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B-328442

September 28, 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; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2016-17 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 2016-17 Season” (RIN: 1018-BA70). We received the rule on September 15, 2016. It was published in the *Federal Register* as a final rule on September 9, 2016. 81 Fed. Reg. 62,404.

The final rule prescribes special migratory bird hunting regulations for certain tribes on federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for FWS recognition of tribal authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest, at levels compatible with populations and habitat conditions.

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 September 9, 2016.

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. Our review of the procedural steps taken indicates that FWS 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 2016-17 SEASON"
(RIN: 1018-BA70)

(i) Cost-benefit analysis

The Fish and Wildlife Service (FWS) 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, FWS 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, FWS also chose the third alternative. FWS pointed out in the final rule that it has also chosen the third alternative for all previous seasons since 2009-10. FWS 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

FWS determined that this final rule will have a significant impact on a substantial number of small entities. FWS 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

FWS 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.*

On May 27, 2016, FWS published a proposed rule. 81 Fed. Reg. 34,226. FWS received nine comments on this proposed rule to which they respond in the final rule. FWS found "good

cause” under section 553(d)(3) of title 5, allowing this final rule to take effect less than 30 days after the date of publication.

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

FWS determined that there are no new information collections under this final rule that would require the Office of Management and Budget’s (OMB) approval. FWS 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

FWS promulgated this final rule under authority of sections 703 to 712 and 742a-j of title 16, United States Code.

Executive Order Nos. 12,866 and 13,563 (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)

FWS determined that this final rule does 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, and, therefore, does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.