signs of inbreeding in this population, although recent bear captures have not detected such signs (Carl Petrick, Natural Resources, Eglin AFB, pers. comm.). We believe the Eglin AFB population is currently stable, but based on uneven habitat quality on occupied conservation lands and the probability of significant human population growth on adjacent private lands, management (e. g., occasional transfers of bears from another population) could be necessary in the future to keep the population viable.

3. In the central Florida panhandle, bears occur primarily on the Apalachicola National Forest (NF) and adjacent conservation and private lands. The area includes 10,930 sq km (2,700,000 ac) of potential, mostly high quality bear habitat. Existing and projected acquisition of public lands will provide about 4,100 sq km (over 1,000,000 ac) of secure habitat. While additional research is necessary to determine population size throughout this area, we estimate that it exceeds 400 animals.

Projected land use indicates that habitat alteration and human development will occur at slow rates, significant areas of private lands are expected to remain forested habitat through the foreseeable future. Considering the large contiguous area of conservation lands, the estimated number of bears present, the slow rate of human development, and the lack of substantial mortality, we believe the Apalachicola NF population is secure for the foreseeable future and may be able to expand into 6,000 sq km (1,482,000 ac) of apparently unoccupied habitat in the Big Bend area of Florida.

4. A small bear population occurs in Citrus, Hernando, and Pasco Counties on the middle Gulf Coast of Florida, and is often referred to as the Chassahowitzka population. There are an estimated 850 sq km (209,950 ac) of potential habitat in the area, but only 250 sq km (61,750 ac) are in public ownership. Less than 20 bears are believed to reside in this area. There are an additional 200 sq km (49,400 ac) of conservation lands along the Withlacoochee River, 100 sq km (24,700 ac) in Pasco County, and 526 sq km (129,922 ac) in the Green Swamp area (another 626 sq km (154,622 ac) are proposed for acquisition there). While bear sightings are known from these areas, they are unlikely to maintain linkages with the Chassahowitzka area and none of these lands in the area are large enough to support a long-term bear population without management. The Chassahowitzka area is likely to have continued rapid human development with the consequent loss of forested lands and the expansion of roads. This indicates that the Chassahowitzka population is unlikely to persist into the foreseeable future. However, Cox *et al.* (1994) believed the Green Swamp area was capable of supporting 24 to 48 bears, and that such a population would have a fair chance of survival for very long periods (under favorable management conditions, possibly greater than 80 percent chance of survival for 200 years). The Commission intends to investigate the status of bears in the Green Swamp, and with management, a small population could likely be maintained on these public lands. A self-sustaining bear population, however, does not appear likely in the Chassahowitzka area.

5. The Ocala NF and the northeastern peninsula of Florida support populations of bears that were (and still are) connected, but the conservation situation is different for each area. The Ocala area includes about 8,935 sq km (2,207,000 ac) of high quality bear habitat, 2,223 sq km (549,000 ac) of which are nearly contiguous public conservation lands. Proposed acquisition projects would increase public lands in the Ocala NF area to 2,600 sq km (642,000 ac). Wooding *et al.* (1994) estimated a minimum density of 0.08 bears per sq km (0.2 bears per square mile (sq mi)) in the forest, and extrapolated this to a possible population size of 125 for the entire forest. Roof and Wooding (1996) studied bears in the vicinity of the wildlife underpass on State Route 46 south of Ocala NF and estimated a density of 0.53 bears sq km (0.28 bears per sq mi). The latter density observation leads us to believe that the estimate of 125 bears (Cox *et al.* (1994) for the Ocala NF is too low, and that several hundred bears occur on the forest and adjacent public conservation lands. Based on the fact that 2,600 sq km (642,000 ac) of protected habitat are projected to be available to bears in the future (2,223 sq km is already protected), and the high productivity of the area, the Service believes the Ocala black bear population will remain viable into the foreseeable future.

Most bear habitat in the St. Johns area is on private commercial timber lands. Several public land holdings provide corridors for the Ocala population to reach private lands to the east, and the continued existence of bears in the St. Johns area probably depends on continued connection to the Ocala NF area. In the southern St. Johns area, the Tosohatchee State Reserve and adjacent conservation lands total about 356 sq km (87,932 ac) and are believed to support a small bear population. Persistence of this population is also dependent on maintaining interchange with the rest of the St. Johns and Ocala areas. The northern St. Johns population extends into Duval County, nearly to Jacksonville. The metropolitan area is expanding rapidly from southern Duval County through St. Johns County and southward, making it unlikely that bears will persist in this area, particularly east of Interstate 95. The St. Johns area is most likely to retain bears if corridors are maintained with the Ocala population. Given the increased density of humans in this area, it is unlikely that effective connections can be maintained

in much of the area. Failing such connections, bear habitat will become increasingly fragmented, with bears being extirpated in the St. Johns area.

6. The Okefenokee National Wildlife Refuge (NWR), Osceola National Forest, and nearby lands support a large bear population. The area has about 5,872 sq km (about 1,500,000 ac) of occupied habitat and 4,395 sq km (about 1,100,000 ac) of potentially occupied or suitable habitat (Commission 1993). About 2,532 sq km (625,404 ac) of primary bear range is protected in State and Federal ownership. Many timber lands surrounding the Okefenokee NWR provide important upland habitat for bears. Many of these areas are leased to local hunt clubs; the hunt clubs and landowners view the bears as an asset because of the interest in the Georgia hunt. Most of these lands are projected to remain in commercial timber production in the future. In Florida, losses of forested area are anticipated around the Jacksonville and Lake City areas, but these are on the periphery of the range and are not expected to affect the core population.

Population density estimates range from 0.1 to 0.4 bears per sq km (0.259 to 1.0 bears per sq mi) (Clark *et al.* unpublished data, Abler 1983). Population extrapolation, assuming a density of 0.25 bears per sq km (derived from the low range of Abler and mid-range of Clark), yields a conservative estimate of 630 bears for currently protected lands, and over 1,200 bears for all occupied habitat in the area.

Based on the low human population in this area, the slow anticipated rate of development, and the large core of protected lands, this population is secure and should remain viable into the foreseeable future.

7. In south Florida, bears are found on private and public lands in four counties in and near the Big Cypress Swamp, and in the vicinity of Highlands County to the north. There are an estimated 3,257 sq km (804,479 ac) of potential habitat (both public and private) in the Big Cypress area (Cox *et al.* 1994); about 3,393 sq km (838,071 ac) of land in this area is included in Federal and State conservation lands, but only 2,700 sq km (666,900 ac) of this protected habitat is believed to be bear habitat. Projected conservation land acquisitions would bring the total protected land area to over 3,850 sq km (950,950 ac). This would encompass 94 percent of the 3,257 km sq of bear habitat identified by Cox *et al.* (1994); 83 percent (2,700 sq km) is currently in Federal and State conservation lands. Based on a density estimate of 0.12 bears per sq km (.31 per sq mi) (Maehr 1997), the Big Cypress area may support 390 bears. The Highlands County area contains about 704 sq km (173,888 ac) of suitable habitat and only 44.5 sq km (10,992 ac) of protected lands, in three scattered areas, and could contain 85 bears.

Projected land use in this region includes urban development and citrus conversion. Based on past rates of forest conversion, most of the forested land in private ownership may be lost to development in the foreseeable future, both in the Highlands and Big Cypress areas. While the Highlands County population will lack sufficient area and connectivity to support a population, the Big Cypress population should remain secure and viable on public conservation lands into the foreseeable future.

We believe that there are four viable Florida black bear populations, Apalachicola NF, Ocala NF, Okefenokee NWR-Osceola NF, and Big Cypress National Preserve, which are secure on public conservation lands, and will be maintained on those lands into the foreseeable future. These populations are distributed over most of the historical range of the species. Therefore, we conclude that habitat loss and fragmentation are not likely to cause the Florida black bear to become endangered in the foreseeable future over all or a significant portion of its range.

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

The Florida black bear is a game species in Alabama, Georgia, and in the Apalachicola National Forest and Baker and Columbia counties in Florida. Bears in the remaining range in Florida are State-listed as threatened. There is currently no open season in Alabama and Florida.

Georgia allows a 6-day hunt of the Florida black bear around the Okefenokee Swamp for three consecutive weekends in September and October and this year added a 3-day hunt in the Dixon Memorial Forest (part of the Okefenokee population) on December 3, 4, and 5. From 1988 to 1997, 392 bears were legally killed, with a mean annual kill of 39 bears. Mean ages of males (4.7 years) and females (6.1 years) taken throughout the history of the hunt indicate a relatively old age distribution, and a sustainable hunt (Bunnell and Tait 1985, Garshelis 1990). Preliminary estimates indicate annual harvest rates of 10 to 13 percent, a level that should not cause a population decrease (J. Clark *et al.* University of Tennessee, unpublished data). Continued State monitoring of the hunt should ensure that excessive proportions of females are not taken and that excessive kills do not occur in years when failures of natural foods cause bears to leave Okefenokee NWR in unusually large numbers. Beginning in 1992, the Georgia Department of Natural Resources implemented and continues to conduct annual bait station surveys to monitor the population.

We do not consider the current legal hunt a threat to the continued existence of the Florida black bear, and conclude that this factor is not likely to cause the species to become endangered throughout all or a significant part of its range in the foreseeable future.

C. Disease or Predation

Southeastern black bears are known to host a variety of disease organisms; none of these seem to represent a serious problem (Davidson and Nettles 1988). Disease in not known to be a factor in the decline of the Florida black bear. This species has few natural enemies; predation is not a threat. These factors are not a threat to the Florida black bear now or in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

The Alabama Department of Conservation and Natural Resources (Division of Game and Fish), Florida Game and Fresh Water Fish Commission, and Georgia Department of Natural Resources (Wildlife Resources Division) have authority and responsibility for the management of the Florida black bear in their respective States. Their capabilities include the regulation of hunting and take (illegal killing), management of State wildlife management areas, law enforcement, research, and conservation and educational activities relating to the Florida black bear. We believe the authority and interest of these agencies are sufficient to monitor the status of the Florida black bear on the four major populations on public lands. The Federal and State protection afforded on the four primary public land areas will be adequate to ensure the continued existence of bears. The agencies are able to move bears if necessary, and, in the case of Florida, may help maintain the bear on one or possibly two additional areas of public lands (Eglin Air Force Base and possibly the Green Swamp) where occasional translocations may be necessary.

We believe there are currently adequate levels of protection and management authority to ensure the survival of the Florida black bear on the

four major public land areas through the foreseeable future, through the existing authority of the U.S. Forest Service, the National Park Service, the Service's National Wildlife Refuge System, and State and other conservation land managers.

Federal protection against illegal trade in bears or bear parts (e.g., gall bladders and claws) that crosses State lines is available through the Lacey Act. Such take is not currently known to be a significant problem (see discussion below).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Poaching is a potential threat to the Florida black bear, including kills of nuisance bears, hunting out of season, and killing of bears for commercially valuable parts such as claws and gall bladders. Currently, directed poaching of Florida black bears for parts appears to be absent or undetectable. Ongoing work in the Okefenokee NWR-Osceola NF area, for example, has not identified a significant level of poaching or illegal killing of black bears (Kasbohm and Bentzien 1998). Further, poaching and illegal kill are not known to be significant mortality factors for other Florida black bear populations.

Road-kills are a mortality factor for the Florida black bear throughout its range. Following the cessation of the legal hunt in Florida after the 1993–1994 season, the main mortality factor in the Apalachicola NF area may be road-kills. At least 81 bears were killed in vehicle collisions from 1976 to 1995 in and near to Apalachicola NF. However, road-kill mortality at current levels seems unlikely to negatively affect the overall Apalachicola bear population due to the slow rate of human population growth in the area and large areas of forested lands that are expected to remain intact. In the Ocala population, 187 road-killed bears were recorded from 1976 to 1995. As in other parts of the State, this mortality rate has increased in the last few years, with 35 percent of all the road-kills occurring from 1993 to 1995. Expansion of State Routes 40, 44, and 46 may lead to higher mortality, reduce the number of bears in the vicinity of these roads, and tend to isolate black bears to fragments of the Ocala NF. Although road-kills represent a significant mortality factor for this population, annual mortality rates calculated for this population, based on radiotelemetry studies (Wooding and Hardisky 1994, Roof and Wooding 1996), were less than those for most bear populations examined in the eastern United States (Bunnell and Tait 1985). A wildlife underpass was installed on State Route 46 in 1994 and appears to have been effective in reducing road-kills (Roof and Wooding 1996). According to Lande and Barrowclough (1987), a subdivided population can be considered approximately panmictic (random mating occurring throughout the population) if separate colonies exchange on the order of one or more migrants (bears in this case) per generation. The abundance and movements of bears in and near Ocala NF (Roof and Wooding 1996) make it unlikely that this level of migration would be prevented in the foreseeable future. Therefore, it appears unlikely that the Ocala population would become genetically isolated due to road widening.

Road-kills in the Big Cypress and Highlands County areas totaled 76 and 27 bears, respectively, from 1976 to 1995 with 80 percent occurring before 1993. This mortality rate may have been alleviated by the establishment of 24 wildlife underpasses on Interstate 75 and two on State Route 29 in Collier County (Gilbert and Wooding 1996).

We conclude that neither illegal killing of black bears nor road mortality is likely to cause the Florida black bear to become endangered throughout all or a significant portion of its range in the foreseeable future.

A basic question in assessing the conservation status of these populations is the likelihood of their persisting into the foreseeable future. Many factors affecting population dynamics and the chance of extinction are uncertain, i.e., due to chance or random events. Demographic uncertainty, environmental variability, and genetic uncertainty are primary threats to vertebrate populations. Demographic uncertainty results from random events in the survival and reproduction of individuals. Environmental uncertainty is due to random or unpredictable changes in weather, food supply, and the populations of competitors, predators, and parasites, etc.; and natural catastrophes occurring at random intervals. Genetic uncertainty or random changes in genetic make-up may occur due to the founder effect (the principle that the founders of a new population carry only a random fraction of the genetic diversity of the parent population), genetic drift (random gene frequency changes in a small population due to chance), or inbreeding (Shaffer 1987).

Minimum viable population modeling (Soulé 1987) is a predictive tool to assess the potential fate of a population by predicting the probability of its persistence for a specific time, based on demographic characteristics of the species and incorporating environmental variability as described above. Cox *et al.* (1994) used such simulations to predict the probability of persistence of the Florida black bear, under varying environmental conditions (favorable, moderate, and unfavorable), for 200 years. The model assumed that a catastrophic event lowering reproduction by 40 percent would occur, on average, every 25 years. Simulations indicated that a population of about 60 bears under favorable conditions would have a 95 percent chance of persistence for 200 years. This probability of persistence would require 100 bears under moderate environmental conditions and 130 bears under unfavorable conditions.

Based on data from stock breeders, Franklin (1980) recommended a minimum effective population size of 50 individuals as a threshold above which the population would maintain acceptably low levels of inbreeding for many generations, but that 500 might be required to maintain typical levels of heritable variation. Effective population size (the size of an ideal population that would undergo the same amount of random genetic drift as the actual population) is always less than the size of a breeding population. Cox *et al.* (1994) estimated that an effective population size of 50 for the Florida black bear would require a total population of 75 to 130. They recommended a general goal of ten secure populations of at least 200 individuals for rare vertebrates, with conservation areas of 2,000 to 4,000 sq km recommended for bears. Given the large amount of relatively undeveloped land required to support such populations, it appears unlikely that this goal can be achieved within the historical range of the Florida black bear. There are currently four populations on public conservation lands, distributed widely over the historical range, that meet the above criteria for population size and size of conservation area. Cox *et al.* (1994) indicated that habitat persistence of wildlife populations was more dependent on appropriate management than population size. Natural resource management of significant conservation lands supporting Florida black bears is discussed below.

Current natural resource management on Eglin AFB includes the maintenance of habitat diversity and includes prescribed burning to maintain natural ecological conditions, uneven aged stands, replacement of sand pine when it has invaded longleaf pine communities, and maintenance of riparian and forested wetlands on which

bears depend (Department of the Air Force 1993). This management is expected to be compatible with the continued existence of bears, although the limited bear population size may require augmentation in the future.

The USDA Forest Service Land and Resource Management Plan (Plan) for National Forests in Florida, covering lands which make up most core bear conservation lands, is expected to be compatible with the continued maintenance of bears at current levels (U.S. Forest Service 1998). The main land management practices in the Plan are prescribed burning and timber management. One of the Plan's goals is to maintain or restore ecosystem composition, structure, and function within the natural range of variability. Meeting this goal should ensure that silvicultural practices are compatible with maintaining bears on the National Forests. Specific management activities include thinning of young pine plantations, initiation of uneven-aged management, and sand pine clearcuts. Hardwoods will be left to supply mast (nuts and fruits of forest trees). Prescribed fire will emphasize growing-season burns. These measures are predicted to increase forage and acorn availability for bears. Most road activity is expected to be maintenance and reconstruction of existing Forest Service roads. Cross-country travel will be limited to pedestrians and horse riders.

The Big Cypress National Preserve management goals are to preserve the watershed and its natural flora and fauna, through prescribed burning, the control of exotic plants, and the restoration of hydrology (National Park Service 1991). This management is expected to be compatible with the continued existence of the bear.

On National Wildlife Refuges, management goals include ecosystem management for the maintenance of diverse natural habitats for a variety of wildlife. The forestry and burning practices plans of Okefenokee and Florida Panther NWRs are expected to continue providing good bear habitat into the foreseeable future.

Based on projected compatible habitat management for bears on core habitat areas, these lands are predicted to continue providing secure bear habitat into the foreseeable future.

The Florida black bear, in comparison to bears not federally protected in other parts of the southeast, is similar in population size and total secure habitat. The recovery criteria for the federally threatened Louisiana black bear (*Ursus americanus luteolus*) (U.S. Fish and Wildlife Service 1995) calls for two viable subpopulations linked by a corridor, with long-term protection of the habitat. In contrast, the Florida black bear currently has four stable populations on conservation lands that have long-term protection.

Finding

We have reviewed the petition, 1998 status review, available literature, and other information. After reviewing the best scientific and commercial information available, we conclude that the continued existence of the Florida black bear is not threatened by any of the five factors alone or in combination. We find, therefore, that the Florida black bear is not endangered nor likely to become endangered within the foreseeable future throughout all or a significant portion of its range and that listing as threatened or endangered is not warranted.

References Cited

A complete list of all references cited herein is available from the Jacksonville Field Office (see **FOR FURTHER INFORMATION** section).

Author: The primary author of this notice is Dr. Michael M. Bentzien (for address and phone number, see **FOR FURTHER INFORMATION** section).

Authority

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

Dated: November 25, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–32547 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to Delist the Squirrel Chimney Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service announces a 90-day finding for a petition to delist the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) under the Endangered Species Act of 1973, as amended. We find that the petition does not present substantial scientific or commercial information indicating that delisting this Florida species due to extinction may be warranted.

DATES: The finding announced in this document was made on November 25, 1998.

ADDRESSES: Those having questions, comments, or information concerning this petition may send them to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The petition finding, supporting data, and comments are available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Milio at the above address or telephone 904/232–2580, ext. 112.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. To the maximum extent practicable, we will make the finding within 90 days of receipt of the petition, and promptly publish the finding in the **Federal Register**. Following a positive finding, we must promptly commence a status review of the species.

The processing of this petition conforms with our current listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition is a Tier 2 action.

The Florida Game and Fresh Water Fish Commission (GFC) submitted the petition, dated August 5, 1997, which we received on August 8, 1997. We have made a 90-day finding on this petition to delist the Squirrel Chimney cave shrimp, *Palaemonetes cummingi*.