

and to southwestern refuges during the 1992–93 hunting season. Refuges in Alaska and waterfowl production areas in the lower 48 States are scheduled to phase in nontoxic shot to hunt certain upland and small game by the 1997–98 and 1998–99 seasons respectively. Additional scientific information and data that forms the basis for these regulations will be provided to the States and public over the next few months, or may be requested as indicated in the previous paragraph.

3. The original proposal to require nontoxic shot while hunting woodcock at Necedah NWR was based on the fact that past hunting occurred in some areas subject to periodic flooding. After receiving public comments expressing concern that this specific requirement would cause confusion among hunters, the Service has agreed that neither grouse nor woodcock hunting will require nontoxic shot at Necedah NWR. This decision was based on the fact that areas subject to flooding can be partitioned away from the hunt area.

The Illinois Department of Conservation expressed general support for reducing the risks of lead poisoning in waterfowl, endangered species, and improving environmental quality, but could not support the proposed rule without the Service:

1. Providing adequate scientific evidence showing that a problem exists from upland/small game hunting with lead shot.

2. Conducting more site-specific studies in relation to lead shotshells and lead rifle bullets for hunting squirrels. Their recent study indicated that 47% of squirrel hunters in the northern half of Illinois hunted with shotguns, and the remainder used .22 caliber rimfire rifles and other weapons.

3. Providing adequate lead-time for hunters to become educated to toxic lead shot problems when hunting upland and other small game and supportive of corrective actions before the Service imposes this rule.

4. Delaying of the rule until at least the 1996–97 hunting season.

#### Response

1. Refer to Wisconsin number 1 response.

2. The regulations relating to nontoxic shot requirements were not intended to apply to rifle bullets and large buckshot. The rule has been clarified on this point. Site-specific evidence will be determined in accordance with Service policy before nontoxic shot will be required for hunting with larger shot such as buckshot, small rifle bullets such as .22 caliber or for shotgun

hunting on nonseasonally flooded uplands.

3. The nontoxic shot program will be phased in starting in the 1996–97 season, rather than the 1995–96 hunting season. Voluntary compliance is requested during the 1995–96 season (refer to Wisconsin number 2 response).

4. The final rules adopting requirements to use nontoxic shot to hunt wildlife species other than waterfowl and coots on certain refuges will be applicable beginning with the 1996–97 hunting season, however, voluntary compliance will be requested prior to that time. Delays until the 1997–98 season are also authorized for Alaska, to allow coordination with the State and the outlying villages. Delays are also provided for the waterfowl production areas principally in the Dakotas, Montana, Wisconsin, and Iowa until the 1998–99 season, with voluntary compliance requested in the meantime.

The Florida Game and Freshwater Fish Commission requested that the Service reconsider the proposal to require nontoxic shot for hunting upland and other small game on certain National Wildlife Refuges. They expressed concern that:

1. requiring use of nontoxic shot for hunting small game in the absence of documented lead ingestion problems amounts to regulatory overkill.

2. the Service should require nontoxic shot only where specific documentation of toxic lead problems exist.

#### Response

1. Refer to Wisconsin number 1 response.

2. For the reasons, and based on the data referred to in the Wisconsin number 1 response, the Service has concluded that it is well documented that toxic problems indeed exist in the hunting situation as described in the regulations developed for the specific refuges.

The State of Indiana, Department of Natural Resources expressed the opinion that:

1. the amount of lead deposited in the wetlands of Muscatatuck NWR by the estimated 122 quail hunter visits would be very incidental and would contribute insignificantly to the adverse welfare of waterfowl using the refuge; and

2. they would rather not see this proposed regulation, which is a disparity to their State regulations, imposed on Indiana's upland game hunters at this time.

#### Response

After evaluating the comments from the State of Indiana, and re-evaluating

the on-ground relationship of where quail and rabbit hunting occurs on the refuge, the Service has decided to remove Muscatatuck NWR from the listing of refuges requiring nontoxic shot to hunt upland and other small game. The Service believes it is possible to adequately zone the hunting area away from the margins of existing wetlands and those refuge lands subject to periodic flooding. Migratory waterfowl and other migratory birds will be adequately protected by implementing this measure.

The National Rifle Association of America objects to the proposed rule because:

1. The document fails to inform the public of the basis and purposes for imposing the nontoxic shot restrictions for upland game hunting on listed refuges.

2. The public has not been afforded a meaningful opportunity to comment on the proposal.

For these reasons, they recommend:

3. That a clear and concise statement of basis and purpose for the nontoxic shot requirements for upland game hunting on specific refuges be provided before a procedurally correct rulemaking on this issue is moved forward.

4. That this rulemaking be withdrawn and a new rulemaking initiated that recognizes this deficiency.

#### Response

As a basis for this rule, the Service has a responsibility to protect migratory birds as well as threatened and endangered species of wildlife from the toxic effects of lead shot poisoning due to hunting. The purpose of this rulemaking is to avoid the use of a known toxic substance, such as lead shot pellets, while hunting upland and other small game in an area where waterfowl and other migratory birds could be harmed or killed. The Service does not agree that there are any deficiencies in its procedures, but in order to more adequately educate and inform hunters and the general public of the new requirements, and coordinate with affected States, the Service will delay application of the nontoxic shot requirements until the 1996–97 season. Also, refer to Wisconsin number 1 response.

With respect to number 2 concern, a 30-day public comment period has been afforded the public to comment on the proposed rule. News articles concerning proposed regulations that address the adverse affects of hunting upland and other small game with toxic lead shot in upland areas subject to periodic flooding and seasonal wetland areas