

TEXAS PARKS AND WILDLIFE DEPARTMENT

EXECUTIVE DIRECTOR ORDER NO. 010-007

Under the provisions of 31 TAC §65.313(d), the Executive Director of the Texas Parks and Wildlife Department, after notifying the Chairman of the Texas Parks and Wildlife Commission, adopts amendments to §65.314 and §65.319, concerning the Migratory Game Bird Proclamation, without changes to the proposed text as published in the May 21, 2010, issue of the Texas Register (35 TexReg 3957). The Executive Director 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.

Signed this the 26th day of July, 2010.

A handwritten signature in black ink, appearing to read "Carter Smith". The signature is fluid and cursive, with a large loop at the end of the last name.

Carter Smith
Executive Director
Texas Parks and Wildlife Department

2010-2011 MIGRATORY GAME BIRD PROCLAMATION

EARLY-SEASON PROVISIONS

ADOPTION PREAMBLE

1. Introduction.

The Texas Parks and Wildlife Department (the department) adopts amendments to §65.315 and §65.319, concerning the Migratory Game Bird Proclamation without changes to the proposed text as published in the May 21, 2010, issue of the Texas Register (35 TexReg 3957). The proposed text as published in the May 21, 2010 issue of the Texas Register also included amendments to §§65.318, 65.320, 65.321. The proposed amendments to §§65.318, 65.320, 65.321 will be considered for adoption by the Texas Parks and Wildlife Commission (commission) on August 26, 2010. After consideration of the remaining sections by the commission, a separate notice of adoption will be published. Because of the timing of the seasons and bag limits established in §65.315 and §65.319, these amendments have been adopted by order of the department's executive director as authorized by Parks and Wildlife Code, §64.022 and 31 TAC §65.313(d).

2. Justification for the Rules.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible under the federal frameworks established by the Service, consistent with the tenets of sound biological management, and with hunter and landowner preference for starting dates and segment lengths, under annual frameworks issued by the Service. In accordance with federal law, the department's rules may be more conservative, but not more liberal than the federal frameworks

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season, retain the season structure and bag limits from 2009 for rails, dove, gallinules, woodcock, and snipe, but adjust the season dates to account 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 to run from September 11-26, 2010. The change to the September teal-only season is being adjusted only for calendar shift. By federal law, the number of days in the September teal season count against the 107 days of total hunting opportunity allowed for ducks, coots, and mergansers.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

3. How the Rules Will Function.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season, will function by establishing the season dates for the hunting of early-season species of migratory game birds.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, will function by establishing the season dates for the hunting of early-season species of migratory game birds by means of falconry.

4. Summary of Public Comment.

The department received 14 comments opposing adoption of the portion of the proposed amendment to §65.315 governing the hunting of doves. Of the 14 comments, 13 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed the opening of dove season on a Friday (and stated that the season should open on the earliest day possible under the federal frameworks. The department disagrees with the commenter and responds that hunter surveys indicate a preference for opening day to occur on a Friday, and that September 17 (a Friday) is the earliest date allowed by federal frameworks in the South Zone. No changes were made as a result of the comment.

Three commenters opposed adoption of the proposed possession limits for dove and stated that the possession limit should be equivalent to three daily bag limits rather than two.

The department disagrees with the comment and responds that the maximum possession limit is established by federal rule and cannot be altered by state action. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all dove zones should open on the same day because by the time the south zone opens the birds have either relocated or are flying too high. The department disagrees with the comment and responds that under the federal frameworks, the season in the South Zone cannot open earlier than September 17 and hunter preference in the South Zone is for the season to begin the earliest full weekend possible under federal law. No changes were made as a result of the comment.

One commenter opposed adoption of the bag limit for whitewing doves and stated that the bag limit should be increased due to that species' abundance. The department disagrees with the comment and responds that the bag limit as adopted is the greatest allowable under federal law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the opening day for dove season should be on a Saturday and not on a Friday. The commenter stated that not everyone is able to take advantage of a Friday opener and that the department should set the opener such that the greatest number of hunters can take advantage of it. The department disagrees with the comment and responds that hunter surveys indicated a preference for the season to open on the earliest Friday possible under the federal frameworks. No changes were made as a result of the comment.

Once commenter opposed adoption and stated that the winter segment of the dove season should not open on December 25. The commenter stated that instead of opening the winter segment on that day, it should open on the 26th and the extra day should be added to the end of the winter split. The department disagrees with the comment and responds that December 25 was chosen because it enables people to have the entire weekend to hunt. Hunter surveys indicate a preference for the season to run as late as possible and the department believes that it is important to provide hunting opportunity during weekends and holidays when most people have an opportunity to hunt and when children and students are out of school. No changes were made as a result of the comment.

One commenter opposed adoption and stated that early segment in the Central Zone should run to October 31. The department disagrees with the comment and responds that season structures have historically been set in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity, and that hunter preference is to have a late segment that is roughly 15 days in length. The department also notes that removing a week from the winter segment would reduce holiday hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that duck season starts too early and interferes with dove hunting. The department disagrees with the comment and responds that duck hunting is not believed to influence the behavior or prevalence of doves and that although the 2010-2011 duck seasons have not yet been established, hunter preference is for duck season to begin in late October or early November. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the last four days of the early segment in the South Dove Zone should be moved to the end of the winter segment, because the season for hunting buck deer is over by then in South Texas and people want something to hunt. The department disagrees with the comment and responds that hunter preference in the South Dove Zone is for as much concurrent dove/deer hunting as possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the shooting hours for dove hunting should be from noon to sunset. The department disagrees with the comment and responds that hunter surveys indicate a strong preference for all-day shooting hours during dove seasons. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the opening day of dove hunting should be September 1 in all zones, and that the winter segment should open the Saturday before Christmas and run to the end of the framework to maximize youth opportunity. The department disagrees with the comment and responds that a statewide opening date of September 1 is impossible because the earliest date allowed by federal frameworks in the South Dove Zone is the Friday closest to September 20th (but not earlier than the 17th) (except for four

half-days in the Special White Wing Dove Area). No changes were made as a result of the comment.

The department received 54 comments supporting adoption of the proposed amendments governing dove hunting.

The department received two comments opposing adoption of the portion of the proposed amendment to §65.314 governing the hunting of gallinules. Both commenters stated that the bag limit is too high. The department disagrees with the comments and responds that commission policy is to adopt the most liberal bag limits possible under the federal frameworks, provided the bag limit is consistent with the tenets of sound biological management. At the current time there is no evidence to suggest that the bag limit for gallinules is inappropriate. No changes were made as a result of the comments.

The department received 19 comments supporting adoption of the proposed amendments governing gallinule hunting.

The department received six comments opposing adoption of the portion of the proposed amendment to §65.314 governing teal hunting. Of the six comments, 13 articulated 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 early teal season should be one week in length or done away with and the days made part of the duck season because there are no teal around at that time of the year. The department disagrees with the comment and responds that days cannot be taken from the September teal season and added to duck season because the duck season in Texas is already at the maximum number of days allowed by federal law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the teal season should include black-bellied ducks, which are becoming invasive. The department agrees with the comment but responds that by federal law, the September teal-only season is restricted to teal only. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for teal should be the same as for ducks during duck season. The commenter stated that there is insufficient hunting

pressure during the early season to control teal populations. The department agrees with the comment but responds that the bag limit adopted for teal during the early season is the maximum allowable under the federal frameworks, and that the harvest strategy for teal is focused on sustainability and not population control. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the bag limit should be higher. The department agrees with the comments but responds that the bag limit for teal during the early season as adopted is the maximum allowed under federal law. No changes were made as a result of the comments.

The department received 54 comments supporting adoption of the portion of the proposed amendment to §65.315 governing the hunting of teal.

The department received three comments opposing adoption of the portion of the proposed amendment to §65.315 governing the hunting of woodcock. All three commenters offered a reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the bag limit is pointless because it would take a week to find three woodcocks. The department disagrees with the comment and responds that it is commission policy to adopt the most liberal bag limits possible under the federal frameworks, consistent with the tenets of sound biological management. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin earlier in north Texas because there are more woodcock in the area at that time. The department disagrees with the comment and responds that hunter sentiment has been to open and run the season as late as possible, which, under the federal frameworks, is January 31. No changes were made as a result of the comment.

Once commenter opposed adoption and stated that there should be an annual bag limit of three birds. The department disagrees with the comment and responds that there is no biological reason for the department not to select the maximum bag limit allowable under the federal frameworks. No changes were made as a result of the comment.

The department received 19 comments supporting adoption of the portion of the proposed amendment to §65.315 governing the hunting of woodcock.

The department received four comments opposing adoption of the portion of proposed §65.315 governing the hunting of snipe. All four comments articulated 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 bag limit should be lower because the birds are rare. The department disagrees with the comment and responds that there is no biological reason for the department not to select the maximum bag limit allowable under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that by running the snipe season concurrently with duck season, the department was forcing people to decide whether to go duck hunting or snipe hunting. The department disagrees with the comment and responds that the intent of running concurrent snipe, gallinule, rail, and duck seasons is to create more hunting opportunity, not less. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for snipe should run from November 15 to March 15. The department disagrees and responds that under the federal frameworks the department may select up to a 107-day season between September 1 and February 28 for snipe. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for snipe should be ten. The department disagrees with the comment and responds that the bag limit as adopted (eight) is the maximum allowed under the federal frameworks. No changes were made as a result of the comment.

The department received 25 comments supporting adoption of the portion of the proposed amendment §65.314 governing the hunting of snipe.

The department received no comments opposing or supporting adoption of the portion of the proposed amendment to §65.314 governing the hunting of early-season species of migratory game birds by means of falconry.

The department received 15 comments supporting adoption of the portion of the proposed amendment to §65.314 governing the hunting of early-season species of migratory game birds by means of falconry.

No groups or associations commented in support of or opposition to adoption 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.

§65.315. Open Seasons and Bag and Possession Limits—Early Season.

(a) Rails.

(1) Dates: September 11–26, 2010 and October 30 – December 22, 2010.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 – October 24, 2010 and December 25, 2010 – January 9, 2011.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 – October 24, 2010 and December 25, 2010 – January 9, 2011.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 17 – October 31, 2010 and December 25 – January 18, 2011.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 4, 5, 11, and 12, 2010.

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day;

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 17 – October 31, 2010 and December 25, 2010 – January 14, 2011.

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 11– 26, 2010 and October 30 – December 22, 2010.

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 11-26, 2010.

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2010 - January 31, 2011. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): October 30, 2010 – February 13, 2011. The daily bag limit is eight. The possession limit is 16.

§65.319. Extended Falconry Season— Early Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 18 – December 24, 2010.

(2) rails and gallinules: December 25, 2010 - January 30, 2011.

(3) woodcock: November 23 - December 16, 2010.

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

