

reorganization under section 368(a)(1) that is not treated as an indirect stock transfer under § 1.367(a)-3(d), apply only to transfers occurring after January 5, 2005 (although taxpayers may apply such provision to transfers of securities occurring on or after July 20, 1998 and on or before January 5, 2005 if done consistently to all transactions). See § 1.6038-1T(b)(i), as contained in 26 CFR part 1 revised as of April 1, 2005, for transfers occurring prior to the effective dates described in paragraphs (g)(2) through (4) of this section.

■ **Par. 13.** In § 1.6038B-1T, paragraph (b)(1)(i) is revised to read as follows:

**§ 1.6038B-1T Reporting of certain transactions to foreign corporations (temporary).**

\* \* \* \* \*

(b) *Time and manner of reporting*—(1) *In general*—(i) [Reserved]. For further guidance, see § 1.6038B-1(b)(1)(i).

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 17, 2006.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 06-587 Filed 1-23-06; 11:43 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

**RIN 1018-AU04; 1018-AU09; 1018-AU13; 1018-AU28**

#### **Migratory Bird Hunting; Approval of Tungsten-Iron-Copper-Nickel, Iron-Tungsten-Nickel Alloy, Tungsten-Bronze (Additional Formulation), and Tungsten-Tin-Iron Shot Types as Nontoxic for Hunting Waterfowl and Coots; Availability of Environmental Assessments**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; availability of Final Environmental Assessment and Finding of No Significant Impact.

**SUMMARY:** The U.S. Fish and Wildlife Service (we, us, or USFWS) approves four shot types or alloys for hunting waterfowl and coots and changes the listing of approved nontoxic shot types to reflect the cumulative approvals of nontoxic shot types and alloys. In addition, we approve alloys of several metals because we have approved the

metals individually at or near 100% in nontoxic shot. We have prepared a Final Environmental Assessment and a Finding of No Significant Impact in support of this decision.

**DATES:** This rule takes effect on February 27, 2006.

**ADDRESSES:** The Final Environmental Assessments for the shot types and the associated Findings of No Significant Impact are available from the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203-1610. You may call 703-358-1825 to request copies.

The complete file for this rule is available, by appointment, during normal business hours at the same address. You may call 703-358-1825 to make an appointment to view the files.

**FOR FURTHER INFORMATION CONTACT:** Dr. George T. Allen, Division of Migratory Bird Management, 703-358-1714.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703-711) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916, amended), Mexico (1936, amended), Japan (1972, amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Acts. The Acts authorize the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the U.S. Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

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 shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We addressed the issue of lead poisoning in waterfowl in an Environmental Impact Statement 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.

We received applications for approval of four shot types as nontoxic for hunting waterfowl and coots. Those shot types are:

1. Tungsten-Iron-Copper-Nickel (TICN) shot, of 40-76 percent tungsten, 10-37 percent iron, 9-16 percent copper, and 5-7 percent nickel (70 FR 3180, January 21, 2005);

2. Iron-Tungsten-Nickel (ITN) alloys composed of 20-70 percent tungsten, 10-40 percent nickel, and 10-70 percent iron (70 FR 22625, May 2, 2005);

3. Tungsten-Bronze (TB) shot made of 60 percent tungsten, 35.1 percent copper, 3.9 percent tin, and 1 percent iron (70 FR 22624, May 2, 2005, Note: This formulation differs from the Tungsten-Bronze nontoxic shot formulation approved in 2004.); and

4. Tungsten-Tin-Iron (TTI) shot composed of 58 percent tungsten, 38 percent tin, and 4 percent iron (70 FR 32282, June 2, 2005).

We reviewed the shot under the criteria in Tier 1 of the nontoxic shot approval procedures contained in 50 CFR 20.134 for permanent approval of shot as nontoxic for hunting waterfowl and coots. We amend 50 CFR 20.21(j) to add the shot types to the list of those approved for waterfowl and coot hunting.

On August 24, 2005, we published a proposed rule to approve the four shot types as nontoxic (70 FR 49541). The applications for the approval of the shot types included information on chemical characterization, production variability, use, expected production volume, toxicological effects, environmental fate and transport, and evaluation, and the proposed rule included this information, a comprehensive evaluation of the likely effects of each shot, and an assessment of the affected environment.

The Director of the U.S. Fish and Wildlife Service has concluded that the spent shot material will not pose a significant danger to migratory birds or other wildlife or their habitats, and therefore approves the use of the four shot types as nontoxic for hunting waterfowl and coots.

We received one comment in response to the proposed rule. However, the commenter raised no issues that caused us to reconsider our approval of the shot types as nontoxic.

The metals in these shot types have already been approved in other nontoxic shot types. In considering approval of these shot types, we were particularly concerned about the solubility and bioavailability of the nickel and copper

in them. In addition, because tungsten, tin, and iron have already been approved at very high proportions of other nontoxic shot types with no known negative effects of the metals, we approve all alloys of these four metals.

The data provided to us indicate that the shot types are nontoxic when ingested by waterfowl and should not pose a significant danger to migratory birds, other wildlife, or their habitats. We conclude that they raise no particular concerns about deposition in the environment or about ingestion by waterfowl or predators.

The process for submission and evaluation of new shot types for approval as nontoxic is given at 50 CFR 20.134. The list of shot types approved as nontoxic for use in hunting migratory birds is provided in the table at 50 CFR 20.21(j). With this rule, we also propose to revise the listing of approved nontoxic shot types in § 20.21(j) to include the cumulative approvals of the shot types considered in this rule with the other nontoxic shot types already in the table.

Many hunters believe that some nontoxic shot types do not compare favorably to lead and that they may damage some shotgun barrels, and a small 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 has increased in recent years (Anderson *et al.* 2000), 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. More important, however, is that the Fish and Wildlife Service is obligated to consider all complete nontoxic shot submissions.

We also add a column to the table of approved shot types that lists the field testing device suitable for each shot type. The information in this column is strictly informational, not regulatory. Because these regulations are used by both waterfowl hunters and law enforcement officers, we believe that information on suitable testing devices is a useful addition to the table.

### Affected Environment

#### Waterfowl Populations

The taxonomic family Anatidae, principally subfamily Anatinae (ducks) and their habitats, comprise the affected

environment. Waterfowl habitats and populations in North America in 2005 were described by the U.S. Fish and Wildlife Service (Garrettson *et al.* 2005). In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was  $31.7 \pm 0.6$  [SE] million birds, similar to last year's estimate of  $32.2 \pm 0.6$  million birds but 5% below the 1955–2004 long-term average. Mallard (*Anas platyrhynchos*) abundance was  $6.8 \pm 0.3$  million birds, which was 9% below the 2004 estimate of  $7.4 \pm 0.3$  million birds and 10% below the long-term average. Blue-winged teal (*Anas discors*) abundance was  $4.6 \pm 0.2$  million birds, similar to the 2004 estimate of  $4.1 \pm 0.2$  million birds, and the long-term average. Of the other duck species, the gadwall estimate (*Anas strepera*;  $2.2 \pm 0.1$  million) was 16% below that of 2004, while estimates of northern pintails (*Anas acuta*;  $2.6 \pm 0.1$  million; +17%) and northern shovelers (*Anas clypeata*;  $3.6 \pm 0.2$  million; +28%) were significantly above their 2004 estimates. The estimate for northern shovelers was 67% above the long-term average for the species, and the estimates for gadwall (+30%) and green-winged teal (*Anas crecca*;  $2.2 \pm 0.1$  million; +16%) also were above their average values. Northern pintails remained 38% below their long-term average despite this year's increase in abundance. Estimates of American wigeon (*Anas americana*;  $2.2 \pm 0.1$  million; -15%) and scaup (*Aythya affinis* and *Aythya marila* combined;  $3.4 \pm 0.2$ ; -35%) also were below their respective long-term averages; the estimate for scaup was a record low. Abundances of redheads (*Aythya americana*) and canvasbacks (*Aythya valisineria*) were similar to last year's counts and long-term averages. The projected mallard fall flight index of  $9.3 \pm 0.1$  million was similar to the 2004 estimate of  $9.4 \pm 0.1$  million birds.

In the restratified eastern survey area, mergansers (*Mergus serrator*, *M. merganser*, and *Lophodytes cucullatus* together) were down 25%, mallards were down 36%, American black ducks (*Anas rubripes*) were down 24%, and green-winged teal were 46% below their 2004 estimates. Ring-necked ducks (*Aythya collaris*) and goldeneyes (common [*Bucephala clangula*] and Barrow's [*Bucephala islandica*]) were similar to their 2004 estimates. No species in the eastern survey area differed from its long-term average.

#### Habitats

Waterfowl hunting occurs in habitats used by many taxa of migratory birds, as well as by aquatic invertebrates,

amphibians and some mammals. Fish also may be found in many hunting locations. The total May pond estimate (Prairie and Parkland Canada and the northcentral U.S. combined) was  $5.4 \pm 0.2$  million ponds, which is 37% greater than the 2004 estimate of  $3.9 \pm 0.2$  million ponds and 12% higher than the long-term average of  $4.8 \pm 0.1$  million ponds. The 2005 pond estimate in Prairie and Parkland Canada was  $3.9 \pm 0.2$  million, a 56% increase relative to last year's estimate of  $2.5 \pm 0.1$  million ponds and 17% higher than the long-term average of  $3.3 \pm 0.3$  million ponds. The 2005 pond estimate for the northcentral U.S. ( $1.5 \pm 0.1$  million) was similar to last year's estimate.

### Characterization of the Four Shot Types

#### TICN Alloys

Spherical Precision, Inc. of Tustin, CA, submitted Tungsten-Iron-Copper-Nickel (TICN) shot for approval. This is an array of layered alloys or metals of 40–76 percent tungsten, 10–37 percent iron, 9–16 percent copper, and 5–7 percent nickel. TICN shot has a density ranging from 10.0 to 14.0 grams per cubic centimeter ( $\text{g}/\text{cm}^3$ ), is noncorrosive, and is magnetic. Spherical Precision estimates that the volume of TICN shot for use in hunting migratory birds in the United States will be approximately 50,000 pounds (lb) (22,700 kilograms (kg)) during the first year of sale, and perhaps 100,000 lb (45,400 kg) per year thereafter.

#### ITN Alloys

ENVIRON-Metal of Sweet Home, OR, submitted Iron-Tungsten-Nickel (ITN) alloys, which are cast alloys containing 10–70 percent iron, 20–70 percent tungsten, and 10–40 percent nickel. The proposed shot types have densities ranging from about 8.5 to about  $13.5 \text{ g}/\text{cm}^3$ . The compositions of the alloys were shown in the proposed rule (70 FR 49541).

ENVIRON-Metal estimated that the yearly volume of ITN shot types with densities between those of steel ( $7.86 \text{ g}/\text{cm}^3$ ) and lead ( $11.3 \text{ g}/\text{cm}^3$ ) expected for use in hunting migratory birds in the United States is approximately 200,000 lb (113,500 kg) during the first year of sale. In the second year and beyond, sales upwards of 500,000 lb (227,000 kg) per year are anticipated. ITN shot types with densities greater than that of lead may ultimately attain sales levels of 1,000,000 lb (454,000 kg) per year.

#### TB Shot

The Olin Corporation of East Alton, IL, submitted Tungsten-Bronze (TB) shot for approval. This is a sintered

composite with an average composition of 60 percent tungsten, 35.1 percent copper, 3.9 percent tin, and 1 percent iron. The copper and tin make up 39 percent of the shot as a 90:10 ratio, respectively, in the form of a bronze alloy. The shot has a density of 12.0 g/cm<sup>3</sup>, compared to 11.1–11.3 g/cm<sup>3</sup> for lead, and 7.9 g/cm<sup>3</sup> for steel. Olin estimated that the yearly volume of the TB shot in hunting migratory birds in North America will be approximately 300,000 lb (136,200 kg).

#### *TTI Shot*

Tungsten-Tin-Iron (TTI) shot, submitted by Nice Shot, Inc., of Albion, PA, is a cast alloy composed of 58 percent tungsten, 38 percent tin, and 4 percent iron. This shot type has a density of 11.0 g/cm<sup>3</sup>. Nice Shot, Inc. estimated that approximately 5,000 lb (2,270 kg) of TTI shot are expected to be sold for use in hunting migratory birds in the United States during the first year of sale. TTI shot contains less than 1 percent lead, and will not be coated.

Each of the four shot types has a residual lead level of less than 1 percent. To inhibit corrosion, TICN shot may be coated with tin, copper, or both, and ITN shot may be surface-coated with thin petroleum-based films. Neither TB nor TTI shot will be coated.

In current 50 CFR 20.21(j)(1), the percent composition by weight for tungsten-tin-bismuth is “49–71 tungsten, 29–51 tin; 0.5–6.5 bismuth, 0.8 iron”. The proposed rule presented this same formulation. However, because we have already approved shot types of 100 percent of each of these metals, we now approve any alloys of them. Therefore, the rule text now reflects that the percent composition by weight for tungsten-tin-bismuth alloys is now “any proportions of tungsten, tin, and bismuth”.

#### **Effects of the Approvals on Migratory Waterfowl**

Approving additional nontoxic shot types will likely result in a minor positive long-term impact on waterfowl and wetland habitats. Approval of the four shot types and additional alloys as nontoxic would have a positive impact on the waterfowl resource.

#### **Cumulative Impacts**

We foresee no negative cumulative impacts of approval of the four shot types and the additional alloys for waterfowl hunting. Their approval should help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots.

#### **Literature Cited**

- Anderson, W. L., S. P. Havera, and B. W. Zercher. 2000. Ingestion of lead and nontoxic shotgun pellets by ducks in the Mississippi flyway. *Journal of Wildlife Management* 64:848–857.
- Garretson, P. R., T. J. Moser, and K. Wilkins. 2005. Waterfowl population status, 2005. U.S. Fish and Wildlife Service, Washington, D.C.

#### **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 regulations for implementing NEPA (40 CFR parts 1500–1508), though all of the metals in these shot types have been approved in other shot types and are not likely to pose adverse toxicity effects on fish, wildlife, their habitats, or the human environment, we have completed Final Environmental Assessments and found no significant environmental impact from this action.

#### **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.” We have concluded that because all of the metals in these shot types have been approved in other shot types and will not be released to the environment (dissolved from the shot) by any of them, the metals will not be available to biota in significant amounts due to use of any of the four shot types. Therefore, this action will not affect endangered or threatened species.

#### **Executive Order 12866**

This rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. This action will not create inconsistencies with other agencies’ actions or otherwise interfere with an action taken or planned by another agency. No other Federal agency has any role in regulating nontoxic shot for migratory bird hunting. The action is consistent with the policies and guidelines of other

Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because it has no mechanism to do so. This action will not raise novel legal or policy issues because the Service has already approved several other nontoxic shot types.

#### **Regulatory Flexibility 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 economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. This rule approves four additional types of nontoxic shot that may be sold and used to hunt migratory birds. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot types already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

#### **Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does 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.

#### **Paperwork Reduction Act**

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. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no new information collection requirements. OMB has assigned control number 1018–0067 to the collection of information that shot manufacturers are required to provide to us for the nontoxic shot approval process. This approval expires December 31, 2006. For further information, see 50 CFR 20.134.

**Unfunded Mandates Reform**

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not significantly or uniquely affect small governments or produce a Federal mandate of \$100 million or more in any given year. Therefore, this rule does not constitute a significant regulatory action under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

In promulgating this rule, we have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

**Takings**

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will

not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings assessment is not required.

**Federalism Effects**

This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. In accordance with Executive Order 13132, this regulation does not have significant federalism effects, nor does it have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**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) and 512 DM 2, we have determined that this rule

has no effects on Federally recognized Indian tribes.

**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:** 16 U.S.C. 703–712; 16 U.S.C. 742a–j; Pub. L. 106–108.

■ 2. Section 20.21 is amended by revising paragraph (j) to read as follows:

**§ 20.21 What hunting methods are illegal?**

\* \* \* \* \*

(j) While possessing loose shot for muzzle loading or shotshells containing other than the following approved shot types.

Approved shot type *	Percent composition by weight	Field testing device **
bismuth-tin .....	97 bismuth, 3 tin .....	HOT*SHOT®.***
iron (steel) .....	iron and carbon .....	Magnet or HOT*SHOT®.
iron-tungsten .....	any proportion of tungsten, ≥1 iron .....	Magnet or HOT*SHOT®.
iron-tungsten-nickel .....	≥1 iron, any proportion of tungsten, up to 40 nickel.	Magnet or HOT*SHOT®.**
tungsten-bronze .....	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron and 60 tungsten, 35.1 copper, 3.9 tin, 1 iron.	Rare Earth Magnet.
tungsten-iron-copper-nickel .....	40–76 tungsten, 10–37 iron, 9–16 copper, 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, ≥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, 2.8 nickel .....	Magnet.

\* Coatings of copper, nickel, tin, zinc, zinc chloride, and zinc chrome 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: January 13, 2006.

**Paul Hoffman,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06–745 Filed 1–25–06; 8:45 am]

BILLING CODE 4310–55–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 011011247–6006–03; I.D. 082701E]

RIN 0648–AP62

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches from Kodiak Island, AK**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from the Alaska Aerospace Development Corporation (AADC), is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to rocket launches from the Kodiak Launch Complex (KLC) on Kodiak Island, AK. Issuance of regulations is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on their availability for subsistence uses. These regulations do not authorize AADC’s rocket launch activities, as such authorization is not within the jurisdiction of the Secretary.