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September 7, 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; 2022–2023 Seasons 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 (FWS) titled “Migratory Bird Hunting; 2022–2023 Seasons for Certain Migratory Game Birds” (RIN: 1018-BF07). We received the rule on August 26, 2022. It was published in the *Federal Register* as a final rule on August 19, 2022. 87 Fed. Reg. 50965. The effective date is August 19, 2022.

According to FWS, this rule prescribes the seasons, hours, areas, and daily bag and possession limits for hunting migratory birds. FWS stated that taking of migratory birds is prohibited unless specifically provided for by annual regulations. FWS also stated that this rule permits the taking of designated species during the 2022–2023 season.

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; 2022–2023 SEASONS
FOR CERTAIN MIGRATORY GAME BIRDS”
(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 (estimates for other species are not quantified due to lack of data). 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 2022–2023 season, it chose alternative 3, with an estimated consumer surplus across all flyways of \$329 million. FWS also stated that it chose alternative 3 for the 2009–2010 through 2021–2022 seasons.

(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 determined and 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.*

On August 31, 2021, FWS published a proposed rule to amend title 50 of the Code of Federal Regulations at part 20. 86 Fed. Reg. 48649. Additionally, FWS stated that it conducted an open meeting with Flyway Council Consultants on September 28–29, 2021, at which participants reviewed information on the current status of migratory game birds and developed recommendations for the 2022–2023 regulations. On February 2, 2022, FWS published the proposed frameworks for the 2022–2023 season migratory bird hunting regulations. 87 Fed. Reg. 5946. On July 15, 2022, FWS published the final frameworks for migratory game bird hunting regulations, from which state wildlife conservation agency officials selected seasons,

hours, areas, and limits for hunting migratory birds during the 2022–2023 season. 87 Fed. Reg. 42598 (July 15, 2022 Final Rule). FWS stated that this final rule is the culmination of the annual rulemaking process allowing migratory game bird hunting, which started with the August 31, 2021, proposed rule. Lastly, FWS stated that this final rule sets the migratory game bird hunting seasons based on the input from the states and that it previously addressed all comments in the July 15, 2022 Final Rule.

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 the Office of Management and Budget (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 CFR Part 20” (expires Oct. 31, 2024).

Statutory authorization for the rule

FWS promulgated this final rule pursuant to sections 703–712, and 742a–j 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.