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B-332539

September 23, 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; 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-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. 53260. The effective date of the final rule is August 28, 2020.

The final rule, according to the Service, prescribes the seasons, hours, areas, and daily bag and possession limits for hunting migratory birds. The Service stated that this rule prohibits the taking of migratory birds unless specifically provided for by annual regulations. The Service stated further that this rule permits the taking of designated species during the 2020–2021 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). 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). According to the Service, this final rule establishes regulations for hunting seasons. Thus, The Service stated it did not defer the effective date pursuant to the exemption in 5 U.S.C. § 808(1).

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; SEASONS AND BAG AND
POSSESSION LIMITS FOR CERTAIN MIGRATORY GAME BIRDS”
(RIN: 1018-BD89)

(i) Cost-benefit analysis

Department of the Interior, Fish and Wildlife Service (Service) prepared an economic analysis for the 2020–2021 season. According to the Service, the analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey). The Service stated its 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 2019–2020 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations similar to the regulations in the 2019–2020 season. For the 2020–2021 season, the Service stated it chose alternative 3, with an estimated consumer surplus across all flyways of \$334–\$440 million with a mid-point estimate of \$387 million. The Service noted that it also chose alternative 3 for the 2009–2010 through 2019–2020 seasons.

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

The Service determined that the annual migratory bird hunting regulations have a significant economic impact on a substantial number of small entities under RFA. The Service noted that their analysis is based on the 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 determined and certified that this rulemaking will not impose a cost of \$100 million or more in any given year on local or state government or private entities. Therefore, the Service stated this rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

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

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

The Service published a proposed rule on October 15, 2019. 84 Fed. Reg. 55120. The Service stated that it opened the public comment period for 2020–2021 migratory game bird hunting regulations and addressed all comments in its final rule “Migratory Bird Hunting; Final 2020–21 Frameworks for Migratory Bird Hunting Regulations (Framework Rule).” 85 Fed. Reg. 51854

(Aug. 21, 2020). The Service also stated that it provided notification of its participation in multiple Flyway Council meetings, opportunities for additional public review and comment on all Flyway Council proposals for regulatory change, and opportunities for additional public review during its Service Regulations Committee meetings.

The Service asserted that states need sufficient time to communicate season selections to their affected publics, and to establish and publicize the necessary regulations and procedures to implement these seasons. Thus, the Service determined that “good cause” exists for this rule to take effect less than 30 days after publication.

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

The Service determined that this rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB). The Service stated that OMB 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 June 30, 2021); 1018-0023, “Migratory Bird Surveys, 50 C.F.R § 20.20” (expires April 30, 2023); and 1018-0171, “Establishment of Annual Migratory Bird Hunting Seasons, 50 C.F.R. pt. 20” (expires June 30, 2021).

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

According to the Service, the Office of Information and Regulatory Affairs has reviewed this rule and has determined that this rule is significant because it will have an annual effect of \$100 million or more on the economy.

Executive Order No. 13132 (Federalism)

According to the Service, these rules do 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. Therefore, the Service stated 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.