lead shot in those areas. The Service believes that by offering alternatives to steel shot, a climate of compliance will be promoted, not reduced, and that this is a reasonable approach to take while field testing techniques are being developed.

2. Toxicity Testing—Comments expressed concern that testing is incomplete and that testing procedures, clearly defined by regulation are not being followed. The Service stresses that there have been no actions relative to this process outside compliance with 50 CFR 20.134. The Service believes, however, that the regulatory process is sufficiently flexible to provide the opportunity for interim conditional approval of alternatives to steel shot. The applicant has demonstrated a good faith effort to comply with the regulatory procedures defined for toxicity testing and there appears to be no information suggesting a hazard to migratory birds. The Service believes this flexibility can be exercised. The procedures described in 50 CFR 20.134 are in place and interim conditional approval is being granted only after completion of the 30-day acute toxicity test and an independent review of the test results. In addition, the Service has clearly stated that only interim conditional approval has been given and the Bismuth Cartridge Company must still complete all remaining toxicity tests before unconditional final approval is granted for the use of bismuth-tin shot.

Timing—Concern was expressed that the hunting season will have begun if/when bismuth-tin shot is approved. The Service regrets that the conditional approval of bismuth-tin had to be delayed until after the start of the 1994-95 hunting season. Although an earlier approval date would have been preferred, the Service was obligated to wait until the acute toxicity tests, analysis of data, and review of the results were completed. The fact that the season has already begun is not considered an adequate justification to delay approval, especially considering the effort put forth to complete the testing and review process as quickly as possible. It was determined that the "inconvenience" of approving the use of bismuth-tin shot after the start of the hunting season was outweighed by the opportunity for the hunting public to use bismuth-tin, even if few days remained in the 1994-95 season.

References

- Grandy, J.W., L.N. Locke and G.E. Bagley. 1968. Relative toxicity of lead and five proposed substitute shot types to penreared mallards. J. Wildl. Manage. 32(3):483–488.
- Ringelman, J.K., M.W. Miller and W.F. Andelt. 1992. Effects of ingested tungsten-bismuth-tin shot on mallards. CO Div. Wildl., Fort Collins, 24 pp.
- Sanderson, G.C., W.L. Anderson, G.L. Foley, L.M. Skowron, and J.W. Seets. 1994. Toxicity and reproductive effects of ingested bismuth alloy shot and effects of embedded bismuth alloy, lead, and iron shot on game-farm mallards. Final Report, Ill. Nat. Hist. Surv., Champaign, IL. 64 pp. + tables.
- Sanderson, G.C. and W.L. Anderson. 1994. Toxicity and reproductive effects of ingested bismuth alloy shot and effects of embedded bismuth alloy, lead, and iron shot on game-farm mallards. 3rd Prog. Rpt., Ill. Nat. Hist. Surv., Champaign, IL. 14 pp. + tables.
- Sanderson, G.C., S.G. Wood, G.L. Foley and J.D. Brawn. 1992. Toxicity of bismuth shot compared with lead and steel shot in game-farm mallards. Trans. 57th N.A. Wildl. Nat. Res. Conf., 57:526–540.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National **Environmental Policy Act of 1969** (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), an Environmental Assessment has been prepared and is available to the public at the Office of Migratory Bird Management at the address listed above. Based on review and evaluation of the information contained in the Environmental Assessment, the Service determined that the proposed action to amend 50 CFR 20.21(j) to allow interim conditional use of bismuth-tin as nontoxic shot for the 1994-95 waterfowl hunting season 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), as amended (16 U.S.C. 1531– 1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) 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 . . ."

Toxicity testing conducted by the Bismuth Cartridge Company indicates that bismuth-tin is nontoxic to the

environment; therefore, no adverse impact on endangered and threatened species is anticipated. Pursuant to section 7 of the ESA, MBMO sought review and concurrence that this action "is not likely to adversely affect" threatened, endangered, proposed, and category 1 species. Based on review and evaluation of the toxicity testing and other available information, the Service determined that no adverse impact on endangered and threatened species would result from the proposed action. The results of this review may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

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 and/or governmental jurisdictions. The Service has determined, however, that this rule will have no effect on small entities since the shot to be approved will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule does not contain any information collection efforts requiring approval by the OMB under 44 U.S.C. 3504.

Effective Date

This rule reflects the interim approval in the text of 50 CFR 20.21(j), by restricting permission to use bismuthtin for the 1994–95 season. Because this rule relieves a restriction, and the current hunting season ends on February 28, 1995, the Service has determined that there is good cause to establish the effective date of this rule as the date of publication in the Federal Register, as authorized under 5 U.S.C. 553(d) (1 and 3).

Authorship

The primary author of this final rule is Peter G. Poulos, Office of Migratory Bird Management.