


TEXAS PARKS AND WILDLIFE DEPARTMENT

EXECUTIVE DIRECTOR ORDER NO. 013-002

Under the provisions of Parks and Wildlife Code, §64.022 and 31 TAC §65.313(f), the Executive Director of the Texas Parks and Wildlife Department, after notifying the Chairman of the Texas Parks and Wildlife Commission, is authorized to adopt regulations establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within U.S Fish and Wildlife Service frameworks. Therefore, the Executive Director hereby adopts amendments to 31 TAC §§65.314, 65.315, and 65.319, concerning the Migratory Game Bird Proclamation, with changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3290). The Executive Director also hereby authorizes publication of the Notice of Adoption in the *Texas Register*.

This order is issued pursuant to §64.022 of the Texas Parks and Wildlife Code and is effective immediately. The adopted regulations shall be effective as provided in the regulations and as provided by other law.

Signed this the 1st day of July 2013.



Carter Smith
Executive Director
Texas Parks and Wildlife Department

2013-2014 MIGRATORY GAME BIRD PROCLAMATION

ADOPTION PREAMBLE

1. Introduction.

The Texas Parks and Wildlife Department (the department) adopts amendments to §§65.314, 65.315, and 65.319, concerning the Migratory Game Bird Proclamation. Section 65.315 and §65.319 are adopted with changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3290). Section 65.314 is adopted without change and will not be republished.

The change to §65.315, concerning Open Seasons and Bag and Possession Limits-Early Season, increases the daily bag limit from four to six for teal ducks during the early September teal season and increases the possession limit for all species of early-season migratory game birds, from twice the daily bag limit to three times the daily bag limit. It is the policy of the Texas Parks and Wildlife Commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks issued by the United States Fish and Wildlife Service (Service) in order to provide maximum hunter opportunity. This year, the federal framework for early-season species of migratory game birds offered a six-bird maximum daily bag limit for teal and an increase in the possession limit for all species of migratory game birds to three times the daily bag limit.

2. Justification for the Rules.

The Service issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Commission to delegate rulemaking authority to the Executive Director. 31 Texas Administrative Code

§65.313(f) authorizes the Executive Director, after notification of the Chairman of the Commission, to engage in rulemaking.

Typically, the Service issues the preliminary early-season (dove, teal, snipe, rails, woodcock, gallinules) frameworks in late June and the preliminary late-season (ducks, geese, cranes) frameworks in early August. Because there is no Commission meeting between May and late August, the 2013-14 early-season migratory game bird regulations are being adopted by authority delegated to the Executive Director.

The proposed amendments to the migratory game bird regulations published in the May 24, 2013 issue of the Texas Register (38 TexReg 3290) also included amendments to §§65.318, 65.320, and 65.321, which affect late-season species of migratory game birds. The proposed amendments to §§65.318, 65.320, and 65.321 will be considered for adoption by the Commission following the release of the late-season frameworks by the Service in early August, after which the department will file notice of adoption.

The amendment to §65.314, concerning Zones and Boundaries for Early Season Species, expands the Special White Winged Dove Area (SWWDA) in South Texas. For the last two decades, white-winged dove populations have steadily expanded both their numbers and their geographical extent. The department believes this expansion warrants enlargement of the SWWDA in South Texas to provide more hunting opportunity. The Service has determined that expansion of the SWWDA will not result in any negative impacts to dove populations in South Texas. The department has determined that the zone expansion will not result in either depletion or waste.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season, adjusts the season dates for early-season migratory game birds to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The amendment to §65.315 also implements a 16-day statewide teal season, accounting for calendar shift, to run from September 14-29, 2013, and increases the daily bag limit from four birds to six. In addition, the amendment implements a 16-day early Canada goose season, also accounting for calendar shift, in the Eastern Zone to run from September 14-29, 2013.

Finally, as noted previously in this preamble, the amendment to §65.315 increases the possession limit for all species of early-season migratory game birds, from twice the daily bag limit to three times the daily bag limit.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates to provide maximum opportunity for the take of early-season species by means of falconry. Because of the dove season structure, adoption of an extended falconry season based strictly on calendar shift would result in reduced opportunity because it would overlap the dove season and result in fewer total days of falconry-only hunting opportunity. The amendment as adopted also increases the possession limit for reasons discussed elsewhere in this preamble.

4. Summary of Public Comment.

The department received three comments opposing adoption of the portion of proposed §65.314 that establishes a new boundary for the SWWDA. One of the commenters offered a reason or rationale for opposing adoption. The commenter stated that there should not be a special zone for white wing doves. The department disagrees with the comment and responds that without the SWWDA designation, there could be no dove hunting in South Texas prior to the regular opening day for the South Zone. The SWWDA designation allows a portion of South Texas to enjoy hunting several weeks earlier than what would otherwise be authorized. No changes were made as a result of the comment.

The department received six comments in support of adoption of the portion of proposed §65.314 that establishes a new boundary for the SWWDA.

The department received four comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves. All four of the commenters offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the daily bag limit in the SWWDA should include four mourning doves and the possession limit should be expanded to a minimum of 90 doves, including 12 mourning doves. The department disagrees with the

comment and responds that the federal frameworks do not allow the department to authorize the take of more than two mourning doves per day per person during the special white-wing dove season, nor do they permit any person to be in possession of more than 45 birds at any time. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the winter segment dates in the North Zone reflect a bias by the commission towards South Texas. The department disagrees with the comment and responds that the dates chosen for the winter segment in the North Zone reflect the commission's interest in providing more hunting opportunity surrounding the holidays, when youth are out of school and families are together. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be increased to three times the daily bag limit or 90 birds. The department both agrees and disagrees with the comment and responds that this year the federal frameworks allow Texas to increase possession limits to three times the daily bag limit, which is adopted in this rulemaking; however, the maximum daily bag limit allowed under the federal frameworks is 15 birds, which means that the maximum possession limit is 45. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be three times the daily bag limit. The department agrees with the comment and for reasons discussed elsewhere in this preamble has made changes accordingly.

The department received six comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves.

The department received six comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for teal. Four of the commenters offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the season should be 23 days in length starting September 14 and ending October 6, 2013. The commenter also stated that the daily bag limit should be increased to six, the possession limit should be three times the daily bag limit,

and the September teal season days should not count against the 107 days of total hunting opportunity allowed under the federal frameworks. As noted earlier, the department agrees that the daily bag and possession limits should be increased, and has made those changes accordingly; however, under the federal frameworks issued by the Service, the department cannot exceed 16 days of early teal opportunity or 107 days of total hunting opportunity and does not have the authority to unilaterally exempt itself from those limitations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the teal season should be shortened in order to add more days to the regular duck season. The department disagrees with the comment. Federal frameworks only allow for a 74 day duck season and the addition of the special September teal season does not have an effect on total days allowed for the regular ducks season. Additionally, hunter surveys indicate a strong preference for the early September teal season to be as long as possible under the federal frameworks. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the bag limit should be six, the same as it is during the regular duck season. The department agrees with the comment and responds that changes have been made accordingly, for reasons explained elsewhere in this preamble.

The department received three comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for teal.

The department received one comment opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for Canada geese. The commenters did not offer a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received three comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for Canada geese.

The department received one comment opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for rails, gallinules, snipe, and woodcock. The commenters did not offer a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received two comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for rails, gallinules, snipe, and woodcock.

The department received one comment opposing adoption of proposed §65.319, regarding extended falconry season for early season species of migratory game birds. The commenter did not offer a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received one comment supporting adoption of proposed §65.319, regarding extended falconry season for early season species of migratory game birds.

No groups or association commented in support of or opposition to any of the proposed amendments.

5. Statutory Authority.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.314. Zones and Boundaries for Early Season Species.

(a) Rails: statewide.

(b) Mourning and white-winged doves.

(1) North Zone: That portion of the state north of a line beginning at the International Bridge south of Fort Hancock; thence north along FM 1088 to State Highway 20; thence west along State Highway 20 to State Highway 148; thence north along State Highway 148 to Interstate Highway 10 at Fort Hancock; thence east along Interstate Highway 10 to Interstate Highway 20; thence northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; thence northeast along Interstate Highway 30 to the Texas-Arkansas state line.

(2) Central Zone: That portion of the state between the North Zone and the South Zone.

(3) South Zone: That portion of the state south of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S.