



441 G St. N.W.
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B-335615

October 11, 2023

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

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

Subject: *Department of the Interior, Fish and Wildlife Service: Migratory Bird Hunting; 2023–2024 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 (FWS) entitled “Migratory Bird Hunting; 2023–2024 Seasons for Certain Migratory Game Birds” (RIN: 1018-BF64). We received the rule on September 26, 2023. It was published in the *Federal Register* as a final rule on August 18, 2023. 88 Fed. Reg. 56489. The effective date is August 18, 2023.

According to FWS, the final rule prescribes the seasons, hours, areas, and daily bag and possession limits for hunting migratory birds. FWS stated the taking of migratory birds is prohibited unless specifically provided for by annual regulations. FWS additionally stated the final rule permits the taking of designated species during the 2023–2024 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). Here, FWS stated that this rule establishes regulations for hunting seasons; thus, FWS did not defer the effective date in accordance with 5 U.S.C. 808(1).

Enclosed is our assessment of FWS’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: Gregory W. Fleming
Wildlife Biologist
Fish and Wildlife Service

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;
2023–2024 SEASONS FOR CERTAIN MIGRATORY GAME BIRDS”
(RIN: 1018-BF64)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (FWS) stated an economic analysis was prepared for the 2023–2024 migratory bird hunting season. FWS stated this analysis was based on data from the 2011 and 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, the most recent years for which data are available. FWS estimated the final rule would create consumer surplus across all flyways of \$356 million.

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

FWS estimated that migratory bird hunters will spend approximately \$2.2 billion at small businesses in 2023.

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

FWS concluded 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) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory

Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

FWS did not discuss the Act in the final rule.

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

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

On January 30, 2023, FWS published a proposed rule. 88 Fed. Reg. 6054. FWS addressed comments received in the final rule.

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

FWS determined the final rule did not contain any new information collection requirements subject to the PRA.

Statutory authorization for the rule

FWS 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)

FWS stated the final rule had been reviewed by the OMB, and determined to be significant under the Order, as amended.

Executive Order No. 13132 (Federalism)

FWS concluded the final rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.