



Office of the General Counsel

B-277928

September 9, 1997

The Honorable Ben Nighthorse Campbell
Chairman
The Honorable Daniel K. Inouye
Ranking Minority Member
Committee on Indian Affairs
United States Senate

The Honorable Don Young
Chairman
The Honorable George Miller
Ranking Minority Member
Committee on Resources
House of Representatives

Subject: Department of the Interior: Migratory Bird Hunting; Migratory Bird
Hunting Regulations on Certain Federal Indian Reservations and Ceded
Lands for the 1997-98 Early Season

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Fish and Wildlife Service. The rule is entitled "Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1997-98 Early Season" (RIN: 1018-AE14). We received the rule on August 27, 1997. It was published in the Federal Register as a final rule on September 2, 1997. 62 Fed. Reg. 46420. The rule was effective on September 1, 1997, pursuant to the exception in 5 U.S.C. § 808(1).

This rule is part of a series of regulations dealing with the establishment of seasons, limits, and other regulations for migratory game bird hunting under amendments to 50 C.F.R. part 20. This rule prescribes special early-season hunting regulations for certain tribes on federal Indian reservations, off-reservation trust lands, and ceded lands in response to tribal requests to recognize their authority to regulate hunting on their reservations under established guidelines. The guidelines were published in the Federal Register on June 4, 1985, 50 Fed Reg. 23467. In its submission, the Fish and Wildlife Service notes that no sport hunting of migratory game birds is

permitted unless regulatory schedules for seasons, daily bag and possession limits, and shooting hours are promulgated.

Enclosed is our assessment of the Department of the Interior's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Department of the Interior's Fish and Wildlife Service complied with the applicable requirements.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO evaluation work relating to the Department of the Interior is Victor Rezendes Director for Energy, Resources, and Science Issues. Mr. Rezendes can be reached at (202) 512-3841.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Donald J. Barry
Acting Assistant Secretary for Fish
and Wildlife and Parks
Department of the Interior

ANALYSIS UNDER 5 U.S.C. §§ 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF THE INTERIOR
ENTITLED
"MIGRATORY BIRD HUNTING; MIGRATORY BIRD HUNTING REGULATIONS
ON CERTAIN FEDERAL INDIAN RESERVATIONS AND CEDED LANDS
FOR THE 1997-98 EARLY SEASON"
(RIN: 1018-AE14)

(i) Cost-benefit analysis

According to the cost-benefit analysis contained in the filing, the migratory bird hunting regulations (of which this regulation is a part) collectively have an estimated economic impact in excess of \$400 million in direct expenditures. For example, the analysis indicates that \$118.1 million will be spent by duck hunters on equipment, \$127.2 million on food, \$134.6 million on transportation and lodging, plus \$36.4 million "other" direct expenditures. Without these regulations, the Service opines that the resources spent in duck hunting would, to some degree, be spent on other recreational activities, so that the actual national economic development effect of the regulations may be less than \$100 million.

The analysis notes that the rule impose some costs of administration and enforcement on the state, but as the states also derive revenue from licensing, the net cost, if any, cannot be quantified.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

The Service's compliance with the Regulatory Flexibility Act consisted of a "Small Entity Flexibility Analysis" issued in 1996 (and available from the Office of Management and Budget upon request). It appears that the analysis was so limited because the regulation's impact is primarily beneficial to a very substantial number of small businesses. The Chief Counsel for Advocacy, Small Business Administration, was notified of the analysis.

The analysis provided by the Service indicates that the regulations are promulgated annually to set frameworks for harvest levels and seasons for migratory bird hunting; that the states then issue regulations within the established framework; and that under the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*, no legal migratory bird hunting could take place without the regulations.

The objective noted by the analysis is to ensure that harvest levels are commensurate with the current population of each species, based on surveys conducted in the spring and early summer.

The analysis notes that as many as 738,000 small entities will share in the estimated \$254-\$592 million spent overall by migratory bird hunters during the 1997-98 season. There are no new compliance requirements for small business resulting from the regulations. In addition, since the regulations are largely beneficial to small entities, the Service indicates that no special treatment was considered for them.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Service has certified that the rulemaking will not impose a cost of \$100 million or more on local or state governments or private entities.

(iv) Other relevant information or requirements under acts and executive orders

The Service notes that National Environmental Policy Act (NEPA) considerations are covered by its "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds," which was filed with the Environmental Protection Agency on June 9, 1988. The Service also asserts that pursuant to Endangered Species Act considerations, it designs hunting regulations to "remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species." In addition, the Service declares that the Department of the Interior has certified to OMB that the regulations meet the applicable standards of E.O. 12778, and that the regulations do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The rule was promulgated through the general notice of proposed rulemaking procedures of the Act, 5 U.S.C. § 553. The Service afforded interested persons the opportunity to comment on the proposed rule, and the final rule addresses the comments.

Statutory authorization for the rule

The rule concerning migratory waterfowl hunting is authorized by 16 U.S.C. §§ 703-712 and 742 a-j.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Service states that there are no information collection requirements resulting from these regulations.¹

Executive Order No. 12866

The Service states that the current rule was not individually submitted to OMB because it is only a small portion of the overall migratory birds hunting regulations frameworks. OMB did review the overall frameworks and considers them to be economically significant.

¹Note, however, that the Service states that it does use various information collection requirements to develop future migratory game bird hunting regulations. The information collection requirements of the Migratory Bird Harvest Information Programs have been approved by OMB and have been assigned clearance number 1018-0015. The Service notes, however, that the OMB approval for the Sandhill Crane Harvest Questionnaire, 1018-0023, has expired and has been resubmitted to OMB for reinstatement. The information required by this latter questionnaire will not be collected until OMB approval has been obtained.