



**BILLING CODE: 4310-55**

**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]**

**RINs 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**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 <sup>®****</sup>
Iron (steel)	iron and carbon	Magnet or Hot Shot <sup>®</sup>
Iron-tungsten	any proportion of tungsten, and $\geq 1$ iron	Magnet or Hot Shot <sup>®</sup>
Iron-tungsten-nickel	$\geq 1$ iron, any proportion of tungsten, and up to 40 nickel	Magnet or Hot Shot <sup>®</sup>
Copper-clad iron	84 to 56.59 iron core, with copper cladding up to 44.1 of the shot mass	Magnet or Hot Shot <sup>®</sup>
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 <sup>®</sup> or Rare Earth Magnet
Tungsten-matrix	95.9 tungsten, 4.1 polymer	Hot Shot <sup>®</sup>
Tungsten-polymer	95.5 tungsten, 4.5 Nylon 6 or 11	Hot Shot <sup>®</sup>
Tungsten-tin-iron	any proportions of tungsten and tin, and $\geq 1$ iron	Magnet or Hot Shot <sup>®</sup>
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 <sup>®</sup>

\* 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 10/31/2013 at 8:45 am; Publication Date: 11/01/2013]*