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Office of the General Counsel

B-277803; B-277873

September 4, 1997

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: Migratory Bird Hunting: (1) Final Frameworks for Early-Season Migratory Bird Hunting Regulations; (2) 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 Department of the Interior, Fish and Wildlife Service. One is entitled "Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations" (RIN: 1018-AE14). We received the rule on August 15, 1997. It was published in the Federal Register as a final rule on August 20, 1997. 62 Fed. Reg. 44229. On August 26, 1997, we received the rule entitled "Migratory Bird Hunting; 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-AE14). This latter rule was published in the Federal Register on August 29, 1997. 62 Fed. Reg. 46152. Both rules were effective on their respective Federal Register publication dates pursuant to section 808(1) of title 5, United States Code.

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 1997-98 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 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 rules. 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 MAJOR RULES  
ISSUED BY  
THE DEPARTMENT OF THE INTERIOR  
ENTITLED  
"MIGRATORY BIRD HUNTING: (1) FINAL FRAMEWORKS FOR  
EARLY-SEASON MIGRATORY BIRD HUNTING REGULATIONS"; AND  
(2) "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-AE14)

(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 \$400 million<sup>1</sup> 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 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" issued in 1997 (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.

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<sup>1</sup>Based on hunter data from 1995 and per capital and per day expenditure data from a 1991 survey.

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 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 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 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 questionnaire will not be collected until OMB approval has been obtained.

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.