

B-333495

August 19, 2021

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

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

Subject: *Department of the Interior, Fish and Wildlife Service: Migratory Bird Hunting; Final 2021–22 Frameworks for Migratory Bird Hunting Regulations, and Special Procedures for Issuance of Annual 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 2021–22 Frameworks for Migratory Bird Hunting Regulations, and Special Procedures for Issuance of Annual Hunting Regulations" (RIN: 1018-BE34). We received the rule on August 5, 2021. It was published in the *Federal Register* as a final rule on July 16, 2021. 86 Fed. Reg. 37854. The effective date is July 16, 2021.

According to the Service, the final rule establishes the final frameworks from which states may select season dates, limits, and other options for the 2021–22 migratory game bird hunting season, and makes a minor change to the special procedures for issuance of annual hunting regulations. The Service stated it annually prescribes outside limits or frameworks within which states may select hunting seasons, and frameworks specify the outside dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. The Service further stated these frameworks are necessary to allow state selections of seasons and limits and to allow harvest at levels compatible with migratory game bird population status and habitat conditions. Finally, the Service stated migratory game bird hunting seasons provide opportunities for recreation and sustenance and aid federal, state, and tribal governments in the management of migratory game birds.

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.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Gregory W. Fleming
Wildlife Biologist
Department of the Interior

ENCLOSURE

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 2021–22 FRAMEWORKS
FOR MIGRATORY BIRD HUNTING REGULATIONS, AND
SPECIAL PROCEDURES FOR ISSUANCE OF
ANNUAL HUNTING REGULATIONS”
(RIN: 1018-BE34)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (Service) prepared an economic analysis for the 2021-22 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. The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2020-21 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations similar to the regulations in the 2020-10 season. For the 2021-22 season, the Service chose the third alternative, with an estimated consumer surplus across all flyways of \$270 to \$358 million with a mid-point estimate of \$314 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 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 2021 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 \$2.2 billion at small businesses in 2021.

(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 does not impose a cost on state, local, or tribal governments or the private sector above the statutory threshold of the Act.

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

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

On October 9, 2020, the Service published a proposed rule. 85 Fed. Reg. 64097. The Service received comments on the proposed rule and responded to them in the final rule. The Service

waived the delay in effective date requirement for good cause. The Service determined it had good cause because states need sufficient time to conduct their own public processes to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. Thus, if there were a delay in the effective date of these regulations after this final rulemaking, the Service determined states might not be able to meet their own administrative needs and requirements.

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

The Service determined the final rule does not contain information collection requirements subject to the Act.

Statutory authorization for the rule

The Service promulgated the final rule pursuant to sections 703 *et seq.* and 742a–742j of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Service stated the Office of Management and Budget reviewed the final rule and determined it was economically significant.

Executive Order No. 13132 (Federalism)

The Service determined the 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.