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October 3, 2022

The Honorable Brian Schatz
Chairman
The Honorable Lisa Murkowski
Vice Chairman
Committee on Indian Affairs
United States Senate

The Honorable Raúl M. Grijalva
Chairman
The Honorable Bruce Westerman
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 2022–23 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 (FWS) entitled “Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2022–23 Season” (RIN: 1018-BF07). We received the rule on September 20, 2022. It was published in the *Federal Register* as a final rule on August 31, 2022. 87 Fed. Reg. 53404. The effective date is August 31, 2022.

According to FWS, this final rule prescribes special migratory bird hunting regulations for certain tribes on federal Indian reservations, off-reservation trust lands, and ceded lands. FWS stated that this rule responds to tribal requests for FWS’s recognition of their authority to regulate hunting under established guidelines. FWS also stated that this rule 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). The 60-day delay in effective date can be waived, however, for 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. 5 U.S.C. § 808(1). Here, FWS stated that this rule establishes hunting seasons; thus FWS did not defer the effective date in accordance with 5 U.S.C. 808(1).

Enclosed is our assessment of FWS’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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Gregory W. Fleming
Wildlife Biologist
Fish and Wildlife Service

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 2022–23 SEASON”
(RIN: 1018-BF07)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (FWS) prepared an economic analysis for this final rule. According to FWS, this analysis provides consumer surplus estimates of three alternatives for duck hunting regulations. FWS stated that the duck hunting regulatory alternatives were (1) issue restrictive regulations allowing fewer days than those issued during the 2021–22 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations, similar to the regulations in the 2021–22 season. FWS chose alternative 3 for the 2022–23 season, with an estimated consumer surplus across all flyways of \$329 million. FWS also stated that it chose alternative 3 for the 2009–10 through 2021–22 seasons.

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

FWS determined that the final rule will have a significant economic impact on a substantial number of small entities under RFA. FWS estimated that migratory bird hunters would spend approximately \$2.2 billion at small businesses in 2022.

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

FWS determined and 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.*

On June 14, 2022, FWS published a proposed rule. 87 Fed. Reg. 35942. According to FWS, it received one comment on its proposed rule. FWS stated that the commenter requested not to allow the killing of migratory birds. FWS also stated that it addressed this one comment in its final rule to set 2022–23 frameworks for migratory bird hunting regulations. 87 Fed. Reg. 42598 (July 15, 2022).

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

FWS stated that this rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB). FWS also stated that OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB Control Numbers: 1018-0019, “North American Woodcock Singing Ground Survey”; 1018-0023, “Migratory Bird Surveys, 50 CFR 20.20”; and 1018-0171, “Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR Part 20.”

Statutory authorization for the rule

FWS promulgated this final rule pursuant to sections 703 *et seq.*, and 742a–j of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

According to FWS, OMB’s Office of Information and Regulatory Affairs determined that the annual migratory bird hunting regulations are significant because they have an annual effect of \$100 million or more on the economy.

Executive Order No. 13132 (Federalism)

FWS determined that this final rule would not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of federal or state governments, or intrude on state policy or administration. Therefore, according to FWS, the final rule will not have significant federalism effects and it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.