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September 11, 2019

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

The Honorable Raúl M. 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; Seasons and Bag and Possession Limits 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 (Service) entitled “Migratory Bird Hunting; Seasons and Bag and Possession Limits for Certain Migratory Game Birds” (RIN:1018-BD10). We received the rule on August 28, 2019. It was published in the *Federal Register* as a final rule on August 28, 2019, with an effective date of August 28, 2019. 84 Fed. Reg. 45077.

The final rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for migratory game birds. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2019-20 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). However, any rule that “establishes, modifies, closes, or conducts a regulatory program for commercial, recreational, or subsistence activity relating 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.

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: 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; SEASONS AND BAG
AND POSSESSION LIMITS FOR CERTAIN
MIGRATORY GAME BIRDS”
(RIN: 1018-BD10)

(i) Cost-benefit analysis

The Fish and Wildlife Service (Service) prepared an economic analysis for the 2019–20 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 2017–18 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2017–18 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. The Service included the 2019–20 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

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. According to the Service, 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 and certified that this final rule will not impose a cost of \$100 million or more in any given year on local or state governments 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 proposed frameworks for the 2019-20 season migratory bird hunting regulations. 83 Fed. Reg. 27836. On September 21, 2018, the Service

published a second document that provided supplemental proposals for migratory bird hunting regulations. 83 Fed. Reg. 47868. The Service stated it 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 seasons over October 16-17, 2018. On August 19, 2019, the Service published final season frameworks for migratory game bird hunting regulations from which state wildlife conservation agency officials selected season hunting dates, hours, areas, and limits for the 2019-20 season. 84 Fed. Reg. 42996. The Service stated that it addressed all comments. The Service found “good cause” within the terms of 5 U.S.C. § 553(d)(3) to waive the 30-day delay in effective date under the Act.

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

The Service determined that there are no new information collections under this final rule that would require Office of Management and Budget (OMB) approval. The Service 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 June 30, 2021), 1018–0023—Migratory Bird Surveys (expires August 31, 2020), and 1018-0171—Establishment of Annual Migratory Bird Hunting Seasons (expires June 30, 2021).

Statutory authorization for the rule

The Service stated that it promulgated this rule pursuant to sections 703 to 712 and 742a to 742j of title 16, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

OMB has reviewed this rule and has determined that this rule is significant because it would have an annual effect of \$100 million or more on the economy.

Executive Order No. 13,132 (Federalism)

The Service determined that these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.