DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AC66

Migratory Bird Hunting; Decision on the Conditional Approval of Bismuth-Tin Shot as Nontoxic for the 1995–96 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is publishing this proposed rule to amend Section 20.21(j) and provide for the conditional approval of bismuth-tin shot for the 1995–96 migratory bird hunting season. Concluded acute toxicity studies, ongoing toxicity reproductive studies undertaken by the Bismuth Cartridge Company, and other pertinent materials indicate that bismuth-tin shot is nontoxic when ingested by waterfowl.

DATES: Comments on this proposal must be received by July 14, 1995.

ADDRESSES: Written comments should be sent to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634 ARLSQ, 1849 C Street NW., Washington D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Keith Morehouse and Pete Poulos, Staff Specialists, Office of Migratory Bird Management, (703/358–1714).

SUPPLEMENTARY INFORMATION: The Service published a final regulation in the January 3, 1995, **Federal Register** (60 FR 61) to provide for conditional approval of bismuth-tin shot (in a mixture of [nominally] 97–3 percent, respectively) as nontoxic for the taking of waterfowl and coots during the 1994–1995 hunting season. This action was in response to a petition for rulemaking from the Bismuth Cartridge Company received June 24, 1994. The petition requested that the Service modify the provisions of 50 CFR section 20.21(j), to legalize the use of bismuth-tin shot on an interim, conditional basis for both the 1994–95 and the 1995–96 seasons. The petition cited the following reasons in support of the proposal: (a) Bismuth is nontoxic; (b) the proposed rule is conditional; and (c) the evidence presented in the record, i.e., the application from the Bismuth Cartridge Company. This petition acknowledged responsibility by the Bismuth Cartridge Company to complete all the nontoxic shot approval tests as outlined in 50 CFR section 20.134. The Service granted conditional approval (effective December 30, 1994) of the use of bismuth-tin shot for the 1994–95 hunting season only. For a complete review of the bismuth-tin shot application and review process, refer to the Supplementary Information Section of the January 3, 1995, **Federal Register** (60 FR 61).

This proposed regulatory action is now taken to further amend Section 20.21(j) to extend the conditional approval for bismuth-tin shot to the 1995–96 hunting season. This is based on a request made to the Fish and Wildlife Service by the Bismuth Cartridge Company on March 20, 1995. Results of the concluded 30-day acute toxicity test and progress made by the Bismuth Cartridge Company in their current reproductive toxicity testing are viewed as justification for extending conditional approval into the next hunting season.

The reproductive toxicity test is being conducted by Dr. Glenn Sanderson and follows a testing protocol reviewed and approved by the Service, with technical assistance provided by the Branch of Environmental Contaminants Research of the Patuxent Environmental Service Center. The general outline of the reproductive toxicity test given below is not a complete description of the testing protocol, but gives the basic outline of the test procedures being conducted:

The test consists of 60 male and 60 female mallards and uses No. 4 lead, steel, and candidate (bismuth-tin) shot. Males and females will be paired randomly and divided into four groups that will be dosed with lead, steel, bismuth-tin, and sham dosed. After diet and light manipulation, birds will be brought into breeding condition. Nests will be checked twice daily with recorded data including clutch initiation, number of eggs laid, egg fertility, egg hatchability, and number of ducklings produced. Eggs collection will continue until 21 uncracked eggs have been collected or until 150 days have elapsed. Eggs will be place in an incubator and after hatching, ducklings will be examined for signs of intoxication and illness. Blood will be collected with hematocrits determined and the blood analyzed. Livers, kidneys, and gonads from adults will be examined for gross and microscopic lesions, and analyzed for major elements found in the candidate shot and for major essential and trace elements. Livers and kidneys will be collected from ducklings and will be examined for gross and microscopic lesions, and analyzed for major elements contained in the candidate shot and for major essential and trace elements. Blood, liver, kidneys, and gonads will be analyzed by ICP for calcium, potassium, magnesium, zinc, copper, tin, iron, and any metal other than Bismuth or lead. Bismuth and lead in the livers, kidneys, and gonads, and blood will be analyzed by graphite furnace atomic absorption spectrometry.

Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant hazard to migratory birds and other wildlife. Currently, only steel shot has been approved by the Service Director as nontoxic. The Service believes, however, that there may be other suitable candidate shot materials that could be approved for use as nontoxic shot. The Service is eager to consider these other materials for approval as nontoxic, and does not feel constrained to limit nontoxic shot options.

Resistance to the use of steel shot, however, is undoubtedly creating an unknown level of noncompliance with the requirement to use nontoxic shot for waterfowl and coot hunting. Although compliance with the use of nontoxic shot has increased moderately over the last few years, the Service believes that this level of compliance may continue to increase with the use of bismuth-tin shot in conjunction with the use of adequate field testing equipment by law enforcement personnel.

In summary, this rule extends conditional approval for the use of bismuth-tin shot for waterfowl and coot hunting to the 1995–96 season. Additionally, the applicant, wishing to obtain final unconditional approval for bismuth-tin shot as nontoxic, is required to obtain season-by-season approval until successfully completing the remaining tests required by 50 CFR section 20.134.

One additional standard will be applied to the unconditional approval of bismuth-tin shot. Since bismuth is a by-product of the smelting of iron, copper, and tin, it is not surprising that traces of lead may be present in bismuth-tin shot. The Service has initiated discussion with the Branch of Environmental Contaminants Research at the Patuxent Environmental Science Center to determine the maximum environmentally acceptable level of lead in bismuth-tin shot. Once this maximum level is determined, it will be stated in any regulation granting unconditional approval for the use of bismuth-tin shot. It will be the Service's position that any bismuth-tin shot manufactured with lead levels exceeding those stated in the regulation will be considered toxic and therefore, illegal.

We are encouraged by the progress that has been made to develop a noninvasive field testing device to assist law enforcement personnel in detecting the use of illegal shot. However, those devices currently available still appear to need refinement. We are hopeful that additional development and testing is planned since noninvasive enforcement

is an important component in the approval of any alternative shot material. Service law enforcement personnel will be asked to assess any noninvasive field testing equipment on the market to determine their utility and accuracy. Final unconditional approval, if otherwise proper, would be contingent upon the development and availability of a noninvasive field testing shot device.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), an Environmental Assessment has been prepared and is available to the public at the Office of Migratory Bird Management at the address indicated under the caption **ADDRESSES**. Based on review and evaluation of the information contained in the Environmental Assessment, the Service determined that the proposed action to amend 50 CFR 20.21(j) to allow conditional use of bismuth-tin an nontoxic shot for the 1995–96 waterfowl hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''ensure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *.'' Consequently, the Service will initiate Section 7 consultation under the ESA for this proposed rulemaking to legalize, on a conditional basis, the use of bismuth-tin shot for hunting waterfowl and coots during the 1995–96 seasons. When completed, the results of the Service's consultation under Section 7 of the ESA may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management, at the address in the **ADDRESSES** section.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions. The Service has determined, however, that this rule will have no effect on small entities since the shot to be approved will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule does not contain any information collection efforts requiring approval by the OMB under 44 U.S.C. 3504.

Authorship: The primary author of this proposed rule is Peter G. Poulos, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter 1 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 701–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978); as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a–d and e–j).

2. Section 20.21 is amended by revising paragraphs (j) introductory text and (j)(2) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin ([nominally] 97–3 percent, respectively) shot or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134.

Provided that:

(1) * * *

(2) Bismuth-tin shot is legal as nontoxic shot only during the 1995–96 season.

Dated: June 5, 1995.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

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