



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-322527

October 6, 2011

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Doc Hastings
Chairman
The Honorable Edward Markey
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 2011-12 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 (Interior), Fish and Wildlife Service, entitled “Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2011-12 Late Season” (RIN: 1018-AX34). We received the rule on September 22, 2011. It was published in the *Federal Register* as a final rule on September 26, 2011. 76 Fed. Reg. 59,298.

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. The final rule also 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 is effective on September 24, 2011.

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: Ronald 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 2010-11 LATE SEASON"
(RIN: 1018-AX34)

(i) Cost-benefit analysis

Interior relied on the economic analysis that was prepared for the 2008-09 season, because it chose to issue identical regulations to past seasons for ducks, and made only minor modifications to the season frameworks for other species. According to Interior, the modifications will not significantly change the economic impacts of the rule which were not quantified for other species. Interior estimated a consumer surplus of \$205-270 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 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 2008. 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 2008 analysis was based on the 2006 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 \$1.2 billion at small businesses in 2008.

(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 proposed rule in the *Federal Register* on April 8, 2011, requesting that tribes desiring special hunting regulations in the 2011-12 hunting

season submit a proposal to Interior including, in part, details on anticipated harvest and methods to measure or monitor harvest. 76 Fed. Reg. 19,876. On August 8, 2011, Interior published proposed special migratory bird hunting regulations for the 2011-12 hunting season for certain Indian tribes in the *Federal Register*. 76 Fed. Reg. 48,694. On September 1, 2011, Interior published a final rule governing the early season. 76 Fed. Reg. 54,676. Interior received only one comment on the August 8th proposed rule to which they respond in the September 1, 2011, 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, 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 number 1018-0023, which expires on April 30, 2014. OMB has also approved the existing information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary household survey used to determine levels of subsistence in Alaska, and assigned control number 1018-0124, which expires on April 30, 2013.

Statutory authorization for the rule

Interior promulgated this final rule under authority of the Migratory Bird Treaty Act, 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.