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Washington, DC 20548

B-332541

September 25, 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; Final 2020–21 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 2020–21 Frameworks for Migratory Bird Hunting Regulations” (RIN: 1018-BD89). We received the rule on September 10, 2020. It was published in the *Federal Register* as a final rule on August 21, 2020. 85 Fed. Reg. 51854. The effective date of the rule is August 21, 2020.

According to the Service, the final rule prescribes the final frameworks from which states may select hunting seasons, shooting hours, hunting 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 2020-21 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). According to the Service, 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 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 with a large initial 'S'.

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; FINAL 2020–21 FRAMEWORKS  
FOR MIGRATORY BIRD HUNTING REGULATIONS”  
(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. 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. 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 2019–20 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations similar to the regulations in the 2019–20 season. For the 2020–21 season, the Service chose alternative 3, with an estimated consumer surplus across all flyways of \$263–\$347 million with a mid-point estimate of \$305 million. The 2020–21 analysis is part of 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 the final rule would have a significant economic impact on substantial numbers of small entities. According to the Service, 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 Service stated the 2020 Analysis is 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 \$2.1 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 the 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 October 15, 2019, the Service published a proposed rule. 84 Fed. Reg. 55120. The Service received comments, including recommendations from all four Flyway Councils. The Service responded to the comments in the final rule. 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 the final rule did not contain information collection requirements subject to the Act.

Statutory authorization for the rule

The Service promulgated the final 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)

The Service stated the final rule was reviewed by the Office of Management and Budget and classified as economically significant.

Executive Order No. 13,132 (Federalism)

The Service determined the final rule will not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.