

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20****RIN 1018-AD94****Migratory Bird Hunting; Approval of Bismuth-Tin Shot as Nontoxic for Hunting Waterfowl and Coots****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is approving bismuth-tin shot as nontoxic for hunting waterfowl and coots. Acute, chronic, and reproductive toxicity studies, undertaken for the Bismuth Cartridge Company, indicate that bismuth-tin shot is nontoxic when ingested by waterfowl (captive-reared mallards).

EFFECTIVE DATE: This final rule takes effect March 3, 1997.

ADDRESSES: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Cyndi Perry, Wildlife Biologist, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, (703/358-1714).

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife. Currently, only steel shot is approved by the Service as nontoxic. The Service believes approval for other suitable candidate shot materials as nontoxic is feasible. The Service is eager to consider these other materials for approval as nontoxic shot.

The requirement to use nontoxic shot for hunting waterfowl and coots created resistance among some hunters with only steel shot available. With the resistance came an unknown level of noncompliance. Although compliance with the use of nontoxic shot has increased over the last few years, the Service believes that this level of compliance will escalate with the availability and approval of other nontoxic shot types.

On October 21, 1993, the Bismuth Cartridge Company petitioned the Service to approve bismuth-tin shot for hunting waterfowl and coots. At that time the company had not undertaken the studies necessary to demonstrate that bismuth-tin shot is nontoxic to waterfowl and the Service did not approve their petition. On June 24,

1994, the Bismuth Cartridge Company petitioned the Service to modify provisions of 50 CFR 20.21(j), to legalize the use of bismuth-tin shot on an interim, conditional basis for the 1994–95 and 1995–96 hunting seasons while conducting toxicity tests. The petitioner's supporting rationale was: 1) bismuth is nontoxic; 2) the rule is conditional; and 3) the evidence presented in the record, i.e., the application from the Bismuth Cartridge Company. The petition acknowledges responsibility of the Bismuth Cartridge Company to complete all the nontoxic shot approval tests outlined in 50 CFR 20.134. Final regulations published in the Federal Registers (January 3, 1995 [60 FR 61] and August 18, 1995 [60 FR 43314]) provided for conditional approval of bismuth-tin shot (nominally, 97 parts bismuth and 3 parts tin) as nontoxic for hunting waterfowl and coots during the 1994–95 and 1995–96 seasons, respectively. A complete review of the bismuth-tin shot application and review process is in the January 3, 1995, Federal Register.

Aside from recently completed toxicity studies there are several other works that support the Service's decision. Sanderson et al. (1994), Ringelman et al. (1992), and Sanderson et al. (1992) saw no adverse effects when bismuth alloy shot was ingested by captive-reared mallards. In Grandy et al. (1968), there were no deaths associated with mallards dosed with tin shot.

The Service saw completion of several conditions prior to this final approval of bismuth-tin shot as nontoxic. First, a series of three toxicity tests in accordance with the requirements of 50 CFR 20.134 demonstrating that bismuth-tin is nontoxic to waterfowl is necessary. The Service reviewed and approved the employed testing protocol with technical assistance provided by the National Biological Service (now the Biological Resources Division of the U.S. Geological Survey).

The short-term (30 day) acute toxicity test entails dosing ducks with shot and feeding them commercially available duck food. Researchers record survival, body weight, blood hematocrit, and organ analysis. Survival to 30 days post dosing, hematocrit values, body weight, mean weight of kidney, liver, gonad, and gizzard were similar in game-farm mallards dosed with either six No. 4 bismuth-tin shot, six No. 4 steel shot, or a placebo (control) (Sanderson et al. 1995).

The 14-week chronic toxicity test entails dosing ducks with either lead shot, steel shot, bismuth-tin shot, or a placebo (control group), during cold

weather using a nutritionally deficient diet. Researchers record the results of the survival, body weight, retention and dissolution of shot, blood and tissue analysis, and histopathology. Sixty-five male and sixty-five female mallards underwent doses of either No. 4 lead, or steel or bismuth-tin shot, or a placebo (control group) on Days 0, 30, 60, and 90. All lead-dosed ducks died within 14 days of initial dosing. All steel- and placebo-dosed ducks survived until sacrificing. All bismuth-tin dosed ducks survived until sacrificing except one female who died of undetermined causes 131 days post dosing after laying 16 eggs. In general, the chronic test documents the absence of any deleterious effects of these bismuth-tin doses on captive-reared mallards (Sanderson et al. 1996).

The third stage of testing was the completion of a reproductive toxicity/chronic dosage study which includes assessment of reproduction, fertility rates, and egg hatchability. For eggs, researchers record weight, shell thickness, and content analysis. For ducklings, researchers record body weight, sex ratios, blood and organ analysis. This test runs concurrently with the chronic study. Results confirmed no significant differences in the time required for either control, steel, or bismuth-tin-dosed ducks to lay 21 eggs, and no differences in the dates when the three dosed groups began to lay. Similarly, no significant differences among doses in the fertility rates, hatchability rates, or chemical content of the eggs arose. In ducklings, no significant differences among doses in the mean body weight (by day 7), sex ratios, hematocrit, mean weights of kidney and liver, mean amounts of elements in organs, or in the histopathology results arose (Sanderson et al. 1996).

As a result of these toxicity tests, the Service concludes that bismuth-tin shot composed of 97 parts bismuth and 3 parts tin with <1 percent residual lead does not impose significant danger to migratory birds and other wildlife and their habitats.

The second condition of approval is residual lead levels. The Service considers any bismuth-tin shot manufactured with lead levels equal to or exceeding 1 percent to be toxic and therefore, illegal. Bismuth may occur as a by-product of iron, copper, and tin smelting and often contains lead. In the August 18, 1995, Federal Register, the Service indicated that it would establish a maximum level for residual lead. The Service, in consultation with the NBS, determined the maximum environmentally acceptable level of lead

in bismuth-tin shot is trace amounts or <1 percent and is incorporating that requirement into the final rule.

The third condition of approval involves enforcement. In the August 18, 1995, Federal Register, the Service indicates that final unconditional approval ... "would be contingent upon the development and availability of a noninvasive field testing device." Several noninvasive field testing devices are available. Service Law Enforcement personnel, using these devices, determined them to be accurate and useful in determining bismuth-tin from lead.

This rule amends 50 CFR 20.21(j) by approving bismuth-tin shot for use in hunting waterfowl and coots. It is based on the original request made to the Service by the Bismuth Cartridge Company on October 21, 1993, and the results of the acute, chronic, and reproductive toxicity tests undertaken for the Bismuth Cartridge Company which document the apparent absence of any deleterious effects of bismuth-tin shot when ingested by captive-reared mallards.

Public Comment and Responses

The August 15, 1996, proposed rule published in the Federal Register (61 FR 42495) invited comments from interested parties. The closing date for receipt of all comments was October 15, 1996. During this 60-day comment period, the Service received twenty-three comment letters. Of these comment letters, thirteen were from individuals and ten from non-governmental organizations. All comment letters expressed support for the final rule approving bismuth-tin as nontoxic for hunting waterfowl and coots. The individuals wrote of "unqualified support for unconditional approval", to "encourage permanent approval" and that "bismuth is a viable alternative." The organizations wrote, "As conservationists, we are moving in the right direction as proven by lead shot being eliminated" and "...appreciate the opportunity to have more choices for nontoxic shot."; that bismuth "...having the performance of lead but without the toxicity will help all concerned"; and "The availability of an additional non-toxic shot is of great importance not only to our waterfowl hunters, but also to the future of the waterfowl resource."

References

Grandy, J.W., L.N. Locke and G.E. Bagley. 1968. Relative toxicity of lead and five proposed substitute shot types to pen-reared mallards. *J. Wildl. Manage.* 32(3):483-488.

Ringelman, J.K., M.W. Miller and W.F. Andelt. 1992. Effects of ingested tungsten-bismuth-tin shot on mallards. CO Div. Wildl., Fort Collins, 24 pp.

Sanderson, G.C., W.L. Anderson, G.L. Foley, L.M. Skowron and J.W. Seets. 1994. Toxicity and reproductive effects of ingested bismuth alloy shot and effects of embedded bismuth alloy, lead, and iron shot on game-farm mallards. Final Report. Ill. Nat. Hist. Survey. Champaign, IL. 64pp.

Sanderson, G.C., S.G. Wood, G.L. Foley and J.D. Brawn. 1992. Toxicity of bismuth shot compared with lead and steel shot in game-farm mallards. Trans. 57th N.A. Wildl. Nat. Res. Conf., 57:526-540.

Sanderson, G.C., W.L. Anderson, G.L. Foley, L.M. Skowron, J.D. Brawn and J.W. Seets. 1995. Toxicity of ingested bismuth alloy shot on game-farm mallards (Revised Final Report). Report to Peterson Publishing Company by the Univ. of Illinois, Ill. Nat. Hist. Survey. Champaign, IL. 69pp.

Sanderson, G.C., W.L. Anderson, G.L. Foley, K.L. Duncan, L.M. Skowron, J.D. Brawn and J.W. Seets. 1996. Toxicity and reproductive test including chronic health effects of ingested bismuth alloy shot on game-farm mallards (Revised Final Report). Report to Peterson Publishing Company by the Univ. Illinois, Ill. Nat. Hist. Survey. Champaign, IL. 113pp.

NEPA Consideration

In compliance with 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), the Service prepared an Environmental Assessment (EA) in July 1996. Copies of this EA are available to the public by writing to the Office of Migratory Bird Management at the address indicated under the caption **ADDRESSES**. After review and evaluation of the information in the Environmental Assessment, the Service determined that the final action to amend 50 CFR 20.21(j) to allow use of bismuth-tin shot as nontoxic for hunting waterfowl and coots 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) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides in part that, each Federal agency shall "insure

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 ..." The Service completed a Section 7 consultation under the ESA for this final rule which stated: "... final approval of bismuth-tin shot for hunting waterfowl and coots is not likely to adversely effect threatened, endangered, proposed and candidate species." The result of the Service's consultation under Section 7 of the ESA are public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia.

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 or governmental jurisdictions. The Service determined, however, that this final rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. The Service anticipates no dislocation or other local effects, with regard to hunters and others. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Service, in promulgating this final rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship: The primary author of this proposed rule is Cynthia M. Perry, 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 amended as follows:

PART 20—[AMENDED]

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

AUTHORITY: 16 U.S.C. 703–711; 16 U.S.C. 712 and 16 U.S.C. 742 a-j.

2. Section 20.21 is amended by revising paragraph (j) introductory text and removing and reserving paragraph (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 (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot or such shot approved as nontoxic by the Director pursuant to procedures set forth in 20.134, provided that:

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Dated: January 24, 1997.
George T. Frampton,
Assistant Secretary for Fish and Wildlife and Parks
[FR Doc. 97–2333 Filed 1–30–97; 8:45 am]
BILLING CODE 4310–55-F