



WILDLIFE: Pressure mounts for EPA to ban lead in tackle, bullets

Phil Taylor, E&E reporter 9/30/2010

A proposal to ban lead in fishing tackle and hunting ammunition garnered new support this week when 62 conservation, bird advocacy and veterinarian groups told U.S. EPA that such a ban is necessary to protect wildlife from lead poisoning and to protect human health.

But the proposal -- pitched in an Aug. 3 petition to EPA and since partially denied by the agency -- still faces strong opposition from sporting groups, state wildlife agencies and several dozen members of Congress, casting doubt over whether such a ban will be initiated before November's midterm elections.

"We respectfully urge the EPA to act on the petition and develop regulations to require lead-free alternatives to lead sporting products, to get the lead out of the food chain for wildlife and humans," said a letter sent by the groups Monday to EPA.

EPA late last month partially dismissed the petition by the American Bird Conservancy, Center for Biological Diversity and three other groups, and claimed last week that it had no authority under the Toxic Substances Control Act to regulate lead in bullets and shot because firearms, shells and cartridges are excluded from the act's definition of "chemical substance."

Bald eagles are among several dozen bird species impacted by the use of lead ammunition and fishing tackle, groups say. Proponents of a ban say they are willing to sue EPA if the agency refuses to honor its petition. Photo courtesy of FWS.

The agency said it is still considering the groups' request to ban lead in fishing tackle and that it will respond to that portion of the petition by Nov. 1.

Hunters each year discharge 3,000 tons of lead into the environment, and 4,000 tons of lead used in fishing lures and sinkers is lost in lakes, ponds and streams annually, according to wildlife advocacy groups.

Hunters typically only take choice parts of their kill and leave behind bullet-strewn carcasses that become meals for scavengers, including bald eagles, golden eagles, ravens and endangered California condors that can ingest the ammunition. Swans, cranes, ducks, geese, loons and other waterfowl also consume lead-based fishing tackle lost in lakes and rivers.

Together, the lost lead causes an estimated 10 million to



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20 million bird mortalities in the United States each year, the groups said.

Lead-based bullets, shot and fishing tackle can be replaced with commercially available, non-lead alternatives, the groups contend in their petition to EPA. The petition suggests the use of lead alloys, lead used with a combination of copper, pure copper or a "green" bullet made of tungsten, tin and bismuth.

"There are numerous ballistic tests showing that these alternative ammunition materials perform just as well if not better," said Bob Johns, spokesman for the American Bird Conservancy.

EPA long ago banned the use of lead shot for hunting waterfowl, a rule that was phased in beginning with the 1987-88 hunting season and implemented nationwide in 1991.

Question of authority

But the 1976 Toxic Substances Control Act, which authorizes restrictions relating to chemical substances or mixtures, does not allow EPA to categorically ban lead ammunition, the agency noted in a Federal Register notice last week.

"Bullets and shot, and any lead within them, are contained in shells and cartridges and are therefore excluded from the chemical substance definition," the agency said.

But, according to petitioners, those arguments contradict the language of TSCA as well as the Senate and House reports on the legislative history and intent of the act.

“The EPA erred ... in their rush to dismiss the hunting ammunition portion of our complaint before the November elections,” said Darin Schroeder, vice president of conservation advocacy for ABC. “Their authority to regulate lead in hunting ammunition is abundantly clear from the most cursory reading of the House of Representatives’ portion of the legislative history of TSCA.”

A House report on the history and intent of the act says, “The Committee does not exclude from regulation under the bill chemical components of ammunition which could be hazardous because of their chemical properties,” according to the groups.

Tucson, Ariz.-based CBD has filed a Freedom of Information Act request seeking all EPA documents and materials used to support the agency’s decision. ABC requested a meeting with EPA Assistant Administrator Steve Owens to discuss the agency’s reasoning behind the decision, the group said.

While the agency has not responded to either request, EPA officials said the agency does not anticipate any jurisdictional uncertainty that would prevent it from considering the groups’ requested ban on lead fishing tackle.

“As there are no similar jurisdictional issues relating to the agency’s authority over fishing sinkers, EPA as required by law will continue formally reviewing a second part [of] the petition related to lead fishing sinkers,” Owens said.

If EPA grants the petition, the agency would then be required to initiate a rulemaking.

Election pressures

But the Obama administration risks a backlash from sporting groups if EPA initiates a rulemaking for lead fishing tackle one day before the general election.

“Politically this is not a very exciting topic for them,” said Johns of ABC.

Sen. Blanche Lincoln (D-Ark.) on Tuesday introduced a bill that would amend TSCA to specifically exempt lead ammunition and lead fishing tackle from EPA’s jurisdiction,

citing potential impacts a ban would have on Arkansas manufacturers including Remington Arms Co. Inc.

Other lawmakers have questioned whether there is sufficient scientific evidence to support claims that lead shot and tackle are harming wildlife.

“There is simply no data to support a ban on traditional fishing tackle and no reason for the EPA to restrict people’s ability to take advantage of the great fishing opportunities in Idaho and elsewhere in the country,” said Idaho Rep. Mike Simpson (R), ranking member of the House Appropriations Subcommittee on Interior and the Environment, which oversees funding for EPA.

Simpson was among 78 members of the bipartisan Congressional Sportsmen’s Caucus who signed a letter delivered last Thursday to EPA Administrator Lisa Jackson urging the agency to dismiss the petition to ban lead in fishing tackle products.

Roughly 60 million recreational anglers in America contribute \$125 billion to the economy each year, the letter states.

The lawmakers warned that requiring alternatives to lead-based fishing tackle would drive up costs for anglers, limiting recreational opportunities and reducing revenue from things such as state fees and licenses.

The Association of Fish and Wildlife Agencies, which represents the 50 state fish and wildlife agencies, also sent a letter to EPA on Sept. 2 urging a dismissal of the petition.

Kathy Hanson, executive director of the Southeast Alaska Fisherman’s Alliance, said commercial fishing gear is too large to be ingested by birds identified in the petition and that alternatives are not available for some other lead-based fishing gear.

“A total lead ban would create economic harm and devastation to the commercial fishing industry,” she said in comments to EPA.

Jeff Miller, conservation advocate for CBD, said previous EPA studies found that fishing weights account for less than 3 percent of the cost of a recreational fishing trip and banning lead from such weights would not prohibit people from fishing.