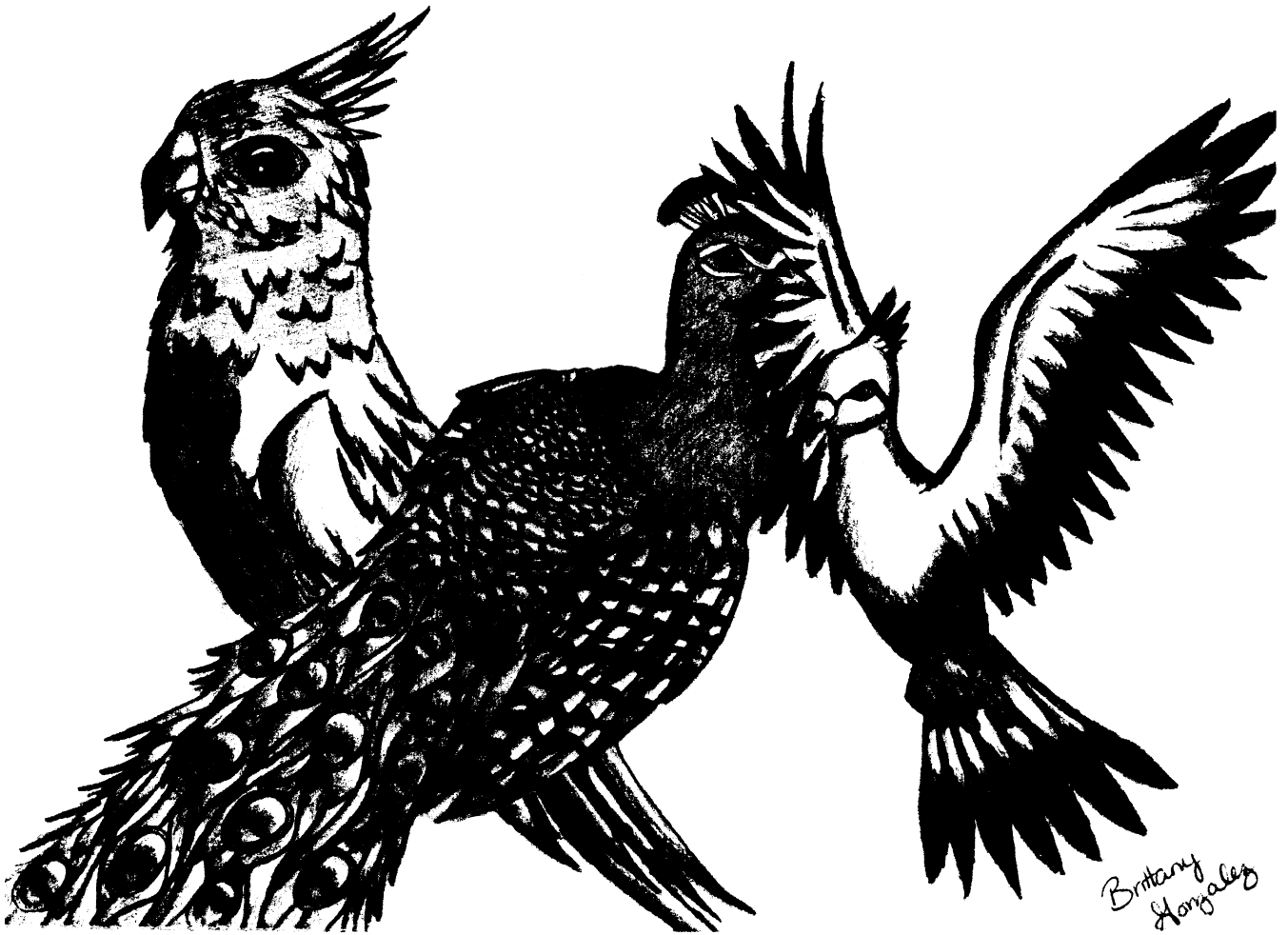

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.310, 65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.310, 65.315, and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation.

The proposed amendment to §65.310, concerning Means and Methods, would clarify that lead shot is lawful for the take of migratory game birds other than waterfowl. Federal law mandates the use of specific types of non-toxic shot for the take of waterfowl. The current rules define "non-toxic shot" as any shot approved by the director of the U.S. Fish and Wildlife Service (Service). Since federal rules allow the use of lead shot for species other than waterfowl, it is therefore regarded as "non-toxic" in that context. The proposed amendment would state this explicitly, rather than leave it to deduction. The proposed amendment is necessary to eliminate potential confusion for hunters.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, would adjust the season dates for early-season species of migratory game birds 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 proposed amendment to the portion of §65.315 concerning doves would implement a slightly different season segment structure from years past. The department has been contacted numerous times by hunters and landowners about the possibility of changing the boundaries of the South Dove Zone in order to allow for later hunting. Boundary changes must be approved by the Service, a process that typically takes from three to five years. However, the department does have the authority to adjust the lengths of the fall and winter segments within the current federal frameworks to provide additional hunting opportunity later in the season. Last year, the fall segment ran for 52 days; the proposed amendment would remove nine days from the end of the segment and transfer them to the end of the winter segment.

The proposed amendment to §65.315 also would implement a 16-day statewide teal season to run September 13 - 28, 2008, which must be approved by the Service before it can be implemented. If the Service does not approve a 16-day season, the department proposes to adopt a 9-day season to run September 20 - 28, 2008. The department cautions that the federal frameworks could close the season on teal if population data warrant. 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. In 2007, the Service authorized a 16-day September teal season, but in the High Plains Mallard Management Unit (HPMMU) the department chose to implement only a nine-day teal season, shifting the seven remaining days to the general duck season. The department's reasoning was that the September teal-only season doesn't offer an

opportunity to take other species of ducks, whereas the general season offers hunting opportunity for at least seven species in addition to teal. Therefore, by shifting seven days from the teal season to the beginning of the general duck season, the intent of the department was to provide more diverse hunting opportunity in the HPMMU.

This year, however, the department is concerned that retaining the current season structure could result in the net loss of hunting opportunity if the Service does not authorize the "liberal" management package for ducks. Under the "liberal" management package, the HPMMU receives 97 days of opportunity, plus two days for the youth-only waterfowl season, yielding a total of 99 days of opportunity. Thus, if the Service authorizes 16 days of teal hunting opportunity, the department will only be able to allow an eight-day teal season in the HPMMU, since the 107-day total season length cannot be exceeded. The department would like to gauge public sentiment for a 16-day teal season in the HPMMU.

The proposed amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift.

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.

The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry, also to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for both calendar shift and the adjustment of season dates in the West Goose Zone resulting from changes in the crane season in Zones A and B.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2008-2009 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions over the summer. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, Regulations Coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the amendments as proposed.

Mr. Macdonald also has determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizens of the state.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendments regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird resources in this state and therefore do not directly affect small businesses or micro-businesses. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the amendments as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the amendments as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4578 or 1-800-792-1112 (e-mail: vernon.bevill@tpwd.state.tx.us).

The amendments are proposed 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.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.310. Means and Methods.

Migratory birds may be taken by any method except those prohibited in this section. Except as provided in this subchapter, no person shall take migratory game birds:

(1) - (10) (No change.)

(11) while possessing loose shot that is not non-toxic shot or shotshells containing any shot other than non-toxic shot. The provisions of this paragraph apply only to the hunting of waterfowl.

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

(a) Rails.

(1) Dates: September 13 - 28, 2008 and November 1 - December 24, 2008 [September 15 - 30, 2007 and November 3 - December 26, 2007].

(2) (No change.)

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2008 [September 1 - October 30, 2007].

(B) - (C) (No change.)

(2) Central Zone.

(A) Dates: September 1 - October 30, 2008 and December 26, 2008 - January 4, 2009 [September 1 - October 30, 2007 and December 26, 2007 - January 4, 2008].

(B) - (C) (No change.)

(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 20 - November 2, 2008 and December 26, 2008 - January 20, 2009 [September 21 - November 11, 2007 and December 26, 2007 - January 12, 2008].

(B) - (C) (No change.)

(4) Special white-winged dove area.

(A) Dates: September 6, 7, 13, and 14, 2008 [September 1, 2, 8, and 9, 2007].

(i) - (ii) (No change.)

(B) Dates: September 20 - November 2, 2008 and December 26, 2008 - January 16, 2009 [September 21 - November 11, 2007 and December 26, 2007 - January 8, 2008].

(i) - (ii) (No change.)

(c) Gallinules.

(1) Dates: September 13 - 28, 2008 and November 1 - December 24, 2008 [September 15 - 30, 2007 and November 3 - December 26, 2007].

(2) (No change.)

(d) September teal-only season.

(1) Dates: September 13 - 28, 2008.

[(A) High Plains Mallard Management Unit: September 15 - 23, 2007.]

[(B) Remainder of the state: September 15 - 30, 2007.]

(2) (No change.)

(e) - (f) (No change.)

(g) Woodcock: December 18, 2008 - January 31, 2009 [December 18, 2007 - January 31, 2008]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 1, 2008 - February 15, 2009 [November 3, 2007 - February 17, 2008]. The daily bag limit is eight. The possession limit is 16.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is five, which may include no more than two scaup, two redheads, two wood ducks, and no more than one (in the aggregate) of the following: mallard hen, pintail, canvasback, or dusky duck (mot-

tled duck, black duck, Mexican duck, or hybrid of those species). The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit: October 25 - 26, 2008 and October 31, 2008 - January 25, 2009 [~~October 20 - 21, 2007 and October 26, 2007 - January 27, 2008~~].

(B) North Zone: November 1 - 30, 2008 and December 13, 2008 - January 25, 2009 [~~November 3 - 25, 2007 and December 8, 2007 - January 27, 2008~~].

(C) South Zone: November 1 - 30, 2008 and December 13, 2008 - January 25, 2009 [~~November 3 - 25, 2007 and December 8, 2007 - January 27, 2008~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 1, 2008 - February 8, 2009 [~~November 3, 2007 - February 5, 2008~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 1, 2008 - February 3, 2009 [~~November 3, 2007 - February 5, 2008~~]. The daily bag limit for dark geese is five, which may not include more than four Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 1, 2008 - January 25, 2009 [~~November 3, 2007 - January 27, 2008~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) white-fronted geese: November 1, 2008 - January 11, 2009 [~~November 3, 2007 - January 13, 2008~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 1, 2008 - January 25, 2009 [~~November 3, 2007 - January 27, 2008~~]. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 8, 2008 - February 8, 2009 [~~November 3, 2007 - February 3, 2008~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 28, 2008 - February 8, 2009 [~~November 23, 2007 - February 3, 2008~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 20, 2008 - January 25, 2009 [~~December 22, 2007 - January 27, 2008~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 18 - 19, 2008 [~~October 13 - 14, 2007~~];

(B) North Zone: October 25 - 26, 2008 [~~October 27 - 28, 2007~~]; and

(C) South Zone: October 25 - 26, 2008 [~~October 27 - 28, 2007~~].

§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 19 - December 25, 2008 [~~November 19 - December 25, 2007~~].

(2) rails and gallinules: December 26, 2008 - January 31, 2009 [~~December 27, 2007 - February 1, 2008~~].

(3) woodcock: November 24 - December 17, 2008 [~~November 24 - December 17, 2007~~].

(b) (No change.)

§65.320. *Extended Falconry Season--Late Season Species.*

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) Ducks, coots, and mergansers:

(A) (No change.)

(B) North Duck Zone: January 26 - February 9, 2009 [~~January 28 - February 11, 2008~~];

(C) South Duck Zone: January 26 - February 9, 2009 [~~January 28 - February 11, 2008~~].

(2) (No change.)

§65.321. *Special Management Provisions.*

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) - (3) (No change.)

(4) Special Light Goose Conservation Period.

(A) From January 26 - March 29, 2009 [~~January 28 - March 30, 2008~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 9 - March 29, 2009 [~~February 6 - March 30, 2008~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

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

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803031

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 389-4775