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August 8, 2016

The Honorable Jim Inhofe
Chairman
The Honorable Barbara Boxer
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; Seasons and Bag and Possession Limits for Certain Migratory Game Birds*

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; Seasons and Bag and Possession Limits for Certain Migratory Game Birds" (RIN: 1018-BA70). We received the rule on July 26, 2016. It was published in the *Federal Register* as a final rule on July 25, 2016. 81 Fed. Reg. 48,648.

The final rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for migratory game birds. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2016-17 season.

In general, the Congressional Review Act requires a 60-day delay in 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 commercial, recreational, or subsistence activity related 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. This final rule became effective on July 25, 2016.

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; SEASONS AND BAG
AND POSSESSION LIMITS FOR
CERTAIN MIGRATORY GAME BIRDS”
(RIN: 1018-BA70)

(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 2016–17 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 determined 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.

On August 6, 2015, the Service published a proposal to amend the regulations governing migratory bird hunting and opened the public comment period for 2016-17 migratory game bird

hunting regulations. 80 Fed. Reg. 47,388. On October 20 and 21, 2015, the Service held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory game birds and developed recommendations for the 2016–17 regulations for these species. On December 11, 2015, the Service published the proposed frameworks for the 2016–17 season migratory bird hunting regulations. 80 Fed. Reg. 77,088. On March 28, 2016, the Service published the final season frameworks for migratory game bird hunting regulations, from which state wildlife conservation agency officials selected season hunting dates, hours, areas, and limits for 2016-17 seasons. 81 Fed. Reg. 17,302. The Service noted that it previously addressed all comments in the March 28, 2016, *Federal Register* publication.

The Service stated that it believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding the migratory bird hunting frameworks for the 2016–17 hunting seasons and that, if there were a delay in the effective date of this rule, states might not be able to meet their own administrative needs and requirements. For these reasons, the Service found that “good cause” exists under the Act for this rule to take effect immediately upon publication.

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 June 30, 2017). 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 promulgated this final rule under the authority of the Migratory Bird Treaty Act, as amended. 16 U.S.C. §§ 703–712.

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

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

Executive Order No. 13,132 (Federalism)

The Service determined 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.