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August 31, 2022

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
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; Final 2022–23 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 (FWS) titled “Migratory Bird Hunting; Final 2022–23 Frameworks for Migratory Bird Hunting Regulations” (RIN: 1018-BF07). We received the rule on August 16, 2022. It was published in the *Federal Register* as a final rule on July 15, 2022. 87 Fed. Reg. 42598. The effective date is July 15, 2022.

According to FWS, it is establishing the 2022–2023 final frameworks from which states may select season dates, limits, and other options for the 2022–2023 migratory game bird hunting season for certain migratory game birds. FWS stated that it prescribes, on an annual basis, outside limits (which it calls “frameworks”) within which states may select hunting seasons. According to FWS, frameworks specify the outside dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. FWS stated that these frameworks are necessary to allow state selections of seasons and limits and to allow harvest at levels compatible with migratory game bird population status and habitat conditions. FWS also stated that migratory game bird hunting seasons provide opportunities for recreation and sustenance, and aid federal, state, and tribal governments in the management of migratory game birds.

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). The 60-day delay in effective date can be waived, however, for any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping. 5 U.S.C. § 808(1). In accordance with 5 U.S.C. § 808(1), FWS stated that it did not defer the effective date of this final rule because the rule establishes regulations for hunting.

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. 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: Gregory W. Fleming
Wildlife Biologist
Fish and Wildlife Service

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
TITLED
“MIGRATORY BIRD HUNTING; FINAL 2022–23 FRAMEWORKS
FOR MIGRATORY BIRD HUNTING REGULATIONS”
(RIN: 1018-BF07)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (FWS) prepared an economic analysis for the 2022–2023 migratory bird hunting season. FWS estimated the consumer surplus of three alternatives for duck hunting regulations. According to FWS, the Office of Management and Budget’s (OMB) Circular A-4, states that consumer surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit. FWS noted that the duck hunting regulatory alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2021–2022 season, (2) issue moderate regulations allowing more days than those in Alternative 1, and (3) issue liberal regulations similar to the regulations in the 2021–2022 season. FWS stated that for the 2021–2022 season, it chose Alternative 3, with an estimated consumer surplus across all flyways of \$270–\$358 million with a mid-point estimate of \$314 million.

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

According to FWS, this rule will have a significant economic impact on a substantial number of small entities under RFA. FWS estimated that migratory bird hunters would spend approximately \$2.2 billion at small businesses in 2022.

(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 rulemaking will not impose a cost of \$100 million or more in any given year on local or state government, or private entities. Therefore, FWS stated, this rule is not a significant regulatory action under the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

FWS stated that the process for promulgating annual regulations for the hunting of migratory game birds involves the publication of a series of proposed and final rulemaking documents. Accordingly, on August 31, 2021, FWS published a proposed rule titled, “Migratory Bird Hunting; Proposed 2022–23 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notification of Meetings.” 86 Fed. Reg. 48649. Additionally, FWS’s Service Regulation Committee (SRC) conducted an open meeting with the Flyway Council on April 6, 2021, and on September 28–29, 2021, to discuss preliminary issues concerning

2022–2023 proposed regulations. See 86 Fed. Reg. 15957 (Mar. 25, 2021) (announcing the April 6, 2021, meeting). On February 2, 2022, FWS published a proposed rule titled, “Migratory Bird Hunting; 2022–23 Frameworks for Migratory Bird Hunting Regulations.” 87 Fed. Reg. 5946. FWS stated that it considered all pertinent comments received, which includes comments submitted in response to both proposed rules and the September SRC meeting. FWS also stated that this final rule establishes final regulatory frameworks for migratory game bird hunting regulations for the 2022–2023 season and includes no substantive changes from the February 2, 2022, proposed rule except a minor correction.

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

According to FWS, this rule does not contain any new collection of information that requires approval by OMB under PRA. FWS stated that OMB has previously 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” (expires Feb. 29, 2024); 1018-0023, “Migratory Bird Surveys, 50 CFR 20.20” (expires Apr. 30, 2023); and 1018-0171, “Establishment of Annual Migratory Bird Hunting Seasons, 50 C.F.R. Part 20” (expires Oct. 31, 2023).

Statutory authorization for the rule

FWS promulgated this final rule pursuant to chapter 128 of the Migratory Bird Treaty Act, codified at sections 703–711 of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

According to FWS, OMB’s Office of Information and Regulatory Affairs has determined that this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

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