



Office of the General Counsel

B-278152, B-278210

October 14, 1997

The Honorable John H. Chafee
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: Migratory Bird Hunting; (1) Final Frameworks for Late-Season Migratory Bird Hunting Regulations; (2) 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 two major rules promulgated by the Department of the Interior, Fish and Wildlife Service. One is entitled "Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations" (RIN: 1018-AE14). We received the rule on September 22, 1997. It was published in the Federal Register as a final rule on September 26, 1997. 62 Fed. Reg. 50660. On September 26, 1997, we received the rule entitled "Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds" (RIN: 1018-AE14). This latter rule was published in the Federal Register on September 30, 1997. 62 Fed. Reg. 51298. Both rules were effective on their respective Federal Register publication dates pursuant to section 808(1) of title 5, United States Code.

These rules are part of a series of regulations dealing with the annual establishment of seasons, limits, and other regulations for migratory game bird hunting under amendments to 50 C.F.R. part 20.

The "final frameworks" rule establishes the final late-season frameworks from which states may select season dates, limits, and other options for the 1997-98 migratory bird hunting season. The Fish and Wildlife Service will publish the state selections as the final regulations for the current hunting season. The "late seasons" rule establishes the state selections.

Enclosed is our assessment of the Department of the Interior's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rules. Our review indicates that the Department of the Interior's Fish and Wildlife Service complied with the applicable requirements.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO evaluation work relating to the Department of the Interior is Victor Rezendes, Director for Energy, Resources, and Science Issues. Mr. Rezendes can be reached at (202) 512-3841.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Donald J. Barry
Acting Assistant Secretary for Fish
and Wildlife and Parks
Department of the Interior

ANALYSIS UNDER 5 U.S.C. §§ 801(a)(1)(B)(i)-(iv) OF MAJOR RULES
ISSUED BY
THE DEPARTMENT OF THE INTERIOR
ENTITLED
"MIGRATORY BIRD HUNTING; (1) FINAL FRAMEWORKS FOR LATE-SEASON
MIGRATORY BIRD HUNTING REGULATIONS"; (2) "LATE SEASONS AND
BAG AND POSSESSION LIMITS FOR CERTAIN MIGRATORY GAME BIRDS"
(RIN: 1018-AE14)

(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 \$400 million¹ in direct expenditures. For example, the analysis indicates that \$118.1 million will be spent by duck hunters on equipment, \$127.2 million on food, \$134.6 million on transportation and lodging, plus \$36.4 million "other" direct expenditures. Without these regulations, the Service opines that the resources spent in duck hunting would, to some degree, be spent on other recreational activities, so that the actual national economic development effect of the regulations may be less than \$100 million.

The analysis notes that the rules impose some costs of administration and enforcement on the state, 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," available from the Office of Management and Budget (OMB) upon request. 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 the regulations are promulgated annually to set frameworks for harvest levels and seasons for migratory bird hunting; that the states then issue regulations within the established framework; and

¹Based on data from the 1995 Waterfowl Harvest and Hunter Activity Administrative Report and the per capita and per day expenditure data reported in the 1991 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

that 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 objective noted by the analysis is to ensure that harvest levels are commensurate with the current population of each species, based on surveys conducted in the spring and early summer.

The analysis notes that as many as 738,000 small entities will share in the estimated \$254-\$592 million spent by migratory bird hunters during the 1997-98 season. There are no new compliance requirements for small business 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 Service has certified that the rulemaking will not impose a cost of \$100 million or more on local or state governments or private entities.

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

The Service notes that National Environmental Policy Act (NEPA) considerations are covered by its "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds," which was filed with the Environmental Protection Agency on June 9, 1988. The Service also asserts that pursuant to Endangered Species Act considerations, it designs hunting regulations to "remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species." In addition, the Service declares that the Department of the Interior has certified to OMB that the regulations meet the applicable standards of E.O. 12778, and that the regulations do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

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

The rules were promulgated through the general notice of proposed rulemaking procedures of the Act, 5 U.S.C. § 553. The Service afforded interested persons the opportunity to comment on the proposed rule, and the final rule addresses the comments.

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 OMB and have been assigned clearance number 1018-0015. The Service also states that the OMB approved the Sandhill Crane Harvest Questionnaire and has assigned clearance number 1018-0023.

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

Our review indicates that the Service adhered to the requirements of Executive Order 12866. Collectively, the rules for migratory bird hunting are reviewed by OMB and are considered to be economically significant.