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B-329120

June 9, 2017

The Honorable John Barrasso  
Chairman  
The Honorable Tom Carper  
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 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 (Service) entitled “Migratory Bird Hunting; Final Frameworks for Migratory Bird Hunting Regulations” (RIN: 1018-BB40). We received the rule on May 24, 2017. It was published in the *Federal Register* as a final rule on May 30, 2017. 82 Fed. Reg. 24,786.

The final rule prescribes final frameworks from which states may select season dates, limits, and other options for the 2017–18 migratory bird hunting seasons. This final rule is meant to facilitate the states’ selection of hunting seasons and to further the annual establishment of the migratory bird hunting regulations. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in hunting seasons. The Service views these frameworks as necessary to allow state selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

In general, the Congressional Review Act requires a 60-day delay in 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, opens, closes, or conducts a regulatory program for commercial, recreational, or subsistence activity related 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. This final rule became effective on May 30, 2017.

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. Our review of the procedural steps taken indicates that the Service 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  
MIGRATORY BIRD HUNTING REGULATIONS”  
(RIN: 1018-BB40)

(i) Cost-benefit analysis

The Fish and Wildlife Service (Service) prepared an economic analysis for the 2013–14 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 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, the Service chose the third alternative, with an estimated consumer surplus across all flyways of \$317.8 million to \$416.8 million. For the 2017–18 season, the Service also chose the third alternative. The Service pointed out in the final rule that it has also chosen the third alternative for all previous seasons since 2009-10. The Service 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

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 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

The Service determined 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 June 10, 2016, the Service published a proposal to amend the regulations governing migratory bird hunting. 81 Fed. Reg. 38,050. On October 25 and 26, 2016, the Service 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 2017–18 regulations for these species. On February 9, 2017, the Service published the proposed frameworks for the 2017–18 season migratory bird hunting regulations. 82 Fed. Reg. 10,222. The Service noted that it made no substantive changes from the proposed rule.

The Service stated that it believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding the migratory bird hunting frameworks for the 2017–18 hunting seasons and that, if there were a delay in the effective date of this rule, states might not be able to meet their own administrative needs and requirements. For these reasons, the Service found that “good cause” exists under the Act for this rule to take effect immediately upon publication.

#### 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 the Office of Management and Budget’s (OMB’s) 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 May 31, 2018) and 1018–0023—Migratory Bird Surveys (expires June 30, 2017). The Service states that in accordance with 5 C.F.R. § 1320.10, the agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB. The Migratory Bird Surveys include the Migratory Bird Harvest Information Program, the Migratory Bird Hunter Surveys, the Sandhill Crane Survey, and the Parts Collection Survey.

#### Statutory authorization for the rule

The Service promulgated this final rule under the authority of the Migratory Bird Treaty Act, as amended. 16 U.S.C. §§ 703–712.

#### 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)

The Service determined that this final rule will 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.