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United States Government Accountability Office
Washington, DC 20548

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October 8, 2008

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; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds*

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; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds” (RIN: 1018-AV62). We received the rule on September 23, 2008. It was published in the *Federal Register* as a final rule on September 25, 2008. 73 Fed. Reg. 55,630.

The final rule prescribes hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which states previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations; this rule permits taking of designated species during the 2008-09 season.

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; therefore, the 60-day delay is not applicable. The final rule is effective on September 26, 2008.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ron W. Kokel
Wildlife Biologist
U.S. Fish and Wildlife Service
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; LATE SEASONS AND
BAG AND POSSESSION LIMITS FOR
CERTAIN MIGRATORY GAME BIRDS"
(RIN: 1018-AV62)

(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 estimated economic benefit range from \$274 to \$362 million, with a mid-point estimate of \$318 million.

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

The Service determined that the final rule will have a significant impact on a substantial number of small entities under the Act. The Service issued a “Small Entity Flexibility Analysis” that was most recently updated in 2008 and was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce’s County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$1.2 billion at small businesses in 2008.

(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 four proposed rules relating to migratory bird hunting from May 28, 2008, through August 29, 2008. The August 29th proposal dealt with the establishment of late-season frameworks for migratory game bird hunting regulations, 73 Fed. Reg. 51,088, from which state wildlife conservation agency officials selected late-season hunting dates,

hours, areas, and limits for 2008-2009. The Service received comments to the proposals and responded to the issues raised in the comments.

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

The Office of Management and Budget (OMB) has approved the information collection requirements in the final rule. Specifically, OMB approved the Migratory Bird Surveys and assigned control number 1018-0023 (expires 2/28/2011).

Statutory authorization for the rule

The final rule is authorized by 16 U.S.C. §§ 703-712 and 742a-742j.

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

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

Executive Order No. 12,866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13,132 (Federalism)

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