



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: U.S. Fish and Wildlife Service—Steller's and Spectacled Eiders
Conservation Plan

File: B-318386

Date: August 12, 2009

DIGEST

Because considerable conservation efforts over several years have not halted the decline of two threatened eider species, GAO will not object to the U.S. Fish and Wildlife Service's (FWS) proposed use of appropriated funds to purchase and distribute caps and other items to residents of Alaska North Slope communities in furtherance of the agency's eider conservation plan. FWS will print images of the threatened eiders on these items and, for some items, include eider conservation messages. The items, which FWS will distribute as part of agency outreach events, will help residents identify the threatened species and serve as reminders of the agency's conservation message.

DECISION

The U.S. Fish and Wildlife Service (FWS) Alaska Regional Director requests an advance decision under 31 U.S.C. § 3529(a) regarding the use of appropriated funds to purchase and distribute items such as T-shirts, baseball caps, stocking caps, and coffee mugs to North Slope communities in furtherance of the agency's eider conservation plan. Letter from Alaska Regional Director, FWS, to Acting Comptroller General, GAO, June 16, 2009 (Request Letter). As explained below, because traditional methods of public outreach and education have failed to halt the decline of threatened eiders, FWS may use appropriated funds to purchase and distribute the items as part of an education plan strategically designed to reach North Slope residents.¹

¹ Our practice when issuing decisions is to obtain the facts and views from the relevant agency. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html. In addition to materials provided with the request

(continued...)

BACKGROUND

FWS is responsible for determining “policies and procedures that are necessary and desirable in carrying out ... laws relating to fish and wildlife.” 16 U.S.C. § 742f(a). The Endangered Species Act of 1973 (ESA), as amended, is one such law, providing for “a program for the conservation of [threatened] . . . species.” 16 U.S.C. § 1531(b).

Steller’s and spectacled eiders are “two threatened waterfowl species . . . [that] breed, raise broods, stage, and migrate” throughout the remote Alaska North Slope. Request Letter. Some species of eiders (*e.g.*, common and king eiders) are legal to hunt, but steller’s and spectacled eiders are not.² FWS, *Conservation Measures for Steller’s and Spectacled Eiders During the 2009 Alaska Migratory Bird Subsistence Harvest and 2009 Migratory Game Bird Hunt*, at 1, 7, Apr. 2, 2009 (Eider Conservation Strategy). However, the population of protected eiders continues to decline as a result of hunting. See Eider Conservation Strategy; FWS, *Biological opinion for 2009 Alaska Migratory Bird Subsistence Harvest*, Apr. 6, 2009 (Biological Opinions).

Critical to the protection of steller’s and spectacled eiders is hunter proficiency at distinguishing among eider species, particularly on-the-wing identification. Eider Conservation Strategy at 7. During the summer months, the protected eiders inhabit many of the same areas as the unprotected eiders and often fly in mixed-species flocks. Eider Conservation Strategy at 7--8; Biological Opinion at 15. The agency conceived a host of outreach actions aimed at educating North Slope residents about eider conservation in general, and developing eider identification skills in particular, including on-the-wing identification proficiency.³ Eider Conservation Strategy;

(...continued)

letter, FWS supplied supporting information by e-mail and telephone. E-mail from Assistant Regional Director, Migratory Birds and State Programs, Alaska Region, FWS, to Managing Associate General Counsel, GAO, *Subject: Threatened Eider Conservation in Alaska*, June 30, 2009 (Assistant Director E-mail); Telephone Conversation between Assistant Regional Director, Migratory Birds and State Programs, Alaska Region, FWS, and Assistant General Counsel for Appropriations Law and Staff Counsel, GAO, July 7, 2009 (Assistant Director Phone Conversation).

² In the past, Native Alaskans were allowed to hunt steller’s and spectacled eiders even though they are listed as threatened species. See 16 U.S.C. § 1539(e). FWS has suspended hunting by Native Alaskans because the species have declined to dangerously low levels. See *Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2009 Season*, 74 Fed. Reg. 23336 (May 19, 2009) (*to be codified at* 50 C.F.R. pt. 92).

³ For an example of eider identification materials, see FWS, *Steller’s Eiders Need Your Help – Do Not Shoot Them!*, available at <http://alaska.fws.gov/ambcc/ambcc/Eiders.pdf> (last visited Aug. 7, 2009).

Memorandum of Understanding Between the North Slope Borough, Ukpeagvik Inupiat Corporation, the Inupiat Community of the Arctic Slope, and the Native Village of Barrow and Department of the Interior, The U.S. Fish and Wildlife Service, Sept. 26, 2008. FWS has convened public meetings in North Slope villages, hosted public radio talk shows, submitted articles to local newspapers, distributed pamphlets and fliers, and displayed posters in affected villages. Request Letter; Assistant Director E-mail.

However, FWS explains that while the agency is undertaking an aggressive education strategy, efforts to date have made very little difference. Request Letter. In spring 2009, FWS implemented a multifaceted conservation strategy aimed at protecting threatened steller's and spectacled eiders. Eider Conservation Strategy. For example, because of 2008 mortality rates, FWS this year plans to continue its meetings with residents in four villages where protected eiders historically reside during summer months as well as with hunters at the annual Duck Camp where a large number of steller's eiders were killed last year. Eider Conservation Strategy at 10. FWS also plans a sustained law enforcement presence, including 24-hour coverage in Barrow. *Id.* at 11. In addition, FWS is considering educating hunters by distributing caps and other items at public outreach meetings where agency staff are speaking about eider conservation. Assistant Director E-mail. These items will contain images of the protected eiders and simple conservation messages. According to FWS, standard marketing methods such as posters, newspapers, and fliers do not work in the North Slope, and in rural Alaska there are no "freeways, billboards, etc. that flood mainstream America." Request Letter. FWS notes that most North Slope residents wear baseball caps for protection from cold, wind, and bright 24-hour summer daylight, and that T-shirts are typical apparel. Assistant Director E-mail. FWS hopes that the items will focus public awareness on the gravity of the eiders' situation. Assistant Director Phone Conversation. FWS expects that the villagers and hunters receiving these items will become "walking billboard[s] for [eider] conservation messages" as the recipients use the items on a daily basis in the broader community, and that these items will serve as constant reminders to hunters, who will see the items whether or not they attended an outreach meeting. *Id.*; Assistant Director E-mail.

DISCUSSION

At issue here is whether FWS may use appropriations to distribute items that would otherwise be considered personal gifts. As a general rule, appropriated funds may not be used for personal gifts without specific statutory authority. B-307892, Oct. 11, 2006. Because of the clear potential for abuse, we find exceptions to the general rule only rarely. We recognize that, occasionally, some gift items in some contexts may advance legitimate agency goals and policies as opposed to simply attracting attention to the agency and its programs. We will consider exceptions to the general rule only after careful consideration of particular factual circumstances in which an agency can demonstrate that the gift item will directly advance an agency's statutory mission and objectives. *See, e.g.* B-310981, Jan. 25, 2008 (National Telecommunications and Information Administration's purchase of gift cards as an

incentive to encourage participation in a survey of its digital converter box coupon program was a necessary expense of the agency's duty to establish and administer a program subsidizing the purchase of analog-to-digital converter boxes); 62 Comp. Gen. 566 (1983) (Army Chaplain's Office purchase of calendars publicizing scheduled services was a necessary expense of the Chaplain's duty to coordinate religious services for uniformed servicemen and their families); B-193769, Jan. 24, 1979 (National Park Service purchase of quarried volcanic rocks was a necessary expense of maintaining a national monument by deterring visitors from removing naturally occurring lava rock found along the park's roads and trails). If the gift item serves only to attract attention to the agency, the well-established rule is that the expenditure is not an authorized use of appropriated funds.

In this case, FWS has broad authority to establish policies and programs "necessary and desirable" to implement fish and wildlife laws and protect threatened species. With its multifaceted eider conservation program, FWS is attempting to protect two threatened species by educating hunters on accurate species identification and asking them to be more discriminate in the birds they take. As explained above, FWS has already tried numerous, more traditional approaches to educate North Slope communities, yet the population of threatened eiders remains in decline because of hunting. Continuing to identify ways to educate residents and hunters and achieve its goal of eider conservation, FWS proposes to distribute at outreach meetings caps and other items that will contain images of the protected eiders and conservation messages. Because of the nature of these items, FWS expects that they will remain in use and on view in North Slope villages throughout the hunting season. Clearly, these items are personal gifts to the recipients. From the government's perspective, however, these items will serve as reminders to residents and hunters of the protected status of the eiders and will aid in identifying the protected eiders and distinguishing them from unprotected species.

The distribution of items that include conservation messages and images of threatened eiders advances FWS's objective of educating the recipients of the items as well as others who view those items even though they may not have attended an outreach meeting, and FWS's ultimate objective of protecting threatened species. In our view, FWS, in response to the effects of hunting on the population of threatened eiders and having had limited success with more traditional means of educating hunters, has identified an approach strategically designed to reach and educate a

particular community of hunters in furtherance of its eider conservation plan. We do not object, therefore, to FWS's use of its appropriations for this purpose.

A handwritten signature in black ink, appearing to read 'D. Gordon', with a long horizontal flourish extending to the right.

Daniel I. Gordon
Acting General Counsel