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September 15, 2015

The Honorable Jim Inhofe  
Chairman  
The Honorable Barbara Boxer  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

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

Subject: *Department of the Interior, Fish and Wildlife Service: Migratory Bird Hunting; Final Frameworks for Early-Season 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 Frameworks for Early-Season Migratory Bird Hunting Regulations” (RIN: 1018-BA67). We received the rule on August 31, 2015. It was published in the *Federal Register* as a final rule on August 21, 2015. 80 Fed. Reg. 51,090.

The final rule prescribes final early-season frameworks from which the states, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2015-16 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the states and territories to further the annual establishment of the early-season migratory bird hunting regulations.

Section 808(1) of title 5, United States Code, exempts any rule that “establishes, modifies, opens, closes, or conducts a regulatory program for commercial, recreational, or subsistence activity related to hunting, fishing, or camping” from the 60-day delay in the effective date otherwise required by section 801(a)(3)(A). This is a rule relating to hunting and, therefore, the 60-day delay is not applicable. This final rule became effective on August 21, 2015.

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. Our review of the procedural steps taken indicates that FWS complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
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; FINAL FRAMEWORKS FOR  
EARLY-SEASON MIGRATORY BIRD HUNTING REGULATIONS"  
(RIN: 1018-BA67)

(i) Cost-benefit analysis

The Fish and Wildlife Service (FWS) prepared an economic analysis for the 2013–14 season (the most recent economic analysis available). 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 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, FWS chose alternative 3, with an estimated consumer surplus across all flyways of \$317.8–\$416.8 million. For the 2015–16 season, FWS also chose alternative 3. FWS also pointed out in the final rule that it also chose alternative 3 for the previous seasons since 2009–10. FWS included the 2013–14 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

FWS determined that this final rule will have a significant impact on a substantial number of small entities. FWS relied on a small entity flexibility analysis that was last updated in 2013. 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 2013 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 2013.

(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 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 April 13, 2015, FWS published a proposed rule. 80 Fed. Reg. 19,852. On June 11, 2015, FWS published supplemental proposals for early- and late-season migratory bird hunting

regulations. 80 Fed. Reg. 33,223. On July 21, 2015, FWS published the proposed framework for early-season regulations. 80 Fed. Reg. 43,266. FWS stated that it published the proposed frameworks for late-season regulations (primarily hunting seasons that start after October 1 and most waterfowl seasons not already established) in a mid-August 2015 *Federal Register*. FWS responded to comments in the final rule. FWS found “good cause” under section 553(d)(3) of title 5, allowing this final rule to take effect immediately upon publication.

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

There are no new information collections under this final rule that would require the Office of Management and Budget’s (OMB) approval. OMB has approved the existing information collection requirements of the Migratory Bird Surveys and assigned control numbers 1018–0019—North American Woodcock Singing Ground Survey, which expires on May 31, 2018; and 1018–0023—Migratory Bird Surveys, which expires on June 30, 2017, and includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Part Collection Survey.

Statutory authorization for the rule

FWS promulgated this final rule under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, 16 U.S.C. §§ 703-711.

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)

FWS determined that this final rule does 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, and, therefore, does not have significant federalism effects or sufficient federalism implications under the Order.