



441 G St. N.W.  
Washington, DC 20548

B-332544

September 24, 2020

The Honorable John Barrasso  
Chairman  
The Honorable Thomas R. 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; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2020–21 Season*

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; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2020–21 Season” (RIN: 1018-BD89). We received the rule on September 10, 2020. It was published in the *Federal Register* as a final rule on August 28, 2020. 85 Fed. Reg. 53247. The effective date of the rule is August 28, 2020.

According to the Service, the final rule prescribes special migratory bird hunting regulations for certain Tribes on federal Indian reservations, off-reservation trust lands, and ceded lands. The Service states the rule also allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

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, opens, closes, or conducts a regulatory program for a 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, according to the Service, is therefore 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 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: Eric Kershner  
Chief, Branch of Conservation,  
Permits, and Regulations  
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; MIGRATORY BIRD HUNTING REGULATIONS  
ON CERTAIN FEDERAL INDIAN RESERVATIONS  
AND CEDED LANDS FOR THE 2020–21 SEASON”  
(RIN: 1018-BD89)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (Service) prepared an economic analysis for the 2020-21 season. The Service stated that this analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available. The Service’s 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 2019-20 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2019-20 season. For the 2020-21 season, the Service chose the third alternative, with an estimated consumer surplus across all flyways of \$334 to \$440 million with a mid-point estimate of \$387 million.

(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. 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. The 2020 analysis was based on the 2016 National 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 2020.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Service 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 2, 2020, the Service published a proposed rule on special migratory bird hunting regulations for the 2020-21 hunting season for certain Indian tribes. 85 Fed. Reg. 18532. According to the Service, it received 57 comments on the April 2, 2020, 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 2020-21 hunting seasons. According to the Service, if there was a delay in the effective date of this final rule, the states and tribes 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 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 April 30, 2023), 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 final rule pursuant to sections 703 *et seq.* and 742a to 742j of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (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.