

441 G St. N.W.
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B-333561

September 22, 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; 2021-2022 Seasons 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; 2021-2022 Seasons for Certain Migratory Game Birds” (RIN: 1018-BE34). We received the rule on August 8, 2021. It was published in the *Federal Register* as a final rule on August 31, 2021. 86 Fed. Reg. 48569. The effective date is August 31, 2021.

According to the Service, the final rule prescribes the seasons, hours, areas, and daily bag and possession limits for hunting migratory birds. The Service stated the taking of migratory birds is prohibited unless specifically provided for by annual regulations, and the final rule permits the taking of designated species during the 2021–22 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, 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 L. 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; 2021-2022 SEASONS
FOR CERTAIN MIGRATORY GAME BIRDS”
(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 Service stated that 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. According to the Service, 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 and certified the final rule does not impose a cost on local or state governments or private entities 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 expanded upon the October proposed rule with an additional proposed rule on February 22, 2021. 86 Fed. Reg. 10622. The Service published a first final rule for the 2021-22 season on July 16, 2021. 86 Fed. Reg. 37854. The Service stated it addressed all comments in the July final rule. The Service stated 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 the final rule does not contain new information collection requirements (ICRs), but previously approved ICRs provide information for the final rule. Those ICRs are associated with Office of Management and Budget (OMB) control numbers 1018-0019, 1018-0023, and 1018-0171.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

The Service stated OMB had reviewed the rule and determined the final rule was significant.

Executive Order No. 13132 (Federalism)

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