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B-330317

September 7, 2018

The Honorable John Barrasso  
Chairman  
The Honorable Thomas R. Carper  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Rob Bishop  
Chairman  
The Honorable Raúl M. Grijalva  
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 2018-19 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 2018-19 Season" (RIN:1018-BB73). We received the rule on August 21, 2018. It was published in the *Federal Register* as a final rule on August 24, 2018, with an effective date of August 24, 2018. 83 Fed. Reg. 42,789.

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

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, any rule that "establishes, modifies, closes, or conducts a regulatory program for commercial, recreational, or subsistence activity relating to hunting, fishing, or camping" is exempt from the 60-day delay requirement. 5 U.S.C. § 808(1). This rule relates to hunting and, therefore, is exempt from the 60-day delay requirement.

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. 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 2018-19 SEASON”  
(RIN: 1018-BB73)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (Service) prepared an economic analysis for the 2018–19 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 2017–18 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2017–18 season. For the 2018–19 season, the Service chose the third alternative, with an estimated consumer surplus across all flyways of \$334 million to \$440 million. The Service pointed out in the final rule that it has also chosen the third alternative for all previous seasons since 2009-10. The Service included the 2018–19 analysis in the record for this rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Service determined that this final rule will have a significant impact on a substantial number of small entities. The Service relied on a small entity flexibility analysis that was last updated in 2018. 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 2018 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 2018.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

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

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

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

The Service stated that the final rule is the final in the series of proposed and final rulemaking documents for Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2018-19 season. The Service published a proposed rule on May 23, 2018. 83 Fed. Reg. 23,869. The Service received five comments which were addressed in the final rule. The Service stated states and Tribes need sufficient time to conduct their own public process to select season dates and limits; to communicate those selections to the Service; and establish and publicize the necessary regulations and procedures to implement their decisions. Because of this, the Service stated if there were a delay in the effective date of the rule, states and Tribes might not be able to meet their own administrative needs and requirements. Therefore, the Service found good cause to waive the delay and make the rule effective upon publication. See 5 U.S.C. § 553(d)(3).

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

The Service determined that there are no new information collections under this final rule that would require Office of Management and Budget (OMB) approval. The Service stated that OMB has approved the existing information collection requirements associated with migratory bird surveys and assigned control numbers: 1018-0019—North American Woodcock Singing Ground Survey (expires June 30, 2021); 1018-0023—Migratory Bird Surveys (expires August 31, 2020); and 1018-0171—Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20 (expires June 30, 2021). The Migratory Bird Surveys include the Migratory Bird Harvest Information Program, the Migratory Bird Hunter Surveys, the Sandhill Crane Survey, and the Parts Collection Survey.

Statutory authorization for the rule

The Service stated that it promulgated this rule pursuant to 16 U.S.C. §§ 703-712 and 16 U.S.C. §§ 742a-j.

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

OMB has reviewed this rule and has determined that this rule is significant because it would have an annual effect of \$100 million or more on the economy.

Executive Order No. 13,132 (Federalism)

The Service determined that these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.