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September 21, 2021

The Honorable Brian Schatz
Chairman
The Honorable Lisa Murkowski
Ranking Member
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 2021-22 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 2021–22 Season” (RIN: 1018-BE34). We received the rule on August 8, 2021. It was published in the *Federal Register* as a final rule on August 17, 2021. 86 Fed. Reg. 45909. The effective date is August 17, 2021.

According to the Service, this rule prescribes special migratory bird hunting regulations for certain Tribes on Federal Indian Reservations, off-reservation trust lands, and ceded lands. The Service stated that the rule responds to Tribal requests for the Service’s recognition of their authority to regulate hunting under established guidelines. The Service stated further that the 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). However, any rule that “establishes, modifies, opens, closes, or conducts a regulatory program for a 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). According to the Service, 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 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: Eric L. Kershner
Chief, Branch of Conservation,
Permits, and Regulations
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 2021-22 SEASON”
(RIN: 1018-BE34)

(i) Cost-benefit analysis

The Department of the Interior, Fish, and Wildlife Service (Service) conducted an economic analysis for this final rule. The Service stated that the cost and benefits of the alternative regulations it considered are measured against a baseline of no hunting. The Service also stated that not allowing hunting would result in substantial loss in support for migratory game bird population monitoring and habitat conservation, management, and restoration projects. The Service stated further that the regulations are similar to the 2020–2021 regulations. See 85 Fed. Reg. 53247 (Aug. 28, 2020). The Service estimates that the rule will create a total consumer surplus of \$314 million. According to the Service, states also derive revenue from licenses and sales taxes on hunting supplies purchased by hunters, but the net effect on state resources is uncertain. These taxes represent a transfer of income from hunters to states.

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

The Service stated that this final rule will have a significant economic impact on a substantial number of small entities under RFA, and it prepared a Final Regulatory Flexibility Analysis. The analysis included the following: (1) the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the agency’s response to comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comments; (4) a description and estimate of the number of small entities to which the rule will apply; (5) a description of the projected reporting, recordkeeping, and other compliance requirements for small entities; (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes; and (7) a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

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

The Service stated that it has determined and certified that this final rule will not impose a cost of \$100 million or more (adjusted annually for inflation) 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.*

On October 9, 2020, the Service published a proposed rule. 85 Fed. Reg. 64097. The Service also stated that it established what it concluded were the longest periods possible for public comment and the most opportunities for public involvement. The Service stated further that it provided notification of its participation in multiple Flyway Council meetings, opportunities for additional public review and comment on all Flyway Council proposals for regulatory change, and opportunities for additional public review during the Service Regulations Committee meeting. Therefore, according to the Service, sufficient public notice and opportunity for involvement has been given to affected persons regarding the migratory bird hunting frameworks for the 2021-2022 hunting season. Further, according to the Service, “good cause” exists, within the meaning of the Act, 5 U.S.C. § 553(d)(3), for this final rule to take effect immediately upon publication.

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

The Service stated that this final rule contains existing and new information collections that it has submitted to the Office of Management and Budget (OMB) for review and approval. The Service also stated that OMB has reviewed and 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;” and 1018-0171, “Establishment of Annual Migratory Bird Hunting Seasons.” The Service estimates that the “Establishment of Annual Migratory Bird Hunting Seasons” (1018-0171) information collection will impose 9,878 burden hours on respondents, but there are no associated burden costs.

Statutory authorization for the rule

The Service 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)

The Service stated that the Office of Information and Regulatory Affairs has reviewed documents related to this final rule and has 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)

The Service stated that this final rule will 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. The Service further stated that the rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.