



441 G St. N.W.
Washington, DC 20548

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October 28, 2013

The Honorable Barbara Boxer
Chairman
The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Doc Hastings
Chairman
The Honorable Peter DeFazio
Ranking 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 2013-14 Late 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, entitled "Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2013-14 Late Season" (RIN: 1018-AY87). We received the rule on September 20, 2013. It was published in the *Federal Register* as a final rule on September 23, 2013. 78 Fed. Reg. 58,233.

The final rule prescribes special late-season migratory bird hunting regulations for certain tribes on federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service recognition of tribal authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest, at levels compatible with populations and habitat conditions.

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 became effective on September 21, 2013.

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 2013-14 LATE SEASON"
(RIN: 1018-AY87)

(i) Cost-benefit analysis

Interior prepared an economic analysis for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available. This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, Interior chose alternative 3, with an estimated consumer surplus across all flyways of \$317.8–\$416.8 million. Interior also pointed out that it also chose alternative 3 for the previous seasons since 2009-10. Interior included the 2013–14 analysis in the record.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 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 2013. 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 2013 analysis was based on the 2011 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 \$1.5 billion at small businesses in 2013.

(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 April 9, 2013, to August 28, 2013, including a special migratory bird hunting regulation for the 2013-14 hunting season for certain Indian tribes. 78 Fed. Reg. 47,136 (Aug. 2, 2013). 78 Fed. Reg. 21,200 (April 9, 2013); 78 Fed. Reg. 35,844 (June 14, 2013); 78 Fed. Reg. 45,376 (July 26, 2013); 78

Fed. Reg. 52,337 (Aug. 22, 2013); 78 Fed. Reg. 53,218 (Aug. 28, 2013). 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 (PRA), 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 numbers 1018-0010—Mourning Dove Call Count Survey, which expires on April 30, 2015; 1018-0019—North American Woodcock Singing Ground Survey; which expires on April 30, 2015; and 1018-0023—Migratory Bird Surveys, which expires on April 30, 2014.

Statutory authorization for the rule

Interior promulgated this final rule under authority of the Migratory Bird Treaty Act (July 3, 1918), 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.