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B-329366

September 11, 2017

The Honorable John Barrasso
Chairman
The Honorable Tom 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 2017-18 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 2017-18 Season” (RIN:1018-BB40). We received the rule on August 29, 2017. It was published in the *Federal Register* as an interim final rule on August 31, 2017, with an effective date of September 1, 2017. 82 Fed. Reg. 41,344.

The interim 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 in recognition of their authority to regulate hunting under established guidelines.

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. Our review of the procedural steps taken indicates that the Service complied with the applicable requirements.

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 2017-18 SEASON”
(RIN: 1018-BB40)

(i) Cost-benefit analysis

The Fish and Wildlife Service (Service) 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, the Service chose the third alternative, with an estimated consumer surplus across all flyways of \$317.8 million to \$416.8 million. For the 2017–18 season, the Service also chose the third alternative. 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 2013–14 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 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

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 provisions in this interim final rule are the same as those set forth in their September 9, 2016, final rule. 81 Fed. Reg. 62,404. The Service also stated that it used the provisions of the September 9, 2016, final rule because it is the most recent Tribal final rule and the public is familiar with it, having already commented on it with the exception of the specific 2017-18 season dates.

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 May 31, 2018) and 1018–0023—Migratory Bird Surveys (expires August 31, 2020). 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. §§ 742 a-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.