

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, the tribes are already working with the Service to address the habitat needs of the species, and are fully aware of the conservation value of their lands. Thus, the educational benefits that might follow critical habitat designation, such as providing information on areas that are important for the long-term survival and conservation of the species, have already been realized. Further, the same or greater educational benefits will be provided to these lands if they are excluded from the designation, because the management plans provide for conservation benefits above any that would be provided by designating critical habitat.

(2) Benefits of Exclusion

The benefits of excluding the tribal lands of the San Carlos Apache, Mescalero Apache Tribe, and the Navajo Nation from designated critical habitat appear to be more significant. We tentatively conclude that not designating critical habitat on these areas would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the tribes to develop and implement Tribal conservation and natural resource management plans for their lands and resources; (2) the establishment and maintenance of effective working relationships to promote the conservation of the owl and its habitat; (3) the allowance for continued meaningful collaboration and cooperation in scientific studies to learn more about the conservation needs of the species; and (4) by providing conservation benefits from the tribal management plans to the forest ecosystem upon which the owl depends which exceed those that would be provided by the designation of critical habitat.

In summary, we view each of the management plans as a continuance of cooperative and productive relationships that have and will continue to provide additional substantive conservation benefits to the owl and its habitat. The additional benefits would be less likely if critical habitat was designated because the tribes view critical habitat as an intrusion on their ability to manage their own lands and trust resources. We tentatively conclude that the benefits of

including these tribal lands in critical habitat are small or nonexistent due to the protection afforded the owl through tribal management plans. These plans provide benefits to the owl through fire abatement projects, which reduce the risk of catastrophic fire, the primary threat to the owl; monitoring; protection of nest sites; and survey efforts. Subject to our reanalysis, after considering public comments and the economic impacts of the designation, we tentatively conclude that the benefits of excluding these areas from being designated as critical habitat for the owl are more significant than the benefits of including them, and include the continued implementation of tribal owl management plans and the continuance of our cooperative working relationships with these tribes for the mutual benefit of the owl and other threatened and endangered species.

Current Status of Critical Habitat for the Owl

As a result of the Court orders in *Center for Biological Diversity v. Norton*, we consider critical habitat to be proposed for the owl in those areas excluded from the final designation published on February 1, 2001 (66 FR 8530). Specifically, Forest Service lands in Arizona and New Mexico and tribal lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe were excluded from the final designation of critical habitat for the owl and are now considered to be proposed as critical habitat. Areas designated as critical habitat for the owl in the February 1, 2001, final designation remain in effect until critical habitat is refinalized, pursuant to the Court's order.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Activities on Federal lands that may affect the owl or its proposed critical habitat will require consultation with us pursuant to section 7 of the Act. Actions on private or State lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect proposed critical habitat. Federal actions not affecting the species or its proposed critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Federal agencies may request formal conferencing on the July 2000 proposed critical habitat with respect to Forest Service lands in Arizona and New Mexico and the lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe.

For areas that were included in the final critical habitat designation, section 7(a)(2) of the Act requires Federal agencies, including us, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, or require a Federal permit, license, or other authorization, or involve Federal funding.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03-28483 Filed 11-17-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Application for Approval of Tungsten-Bronze-Iron as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby provides public notice that International Nontoxic Composites Corporation of Ontario, Canada, has applied for approval of Tungsten-Bronze-Iron shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of the shot under the criteria set out in Tier 1 of the nontoxic shot approval procedures given at 50 CFR 20.134.

DATES: A comprehensive review of the Tier 1 information is to be concluded by January 20, 2004.

ADDRESSES: The International Nontoxic Composite Corporation application may be reviewed in Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 N. Fairfax Drive, Arlington, Virginia,