



RESTRICTIONS ON WATERFOWL HUNTING AND BAITING

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Texas hunters enjoy the waterfowl migration and are fortunate to have large numbers of ducks and geese to hunt each year. Other hunted waterfowl include Sandhill cranes and coots. Responsible hunters enjoy these resources and strive to hunt inside the law. Waterfowl are considered migratory game birds, and federal statutes to comply with the Migratory Bird Treaty Act govern hunting them. This treaty protects migratory birds such as waterfowl travelling from Canada to Mexico. It is a cornerstone of conservation and contains complex legal restrictions. Once such restriction addresses hunting waterfowl over bait.

Simply put, hunting migratory game birds over baited areas is strictly forbidden. The goal of this law is to equalize hunting opportunity along migration path-

ways and prevent localized overharvest of migratory game birds. The exact definition of baiting, however, can be somewhat unclear. According to the US Fish & Wildlife Service baiting is:

the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could lure or attract waterfowl to, on, or over any areas where hunters are attempting to take them.

[Title 50, Code of Federal Regulations, Part 20.11 (k)]

Throwing out bags of salt, grain or other feed is clearly baiting and illegal when it comes to any migratory birds—including dove. However, is it baiting if the grain comes directly or indirectly from crops that are growing on agricultural lands? Consider the following, which is quoted from the US Fish and Wildlife Service office of Law Enforcement:

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Agricultural lands offer prime waterfowl hunting opportunities. You can hunt waterfowl in fields of unharvested standing crops. You can also hunt over standing crops that have been flooded. You can flood fields after crops are normally harvested and use these areas for waterfowl hunting. Hunting waterfowl over a crop that has not been harvested but that has been manipulated (rolled/disc'd) is considered baiting under current regulations.

<http://www.fws.gov/le/waterfowl-hunting-and-baiting.html>

Key terms in the law are “harvest” and “manipulation.” Again, from US Fish and Wildlife Service office of Law Enforcement:

You should be aware that although you can hunt doves over manipulated agricultural crops, you cannot hunt waterfowl over manipulated agricultural crops except after the field has been subject to a normal harvest and removal of grain (i.e., post-harvest manipulation).

<http://www.fws.gov/le/what-is-legal.html>

Rules for doves and waterfowl are different

For hunting doves, which are also migratory birds but not waterfowl, hunters are allowed to plant a crop and then manipulate the field in a way that scatters seed specifically to attract doves. With waterfowl, however, this practice is considered baiting. The difference is whether the field is harvested to remove the grain. A person cannot legally hunt waterfowl over a manipulated field unless the field has first been harvested for the removal of grain. For example, if a grain sorghum field were planted and harvested to remove the grain, it would be legal to hunt waterfowl over that particular field. If a field were planted and was not harvested, but was shredded, disked, or trampled by livestock, it would be legal for dove hunting, but it would not be legal for hunting waterfowl. Again, the difference is in how the field was manipulated—whether or not the crop was harvested under normal agricultural processes for the removal of grain. In the first instance, the field was planted and manipulated to enhance the dove hunting experience (no harvest to remove seed required); in the second instance, where waterfowl are at issue, manip-

ulating the field (without harvesting to remove seed) would violate waterfowl hunting law.

What are normal agricultural practices and normal agricultural harvest?

Farmers and ranchers have adopted various planting strategies over the years. Regarding what is considered a normal agricultural operation versus an operation designed solely to attract birds, federal law states:

In the course of normal farming and ranching operations, some agricultural seed is left exposed on the ground and can serve as “bait” for migratory birds, including doves. If seed is left out in the open as a “normal agricultural operation,” the law considers this acceptable to hunt over. A problem arises, however, as to what constitutes a “normal agricultural operation.” For the purpose of the Migratory Bird Treaty Act “normal agricultural operation” means a normal agricultural planting, harvesting, post-harvest manipulation, or agricultural practice, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative State Research, Education, and Extension Service of the U.S. Department of Agriculture.

[Title 50, Code of Federal Regulations, Part 20.11 (h)]

The Texas A&M AgriLife Extension Service produces the official recommendations for farming and ranching practices in Texas. Recommendations include suggested species, planting methods, and planting dates that are based on data obtained from Texas A&M AgriLife Research scientists, Texas A&M AgriLife Extension Service specialists, and others. Although Texas A&M AgriLife Extension Service specialists do not dictate how farming operations are conducted, they do make recommendations that are designed to offer the greatest potential for successful crop establishment.

Regarding this practice, federal law states: Normal agricultural planting, harvesting, or post-harvest manipulation means a planting or harvesting undertaken for the purpose of producing and gathering a crop, or manipulation after such harvest and removal of grain, that

is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative State Research, Education, and Extension Service of the U.S. Department of Agriculture.

[Title 50, Code of Federal Regulations, Part 20.11 (g)]

Manipulation, as defined by federal law is:

The alteration of natural vegetation or agricultural crops by activities that include but are not limited to mowing, shredding, disking, rolling, chopping, trampling, flattening, burning, or herbicide treatments. The term manipulation does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

[Title 50, Code of Federal Regulations, Part 20.11 9(l)]

In some instances, waterfowl may also be attracted to areas where livestock are being fed a grain-based ration. Waterfowl may not be hunted over these areas as this constitutes a baited area. Baited areas are considered such for 10 days after all bait has been removed. Hunters should also note it is illegal to hunt waterfowl that are attracted to baited areas not under the hunter's control, such as a livestock feeding area on an adjacent property. It is important to be aware of potential bait sources on your hunting property, as well as those of neighbors.

Moist soil management: An economical waterfowl baiting alternative

How does a hunter or land manager attract waterfowl to hunt and still obey the law? Flooding fields is an approved practice that can attract waterfowl for hunting. Traditionally, agricultural enterprises such as rice farming accounted in part for the large numbers of waterfowl along the Texas coast. The food available from these fields attracted and supported these migrating birds' nutritional requirements. Today the rice industry is much diminished, but using manmade wetland habitat in the form of **moist soil management units** is still a successful and legal strategy to attract waterfowl for hunting.



These structures consist of impoundments where water is drawn up or down during the year to mimic natural processes and grow food plants for waterfowl. These areas can grow native and non-native plants that naturally reseed each year. This technique is generally more cost-effective than planting and flooding cultivated fields. If you decide to add supplemental seed to these areas, be sure to clearly avoid seeding during or immediately before waterfowl hunting seasons, given that these areas are planted **specifically** for waterfowl hunting. It is important to remember that moist soil management units require maintenance and planning, and that water levels must be maintained at depths appropriate for waterfowl foraging.

Native (natural) vegetation may be manipulated and hunted. One particular problem, however, involves the use of millet. Millet is a non-native species that is used as an agricultural crop or as part of a moist soil management program. Manipulated millet may **not** be hunted over the first year of establishment. However, any millet that naturally reseeds (volunteers) the year following planting can be considered natural vegetation, and be manipulated for legal hunting. Additionally, waterfowl may not be hunted over **freshly** planted wildlife food plots.

There are a variety of guides that detail the construction and use of moist soils management units. For a

basic introduction, consult *Techniques for Wetland Construction and Management, SP-316* from the Texas A&M AgriLife Extension Service.

Advice for hunters

The regulations that govern waterfowl hunting and baiting can be confusing, but there are some simple guidelines you can follow. According to the US Fish & Wildlife Service, the following are examples of legal waterfowl hunting opportunities:

You can hunt waterfowl on or over or from:

- ◆ Standing crops or flooded standing crops, including aquatic plants.
- ◆ Standing, flooded, or manipulated natural vegetation.
- ◆ Flooded harvested croplands.
- ◆ Lands or areas where grains have been scattered solely as the result of a normal agricultural planting, harvesting, or post-harvest manipulation.
- ◆ Lands or areas where top-sown seeds have been scattered solely as the result of a normal agricultural planting, or a planting for agricultural soil erosion control or post-mining land reclamation.
- ◆ A blind or other place of concealment camouflaged with natural vegetation.



- ◆ A blind or other place of concealment camouflaged with vegetation from agricultural crops, provided your use of such vegetation does not expose, deposit, distribute or scatter grain or other feed.
- ◆ Standing or flooded standing crops where grain is inadvertently scattered solely as the result of hunters entering or leaving the area, placing decoys, or retrieving downed birds. Hunters are cautioned that while conducting these activities, any intentional scattering of grain will create a baited area.

Some examples of areas where you **cannot** hunt waterfowl include:

- ◆ Areas where grain or seed has been top-sown and the Cooperative Extension Service does not recommend the practice of top sowing (see section on wildlife food plots).
- ◆ Crops that have been harvested outside of the recommended harvest dates established by the Cooperative Extension Service (including any subsequent post-harvest manipulations).
- ◆ Unharvested crops that have been trampled by livestock or subjected to other types of manipulations that distribute, scatter, or expose grain.
- ◆ Areas where grain is present and stored, such as grain elevators and grain bins.
- ◆ Areas where grain is present for the purpose of feeding livestock.
- ◆ Freshly planted wildlife food plots that contain exposed grain.
- ◆ Croplands where a crop has been harvested and the removed grain is redistributed or “added back” onto the area where grown.

What should a hunter do to ensure legal hunting?

1. Become familiar with state and federal migratory game bird hunting regulations.
2. Ask the landowner, hunting outfitter, or other responsible party, if the area has been baited.
3. Watch for unusual waterfowl behavior that may indicate baiting, even if you cannot see bait from your location.

4. Watch for bait and for signs of field manipulation unrelated to a normal grain harvest. This includes bait scattered in a moist soils management unit or wetland. These may appear to be naturally scattered, but could be baited.
5. Familiarize yourself with the normal agricultural practices for your hunting area.
6. Stop hunting immediately if you suspect or find evidence that you are hunting over bait.

Before you go hunting, you should know the law—state and federal. Familiarize yourself with what constitutes baiting as well as other prohibited practices. For example, “herding” waterfowl by using watercraft or other vehicles to drive them towards hunters is expressly forbidden. As with baiting, both outfitters and hunters may be subject to penalties at law enforcement discretion. If you have some doubt regarding any given practice, check with your local Texas Parks and Wildlife game warden or US Fish & Wildlife Service law enforcement personnel.

Additional Resources

**Texas A&M AgriLife Extension
Waterfowl Management**

<http://wildlife.tamu.edu/wildlifemanagement/waterfowl/>

**Texas Parks and Wildlife Department
Law Enforcement**

<https://tpwd.texas.gov/warden/>

Waterfowl Management

<http://tpwd.texas.gov/publications/huntwild/wild/species/waterfowl/>

US Fish and Wildlife Service

Law Enforcement

<http://www.fws.gov/le/>

<http://www.fws.gov/le/what-is-legal.html>



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