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Office of the General Counsel

B-280935

September 16, 1998

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, Fish and Wildlife Service: Migratory Bird  
Hunting Regulations on Certain Federal Indian Reservations and Ceded  
Lands for the 1998-99 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 (Service), entitled "Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1998-99 Early Season" (RIN: 1018-AE93). We received the rule on August 27, 1998. It was published in the Federal Register as a final rule on September 1, 1998. 63 Fed. Reg. 46558.

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 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 A MAJOR RULE  
ISSUED BY  
THE DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE  
ENTITLED  
"MIGRATORY BIRD HUNTING REGULATIONS ON  
CERTAIN FEDERAL INDIAN RESERVATIONS  
AND CEDED LANDS FOR THE 1998-99 EARLY SEASON"  
(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 consists 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 Program 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.