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January 22, 2020

The Honorable John Barrasso
Chairman
The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Raúl Grijalva
Chairman
The Honorable Rob Bishop
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Fish and Wildlife Service: Migratory Bird Hunting; Final Frameworks for Migratory Bird Hunting Regulations*

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; Final Frameworks for Migratory Bird Hunting Regulations" (RIN: 1018-BD10). We received the rule on January 8, 2020. It was published in the *Federal Register* as a final rule on August 19, 2019. 84 Fed. Reg. 42996.

The final rule prescribes final frameworks from which states may select season dates, limits, and other options for the 2019-20 migratory bird hunting seasons. This final rule is meant to facilitate the states' selection of hunting seasons and to further the annual establishment of the migratory bird hunting regulations. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in hunting seasons. The Service views these frameworks as necessary to allow state selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

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 is related to hunting and, therefore, is exempt from the 60-day delay requirement. The effective date of the rule is August 19, 2019.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Eric L. Kershner
Chief, Branch of Conservation, Permits, and Regulations
U.S. Fish & 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; FINAL FRAMEWORKS
FOR MIGRATORY BIRD HUNTING REGULATIONS”
(RIN: 1018-BD10)

(i) Cost-benefit analysis

The Fish and Wildlife Service (Service) prepared an economic analysis for the 2019–20 season. The Service stated that its analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available. The Service’s 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 2018–19 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2018–19 season. For the 2019–20 season, the Service chose the third alternative, with an estimated consumer surplus across all flyways of \$334 million to \$440 million with a mid-point estimate of \$387 million.

(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 2019. 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 2019 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 2019.

(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 June 14, 2018, the Service published a proposal to amend the regulations governing migratory bird hunting. 83 Fed. Reg. 27836. On September 21, 2018, the Service published a second document providing proposals for migratory bird hunting regulations. 83 Fed. Reg. 47868. On October 16 and 17, 2018, 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 2019–20 regulations for these species. On April 17, 2019, the Service published the proposed frameworks for the 2019–20 season migratory bird hunting regulations. 84 Fed. Reg. 16152. The Service noted that there are no substantive changes from the April 17, 2019, proposed rule, with the exception of changes made in response to the John D. Dingell, Jr. Conservation, Management, and Recreation Act, which was signed into law on March 12, 2019. Pub. L. No. 116-9, 133 Stat. 580 (Mar. 12, 2019).

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 2019–20 hunting seasons and that, if there were a delay in the effective date of this rule, the 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 *et seq.*

The Service stated that this final rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB). The Service stated that OMB had previously approved the information collection requirements associated with migratory bird surveys and assigned control numbers: 1018–0019—“North American Woodcock Singing Ground Survey” (expires June 30, 2021); 1018–0023—“Migratory Bird Surveys, 50 C.F.R. 20.20” (expires August 31, 2020) including Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey; and 1018-0171—“Establishment of Annual Migratory Bird Hunting Seasons, 50 C.F.R. part 20” (expires June 30, 2021).

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.