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September 16, 2009

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 Doc Hastings
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 2009-10 Early 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; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2009-10 Early Season” (RIN: 1018-AW31). We received the rule on August 31, 2009. It was published in the *Federal Register* as a final rule on September 2, 2009. 74 Fed. Reg. 45,343.

The final rule prescribes special early season migratory bird hunting regulations for certain tribes on federal Indian reservations, off-reservation trust lands, and ceded lands. The final rule also allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

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 of the procedures taken 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 1, 2009.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing 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; MIGRATORY BIRD HUNTING
REGULATIONS ON CERTAIN FEDERAL INDIAN RESERVATIONS
AND CEDED LANDS FOR THE 2009-10 EARLY SEASON"
(RIN: 1018-AW31)

(i) Cost-benefit analysis

The Service relied on the economic analysis that was prepared for the 2008-2009 season, because it chose to issue identical regulations to past seasons for ducks and made only minor modifications to the season frameworks for some other species. According to the Service, the modifications will not significantly change the economic impacts of the rule which were not quantified for other species. The Service estimated a consumer surplus of \$205--\$270 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 2008. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns. The 2008 Analysis 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 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 a significant regulatory action 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.

On April 10, 2009, the Service published in the *Federal Register* a request that tribes desiring special hunting regulations in the 2009-10 hunting season submit a proposal. 74 Fed. Reg. 16,339. The Service issued a proposed rulemaking on August 11, 2009. 74 Fed. Reg. 40,138. In the final rule, the Service states that it did not receive any comments on the proposed rule. 74 Fed. Reg. 45,343. The Service found “good cause” under section 553(d)(3) of title 5, allowing this final rule to take effect immediately on publication.

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 Migratory Bird Surveys and assigned control number 1018-0023, which expires on February 28, 2011. OMB has also approved the existing information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018-0124, which expires on January 31, 2010.

Statutory authorization for the rule

The rules concerning migratory bird hunting are authorized by the Migratory Bird Treaty Act, sections 703 to 711 of title 16, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule 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 the 2008-09 season.

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.