

P-07-601; CAS No. 754-12-1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Industrial, commercial, and consumer activities.* A significant new use is use other than as a refrigerant in motor vehicle air conditioning systems in new passenger cars and vehicles (i.e., as defined in 40 CFR 82.32(c) and (d)); § 721.80(m) (commercial use other than in passenger cars and vehicles in which the original charging of motor vehicle air conditioning systems with the PMN substance was done by the motor vehicle original equipment manufacturer (OEM)); § 721.80(o) (use in consumer products other than products used to recharge the motor vehicle air conditioning systems in passenger cars and vehicles in which the original charging of motor vehicle air conditioning systems with the PMN substance was done by the motor vehicle OEM).

* * * * *

[FR Doc. 2013-25981 Filed 10-31-13; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket Nos. FWS-R9-MB-2012-0028 and FWS-R9-MB-2012-0038; FF09M21200-134-FXMB1231099BPP0]

RIN 1018-AY61, 1018-AY66

Migratory Bird Hunting; Application for Approval of Copper-Clad Iron Shot and Fluoropolymer Shot Coatings as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; availability of environmental assessments.

SUMMARY: We, the U.S. Fish and Wildlife Service, approve copper-clad iron shot and fluoropolymer coatings for hunting waterfowl and coots. We published a proposed rule for approval of copper-clad iron shot and fluoropolymer coatings in the **Federal Register** on September 26, 2012 (77 FR 59158). We considered comments on the proposed rule, and we believe that neither the shot nor the coatings will pose toxicity hazards to fish or wildlife or their habitats.

DATES: This rule is effective December 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. George Allen, at 703-358-1825.

SUPPLEMENTARY INFORMATION:

Background

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 most migratory bird species from take, except as permitted under the Act, which authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. We prohibit the use of shot types other than those listed in the Code of Federal Regulations (CFR) at 50 CFR 20.21(j) for hunting waterfowl and coots and any species that make up aggregate bag limits.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested. We continue to review shot types and shot coatings submitted for approval as nontoxic.

We addressed lead poisoning in waterfowl in an environmental impact statement (EIS) in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential candidates for approval as nontoxic shot. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

Many hunters believe that some nontoxic shot types compare poorly to lead and may damage some shotgun barrels. A small and decreasing percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting increased after the ban on lead shot, but we believe that

compliance will continue to increase with the availability and approval of other nontoxic shot types. Increased use of nontoxic shot will enhance protection of migratory waterfowl and their habitats.

Copper-Clad Iron Shot

Copper-clad iron shot is a composite in which copper is thermo-mechanically bonded to centerless-ground steel rod, then mechanically worked to final wire and shot configurations. Copper-clad iron shot may be produced with a variety of different proportions of copper and iron, ranging from 16 to 44.41% by weight copper, with a density of approximately 8.3 grams per cubic centimeter. Environ-Metal asserts that “there is little variability in composition to be expected” in production of the shot. Environ-Metal expects to produce about 50,000 pounds of copper-clad iron shot per year.

Fluoropolymer Coatings

Spectra Shot is cut wire shotgun shot (steel shot) with a proprietary shot coating. Four different colors of the coated shot will be marketed as Spectra Shot™ Blue, Spectra Shot™ Green, Spectra Shot™ Orange, and Spectra Shot™ Yellow. The thickness of the coating will be 3 to 10 microns, with a corresponding weight per shot as follows: Spectra Shot™ Blue—0.209 milligram per shot; Spectra Shot™ Green—0.732 milligram per shot; Spectra Shot™ Orange—0.942 milligram per shot; and Spectra Shot™ Yellow—1.779 milligrams per shot. Spectra Shot expects annual use of the coated shot in hunting migratory birds in the United States to be 98,000 pounds.

Polyamide-imide copolymer, polytetrafluoroethylene, amorphous fumed silica, and methylphenyl polysiloxane are common to all Spectra Shot™ colors and make up the bulk of the coating. The pigments vary between coatings, and comprise 13.8% to 20.5% by weight of the dry film.

Effects of the Approval on Migratory Waterfowl

Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. Furnishing additional approved nontoxic shot types and nontoxic coatings likely will further reduce the use of lead shot. Thus, approving additional nontoxic shot types and coatings will likely have no effect on waterfowl and wetland habitats.

Effects on Endangered and Threatened Species

Copper-clad iron shot and fluoropolymer coatings are highly unlikely to adversely affect animals that consume the shot or habitats in which the shot might be used. Their approval will not affect threatened or endangered species.

We obtained a biological opinion pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), prior to establishing the seasonal hunting regulations. The hunting regulations promulgated as a result of this consultation remove and alleviate chances of conflict between migratory bird hunting and endangered and threatened species.

Effects on Ecosystems

Previously approved shot types have been shown in test results to be nontoxic to the migratory bird resource, and we believe that they cause no adverse impact on ecosystems. There is concern, however, about noncompliance with the prohibition on lead shot and potential ecosystem effects. The use of lead shot has a negative impact on wetland ecosystems due to the erosion of shot, causing sediment/soil and water contamination and the direct ingestion of shot by aquatic and predatory animals. Though we believe noncompliance is of concern, approval of the shot type and the coatings will have little impact on the resource, unless it has the small positive impact of reducing the rate of noncompliance.

Cumulative Impacts

We foresee no negative cumulative impacts if we approve the shot type and the coatings for waterfowl hunting. Their approval could help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of the approvals for waterfowl hunting in the United States should be positive, albeit minor.

Comments on the Proposed Rule

We received five comments on the proposed rule published on September 26, 2012 (77 FR 59158). Four supported approval of the shot and the coatings, and one contained no useful information. Therefore, as stated in the proposed rule, we reviewed the shot and the shot coatings under the criteria at 50 CFR 20.134, and add these products to the list of those approved for hunting waterfowl and coots at 50 CFR 20.21(j).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 affirms the principles of E.O. 12866, and calls for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. The rule will allow small entities to improve their economic viability. However, the rule will not have a significant economic impact because it will affect only two companies. We certify that because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)).

a. This rule will not have an annual effect on the economy of \$100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year. It will not be a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact assessment under E.O. 13132. It will not interfere with the ability of States to manage themselves or their funds.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control

number. OMB has approved our collection of information associated with applications for approval of nontoxic shot (50 CFR 20.134) and assigned OMB Control Number 1018–0067, which expires May 31, 2015.

National Environmental Policy Act

Our environmental assessment is part of the administrative record for this regulations change. It is posted at <http://www.regulations.gov> in Docket Nos. FWS–R9–MB–2012–0028 and FWS–R9–MB–2012–0038. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq. and Part 516 of the U.S. Department of the Interior Manual (516 DM), approval of copper-clad iron shot and fluoropolymer coatings will not have a significant effect on the quality of the human environment, nor will it involve unresolved conflicts concerning alternative uses of available resources. Therefore, preparation of an EIS is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have

determined that there are no potential effects on federally recognized Indian Tribes. This rule will not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change will not be a significant regulatory action under E.O. 12866, nor will it significantly affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "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" (16 U.S.C. 1536(a)(2)). We have concluded that the regulation change will not affect listed species.

List of Subjects in 50 CFR Part 20

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

For the reasons discussed in the preamble, we amend part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

- 2. Amend § 20.21(j)(1) by revising the table and footnotes to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) * * *

Approved shot type*	Percent composition by weight	Field testing device**
Bismuth-tin	97 bismuth, and 3 tin	Hot Shot®***
Iron (steel)	iron and carbon	Magnet or Hot Shot®.
Iron-tungsten	any proportion of tungsten, and ≥1 iron	Magnet or Hot Shot®.
Iron-tungsten-nickel	≥1 iron, any proportion of tungsten, and up to 40 nickel	Magnet or Hot Shot®.
Copper-clad iron	84 to 56.59 iron core, with copper cladding up to 44.1 of the shot mass.	Magnet or Hot Shot®.
Tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, and 0.6 iron, or 60 tungsten, 35.1 copper, 3.9 tin, and 1 iron.	Rare Earth Magnet.
Tungsten-iron-copper-nickel	40–76 tungsten, 10–37 iron, 9–16 copper, and 5–7 nickel	Hot Shot® or Rare Earth Magnet.
Tungsten-matrix	95.9 tungsten, 4.1 polymer	Hot Shot®.
Tungsten-polymer	95.5 tungsten, 4.5 Nylon 6 or 11	Hot Shot®.
Tungsten-tin-iron	any proportions of tungsten and tin, and ≥1 iron	Magnet or Hot Shot®.
Tungsten-tin-bismuth	any proportions of tungsten, tin, and bismuth	Rare Earth Magnet.
Tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, and 2.8 nickel	Magnet.
Tungsten-iron-polymer	41.5–95.2 tungsten, 1.5–52.0 iron, and 3.5–8.0 fluoropolymer	Rare Earth Magnet or Hot Shot®.

* Coatings of copper, nickel, tin, zinc, zinc chloride, zinc chrome, and fluoropolymers on approved nontoxic shot types also are approved.

** The information in the "Field Testing Device" column is strictly informational, not regulatory.

*** The "HOT*SHOT" field testing device is from Stream Systems of Concord, CA.

* * * * *

Dated: September 17, 2013.

Michael J. Bean,

*Acting Principal Deputy Assistant Secretary
for Fish and Wildlife and Parks.*

[FR Doc. 2013-26063 Filed 10-31-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS-R9-MB-2011-0060;
FF09M21200-134-XMB123199BPP0]

RIN 1018-AX90

Migratory Bird Permits; Definition of “Hybrid” Migratory Bird

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), revise the definition of “hybrid” as it relates to birds protected under the Migratory Bird Treaty Act. We revise the definition to make it clear that it applies to all offspring of any species listed at 50 CFR 10.13.

DATES: This rule is effective on December 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, 703-358-1825.

SUPPLEMENTARY INFORMATION:

I. Background

At 50 CFR 21.3, the term “hybrid” is defined as the “offspring of birds listed as two or more distinct species in § 10.13 of subchapter B of this chapter, or offspring of birds recognized by ornithological authorities as two or more distinct species listed in § 10.13 of subchapter B of this chapter.” This means that, under the definition of “hybrid” at 50 CFR 21.3, the only hybrid migratory birds that are protected by our regulations under the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703-712) are birds that are the offspring of two species already protected under the MBTA.

This definition has created difficulties because it differs from the longstanding Service interpretation of “hybrid” as applied to falconry and raptor propagation birds, in particular, where hybrids between two separate taxa when one or both include genetic material of a species listed in 50 CFR 10.13 have been regulated under the MBTA. This interpretation is consistent with the § 10.12 definition of “migratory bird,” which is any bird, whatever its origin

and whether or not raised in captivity, which belongs to a species listed in § 10.13, or which is a mutation or a hybrid of any such species.

The definition at 50 CFR 21.3 also differs from the definition of “hybrid” under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires CITES documentation for import or export of all raptors, including any resulting from a cross of genetic material between two separate taxa when one or both are listed under the CITES appendices (CITES, 50 CFR 23.5).

“Hybrid” was not defined under the MBTA prior to 2008, when the falconry regulations were substantially revised (73 FR 59448-59477, October 8, 2008). At that time, we inadvertently defined “hybrid” in 50 CFR 21.3 in a manner that conflicts with the use of the term in other regulations.

To ensure that migratory birds are protected under our regulations implementing the MBTA, on November 8, 2011, we proposed a change to the definition of “hybrid” at 50 CFR 21.3 (76 FR 69223-69225). The change was intended to make it clear that the offspring of any species listed at 50 CFR 10.13 are protected under the MBTA, whether or not additional species that are not protected under the MBTA have contributed to its genetics, and regardless of how many generations separate such birds from a species protected by the MBTA. This change will also make our regulations consistent with our long-standing practice.

II. Comments on the Proposed Rule

The most in-depth comments on the proposed rule were based on assessment of the proposal in light of the 2004 Migratory Bird Treaty Reform Act (MBTRA, Pub. L. 108-447, December 8, 2004). Commenters asserted that the proposed definition was in conflict with the provisions of the MBTRA. The MBTRA amended 16 U.S.C. 703, stating that the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703-712) “applies only to migratory bird species that are native to the United States or its territories.”

The MBTRA states that “a migratory bird species that occurs in the United States or its territories solely as a result of intentional or unintentional human-assisted introduction shall not be considered native to the United States or its territories.” The MBTRA was intended to address problems of human-introduced bird species, such as the mute swan. These species often become established in the wild and conflict with native wildlife. The MBTRA refers

throughout only to migratory bird “species.” It does not address hybrids, including those intentionally created in captivity by man. Therefore, the MBTRA does not apply to this regulations change.

Lastly, we conclude that the MBTRA does not affect the protection of hybrid birds. The MBTRA was precipitated by litigation forcing the Service to protect the mute swan, a nonnative species introduced through human intervention. It was intended to exclude such nonnative, human-introduced bird species from protection under the MBTA. We find nothing in the legislative history to show that Congress intended the MBTRA to have the effect of excluding hybrids of native species from the protection of the MBTA.

It was also argued that the proposed definition change used the *Andrus v. Allard* decision (444 U.S. 51, 1979) and “is an attempt to justify the expansion of FWS authority.” In the unanimous decision in that court case, the Supreme Court ruled that imposition of a restriction on commercial use of migratory birds or migratory bird parts was not a taking of private property. Many activities with migratory birds are governed by regulations, and may not be conducted without permits. This does not mean that the government has taken private property, nor does it mean that the Service is attempting to expand its authority in this case. The definition of “hybrid” we are codifying is already in use by the Service in other regulations.

One commenter asserted that “Most hybrid raptors are more easily distinguished from native species than any of the above species are from each other. In addition, wildlife officials have access to the trained eyes of experts at museums, falconers and raptor breeders if the possession or importation of any raptor is in question.”

We disagree with this argument. For enforcement of the MBTA, identification of the birds held by permittees is vital to State and Federal law enforcement officers. Yet, identification of hybrids is difficult. Eastham and Nicholls (2005, Morphometric analysis of large *Falco* species and their hybrids with implications for conservation, *Journal of Raptor Research* 39:386-393) concluded that “phenotypic characteristics are not reliable for identification of such hybrids [gyrfalcon (*Falco rusticolus*) × peregrine (*Falco peregrinus*), gyrfalcon × saker falcon (*Falco cherrug*), peregrine × saker], and for legal purposes.” Thus, hybrids present challenges to law enforcement officers in the field. Experts at museums, falconers, and propagators may be available to assist