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October 8, 2003

The Honorable James M. Inhofe
Chairman
The Honorable James M. Jeffords
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Richard W. Pombo
Chairman
The Honorable Nick J. Rahall II
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 2003-04 Late 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 2003-04 Late Season" (RIN: 1018-AI93). We received the rule on September 23, 2003. It was published in the Federal Register as a final rule on September 29, 2003. 68 Fed. Reg. 56102.

The final rule prescribes special late-season migratory bird hunting regulations for certain tribes on federal Indian reservations, off-reservation trust lands and ceded lands.

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 James W. Vickers, Assistant General Counsel, at (202) 512-8210. 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

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Craig Manson
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 2003-04 LATE SEASON"
(RIN: 1018-AI93)

(i) Cost-benefit analysis

Collectively, the migratory bird hunting regulations (of which this final rule is a part) have an expected welfare benefit of \$50 million to \$192 million.

(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" based on the 1996 National Hunting and Fishing Survey issued in 1998. The survey is updated on a 5-year basis. It appears that the analysis was limited because the regulation's impact is primarily beneficial to a very substantial number of small entities. The survey estimated that bird hunters would spend between \$429 million and \$1.084 billion at small businesses in 2003.

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

The final rule will not impose either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

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

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

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553. From May 6, 2003, through August 29, 2003, the Service published four Notices of Proposed Rulemaking (NPRMs) covering the various aspects of the migratory bird hunting regulations. The comments received in response to the NPRMs are discussed in the preamble to the final rule.

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 assigned Control No. 1018-0015, expiration date of October 31, 2004. OMB has also approved the Sandhill Crane Harvest Questionnaire, Control No. 1018-0023, with an expiration date of October 31, 2004.

Statutory authorization for the rule

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

Executive Order No. 12866

Collectively, the rules for migratory bird hunting are reviewed by OMB and are considered economically significant.

Executive Order No. 13132 (Federalism)

According to the Service, the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.