



441 G St. N.W.  
Washington, DC 20548

B-335614

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; Migratory Game Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands*

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; Migratory Game Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands” (RIN: 1018-BF64). We received the rule on September 26, 2023. It was published in the *Federal Register* as a final rule on September 1, 2023. 88 Fed. Reg. 60375. The effective date is September 1, 2023.

According to FWS, as part of the rulemaking process for the 2023–2024 season for migratory game bird hunting, it has revised the process for establishing regulations for certain tribes on federal Indian reservations, off-reservation trust lands, and ceded lands. FWS stated that it recognizes Tribal treaty rights and the reserved hunting rights and management authority of Indian tribes and seeks to strengthen Tribal sovereignty. FWS also stated that it will no longer require that tribes annually submit a proposal to FWS for its review and approval and no longer publish in the *Federal Register* the annual Tribal migratory bird hunting regulations. Instead, FWS stated, its regulations will include elements of its current guidelines for establishing migratory game bird hunting regulations on federal Indian reservations (including off-reservation trust lands) and ceded lands. FWS explained that, since 1985, Tribal migratory bird harvest has been small with negligible impact to bird population status, and that it anticipates that Tribal hunting of migratory birds will continue to have similar negligible impacts to bird populations in the future. Lastly, FWS noted that this final rule will reduce administrative burdens on both the tribes and FWS while continuing to sustain healthy migratory game bird populations for future generations.

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). In accordance with 5 U.S.C. § 808(1), FWS stated that it did not defer the effective date of this final rule because the rule establishes regulations for hunting.

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;  
MIGRATORY GAME BIRD HUNTING REGULATIONS  
ON CERTAIN FEDERAL INDIAN RESERVATIONS AND CEDED LANDS”  
(RIN: 1018-BF64)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (FWS) prepared an economic analysis of this final rule. FWS stated that its analysis estimated consumer surplus for four alternatives for duck hunting regulations. FWS explained that the duck hunting regulatory alternatives are (1) not opening a hunting season, (2) issuing restrictive regulations that allow fewer days than the 2022–2023 season, (3) issuing moderate regulations that allow more days than those in Alternative 2 but fewer days than the 2022–2023 season, and (4) issuing liberal regulations that allow days similar to the 2022–2023 season. FWS stated that it chose Alternative 4 for the 2023–2024 season. FWS estimated the consumer surplus across all flyways to be \$356 million. FWS also stated that it chose Alternative 4 for the 2009–2010 through 2022–2023 seasons.

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

FWS determined that this final rule will have a significant economic impact on substantial numbers of small entities under RFA. FWS stated that an initial regulatory flexibility analysis was prepared to analyze the economic impacts of the annual hunting regulations on small business entities. FWS also stated that this analysis is updated annually. FWS explained 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. FWS explained further that its 2023–2024 analysis is based on the 2011 and 2016 National Survey and the U.S. Department of Commerce’s County Business Patterns, from which it estimates that migratory bird hunters would spend approximately \$2.5 billion at small businesses during the 2023–2024 migratory bird hunting season.

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

FWS determined and certified that this final rule does not include any federal mandates that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year.

(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 does not discuss the Administrative Pay-As-You-Go Act of 2023 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 March 23, 2023, FWS published a proposed rule. 88 Fed. Reg. 17511. According to FWS, it received a total of 10 written responses from five individuals, three tribes, one state, and one organization. FWS stated that it incorporated, as appropriate into the final rule, information obtained through the public comment period. FWS also noted that, in addition to the written comments, it received 21 verbal comments during four Tribal webinars held in 2022 and 2023 where it explained the proposed new federal process for establishing Tribal hunting regulations. Lastly, FWS stated that it also received five emails or telephone calls.

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

FWS stated that this rule does not contain any new collection of information that requires approval by OMB under PRA. According to FWS, OMB has 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 Feb. 29, 2024); 1018-0023, “Migratory Bird Surveys, 50 C.F.R. 20.20” (expires May 31, 2026); and 1018-0171, “Establishment of Annual Migratory Bird Hunting Seasons, 50 C.F.R. Part 20 (expires Oct. 31, 2024).

Statutory authorization for the rule

FWS promulgated this 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 that this final rule is economically significant under the Order, as amended, and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

FWS determined that the final rule does not have federalism implications and does not warrant the preparation of a federalism summary impact statement.