



441 G St. N.W.  
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B-336643

September 16, 2024

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; 2024–25 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; 2024–25 Seasons for Certain Migratory Game Birds” (RIN: 1018-BG63). We received the rule on August 29, 2024. It was published in the *Federal Register* on August 30, 2024. 89 Fed. Reg. 70545. The effective date of the rule is August 29, 2024.

This rule prescribes the seasons, hours, areas, and daily bag and possession limits for hunting migratory birds. According to FWS, taking of migratory birds is prohibited unless specifically provided for by annual regulations. The rule permits the taking of designated species during the 2024–25 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 does not apply, 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). According to FWS, because this rule establishes a regulatory program for an activity related to hunting, and because hunting seasons are time sensitive, the effective date for the rule is established under this exemption. 89 Fed. Reg. 70546.

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

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 of the Division of Bird Conservation, Permits, and Regulations  
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;  
2024–25 SEASONS FOR CERTAIN MIGRATORY GAME BIRDS”  
(RIN: 1018-BG63)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (FWS) prepared an analysis of the costs and benefits for this rule. See 89 Fed. Reg. 70546. FWS estimated the rule will result in consumer surplus of \$606 million to \$797 million for the 2024–25 season. *Id.*

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

According to FWS, the annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities. 89 Fed. Reg. 70546. FWS prepared an initial regulatory flexibility analysis that is updated annually. *Id.*

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

FWS determined that this rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. See 89 Fed. Reg. at 70547.

(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.

In its submission to us, FWS indicated the Act is not applicable to the rule.

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

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

On February 8, 2024, FWS published a proposed rule. 89 Fed. Reg. 8631. FWS stated that it previously addressed all pertinent concerns in its May 13, 2024, proposed rule (89 Fed. Reg. 41522) and August 26, 2024, final rule (89 Fed. Reg. 68500). 89 Fed. Reg. 70547.

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

FWS determined that this rule contains no new information collection requirements under the Act. 89 Fed. Reg. 70547.

Statutory authorization for the rule

FWS promulgated this rule pursuant to the Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712.

Executive Order No. 12866 (Regulatory Planning and Review)

FWS stated that this rule is significant under the Order. 89 Fed. Reg. 70546.

Executive Order No. 13132 (Federalism)

FWS determined that this rule does not have federalism implications. 89 Fed. Reg. 70547.