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October 8, 2010

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Nick J. Rahall II
Chairman
The Honorable Doc Hastings
Ranking 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 (Interior), Fish and Wildlife Service, entitled “Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds” (RIN: 1018-AX06). We received the rule on September 23, 2010. It was published in the *Federal Register* as a final rule on September 24, 2010. 75 Fed. Reg. 58,994.

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. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This final rule permits the taking of designated species during the 2010-11 season.

Enclosed is our assessment of Interior’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 procedural steps taken indicates that Interior complied with the applicable requirements.

Section 808(1) of title 5, United States Code, exempts any rule that “establishes, modifies, opens, closes, or conducts a regulatory program for 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 relating to hunting and, therefore, the 60-day delay is not applicable. This final rule is effective on September 25, 2010.

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: Ronald W. Kokel
Wildlife Biologist
U.S. Fish and Wildlife Service
Department of the Interior

ENCLOSURE

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-AX06)

(i) Cost-benefit analysis

Interior relied on the economic analysis that was prepared for the 2008-09 season, because it chose to issue identical regulations to past seasons for ducks, and made only minor modifications to the season frameworks for other species. According to Interior, the modifications will not significantly change the economic impacts of the rule which were not quantified for other species. Interior 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

Interior determined that this final rule will have a significant impact on a substantial number of small entities. Interior relied on a small entity flexibility analysis that was last updated in 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 analysis 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

Interior certified that this final rule will not impose a cost of \$100 million or more in any given year on local or state government or private entities.

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

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

Interior published a series of proposed rules relating to migratory bird hunting from May 13, 2010, to September 23, 2010. 75 Fed. Reg. 27,144 (May 13, 2010); 75 Fed.

Reg. 32,872 (June 10, 2010); 75 Fed. Reg. 44,856 (July 29, 2010); 75 Fed. Reg. 52,398 (August 25, 2010); 75 Fed. Reg. 58,250 (September 23, 2010). Interior received comments on these proposed rules to which they respond in the final rule. Interior found “good cause” under section 553(d)(3) of title 5, allowing this final rule to take effect immediately upon publication.

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

There are no new information collections under this final 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.

Statutory authorization for the rule

Interior promulgated this final rule under authority of the Migratory Bird Treaty Act, as amended, 16 U.S.C. §§ 703-711.

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

OMB determined that this rule is a significant regulatory action and, therefore, has reviewed the rule under Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

Interior determined that the regulations that prescribe frameworks from which the states make selections regarding the hunting of migratory birds do not have sufficient federalism implications to warrant the preparation of a federalism assessment.