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October 26, 2007

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Minority Member
Committee on Environment and Public Works
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; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2007-08 Early and Late Seasons*

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; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2007-08 Early and Late Seasons” (RIN: 1018-AV12). We received the rule on October 12, 2007. It was published in the *Federal Register* as a final rule on October 15, 2007. 72 Fed. Reg. 58,452.

The final rule prescribes special early and 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 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: David M. Verhey
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; MIGRATORY BIRD HUNTING
REGULATIONS ON CERTAIN FEDERAL INDIAN RESERVATIONS
AND CEDED LANDS FOR THE 2007-08 EARLY AND LATE SEASONS"
(RIN: 1018-AV12)

(i) Cost-benefit analysis

The Fish and Wildlife Service (Service) has determined that the expected welfare benefit of the annual migratory bird hunting frameworks ranges from \$734 million to \$1.064 billion, with a mid-point estimate of \$899 million. The benefit estimate is based on an analysis from 2004. The Service updated the 2004 analysis with respect to duck hunting and determined that the total consumer surplus of the annual duck hunting frameworks is on the order of \$220 to \$360 million, with a mid-point estimate 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 the regulations will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. The Service issued a Small Entity Flexibility Analysis (Analysis) to comply with the requirements of the Act. The Analysis as relates to all migratory bird hunting was last updated in 2004. The 2004 Analysis estimated that migratory bird hunters would spend between \$481 million and \$1.2 billion at small businesses in 2004. The Service updated the 2004 Analysis with regards to duck hunting and estimates that duck hunters will spend between \$291 and \$473.5 million at small businesses in 2007. The Service plans a full update of the Analysis in 2008 when the full results of the 2006 National Hunting and Fishing Survey will be available.

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

The Service determined and has certified that the rulemaking will not impose a cost of more than \$100 million dollars in any given year on local or state governments or private entities. As a result, the rule is not significant under the Unfunded Mandates Reform Act of 1995.

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

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

The Service published a notice of intent announcing regulations on April 11, 2007. 72 Fed. Reg. 18,328. On August 31, 2007, the Service published proposed special migratory bird hunting rules for the 2007-08 hunting season for certain Indian tribes. 72 Fed. Reg. 50,596. The Service received comments on these proposed rules, to which they responded in the final rule. 72 Fed. Reg. 58,452—58,454. The Service found “good cause” under section 553(d)(3) of title 5, allowing this final rule to take effect immediately on publication. See also 5 U.S.C. § 808(1).

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

There are no new information collections under this rule that would require the Office of Management and Budget’s (OMB) approval. OMB has approved the existing information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018-0015, which expires on February 29, 2008.

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.

Executive Order No. 12,866

The final rule, as part of the migratory bird hunting regulation, was determined to be economically significant by the Service and was reviewed by the Office of Management and Budget under Executive Order No. 12,866. The Service relied on its cost-benefit analysis from 2004 to conclude that the expected welfare benefit of the annual migratory bird hunting frameworks ranges from \$734 million to \$1.064 billion, with a mid-point estimate of \$899 million. The Service updated the 2004 analysis with respect to duck hunting and determined that the total consumer surplus of the annual duck hunting frameworks is on the order of \$220 to \$360 million, with a mid-point estimate of \$291 million.

Executive Order No. 13,132 (Federalism)

The Service determined that the regulations do not have sufficient federalism implications to warrant the preparation of a federalism assessment under the Order.