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B-335618

October 4, 2023

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Bruce Westerman
Chairman
The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Fish and Wildlife Service: Migratory Bird Hunting; Final 2023–24 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) entitled “Migratory Bird Hunting; Final 2023–24 Frameworks for Migratory Bird Hunting Regulations” (RIN: 1018-BF64). We received the rule on September 26, 2023. It was published in the *Federal Register* as a final rule on August 11, 2023. 88 Fed. Reg. 54830. The effective date is August 11, 2023.

According to FWS, it is establishing the 2023–24 final frameworks from which states may select season dates, limits, and other options for the 2023–24 migratory game bird hunting season. 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
ENTITLED
“MIGRATORY BIRD HUNTING;
FINAL 2023–24 FRAMEWORKS FOR MIGRATORY BIRD HUNTING REGULATIONS”
(RIN: 1018-BF64)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (FWS), prepared an economic analysis for the 2023–24 migratory bird hunting season. This analysis was based, according to FWS, on data from the 2011 and 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent years for which data are available. FWS stated the duck hunting regulatory alternatives are (1) not opening a hunting season, (2) issuing restrictive regulations that allow fewer days than the 2022–23 season, (3) issuing moderate regulations that allow more days than those in Alternative 2 but fewer days than the 2022–23 season, and (4) issuing liberal regulations that allow days similar to the 2022–23 season. For the 2023–24 season, FWS stated it chose Alternative 4, with an estimated consumer surplus across all flyways of \$356 million.

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

FWS stated that this final rule has a significant economic impact on a substantial number of small entities under RFA. According to FWS, an initial regulatory flexibility analysis was prepared to analyze the economic impacts of the annual hunting regulations on small business entities. This analysis, according to FWS, is updated annually. FWS stated that the primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. FWS further stated the 2022 analysis is based on the 2016 National Survey and the U.S. Department of Commerce’s County Business Patterns, from which it is 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 final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year and does not significantly or uniquely affect small governments.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to

Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

FWS does not discuss the Administrative Pay-As-You-Go Act of 2023 in the final rule.

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

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

On January 30, 2023, FWS published a proposed rule. 88 Fed. Reg. 6054. FWS stated it considered all pertinent comments received.

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 May 31, 2026); 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 703–711, 712, and 742 a–j of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FWS stated that this final rule is a significant regulatory action as defined by the Order, as amended by Executive Order No. 14094.

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.