United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

B-286414

October 12, 2000

The Honorable Robert C. Smith
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Don Young
Chairman
The Honorable George Miller
Ranking Minority Member
Committee on 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-AG08). We received the rule on September 25, 2000. It was published in the Federal Register as a final rule on September 28, 2000. 65 Fed. Reg. 58314.

The final rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which states previously deferred selection.

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 Barry Hill, Director, Natural Resources and Environment. Mr. Hill can be reached at (202) 512-3841.

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Mr. Kenneth L. Smith
Acting Assistant Secretary for Fish
and Wildlife and Parks
Department of the Interior

ENCLOSURE

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; LATE SEASONS AND
BAG AND POSSESSION LIMITS FOR
CERTAIN MIGRATORY GAME BIRDS"
(RIN: 1018-AG08)

(i) Cost-benefit analysis

According to the cost-benefit analysis contained in the filing, the migratory bird hunting regulations (of which these regulations are a part) collectively have an economic impact in excess of an estimated $600 million in direct expenditures. For example, the analysis indicates that $293.3 million will be spent by duck hunters on equipment, $144.3 million on food, $147.1 million on transportation and lodging, plus $73.8 million "other" direct expenditures. Without these regulations, the Service opines that the resources spent in game bird hunting would, to some degree, be spent on other recreational activities.

The analysis notes that the rules impose some costs of administration and enforcement on the states, but as the states also derive revenue from licensing, the net cost, if any, is not quantifiable.

(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" updated with information from 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 so limited because the regulation's impact is primarily beneficial to a very substantial number of small businesses.

The analysis provided by the Service indicates that (1) the regulations are promulgated annually to set frameworks for harvest levels and seasons for migratory bird hunting; (2) the states then issue regulations within the established framework; and (3) under the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq., no legal migratory bird hunting could take place without the regulations.

The analysis notes that small entities shared in the estimated $429-$1,084 million spent by migratory bird hunters during the 1998-1999 season. There are no new compliance requirements for small businesses resulting from the regulations. In

addition, since the regulations are largely beneficial to small entities, the Service indicates that no special treatment was considered for them.

(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 a federal mandate, as defined in title II, of more than $100 million in any one year on either state, local, or tribal governments or the private sector.

(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 April 25, 2000, through August 22, 2000, the Service published five Notices of Proposed Rulemaking (NPRM) covering the various aspects of the migratory bird hunting regulations. The comments received in response to the NPRM's are responded to 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 Programs have been approved by the Office of Management and Budget (OMB) and assigned Control No. 1018-0015, with the expiration date of September 30, 2001. OMB has also approved the Sandhill Crane Harvest Questionnaire, Control No. 1018-0023, and the expiration date is July 31, 2003.

Statutory authorization for the rule

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

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

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