

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, the tribes are already working with the Service to address the habitat needs of the species, and are fully aware of the conservation value of their lands. Thus, the educational benefits that might follow critical habitat designation, such as providing information on areas that are important for the long-term survival and conservation of the species, have already been realized. Further, the same or greater educational benefits will be provided to these lands if they are excluded from the designation, because the management plans provide for conservation benefits above any that would be provided by designating critical habitat.

(2) Benefits of Exclusion

The benefits of excluding the tribal lands of the San Carlos Apache, Mescalero Apache Tribe, and the Navajo Nation from designated critical habitat appear to be more significant. We tentatively conclude that not designating critical habitat on these areas would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the tribes to develop and implement Tribal conservation and natural resource management plans for their lands and resources; (2) the establishment and maintenance of effective working relationships to promote the conservation of the owl and its habitat; (3) the allowance for continued meaningful collaboration and cooperation in scientific studies to learn more about the conservation needs of the species; and (4) by providing conservation benefits from the tribal management plans to the forest ecosystem upon which the owl depends which exceed those that would be provided by the designation of critical habitat.

In summary, we view each of the management plans as a continuance of cooperative and productive relationships that have and will continue to provide additional substantive conservation benefits to the owl and its habitat. The additional benefits would be less likely if critical habitat was designated because the tribes view critical habitat as an intrusion on their ability to manage their own lands and trust resources. We tentatively conclude that the benefits of

including these tribal lands in critical habitat are small or nonexistent due to the protection afforded the owl through tribal management plans. These plans provide benefits to the owl through fire abatement projects, which reduce the risk of catastrophic fire, the primary threat to the owl; monitoring; protection of nest sites; and survey efforts. Subject to our reanalysis, after considering public comments and the economic impacts of the designation, we tentatively conclude that the benefits of excluding these areas from being designated as critical habitat for the owl are more significant than the benefits of including them, and include the continued implementation of tribal owl management plans and the continuance of our cooperative working relationships with these tribes for the mutual benefit of the owl and other threatened and endangered species.

Current Status of Critical Habitat for the Owl

As a result of the Court orders in *Center for Biological Diversity v. Norton*, we consider critical habitat to be proposed for the owl in those areas excluded from the final designation published on February 1, 2001 (66 FR 8530). Specifically, Forest Service lands in Arizona and New Mexico and tribal lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe were excluded from the final designation of critical habitat for the owl and are now considered to be proposed as critical habitat. Areas designated as critical habitat for the owl in the February 1, 2001, final designation remain in effect until critical habitat is refinalized, pursuant to the Court's order.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Activities on Federal lands that may affect the owl or its proposed critical habitat will require consultation with us pursuant to section 7 of the Act. Actions on private or State lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect proposed critical habitat. Federal actions not affecting the species or its proposed critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Federal agencies may request formal conferencing on the July 2000 proposed critical habitat with respect to Forest Service lands in Arizona and New Mexico and the lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe.

For areas that were included in the final critical habitat designation, section 7(a)(2) of the Act requires Federal agencies, including us, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, or require a Federal permit, license, or other authorization, or involve Federal funding.

Authority

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

Dated: November 7, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Application for Approval of Tungsten-Bronze-Iron as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby provides public notice that International Nontoxic Composites Corporation of Ontario, Canada, has applied for approval of Tungsten-Bronze-Iron shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of the shot under the criteria set out in Tier 1 of the nontoxic shot approval procedures given at 50 CFR 20.134.

DATES: A comprehensive review of the Tier 1 information is to be concluded by January 20, 2004.

ADDRESSES: The International Nontoxic Composite Corporation application may be reviewed in Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 N. Fairfax Drive, Arlington, Virginia,

22203-1610. Comments on this notice may be submitted to the Division of Migratory Bird Management at 4401 North Fairfax Drive, MS MBSP-4107, Arlington, VA 22203-1610. Comments will become part of the Administrative Record for the review of the application. The public may review the record at the Division of Migratory Bird Management, Room 4091, 4501 North Fairfax Drive, Arlington, Virginia, 22203-1610.

FOR FURTHER INFORMATION CONTACT:

Brian Millsap, Chief, Division of Migratory Bird Management, (703) 358-1714, or George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, (703) 358-1825.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703-712 and 16 U.S.C. 742 a-j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except

as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, the Service has sought to identify types of shot for waterfowling that are not toxic to migratory birds or other wildlife when ingested. We have approved several types of shot as nontoxic and added them to the migratory bird hunting regulations in 50 CFR 20.21. We believe that compliance with the use of nontoxic shot will continue to increase with the approval and availability of other nontoxic shot types. Therefore, we continue to review all shot types submitted for approval as nontoxic.

International Nontoxic Composites has submitted its application with the counsel that it contained all of the information specified in 50 CAR 20.134 for a complete Tier 1 submittal, and has requested unconditional approval pursuant to the Tier 1 time frame. The

Service has determined that the application is complete, and has initiated a comprehensive review of the Tier 1 information. After the review, the Service will either publish a Notice of Review to inform the public that the Tier 1 test results are inconclusive or publish a proposed rule for approval of the candidate shot. If the Tier 1 tests are inconclusive, the Notice of Review will indicate what other tests will be required before approval of the Tungsten-Bronze-Iron shot as nontoxic is again considered. If the Tier 1 data review results in a preliminary determination that the candidate material does not pose a significant hazard to migratory birds, other wildlife, or their habitats, the Service will commence with a rulemaking proposing to approve the candidate shot.

Dated: November 4, 2003.

Matt Hogan,

Director, U.S. Fish and Wildlife Service.

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