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Washington, DC 20548

B-310145

September 11, 2007

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Nick J. Rahall II
Chairman
The Honorable Don Young
Ranking Minority Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Fish and Wildlife Service: 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*

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; 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-AV12). We received the rule on August 27, 2007. It was published in the *Federal Register* as a final rule on August 30, 2007. 72 Fed. Reg. 50,164.

The final rule prescribes hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons.

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.

Section 808(1) of title 5, United State Code, exempts any rule that “establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping” from the 60-day delay in the effective date otherwise required by section 801(a)(3)(A). This is a rule related to hunting, so the 60-day delay is not applicable.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Todd Willens
Acting Assistant Secretary for
Fish and Wildlife and Parks
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE
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-AV12)

(i) Cost-benefit analysis

Collectively, the Fish and Wildlife Service (Service) expects the migratory bird hunting regulations, of which this final rule is a part, to have an expected welfare benefit of \$734 million to \$1,064 million with a mid-point estimate of \$899 million. This benefit estimate is based on an analysis from 2004. The Service partially updated this analysis with respect to duck hunting. The Service estimates that the total consumer surplus of the annual duck hunting framework is between \$222 million and \$360 million with a mid-point of \$291 million.

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

The Service determined that this final rule will have a significant impact on a substantial number of small entities under the Act. The Service's compliance with the Act consists of a "Small Entity Flexibility Analysis" that was most recently updated in 2004 and was based on the 2001 National Hunting and Fishing Survey. The Service estimates that migratory bird hunters spent between \$481 million and \$1.2 billion at small businesses in 2004.

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

The Service concluded that this rule will not impose a cost of \$100 million or more in any given year on local or state governments or on private entities.

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

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

The Service promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. The Service published a series of proposed rules relating to migratory bird hunting from April 11, 2007, to

August 31, 2007. 72 Fed. Reg. 18,328 (April 11, 2007); 72 Fed. Reg. 31,789 (June 8, 2007); 72 Fed. Reg. 40,194 (July 23, 2007); 72 Fed. Reg. 50,613 (Aug. 31, 2007). The Service received comments on these proposed rules, to which they responded in a different final rule. 72 Fed. Reg. 49,622–49,625. The Service found “good cause” under section 553(d)(3) of title 5, allowing, therefore, this final rule to take effect immediately on publication.

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

The Office of Management and Budget (OMB) has approved the information collection requirements in this final rule. The information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program have the clearance number 1018-0015 and expire on February 29, 2008. The information collection requirements of the Sandhill Crane Harvest Survey have the clearance number 1018-0023 and expire on November 30, 2007.

Statutory authorization for the rule

The rules concerning migratory bird hunting are authorized by sections 703 to 712 and 742a to 742j of title 16, United States Code.

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370f

According to the Service, NEPA considerations are covered by its “Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),” filed with the Environmental Protection Agency on June 9, 1988. Annual NEPA considerations are covered by the “Duck Hunting Regulations for 2007-08” and an August 2007 finding of no significant impact.

Endangered Species Act, 16 U.S.C. §§ 1531–43

The Service determined that this final rule is not likely to adversely affect any endangered or threatened species.

Executive Order No. 12,866

This final rule, as part of the migratory bird hunting regulations, is economically significant and was reviewed by OMB under the order. Collectively, the Service expects the migratory bird hunting regulations, of which this final rule is a part, to have an expected welfare benefit of \$734 million to \$1,064 million with a mid-point estimate of \$899 million. This benefit estimate is based on an analysis from 2004. The Service partially updated this analysis with respect to duck hunting. The Service estimates that the total consumer surplus of the annual duck hunting framework is between \$222 million and \$360 million with a mid-point of \$291 million.

Executive Order No. 13,132 (Federalism)

The Service determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order No. 12,988 (Civil Justice Reform)

The Service determined that this final rule will not unduly burden the judicial system and that it meets the requirements of this order.

Executive Order No. 12,630 (Takings)

The Service determined that this final rule does not have significant takings implications and does not affect any constitutionally protected property rights.

Executive Order No. 13,211 (Energy Effects)

The Service determined that this final rule is not expected to adversely affect energy supplies, distribution, or use. Therefore, it is not a significant energy action and no Statement of Energy Effects is required.

Executive Order No. 13,175 (Government-to-Government Relationship with Tribes)

The Service determined that this final rule will have no effect on Indian trust resources.