



Office of the General Counsel

B-280889; B-280914

September 11, 1998

The Honorable John H. Chafee
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
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, Fish and Wildlife Service: Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on two major rules promulgated by the Department of the Interior, Fish and Wildlife Service (Service), entitled "Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations" and "Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands" (RIN: 1018-AE93). We received the rules on August 25 and August 26, 1998. They were published in the Federal Register as a final rules on August 28 and August 31, 1998, respectively. 63 Fed. Reg. 46124 and 63 Fed. Reg. 46336.

These rules are 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.

The "final frameworks" rule establishes the early-season frameworks from which states, Puerto Rico, and the Virgin Islands may select dates and other options available to them for the 1998-99 migratory bird hunting seasons. After receiving this information, the Fish and Wildlife Service will publish the selections as the final regulations for the current hunting season. The "early seasons and bag and possession limits" rule prescribes hunting seasons, hours, areas, and daily bag limits and possession limits for specific game birds in the contiguous states, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Enclosed is our assessment of the Fish and Wildlife Service's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the 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, Fish and Wildlife Service, 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
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 TWO MAJOR RULES
ISSUED BY
THE DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE
ENTITLED
"MIGRATORY BIRD HUNTING; FINAL FRAMEWORKS FOR EARLY-SEASON
MIGRATORY BIRD HUNTING REGULATIONS"; AND
"EARLY SEASONS AND BAG AND POSSESSION LIMITS FOR CERTAIN
MIGRATORY GAME BIRDS IN THE CONTIGUOUS UNITED STATES,
ALASKA, HAWAII, PUERTO RICO, AND THE VIRGIN ISLANDS"
(RIN: 1018-AE93)

(i) Cost-benefit analysis

According to the cost-benefit analysis contained in the filing, the migratory bird hunting regulations (of which these regulations are a part) collectively have an economic impact in excess of an estimated \$600 million in direct expenditures. For example, the analysis indicates that \$293.3 million will be spent by duck hunters on equipment, \$144.3 million on food, \$147.1 million on transportation and lodging, plus \$73.8 million "other" direct expenditures. Without these regulations, the Service opines that the resources spent in game bird hunting would, to some degree, be spent on other recreational activities.

The analysis notes that the rules impose some costs of administration and enforcement on the state, but as the states also derive revenue from licensing, the net cost, if any, is not quantifiable.

(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" updated with information from the 1996 National Hunting and Fishing Survey issued in 1998 (and available from the Office of Migratory Bird Management 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 of the 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 small entities will share in the estimated \$429-\$1,084 million spent by migratory bird hunters during the 1998-99 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 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 rules were 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.

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

The Service states that it uses 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 the Office of Management and Budget (OMB) and have been

assigned clearance number 1018-0015. The Service also notes, that the OMB approval for the Sandhill Crane Harvest Questionnaire, 1018-0023, has been approved by OMB with an expiration date of September 30, 2000.

Statutory authorization for the rule

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

Executive Order No. 12866

Our review indicates that the Service adhered to the requirements of Executive Order 12866. Collectively, the rules for migratory bird hunting are reviewed by OMB and are considered to be economically significant.