Colorado County Appraisal District

Guidelines for the Qualification of Agricultural Land in Wildlife Management

Colorado County Appraisal District

Wildlife Management Use Policy

1) Texas Parks and Wildlife Plan form PWD-885 is required.

2) The original 1-d-1 application must also include a one-page summary listing the species managed for and the actual practices being conducted.

3) All land that qualifies for open-space agricultural use or wildlife management use can qualify for wildlife management use unless the tract has a new owner, and the tract is split from a larger tract, then the minimum tract size required for wildlife management use is 16.1 acres. It is important to note that land in the process of being converted from agricultural use to wildlife management must have a full twelve (12) month period in wildlife as a larger tract before the 16.1 acre minimum requirement does not apply.

4) Any agricultural use tract can be transferred to wildlife management use as long as the minimum of ten (10) acre agricultural use size is adhered to.

5) The plan must identify the targeted species.

6) The plan must list the practices (the CAD can request proof of practices, expenses, and the name and address of the individual completing the practice).

7) Proof of open space, agricultural use for the prior three (3) years may be required.

8) An on-site visit by CAD staff may be required.

9) It is the taxpayer's responsibility to read and understand the guidelines to determine the requirements.

10) The taxpayer will be supplied with the guidelines upon request.

11) Rollback taxes are calculated the same as open-space rollback taxes

12) It is permissible to change from wildlife management use back to open-space agricultural use land at a later date.

*Only open-space agricultural use land can be transferred to wildlife management use. Market value land and 1-d land are not eligible for wildlife management use.

Introduction

The *Guidelines for Qualification of Agricultural Land in Wildlife Management Use* discuss the requirements that land must meet to qualify for wildlife management use, how to value this land and each of the seven wildlife management practices authorized by state law.

In 1995, Texas voters approved Proposition 11, which amended Article VIII, Section 1-d-1 of the Texas Constitution to permit agricultural appraisal for land used to manage wildlife.[1] H.B. 1358 implemented the constitutional amendment by making wildlife management an agricultural use that qualifies the land for agricultural appraisal.

In 2001, the Legislature passed H.B. 3123, requiring the Texas Parks and Wildlife Department (TPWD) to develop and the Comptroller to adopt rules for the qualification of agricultural land in wildlife management use. These guidelines and Title 34, Chapter 9, Subchapter G of the Texas Administrative Code constitute the rules, as required by Tax Code Section 23.521(a) and are to be used by appraisal districts in appraising land in wildlife management use. The Administrative Code specifically addresses the qualification of land for wildlife management use when the land is partitioned from a larger tract of land that previously qualified for agricultural appraisal.[2]

In 2009, the Texas Legislature allowed qualified timberland to convert to agricultural use under wildlife management.[3] Timber production satisfies the historical use requirement needed to qualify for open-space appraisal if the land is devoted principally to an agricultural use or to the production of timber or forest products.[4]

Tax Code Chapter 23, Subchapter D addresses the requirements for landowners to qualify their land for agricultural appraisal and instructs appraisal districts on how to appraise qualified agricultural land. Land used for wildlife management must meet all the legal requirements of land qualified for agricultural appraisal. Those requirements, however, are outside the scope of these guidelines. The Comptroller publishes a *Manual for the Appraisal of Agricultural Land* that discusses in detail the qualification of land for agricultural appraisal, the rollback tax penalty for change of use and appraisal of agricultural land.

Land on which the property owner engages in wildlife management and that meets other requirements for agricultural appraisal is qualified for agricultural appraisal and is technically in agricultural use. To simplify terms these guidelines refer to agricultural land used for wildlife management as land in *wildlife management use.*

Tax Code Section 23.51(1) defines qualified open-space land as:

> *Land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university and that has been used principally in that manner by a college or university for five of the preceding seven years.*

[1] *Tex. H.J.R. 72, 74th Reg. Sess. (1995)*

[2] *34 Tex. Admin. Code §9.2005*

[3] *Tex. SB 801, 81st Reg. Sess. (2009)*

[4] *Tex. Tax Code §23.51(1)*

Tax Code Section 23.51(2) includes wildlife management in the definition of agricultural uses of land. Tax Code Section 23.51(7) defines wildlife management as:

Actively using land that at the time the wildlife management use began was appraised as qualified open-space land under this subchapter or as qualified timberland under Subchapter E in at least three of the following ways to propagate a sustaining breeding, migrating or wintering population of indigenous wild animals for human use, including food, medicine or recreation:

- *habitat control;*
- *erosion control;*
- *predator control;*
- *providing supplemental supplies of water;*
- *providing supplemental supplies of food;*
- *providing shelters; and*
- *making of census counts to determine population;*

Actively using land to protect federally listed endangered species under a federal permit if the land is:

- *included in a habitat preserve and is subject to a conservation easement created under Chapter 183, Natural Resources Code; or*
- *part of a conservation development under a federally approved habitat conservation plan that restricts the use of the land to protect federally listed endangered species; or*

Actively using land for a conservation or restoration project to provide compensation for natural resource damages pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. Section 2701 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) or Chapter 40, Natural Resources Code.

Part One discusses the qualification of agricultural land used for wildlife management. Part Two discusses in detail the seven wildlife management practices listed in Tax Code Section 23.51(7).

Part I:

Qualifying Land for Wildlife Management Use

WILDLIFE MANAGEMENT USE REQUIREMENTS

LAND MUST QUALIFY FOR CHAPTER 23, SUBCHAPTER D (1-D-1) AGRICULTURAL APPRAISAL OR SUBCHAPTER E TIMBERLAND APPRAISAL

The first requirement for wildlife management use qualification is purely technical and is not related to the land's actual use to manage wildlife. The law restricts land that may qualify for wildlife management use. To qualify for agricultural appraisal under wildlife management use, land must generally qualify for agricultural appraisal under Tax Code Chapter 23, Subchapter D, (also called 1-d-1 or open-space agricultural appraisal) or Subchapter E (timberland), at the time the property owner changes to wildlife management use.

In other words, in most cases the land must have qualified for and been appraised as agricultural land or timberland during the year before the year the property owner changes to wildlife management use. For example, a property owner who wishes to qualify for wildlife management use in 2023 must be able to show the land was qualified for and appraised as agricultural land or timberland in 2022.

Land qualified for agricultural appraisal under Article VIII, Section 1-d of the Texas Constitution and Tax Code Chapter 23, Subchapter C (also called 1-d agricultural appraisal) is not eligible for wildlife management use. Similarly, land qualified for special appraisal as restricted-use timberland under Tax Code Chapter 23, Subchapter H is not eligible for wildlife management use. The law limits wildlife management use to only land qualified under Tax Code Chapter 23, Subchapters D or E.

LAND MUST BE USED TO GENERATE A SUSTAINING BREEDING, MIGRATING OR WINTERING POPULATION OF INDIGENOUS WILD ANIMALS

The second requirement for qualified wildlife management use is that the land must be used to propagate a sustaining breeding, migrating or wintering population of indigenous wild animals.[5]

An indigenous animal is a native animal that originated in or naturally migrates to or through an area and that is living naturally in that area,[6] as opposed to an exotic animal or one that has been introduced to the area. In this context, an *indigenous animal* is one that is native to Texas. (You may contact TPWD to determine if an animal species is considered indigenous.)

Land may qualify for wildlife management use if it is actively used in supporting a sustaining breeding, migrating or wintering population.[7] A group of animals need not permanently live on the land, provided they regularly migrate across it or seasonally live there.

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[5] *Tex. Tax Code §23.51(7)(A)*

[6] *34 Tex. Admin. Code §9.2001(8)*

[7] *Tex. Tax Code §23.51(7)(A)*

A *sustaining breeding* population is a group of indigenous wild animals that is large enough to live independently over several generations.[8] This definition implies that the population will not die out because it produces enough animals to continue as a viable group. TPWD may be able to provide information to help determine the number of animals of a particular species that must group together to sustain the population.

A *migrating* population of indigenous wild animals is a group of animals moving between seasonal ranges.[9] A *wintering* population of indigenous wild animals is a group of animals living on its winter range.[10]

THE INDIGENOUS WILDLIFE POPULATION MUST BE MANAGED FOR HUMAN USE

The law requires a property owner to propagate the wildlife population for human use which may include food, medicine or recreation.[11] Land will not qualify unless the owner propagates the population of wild animals for a human purpose.

The use of animals for food and medicine is self-explanatory. These uses result in a product and require active participation. A recreational use may be either active/non-passive or passive and may include any type of use for pleasure or sport. Bird watching, hunting, photography and other non-passive recreational or hobby-type activities are qualifying recreational uses. The property owner's passive enjoyment in owning the land and managing it for wildlife would also be a qualifying recreational use.

LAND MUST BE USED FOR THREE OR MORE OF THE ALLOWABLE WILDLIFE MANAGEMENT PRACTICES

Under the law, a property owner must perform at least three of seven listed wildlife management practices on the land. A property owner may qualify by doing more than three but may not engage in fewer than three of the practices. These practices are explained in detail in Part Two of these guidelines, but a short summary of each management practice listed in the law appears below.[12] Wildlife management activities are the methods chosen by a landowner to implement one of the seven practices.[13]

- **Habitat Control (Habitat Management).** A wild animal's habitat is its surroundings as a whole, including plants, ground cover, shelter and other animals on the land. Habitat control—or habitat management—means actively using the land to create or promote an environment that is beneficial to wildlife
- **Erosion Control.** Any ongoing activity that attempts to reduce or keep soil erosion to a minimum for the benefit of wildlife is erosion control.
- **Predator Control (Predator Management).** This term means activities intended to manage the population of predators to benefit the property owner's targeted wildlife population. Predator control is usually not necessary unless the number of predators is harmful to the desired wildlife population.
- **Providing Supplemental Supplies of Water.** Natural water exists in all wildlife environments. Supplemental water is provided when the property owner actively provides water in addition to the natural sources.
- **Providing Supplemental Supplies of Food.** Most wildlife environments have some natural food. A property owner supplies supplemental

[8] *34 Tex. Admin. Code §9.2001(9)*
[9] *34 Tex. Admin. Code §9.2001(10)*
[10] *34 Tex. Admin. Code §9.2001(11)*
[11] *Tex. Tax Code §23.51(7)(A)*
[12] *34 Tex. Admin. Code §9.2001(4)*
[13] *34 Tex. Admin. Code §9.2001(5)*

food by providing food or nutrition in addition to the level naturally produced on the land.

- **Providing Shelter.** This term means actively creating or maintaining vegetation or artificial structures that provide shelter from the weather, nesting and breeding sites or escape cover from enemies.
- **Making Census Counts to Determine Population.** Census counts are periodic surveys and inventories to determine the number, composition or other relevant information about a wildlife population to measure if the current wildlife management practices are serving the targeted species.

WILDLIFE MANAGEMENT PROPERTY ASSOCIATIONS

Wildlife Management Property Associations (WMPA) are a group of neighbors that are subject to a written agreement that legally obligates the property owner of each tract to perform the management practices and activities necessary for each tract to qualify for agricultural valuation as land in wildlife management use.[14] The tracts of land must be contiguous, however the presence of public roads or bodies of water do not affect the contiguity of the tracts.[15]

Although property owners with smaller tracts of land are encouraged to work cooperatively with their neighbors for some wildlife management practices, such as conducting a population census, each property owner must also individually be doing three practices of an appropriate intensity level on their property, submit their own individual wildlife management plan and be able to qualify on their own.

The WMPA may prepare a single wildlife management plan provided that all required information is included for each tract of land in the WMPA and the plan is signed by each property owner or their agent.[16] The agent must be designated in the manner required by Tax Code Section 1.111 and Administrative Code Title 34, Section 9.3044.[17]

WILDLIFE USE REQUIREMENT

While there is generally not a minimum acreage requirement for land converting from agricultural use or timberland to wildlife management use or land that is currently in wildlife management use, under certain scenarios a tract of land may be subject to a minimum acreage requirement ("wildlife use requirement") to continue to qualify for wildlife management use.

If the number of acres in a tract of land is *equal to or greater* than the number of acres on Jan. 1 of the preceding tax year, the tract of land is *not* subject to the wildlife use requirement.[18] For any tract that is smaller than it was the previous year on Jan. 1, then it will be subject to the wildlife use requirement, except as provided by Administrative Code Title 34, Section 9.2005(f) and (g).[19] For wildlife management purposes, a tract of land is the entire area of a parcel or contiguous parcels of land as reflected in appraisal district records under common ownership. The presence of public roads and bodies of water does not affect the contiguity of the parcels of land.[20]

The wildlife use requirement is a number expressed as a percentage calculated by subtracting one (1) from the total number of acres in the tract and dividing by the total number of acres in the tract.[21] If the resulting percentage is equal to or greater than the wildlife use requirement percentage the land continues to be eligible for wildlife management use.

[14] *34 Tex. Admin. Code §9.2001(b)(7)(D)*
[15] *34 Tex. Admin. Code §9.2001(b)(7)(A)*
[16] *34 Tex. Admin. Code §9.2003(f)*
[17] *34 Tex. Admin. Code §9.2003(f)*
[18] *34 Tex. Admin. Code §9.2005(b)*
[19] *34 Tex. Admin. Code §9.2005(c)*
[20] *34 Tex. Admin. Code §9.2001(b)(6)*
[21] *34 Tex. Admin. Code §9.2005(a)*

The wildlife use requirement percentage is selected by the chief appraiser, with the advice and consent of the appraisal district Board of Directors, from the wildlife use requirement ranges specified by TPWD for each ecological region (ecoregion) and listed in Administrative Code Title 34, Section 9.2005(c). The wildlife use requirement percent ranges are used to calculate the minimum acreage range. The chief appraiser can select any acreage requirement within the range as the minimum but may not go outside the calculated range.

For example, for a county in the Blackland Prairie Region the wildlife use requirement percentage range is at least 92% but not more than 94%.[22] Exhibit 1 shows how to calculate the upper and lower limits in acres. For a county in this ecoregion the chief appraiser can choose any acreage amount between 12.5 to 16.7 acres as the minimum.

EXHIBIT 1

Calculating Acres from Percentages - Standard Range

100 ÷ (100 - 92) = **12.5 acres**	100 ÷ (100 - 94) = **16.7 acres**

If a tract of land is in a WMPA or is being managed for an endangered or threatened species or species of concern (ES) it will have to pass the wildlife use requirement *every year*, except as provided by Administrative Code Title 34, Section 9.2005(f) and (g). The wildlife use requirement percentage is selected by the chief appraiser, with the advice and consent of the appraisal district Board of Directors, from the wildlife use requirement ranges specified by TPWD for each ecoregion and listed in Administrative Code Title 34, Section 9.2005(d) and (e), respectively.

These ranges are smaller than the standard acreage ranges. For example, for a county in the Blackland Prairie Region the wildlife use requirement percent range for a WMPA/ES is at least 90% but not more than 91%. Exhibit 2 shows how to calculate the upper and lower limits using these percentages. For a county in this ecoregion the chief appraiser can choose any acreage amount between 10 to 11.1 acres as the minimum. Exhibit 3 also includes a chart with the calculated upper and lower limits for each wildlife use requirement percentage range and each ecoregion.

EXHIBIT 2

Calculating Acres from Percentages - WMPA/ES

100 ÷ (100 - 90) = **10 acres**	100 ÷ (100 - 91) = **11.1 acres**

[22] *34 Tex. Admin. Code §9.2005(c)(10)*

AGRICULTURAL USE REQUIREMENTS

Wildlife management use must meet all the requirements to qualify for agricultural use as defined in Tax Code Section 23.51(1). Below is a brief overview of the principal components of agricultural use requirements that also apply to land used for wildlife management. For a thorough discussion of these components, please refer to the *Manual for the Appraisal of Agricultural Land.*

PRIMARY USE

The law requires agriculture to be the most important or *primary*[23] use of the land. Wildlife management is an agricultural use under the law.[24] The *primary* use requirement is particularly important for land used to manage wildlife. For example, land devoted to wildlife management can be used as a residence for the owner, but the land will not qualify if residential use—and not wildlife management—is the land's primary use.

A chief appraiser must gather and consider all the relevant facts to determine if the land is primarily used to manage wildlife. Some important questions to consider are:

- Is the property owner implementing an active, written, wildlife management plan that shows he or she is engaging in activities necessary to preserve a sustaining population on the land? A management plan is required and must be completed on a form supplied by TPWD for each tract of land for which qualification is sought. A plan is clear evidence of the property owner's intent to use the land primarily for wildlife management. A good plan will usually list wildlife management practices with the appropriate seasons or sequence of events.
- Do the property owner's management practices emphasize managing the population to ensure its continued existence over another use of the land? For example, does the property owner refrain from allowing visitors on the land in years when the habitat is sensitive?
- Has the property owner engaged in the wildlife management practices necessary to sustain and encourage the population? In some cases, a property owner may control predators and may supply water when water is not adequate, may supply shelter and may provide food when natural food production is not adequate and may establish vegetation to control erosion. In other cases, less active management may maintain and encourage the growth of wildlife. The determination is to be made by the landowner as long as they meet the intensity requirements on three of the seven practices.
- Are there improvements—appropriate fencing for feral hog or cattle exclusion, cross fencing for grazing animal rotation, supplemental watering sources, bird boxes for shelter, for example—necessary to control or sustain the wildlife population if listed in the management plan?

A property owner may use land for purposes that are secondary to the primary use—wildlife management—if the secondary use is compatible with the primary use. For example, a property owner may engage in wildlife management and also operate a business in which bird watchers stay on the land overnight and watch for birds during the day (known as a bird and breakfast operation). This activity is secondary to the primary activity of managing the wildlife, but it is compatible with the wildlife management use.

In the first year that a property owner seeks to qualify for wildlife management use, the chief appraiser is required to approve the application if the facts on the application, the management plan and any additional evidence provided by the owner indicate that the land and the owner will meet the requirements. However, if in that first year the owner's actual use of the land did not meet the requirements and was otherwise ineligible for appraisal as open-space land

[23] *"Principal" or "principally" is defined in the online Merriam-Webster's dictionary and thesaurus as "most important, consequential or influential" and the term "primary" is one of several synonyms.*

[24] *Tex. Tax Code §23.51(2)*

Tax Code Section 23.54(j) requires the chief appraiser to appraise the property at market value for the year that it was erroneously appraised for wildlife management use.[25]

DEGREE OF INTENSITY

The degree of intensity standard for wildlife management land is determined in a similar way as other agricultural uses. Wildlife management land usually requires management practices that encourage long-term maintenance of the population.

The chief appraiser must become familiar with the typical wildlife management practices and activities in the area. To help become familiar the chief appraiser may ask themselves whether fencing is typical in the area for managing the target wildlife population, and what is the typical population size? In addition, the chief appraiser could ask themselves how many of the following practices are typical in the area (or typical for the area during some parts of the year): habitat management; predator management; erosion control; providing supplemental supplies of food or water; providing shelter and engaging in census counts.[26]

Because wildlife management practices are elements of the degree of intensity determination, a property owner must be engaging in three of seven practices to the degree of intensity typical for the area. The practices chosen by the landowner must be implemented to the degree of intensity that is consistent with these guidelines and TPWD's *Comprehensive Wildlife Management Planning Guidelines* for the ecoregion in which the tract of land is located and also for the specific indigenous species targeted for management.[27] These plans themselves can be found on TPWD's website. A map of the ecoregions can be found in Exhibit 4 on page 10.

HISTORICAL USE REQUIREMENT

Generally, land must have qualified for agricultural use or timberland and been appraised as agricultural use or timberland in the year before the property owner changes its use to wildlife management. Consequently, the time-period test to determine if the land has been used for agriculture for five of the preceding seven years may not be necessary.

There are two exceptions to this requirement for wildlife management use:[28]

- land that is being actively used to protect a federally listed endangered species if the land is included in a habitat preserve and is subject to a conservation easement created under Natural Resources Code Chapter 183 or part of a conservation development under a federally approved habitat conservation plan that restricts the use of the land to protect federally listed endangered species;[29] and
- land that is being actively used for a conservation or restoration project to provide compensation for natural resource damages pursuant to the Comprehensive Environment Response, Compensation, and Liability Act of 1980[30], the Oil Pollution Act of 1990[31], the Federal Water Pollution Control Act[32] or Chapter 40 of the Natural Resources Code.[33]

The terms "endangered species," "federal permit" and "habitat preserve" have the meaning assigned to them by Parks and Wildlife Code Section 83.011.

[25] *34 Tex. Admin. Code §9.2004(c)*
[26] *Tex. Tax Code §23.51(7)(A)*
[27] *34 Tex. Admin. Code §9.2004(b)(4)*
[28] *Tex. Tax Code §§23.51(1) and 23.51(7),(B), and (C)*
[29] *Tex. Tax Code §23.51(7)(B)*
[30] *42 U.S.C. Section 9601 et seq.*
[31] *33 U.S.C. Section 2701 et seq.*
[32] *33 U.S.C. Section 1251 et seq.*
[33] *Tex. Tax Code §23.51(7)(C)*

DETERMINING APPRAISED VALUES

Wildlife management use is a *revenue-neutral* use of land.[34] Land qualified for wildlife management should be placed in a wildlife management category but should have the same appraised value as before its conversion to wildlife management use. For example, if the land was in Native Pasture I before the property owner converted to wildlife management use, the land should be placed in the wildlife management category and will be appraised at the Native Pasture I value.

If that land use category's value subsequently changes in the county, the new category values would apply to those tracts under wildlife management use in that category.

NOTIFYING THE CHIEF APPRAISER OF CHANGE OF USE

The law requires a property owner to notify the chief appraiser if the category of agricultural use changes. Since agricultural use or timberland may qualify for wildlife management use, a property owner who converts to wildlife management use will need to submit a new *Application for 1-d-1 (Open-Space) Agricultural Use Appraisal* form along with a wildlife management plan. The property owner must notify the chief appraiser in writing before May 1 of the year in which the property owner wants to qualify under wildlife management use.[35]

Likewise, a property owner must notify the chief appraiser if land is switched from wildlife management use to another qualifying agricultural use or if land is no longer eligible to be appraised as agricultural land. Failure to notify the appraisal district of the change in use will result in a penalty equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under Tax Code Chapter 23, Subchapter D and the taxes that would otherwise have been imposed.[36]

Property owners should contact their appraisal district about notification requirements before changing small portions of their land from one qualified agricultural use to another.

[34] *Tex. Tax Code §23.52(g)*

[35] *Tex. Tax Code §§23.54(h) and 23.75(h)*

[36] *Tex. Tax Code §23.54(h)*

Part II:

Wildlife Management Practices, Activities and Definitions

Among the statutory requirements for property owners to qualify agricultural land for wildlife management use is a mandate that property owners perform at least three of seven wildlife management practices, which were briefly summarized in Part I:

1. habitat control (habitat management);
2. erosion control;
3. predator control (predator management);
4. providing supplemental supplies of water;
5. providing supplemental supplies of food;
6. providing shelters; and
7. making census counts to determine population.

Below is a detailed explanation of the kinds of activities that a property owner can do to satisfy the listed practices above. Chief appraisers should examine these along with their respective TPWD regional planning guidelines to determine if a property owner satisfies the law's requirements to implement the listed practices. Some of the activities listed below may require permits from federal, state or local governments. The specific examples throughout these practices and activities may not be appropriate in your specific ecoregion, please check the TPWD's regional planning guidelines. For example, before improving a wetland or controlling grackles or cowbirds, a property owner may need a permit. Or before conducting a prescribed burn, a property owner may be required to provide a map of the acreage. Property owners should contact the appropriate legal authorities for permit information if they have questions or concerns about engaging in any of the practices listed above.

WILDLIFE MANAGEMENT PLAN

A *Wildlife Management Plan* gives information on the property's history and current use, establishes the property owner's goals for the property and provides a set of activities that were chosen to implement the practices designed to integrate wildlife and habitat improvement. Such a plan is clear evidence of the property owner's intent to use the land primarily for wildlife management.

As stated in Part I, a property owner must provide a wildlife management plan along with a completed *Application for 1-d-1 (Open-Space) Agricultural Use Appraisal* to the appraisal district. The plan must be completed on the form prescribed by TPWD for each tract of land for which wildlife management use qualification is sought.[37]

A chief appraiser may accept a wildlife management plan that is not on the form prescribed by TPWD if the plan contains all the required information but may not require it.[38] The practices and activities contained in the plan must be consistent with the practices and activities recommended in the model TPWD regional management plan for the region in which the property is located. The deadline for filing these two documents is before May 1, meaning both must be postmarked by April 30 or filed no later than midnight April 30.[39]

[37] *34 Tex. Admin. Code §9.2003(a)*
[38] *34 Tex. Admin. Code §9.2003(a)*
[39] *Tex. Tax Code §§1.08 and 23.54(d)*

Property owners may formulate their own plans. Assistance or review is available from the TPWD, the Texas A&M AgriLife Extension Service, the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS), the Texas A&M Forest Service or other qualified wildlife biologists.

A complete plan is likely to include elements of all seven wildlife management practices. All practices and activities should be designed to overcome deficiencies that limit wildlife or harm their habitats. Each of the activities should be practiced routinely or consistently as part of an overall habitat management plan. For example, scattering seed corn sporadically would not qualify as providing supplemental supplies of food under these guidelines, and occasionally placing barrels of water in a pasture would not meet the requirements for providing supplemental supplies of water.

If the tract of land provides habitat for federally listed endangered species, or is a threatened species or candidate for listing, the plan must ensure that the specific management practices and activities do not harm the listed species.[40]

Some activities that are appropriate for certain regions of Texas may be inappropriate in others. For example, some areas of East Texas may not require providing supplemental pond water for wildlife and there may be no need for supplemental cover in South Texas brush. TPWD has developed regional wildlife management plans that list the practices and activities appropriate to the 10 ecoregions in Texas.

Exhibit 4 is a map of the regions, which are:

1. East Texas Pineywoods
2. Gulf Coast Prairies and Marshes
3. Post Oak Savannah
4. Blackland Prairies
5. Cross Timbers and Prairies
6. South Texas Plains
7. Edwards Plateau
8. Rolling Plains
9. High Plains
10. Trans-Pecos

An appraisal district has the option to require a property owner to file an annual report detailing how the wildlife management plan was implemented in any given year for each qualified tract of land. If an annual report is required, it must be completed on the form prescribed by TPWD and signed by the property owner or their agent.[41] A WMPA may file a single annual report as long as the report shows how the wildlife management plan was implemented on each tract of land in the WMPA and the single report is signed by each property owner or their agent. No penalty or late fee may be assessed in the event the annual report is filed late. The annual report form can be found on the TPWD's website.[42]

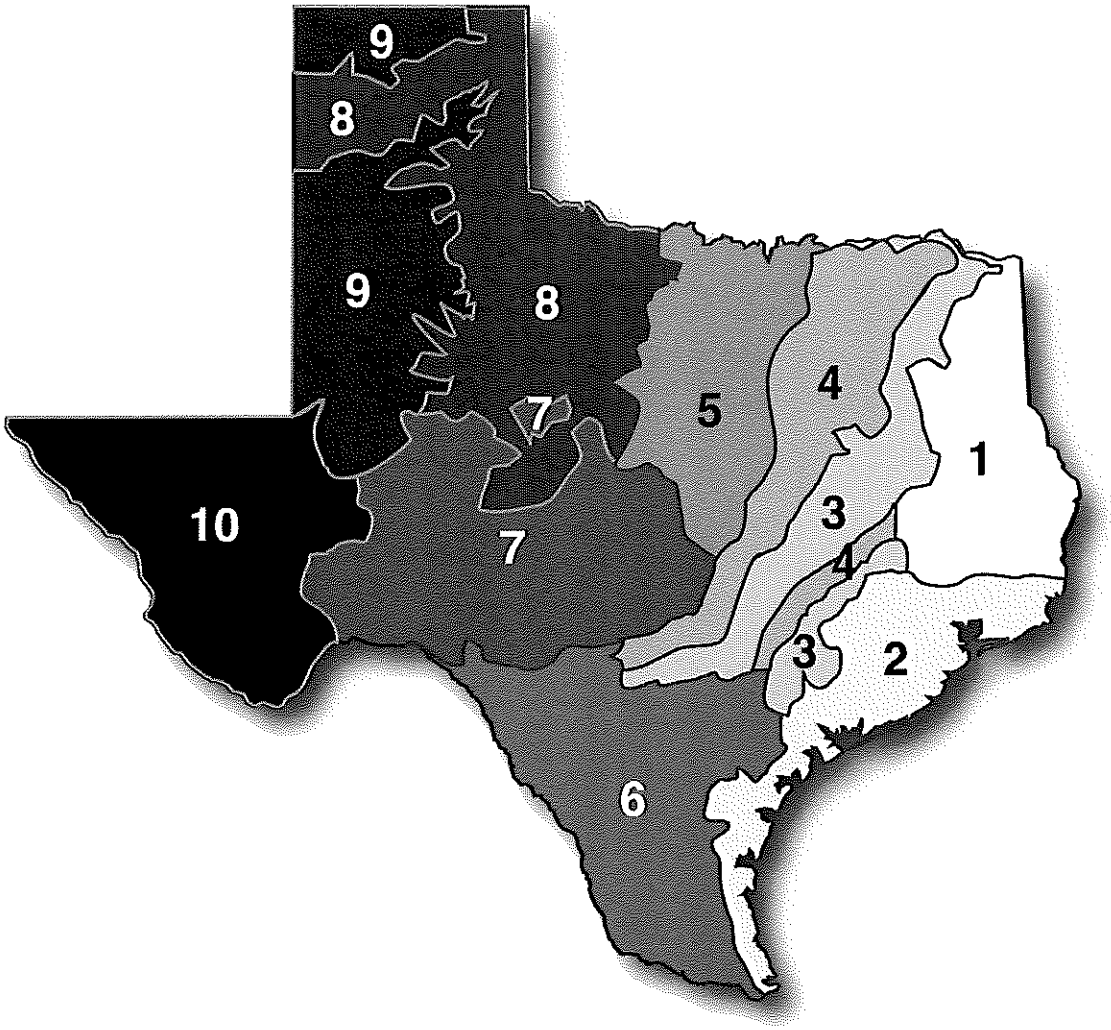
[40] *34 Tex. Admin. Code §9.2003(e)*

[41] *Tex. Tax Code §1.111 and 34 Tex. Admin. Code §9.3044*

[42] *34 Tex. Admin. Code §9.2003(g)*

EXHIBIT 4

Ecological Regions of Texas



HABITAT CONTROL (HABITAT MANAGEMENT)

A wild animal's habitat is its surroundings as a whole, including plants, ground cover, shelter and other animals on the land. Habitat control—or habitat management—means actively managing the land to create or promote an environment that benefits wildlife on the land.

Activities that contribute to habitat control or management include:

- grazing management;
- prescribed burning;
- range enhancement;
- brush management;
- forest management;
- riparian management and improvement;
- wetland improvements;
- habitat protection for species of concern;
- managing native, exotic and feral species; and
- wildlife restoration.

Grazing management means shifting livestock and grazing intensity to increase food and

animal cover or to improve specific animals' habitat. Grazing management focuses on:

- the kind and class of livestock grazed;
- stocking rates or intensity;
- periodic rest for pastures by controlling grazing intensity; and
- the sign of excluding livestock from sensitive areas to promote vegetation protection and recovery or to eliminate competition for food and cover.

Deferred grazing is an acceptable practice. Two years of deferment is a general standard, although drought or other local conditions may extend the deferment. Seasonal stocker operations also may be appropriate. Supplemental livestock water—provided by earthen tanks or wells—may be useful when implementing grazing rotation.

Appropriately designed fencing can play an important role in grazing rotation plans. Fencing also can be used to improve or protect sensitive areas, woodlands, wetlands, riparian areas and spring sites. Property owners should review their fencing and grazing plans annually to ensure they meet the overall wildlife management goals.

Prescribed burning is the planned application of fire to improve habitat and plant diversity, to increase food and cover or to improve a particular species' habitat. The property owner's wildlife management plan indicates the frequency of planned burnings and the minimum percentage of acreage to be burned. A plan may designate the areas to be protected or excluded from burning but should remain flexible during periods when conditions are not favorable for burning, such as during periods of drought.

Range enhancement means to establish native plants—such as grasses and forbs (weeds and wildflowers)—that provide food and cover for wildlife or help control erosion. Protecting, restoring and managing native prairies also is considered range enhancement.

The plants chosen and the methods for establishing the plants should be appropriate to the county. Non-native species generally are not recommended, but if required for a specific purpose, non-native species should not exceed 25 percent of the seeding mix.

The seeding mixtures should provide for maximum native plant diversity. Many broadleaf perennial plants, such as weeds and wildflowers, provide forage for wildlife and seed production. Property owners should encourage weed and wildflower species by using the methods appropriate to native rangelands, land devoted to the federal Conservation Reserve Program (CRP) and improved grass pastures (for example, Coastal Bermuda). Some periodic noxious weed control may be necessary in fields converted to native rangeland to help establish desirable vegetation.

Brush management may involve maintaining, establishing or selectively removing or suppressing targeted woody species (including exotics) to encourage the growth of desirable trees, shrubs, grasses and forbs for forage and nesting or protective cover for selected wildlife species. Brush management also includes keeping the proper kind, amount and distribution of woody cover for selected animal species.

A useful brush management plan should examine wildlife cover requirements, soil types, slope angle and direction, soil loss and erosion factors and plans to control reinvasion as part of an overall wildlife management plan. This activity should focus on retaining snags to provide cover and nesting sites for cavity-nesting animals. In addition, herbicides, if used, should be used in strict accordance with label directions.

In areas where brushy cover is limited, property owners may establish native tree and shrub species to provide food, corridors and shelter using appropriate plant species and methods.

Forest management involves establishing, maintaining, harvesting, selectively removing or suppressing trees or woody species (including exotics) to allow for the

growth of desirable trees, shrubs, grasses and forbs for forage and nesting or protective cover for selected species. Forest management activities also include keeping the proper kind, amount and distribution of woody cover for selected animal species.

As with brush management, this activity also includes retaining snags to provide cover and nesting sites for cavity-nesting animals. Forest management activities include pre-commercial thinning or non-commercial thinning, which involves reducing the stocking levels in a stand to increase the sunlight that reaches the ground to encourage vegetation or plants in the understory.

Property owners should establish native tree and shrub species to provide food, corridors and shelter using species and methods appropriate to the county. Owners should attempt to restore important forested habitats including bottomland hardwoods, longleaf pine, bogs, mixed pine/hardwood areas and upland hardwoods. Property owners also should avoid breaking up large forested habitats for some wildlife species.

Riparian management and improvement focuses on annually or seasonally protecting the vegetation and soils in riparian areas (low areas on either side of stream courses). Riparian management and improvements can include providing livestock alternate watering sites, deferring livestock grazing in pastures with riparian areas during critical periods, excluding livestock from pastures with riparian areas and fencing to exclude or provide short-duration livestock grazing.

Property owners should attempt to restore important forested habitats including bottomland hardwoods, bogs, mixed pine/hardwood areas and turkey roost sites and avoid breaking up large forested habitats in riparian areas.

Wetland improvements provide seasonal or permanent water for roosting, feeding or nesting wetland wildlife. This practice involves creating, restoring or managing shallow wetlands, greentree reservoirs, playa lakes and other moist soil sites.

Habitat protection for species of concern refers to managing land to provide habitat for an endangered, threatened or rare species. Habitat protection includes managing or developing additional areas for protecting nesting sites, feeding areas and other critical habitat limiting factors. This protection can be provided by fencing off critical areas, managing vegetation for a particular species, maintaining firebreaks to ensure critical overstory vegetation and annually monitoring the species of concern. Any broad-scale habitat management for migrating, wintering, breeding neotropical birds (primarily songbirds) should follow the specific guidelines provided in TPWD's management plans for each ecoregion. Contact TPWD or follow specifically approved management guidelines before practicing activities designed to protect endangered species.

Managing native, exotic and feral species involves controlling the grazing and the browsing pressure from native and non-native wildlife, particularly white-tailed deer and exotic ungulates, such as axis deer. This activity is designed to prevent overuse of desirable plant species and improve the habitat and plant diversity for native animals.

To ensure that a property owner's objectives are met and that the animals are not exceeding the habitat's carrying capacity, property owners should monitor the harvesting of animals and vegetation use over time. Property owners also may control other exotic and feral animals — previously domesticated animals that have become wild — to improve the habitat and reduce the negative effect on native wildlife. Control of native, exotic and feral animals must be conducted in accordance with applicable laws.

In addition, property owners should selectively remove or control exotic vegetation affecting native habitats and wildlife over a period of time, for example, large stands of naturalized salt cedar, Chinese tallow, weeping lovegrass, among other things. Property owners also

should convert tame pasture grasses, such as large areas of coastal Bermuda, to native vegetation.

Wildlife restoration simply means 1) restoring and improving a habitat to good condition for targeted species and 2) reintroducing and managing a TPWD-approved native species within a habitat's carrying capacity as part of a TPWD-approved restoration area.

EROSION CONTROL

Any activity that attempts to reduce or keep soil erosion to a minimum for the benefit of wild animals constitutes erosion control. Erosion is the detachment and movement of soil by moving water, wind or ice. When raindrops hit an uncovered soil surface, they dislodge and detach soil particles (splash erosion). If there is more rainfall than the ground can absorb, the resulting runoff carries these detached soil particles away. Some erosion control activities include:

- pond construction;
- gully shaping;
- streamside, pond and wetland revegetation;
- establishing native plants;
- dike, levee construction or management; and
- water diversion.

Pond construction is defined as building a permanent water pond to prevent, stop or control erosion as an approved NRCS watershed project while providing habitat diversity and benefiting wildlife. Whenever possible, property owners should use ponds to help create or restore shallow water areas as wetlands and for water management.

Gully shaping involves reducing erosion rates on severely eroded areas by smoothing to acceptable grades and re-establishing vegetation. An area should be seeded with plant species that provide food and cover for wildlife.

Streamside, pond and wetland revegetation means revegetating areas along creeks, streams, ponds and wetlands to reduce erosion and sedimentation, stabilize streambanks, improve plant diversity and improve the wildlife value of sensitive areas. Some revegetation activities include:

- building permanent or temporary fences to exclude, limit or seasonally graze livestock to prevent erosion;
- using hay (native, when possible) to slow and spread water runoff in areas where vegetation has been recently re-established;
- establishing plant buffer areas or vegetative filter strips along water courses or other runoff areas;
- installing rip-rap, dredge spoil or other barrier material along embankments to prevent erosion and protect wildlife habitat; and
- establishing stream crossings to provide permanent low-water crossings to reduce or prevent erosion.

Establishing native plants on critical areas is one method of controlling erosion. These plants also can provide food and cover for wildlife and restore native habitat. Some of the ways to establish these plants include:

- establishing and managing wind breaks/shelterbelts by planting multi-row shelterbelts (at least four rows that are 120 feet wide by 1/4 mile), renovating old shelterbelts (re-fence, root-prune and replace dead trees) and establishing shrub mottes;
- establishing perennial vegetation on circle irrigation corners by revegetating at least every other corner to reduce erosion and sedimentation, improve plant diversity and improve wildlife habitat;
- planting permanent vegetation on terraces and field borders to reduce erosion, improve plant diversity and improve wildlife habitat;
- conserving tillage/no-till farming practices by leaving waste grain and stubble on the soil surface until the next planting season to provide supplemental food or cover for wildlife, control erosion and improve the soil tilth; and

- managing CRP cover by maintaining perennial cover established under the CRP on erodible sites using proper management techniques such as haying, prescribed grazing or burning.

Dike, levee construction or management is a way to establish and maintain wetlands or slow runoff to control or prevent erosion and to provide habitat for wetland-dependent wildlife. Levee management may include reshaping or repairing damage caused by erosion and revegetating levee areas to reduce erosion and sedimentation and stabilize levees. This activity may include fencing to control and manage grazing use.

Water diversion systems also can be installed to protect erodible soils and divert water into wetlands to provide habitat for resident and migratory water birds and wetland-dependent species.

PREDATOR MANAGEMENT

Predator management refers to any activity intended to manage the population of predators to benefit the property owner's target wildlife population. Predator control usually is not necessary unless the number of predators is harmful to the desired wildlife population. Predator control and management should not be counted as one of the seven wildlife management practices necessary to qualify for agricultural use appraisal unless it is part of a comprehensive wildlife management scheme or plan. Predator management must be conducted in accordance with applicable laws. Some types of predator management and control activities are:

- mammal predator control;
- fire ant control;
- brown-headed cowbird control; and
- grackle or starling control.

Mammal predator control may be necessary to increase the survival of the targeted species. Key native predator species may include coyotes, raccoons, bobcats and mountain lions, while exotic predators may include wild house cats, wild dogs and wild hogs.

Fire ant control (imported red fire ants) can be used to protect native wildlife species or their food base. Treatments should comply with the label instructions and should cover at least 10 acres or one tenth of an infested area each year, whichever is more.

Controlling brown-headed cowbirds to decrease nest parasitism of targeted neotropical bird species, such as endangered songbirds, may be part of an overall planned program.

Grackle/starling control can be undertaken as part of a planned program to reduce bird diseases and overcrowding, which can harm the population of white-winged dove and other neotropical birds.

PROVIDING SUPPLEMENTAL WATER

Natural water exists in all wildlife environments. Supplemental water is provided when the property owner actively provides water in addition to the natural sources. This wildlife management practice includes providing supplemental water in habitats where water is limited or redesigning water sources to increase the availability to wildlife. Wildlife water developments are in addition to those sources already available to livestock and may require protection from livestock. Some examples of recommended activities include:

- marsh or wetland restoration or development;
- managing well, trough and windmill overflow; and
- spring development and/or improvements.

Marsh or wetland restoration or development can provide supplemental water in the form of shallow wetlands for wetland-dependent wildlife, even in areas where inadequate water does not limit wildlife. Property owners may include seasonally available water such as:

- greentree reservoirs;
- specific shallow roost pond development;

- seasonally flooded crops and other areas;
- moist soil management;
- cienega (desert marsh) restoration, development and protection; and
- maintaining water in playa lakes.

Based on the wildlife's needs and the suitability of the property, managing water levels annually is desirable. In order to meet practice standards and maximize productivity of wetland sites, a minimum of one marsh/wetland should be restored or developed every ten years.

Managing well, trough and windmill overflow can provide supplemental water for wildlife and provide habitat for wetland plants. Property owners may drill wells if necessary and build pipelines to distribute water. Building devices known as wildlife water guzzlers to collect rainfall and runoff for wildlife in areas where water is limited helps protect wildlife, however these devices must be a part of an overall habitat management program.

Spring development and improvements can be designed to protect the immediate area surrounding a spring. Excluding and controlling livestock around springs may help to maintain native plants and animal diversity. Other ways to protect areas include moving water through a pipe to a low trough or a shallow wildlife water overflow, making water available to livestock and wildlife while preventing degradation of the spring area from trampling.

Improvements could include restoring a degraded spring by selectively removing appropriate brush and revegetating the area with plants and maintaining the restored spring as a source of wildlife water. Maintaining critical habitat, nesting and roosting areas for wildlife and preventing soil erosion must be considered when planning and implementing brush removal. This activity should be introduced gradually and selectively over a period of time.

PROVIDING SUPPLEMENTAL FOOD

Most wildlife environments have some natural food. A property owner supplies supplemental food by providing food or nutrition in addition to the level naturally produced on the land. Grazing management, prescribed burning and range enhancement can be used to provide supplemental food. Additional information on these activities can be found on page 11. Other ways to provide supplemental food include:

- food plots;
- feeder and mineral supplements; and
- managing tame pasture, old fields and croplands.

Food plots are one way to establish locally adapted forage to provide supplemental food and cover during critical periods of the year. Livestock should be generally excluded from small food plots. The shape, size, location and percentage of total land area devoted to food plots should be based on the requirements of the targeted species.

Feeders and mineral supplements can help dispense additional food to selected wildlife species during critical periods. Corn feeders should not be used except to control excessive numbers of deer and exotic ungulates as defined within a comprehensive wildlife management plan with a targeted harvest quota that is regularly measured. Harmful aflatoxin in feed should not exceed 20 parts per billion.

Mineral supplements also may be supplied to wildlife in several ways, however, this activity must be a part of an overall habitat management plan that addresses all animal groups and considers the habitat's carrying capacity.

Managing tame pasture, old fields and croplands can increase plant diversity, provide supplemental food and forage and gradually help convert the land to native vegetation. Recommended activities may include:

- overseeding or planting cool season and warm season legumes, such as clovers, vetches and peas, and small grains in pastures or rangeland;

- using plants and planting methods appropriate to the county;
- shallow tillage (discing) that encourages habitat diversity, the production of native grasses and forbs or increases bare ground feeding habitat for selected species; and
- no-till or minimum-till agricultural practices that leave waste grain and stubble on the soil surface until the next planting season, which provide supplemental food or cover, control erosion and improve soil tilth.

If legumes are planted this is an annual practice until all pastures are shifted to native vegetation.

PROVIDING SUPPLEMENTAL SHELTER

Providing supplemental shelter means actively creating or maintaining vegetation or artificial structures that provide shelter from the weather, nesting and breeding sites or escape cover from enemies. The best shelter for wildlife can be provided by a well-managed habitat. Some activities to provide supplemental shelter include:

- installing nest boxes and bat boxes;
- brush piles and slash retention;
- managing fence lines;
- managing hay meadow, pasture or cropland;
- half-cutting trees and shrubs;
- establishing woody plants and shrubs; and
- developing natural cavities and snags.

Installing nest boxes and bat boxes in the proper numbers and locations to provide nests or dens for selected species when necessary should be consistent with the habitat needs of the target species.

Brush piles and slash retention can provide additional wildlife cover and protection in habitats where inadequate natural cover limits the growth of a selected species. Planned placement of brush piles and slash retention—leaving dead brush on the ground where it was cut or uprooted—also can protect seedlings of desirable plant species. In addition, stacking posts or limbs in tepees can provide cover for small game and other wildlife in open areas.

Fence line management, which maintains or allows trees, shrubs, forbs and grasses to grow around fence lines, can provide both food and cover. This activity should only be used where cover is insufficient in the habitat, i.e. cropland or tame pasture.

Hay meadow, pasture or cropland management can be useful tools in wildlife management. Property owners should postpone mowing or swathing hay fields until after the peak of the nesting and young-rearing period of local ground-nesting birds and mammals.

Property owners should mow or shred one-third of open areas per year, preferably in strips or mosaic type patterns, to create edge and structural diversity. Weeds are an important source of food for many wildlife species, and property owners should minimize weed control practices.

Property owners should use no-till or minimum-till agricultural practices to leave waste grain and stubble on the soil surface until the next planting season to provide supplemental food or cover for wildlife, control erosion and improve soil tilth.

Providing shelter also can include roadside right-of-way management for ground-nesting birds, establishing perennial vegetation on circle irrigation corners, terraces, fencerows and field borders, establishing multi-row shelterbelts or renovating old shelterbelts, and protecting and managing old homesites, farmsteads and CRP cover.

Half-cutting trees and shrubs, which means partially cutting branches of a live tree or shrub to encourage horizontal cover near the ground, provides supplemental cover in habitats where cover is lacking for a targeted wildlife species. Additional information can be found on TPWD's website.

Woody plant and shrub establishment, which includes planting native seedlings to establish shrub thickets, shelterbelts or wind rows, should be organized by four rows of 120 feet for a 1/4 mile.

Natural cavity and snag development involves retaining or creating snags for cavity-dwelling species. Undesirable trees can be girdled or treated with herbicide and left standing. Large living trees should be protected and girdling should be minimal where trees are insufficient.

CENSUS COUNTS

Census counts are periodic surveys and inventories to determine the number, composition or other relevant information about a wildlife population to measure if the current wildlife management practices are serving the targeted species. Such surveys also help evaluate the management plan's goals and practices. Specifically, this practice estimates species numbers, annual population trends, density or age structure using accepted survey techniques. Annual results should be recorded as evidence of completing this practice. The survey techniques and intensity listed below should be appropriate to the species counted:

- spotlight counting;
- aerial counts;
- daylight wildlife composition counts;
- harvest data collection and record keeping;
- browse utilization surveys;
- census and monitoring endangered, threatened or protected wildlife; and
- census and monitoring of nongame wildlife species.

Spotlight counting animals at night along a predetermined route using a spotlight should follow accepted methodology with a minimum of three counts conducted annually.

Aerial counts using a fixed-wing aircraft or helicopter to count animals should follow accepted methodology for the region and be performed by a trained individual.

Daylight wildlife composition counts are driving counts used to census wildlife in daylight hours. Annual population trends on dove, quail, turkey and deer, as well as sex and age structure on deer, should be determined by sightings along a standardized transect of a minimum of five miles at least three times during a season.

Harvest data collection and record-keeping means tracking the annual production of wildlife. Age, weight and antler development from harvested deer and the age and sex information from game birds and waterfowl should be obtained annually.

Browse utilization surveys annually examine deer browse plant species for evidence of deer use on each major vegetative site on the property. The surveys should be conducted in a way that can be repeated.

Census and monitoring of endangered, threatened or protected wildlife through periodic counts can improve management and increase knowledge of the local, regional or state status of the species.

Census and monitoring of nongame wildlife species can improve management or increase knowledge of the local, regional or state status of the species. These activities can include developing checklists of wildlife diversity on the property and should be a part of a comprehensive wildlife management plan.

FOR MORE INFORMATION

The TPWD can provide more information on any of the practices or activities listed above. TPWD has detailed information on appropriate practices for each ecoregion of Texas. Contact your local TPWD office or the state headquarters in Austin at 800-792-1112 or 512-389-4800.