

ADDRESSES: Written comments should be addressed to Gregory Crawford at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104.

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Davis at (404) 562-9127 or Gregory Crawford at (404) 562-9046. Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 7, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.
[FR Doc. 98-19935 Filed 7-24-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MN51-01-7276b; FRL-6128-7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Minnesota; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to approve the Minnesota State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State's plan submittal was made pursuant to requirements found in the Clean Air Act (Act). The State's plan was submitted to EPA on March 4, 1997 in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. It establishes performance standards for

existing MSW landfills and provides for the implementation and enforcement of those standards. The EPA finds that Minnesota's Plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. In the final rules of this **Federal Register**, the EPA is approving this action as a direct final without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by August 26, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, (312) 353-6960.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final document which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the following address: (Please telephone Douglas Aburano at (312) 353-6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 10, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98-19938 Filed 7-24-98; 8:45 am]

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DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE66

Migratory Bird Hunting; Temporary Approval of Tungsten-Polymer Shot as Nontoxic for the 1998-99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend Section 20.21(j) and provide temporary approval of tungsten-polymer shot as nontoxic for the 1998-99 migratory bird hunting season, except in the Yukon-Kuskokwim (Y-K) Delta, Alaska. A toxicological report includes an extensive literature review, and analysis of tungsten and Nylon 6 (the polymer) suggests that these compounds are nontoxic under assumed use and in the environment. The toxicity study reveals no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with 8 BB-size tungsten-polymer shot. However, there is some concern that the absorption of tungsten into the femur, kidney, and liver could potentially affect the spectacled eider (*Somateria fischeri*), a species already subject to adverse weather, predation, and lead poisoning on the Yukon-Kuskokwim (Y-K) Delta, Alaska. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, the Service proposes not to approve the use of tungsten-polymer shot on the Y-K Delta.

DATES: Comments on the proposed rule must be received no later than August 26, 1998.

ADDRESSES: Comments may be sent to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634-ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, (703) 358-1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved by the Service as nontoxic. The Service previously granted temporary approval

for bismuth-tin on two separate actions for the hunting seasons of 1994–95 and 1995–96. Tungsten-iron shot was given temporary approval for the 1997–98 migratory bird hunting season. The Service believes that approval of other suitable candidate shot materials as nontoxic is feasible. Compliance with the use of nontoxic shot has increased over the last few years. The Service believes that compliance will continue to increase with the approval and availability of other nontoxic shot types.

Federal Cartridge Company's (Anoka, Minnesota) candidate shot is a matrix of Nylon 6 or 11 polymer surrounding particles of elemental tungsten. Shot made from this material has a density of approximately 11.2 g/cm³ or approximately the density of lead. The shot will contain approximately 95.5 percent tungsten and 4.5 percent Nylon 6 or 11 by weight, plus sufficient iron to attract a magnet.

Federal's application includes a description of the new tungsten-polymer (TP) shot, a toxicological report (Barr, 1996), and the results of a 30-day dosing study of the toxicity of this shot in game-farm mallards (*Anas platyrhynchos*). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration). The toxicity study is a 30-day dosing test to determine if the candidate shot poses any deleterious effects to game-farm mallards. This will meet the requirements for Tier 2 consideration, as described in 50 CFR 20.134(b)(3).

Toxicity Information

There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten. Elemental tungsten is virtually insoluble and is, therefore, expected to be relatively nontoxic. The potential toxicity of nylon compounds due to degradation is primarily associated with the stabilizers, antioxidants, plasticizers, and unreacted prepolymers. Residual caprolactum has been found in some commercial Nylon 6 products, but little concern regarding this compound has been developed (Patty, 1981). Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten (while the toxicity of Nylon 6 is negligible due to its insolubility), there appears to be no basis for concern of toxicity to wildlife

for the TP shot (metallic tungsten and Nylon 6) via ingestion by fish, birds, or mammals (Bursian et al., 1996; Gigiena, 1983; Patty, 1981; Industrial Medicine, 1946; Karantassis, 1924).

Environmental Fate and Transport

Tungsten is insoluble in water and, therefore, not mobile in hypergenic environments. Tungsten is very stable in acids and does not easily complex. Preferential uptake by plants in acid soil suggests that uptake of tungsten in the anionic form is associated with tungsten minerals rather than elemental tungsten (Kabata-Pendias and Pendias, 1984).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of tungsten in a terrestrial ecosystem is based on 69,000 shot per hectare (Pain, 1990), assuming complete erosion of material in 5 cm of soil. The EECs for tungsten and Nylon 6 in soil are 58.3 mg/kg and 2.7 mg/kg, respectively. Calculation of the EEC in an aquatic ecosystem assumes complete erosion of the shot in one cubic foot of water. The EECs in water for tungsten and Nylon 6 are 18.7 mg/L and 0.9 mg/L, respectively. The Hazard Quotients assume that complete erosion of the shot components would occur; however, the TP shot is considered insoluble and is stable in basic, neutral, and mildly acidic environments. Therefore, erosion is expected to be minimal, and adverse effects on biota are not expected to occur.

Effects on Birds

An extensive literature review provided information on the toxicity of elemental tungsten to waterfowl and other birds. Ringelman et al. (1993) orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03g) tungsten-bismuth-tin (TBT) pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial, gross lesions were not observed during the postmortem examination, histopathological examinations did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that TBT shot presented virtually no potential for acute intoxication in mallards.

Kraabel et al. (1996) assessed the effects of embedded TBT shot on mallards and concluded that TBT was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to TBT shot were localized and had no detectable systemic effects on mallard health.

Nell (1981) fed laying hens (*Gallus domesticus*) 0.4 or 1 g/kg tungsten in a commercial mash for five months to assess reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding, resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell, 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 mg/g liver. At that concentration, xanthine dehydrogenase activity was zero.

Nylon 6 is the commercially important homopolymer of caprolactum. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson, 1977). Few data exist on the toxicity of Nylon 6 in animals. Most toxicity studies relate to thermal degradation products and so are not relevant to the exposure of wildlife to shot containing nylon. Montgomery (1982) reported that feeding Nylon 6 to rats at a level of 25 percent of the diet for 2 weeks caused a slower rate of weight gain, presumably due to a decrease in food consumption and feed efficiency. However, the rats suffered no anatomic injuries due to the consumption of nylon.

Federal's 30-day dosing study (Bursian et al., 1996) included four treatment groups of game-farm mallards (16 birds in each group, 8 males and 8 females) exposed to different types of shot: 8 No. 4 steel, 8 No. 4 lead, 8 BBs of tungsten-polymer, and none (control). All TP-dosed birds survived the test with no significant alteration in body weight. There were no changes in hematocrit, hemoglobin concentration, or ALAD activity. The only significant difference between no-shot, steel, and TP males in any of the 25 plasma chemistry parameters at day 15 was an increase in the albumin/globulin ratio in the TP birds when compared to the other two groups, but the authors felt this was not remarkable. Three TP-dosed males developed mild biliary stasis. The authors attributed this to the intubating of mallards with 8 BBs of TP shot inducing a pathological condition, however, slight, that is not found in the control birds. No other histopathological lesions were found. In general, no adverse effects were seen in mallards

given 8 BB-size TP shot and monitored over a 30-day period. Tungsten was detected in the femur of 2 TP-dosed females and the kidneys of 2 TP-dosed birds; in both tissues, concentrations were only slightly above detection limits.

Based on the results of the toxicological report and the toxicity test (Tier 1 and 2), the Service concludes that TP shot (95.5 percent tungsten and 4.5 percent Nylon 6 or 11, by weight with <1 percent residual lead), does not pose a significant danger to migratory birds or other wildlife and their habitats. However, the Service has some concern that the absorption of tungsten into the femur, kidney, and liver could potentially affect the spectacled eider (*Somateria fischeri*), a species already subject to adverse weather, predation, and lead poisoning on the Yukon-Kuskokwim (Y-K) Delta, Alaska. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, TP shot cannot be approved for the Y-K Delta.

The first condition of approval is toxicity testing. Candidate materials not approved under Tier 1 and/or 2 testing are subjected to standards of Tier 3 testing. The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in game-farm mallards, as outlined in 50 CFR 20.134 (b)(4)(A and B) (Tier 3) and in consultation with the Service's Office of Migratory Bird Management and the U.S. Geological Survey's Division of Biological Resources. This study includes assessment of long-term toxicity under depressed temperature conditions using a nutritionally-deficient diet, as well as a moderately long-term study that includes reproductive assessment. The tests require the applicant to demonstrate that TP shot is nontoxic to waterfowl and their offspring.

The second condition of approval is testing for residual lead levels. Any TP shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. In the August 18, 1995, **Federal Register** (60 FR 43314), the Service indicated that it would establish a maximum level for residual lead. The Service has determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and has incorporated this requirement (50 CFR 20.134(b)(5)) in the December 1, 1997, final rule (62 FR 63608).

The third condition of approval involves enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), the Service indicated that final

unconditional approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. Several noninvasive field testing devices are under development to separate TP shot from lead shot. Furthermore, TP shot can be drawn to a magnet as a simple field detection method. This requirement was incorporated into regulations at 50 CFR 20.134(b)(6) in the December 1, 1997, final rule (62 FR 63608).

This proposed rule would amend 50 CFR 20.21(j) by approving temporary approval of TP shot as nontoxic for migratory bird hunting, except in the Yukon-Kuskokwim (Y-K) Delta, Alaska. It is based on the original request made to the Service by Federal Cartridge Company on July 16, 1997, the toxicological report, and acute toxicity study. Results of the toxicological report and 30-day toxicity test undertaken for Federal Cartridge Company document the apparent absence of any deleterious effects of TP shot when ingested by captive-reared mallards or to the ecosystem.

References

- Barr Engineering Company. 1996. Toxicology report on new shot. Contract Report 2302118/40970091/CET. 21 pp.
- Bursian, S. J., M. E. Kelly, R. J. Aulerich, D. C. Powell, and S. Fitzgerald. 1996. Thirty-day dosing test to assess the toxicity of tungsten-polymer shot in game-farm mallards. Report to Federal Cartridge Co. 77 pp.
- Gigiema I. Sanitariya. 1983. *Mezhdunarodnaya Kniga*. Moscow, USSR. 48(7):77.
- 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. *Journal of Wildlife Management* 32(3):483-488.
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- Interagency Ecosystem Management Task Force. 1995. The ecosystem approach: healthy ecosystems and sustainable economics. Volume II-Implementation Issues.
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- Kraabel, F. W., M. W. Miller, D. M. Getzy, and J. K. Ringleman. 1996. Effects of embedded tungsten-bismuth-tin shot and steel shot on mallards. *Journal of Wildlife Diseases* 38(1):1098.
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- Nell, J. A., W. L. Bryden, G. S. Heard, and D. Balnave. 1981. Reproductive performance of laying hens fed tungsten. *Poultry Science* 60(1):257-258.
- Pain, D. J. 1990. Lead shot ingestion by waterbirds in the Carmarque, France: an investigation of levels and interspecific difference. *Environ. Pollut.* 66:273-285.
- Patty's Industrial Hygiene and Toxicology. 1981. Wiley Interscience. Wiley & Sons, Inc. NY, NY. Third Edition.
- Peterson, J. E. 1977. *Industrial Health*. Prentice-Hall, Englewood Cliffs, NJ.
- Ringelman, J. K., M. W. Miller and W. F. Andelt. 1993. Effects of ingested tungsten-bismuth-tin shot on mallards. Colorado Division of Wildlife, Fort Collins, 24 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (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 May, 1998. This EA is available to the public at the location indicated under the ADDRESSES caption. Based on review and evaluation of the information in the EA, the Service has determined that amending 50 CFR 20.21(j) to provide approval of TP shot as nontoxic for migratory bird hunting 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 that Federal agencies 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 has completed a Section 7 consultation under the ESA for this proposed rule, which stated the "use of tungsten-polymer shot is not likely to adversely affect listed species." The result of the Service's consultation under Section 7 of the ESA is available to the public at the location indicated under the ADDRESSES caption.

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 economic impacts of annual hunting on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis), under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), was issued by the Service in 1996 (copies available upon request from the Office of Migratory Bird Management). The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1991 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between \$254 and \$592 million at small businesses in 1996. The approval of tungsten-polymer as an alternative shot to steel and bismuth-tin will have a minor positive impact on small businesses by allowing them to sell a third nontoxic shot to the hunting public. However, the overall effect to hunting expenditures in general would be minor. Therefore, the Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The approved shot will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems, therefore, this rule would have minimal effect on such entities. The Service anticipates no dislocation or other local effects with regard to hunters and others. This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866.

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. The Service does have OMB approval (1018-0067; expires 06/30/2000) for information collection relating to what manufacturers of shot are required to provide the Service for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

The Service has determined and certifies pursuant to 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 governments or private entities.

Civil Justice Reform—Executive Order 12988

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

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

Accordingly, the Service proposes to amend part 20, subchapter B, chapter 1 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: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) introductory text and adding paragraph (j)(3) 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, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron ([nominally] 40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 part tungsten: 4.5 parts Nylon 6 or 11 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:

* * * * *

(3) Tungsten-polymer shot (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) is legal as nontoxic shot for the 1998–99 migratory bird hunting season, except for the Yukon-Kuskokwim Delta habitat in Alaska.

Dated: July 14, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE35

Migratory Bird Hunting; Extension of Temporary Approval of Tungsten-Iron Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is proposing to amend Section 20.21(j) to grant temporary approval of tungsten-iron shot as nontoxic for the 1998–99 migratory bird hunting season, except in the Yukon-Kuskokwim (Y–K) Delta, Alaska. The Service had previously granted temporary approval of tungsten-iron shot as nontoxic for the 1997–98 season. The toxicological report, which is an extensive literature search and analysis of tungsten and tungsten-iron, suggests that these compounds are nontoxic under assumed use and in the environment. Analysis of the toxicity study reveal no adverse effects over a 30-day period when dosing mallards (*Anas platyrhynchos*) with 8 BB size tungsten-iron shot. However, there is some concern that the absorption of tungsten into the femur, kidney, and liver could potentially affect the spectacled eider (*Somateria fischeri*), a species already subject to adverse weather, predation, and lead poisoning on the Y–K Delta. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, tungsten, iron shot will not be approved for the Y–K Delta.

DATES: Comments on the proposed rule must be received no later than August 26, 1998.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., room 634-ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, (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. The