

Antler Restriction Proposal

April 1, 2009 – May 18, 2009

Assessment of Public Comment

The Department received numerous comments concerning the proposed rulemaking (I.D. No. ENV-13-09-00011-P) to amend sections 1.22 and 1.27 of Title 6 NYCRR by updating muzzleloading regulations in the Northern Zone and expanding antler restrictions in the Catskills. A few comments were specific to section 1.22 (muzzleloading) but most were directed to section 1.27 (antler restrictions).

The comments submitted to the Department concerning the proposed rulemaking for section 1.27 are summarized below, followed by the Department's response:

Comment: Many comments were received that simply stated support or opposition without explanation.

Response: The Department anticipated mixed response from New York deer hunters to the proposed rulemaking.

Comment: Many comments reflected opposing viewpoints of the social impact of mandatory antler restrictions on deer hunting and deer hunters. Supporters frequently expressed belief that antler restrictions will increase hunter satisfaction and generate excitement for deer hunting due to increased sightings of older bucks and their sign and increased opportunity to harvest older bucks with heavier body weights and larger antlers. Supporters routinely stated that antler restrictions will improve hunter recruitment and retention, keep NY hunters from going out-of-state to hunt, and bring non-residents to NY, resulting in increased tourism and revenue for local economies.

In contrast, those opposed frequently stated that mandatory antler restrictions will decrease hunter satisfaction due to the inherent decrease in harvest opportunity (especially when coupled with low Deer Management Permit, doe tag, availability), the loss of freedom in choosing what type of buck they can harvest, frustration with increased regulation, concern over having to count antler points and concern that a mistaken count may result in accidental taking of an illegal deer. Those opposed to the proposed rulemaking suggested that decreasing hunter satisfaction from mandatory antler restrictions will result in declines in hunter recruitment and retention and participation thereby decrease revenues to state and local economies. Some writers further suggested that the claim commonly made by antler restriction supporters that antler restrictions will improve local economies is unsubstantiated.

Response: The Department acknowledges that a slight majority of deer hunters in southeastern New York are dissatisfied with their buck hunting opportunities and that management changes may be important to improve satisfaction levels. However, previous survey work of hunters in southeastern New York indicates that implementation of mandatory antler restrictions will increase satisfaction of hunters that support the program but decrease satisfaction of hunters that do not support the program. Additionally, surveys conducted in the pilot antler restriction

WMUs (3C, 3H, 3J, 3K) indicate similar division whereby the antler restriction has further increased either their satisfaction or dissatisfaction.

Hunter satisfaction is a complicated issue, influenced by many facets of expectation, perception and realized experience. Surveys of hunter satisfaction routinely identify the total number of deer seen and the number of bucks seen as key elements of satisfaction. Mandatory antler restrictions would result in decreased harvest of young bucks, and these deer would be available to be seen by hunters through the duration of the hunting season, likely enhancing satisfaction for some hunters. However, having the freedom to choose what type of buck they can shoot was also identified as a key element of hunter satisfaction. Mandatory antler restrictions would alter this freedom, likely decreasing satisfaction for some hunters.

The suggested domino effect of antler restrictions on hunter participation, recruitment and retention and revenues to state and local economies appears to be based not on data but rather on opinion reflecting personal support or opposition to mandatory antler restrictions. The 2007 Statewide Deer Hunter Survey indicated that hunters who reported having decreased interest in deer hunting (at risk for discontinuing the activity) were also those who indicated that deer hunting was not a very important activity for them. These same respondents were less likely to have a strongly held opinion in support of or opposed to mandatory antler restrictions. In contrast, hunters who reported that deer hunting was the most important or one of their most important activities (not at risk for discontinuing the activity) were also those who held strong opinions in favor of or opposed to mandatory antler restrictions. Thus, implementation of mandatory antler restrictions is unlikely to have substantial impacts on increasing or decreasing hunter participation and retention. The survey authors suggest that improvements to hunter recruitment and retention would best be accomplished through interventions outside the realm of deer management.

Furthermore, license sales and hunter survey data from the pilot antler restriction program suggest similar rates of license purchases, hunting participation and level of hunting activity in the antler restriction units as in the broader southeastern portion of New York. These data imply no net gain or loss in local or state economic revenue due to implementation of antler restrictions.

Comment: Most comments in support of mandatory antler restrictions mentioned interest in seeing or taking more, older bucks with heavier bodies and larger antlers. These bucks were frequently referred to as 2.5 year old and older bucks, or mature bucks, or trophy bucks. One writer suggested that deer management without regard to buck age structure “cheats” hunters and non-hunters from the opportunity to see bucks reach maturity.

Response: The proposed antler restriction was designed to protect most yearling (1.5 year old) bucks from harvest, allowing for greater numbers of bucks in the 2.5 year old age class and likely a small increase in 3.5 year old and older age classes prior to the subsequent hunting seasons. For hunters seeking to see more 2.5 year old bucks, antler restrictions may be effective. However, antler restrictions may be only minimally effective for hunters desiring to take more, older bucks. Data from New York’s current pilot antler restriction program reveals only a minor increase (about 14%) in the average number of 2.5 year old and older bucks harvested after several years of antler restrictions despite a dramatic reduction (about 65%) in average yearling harvest.

Common reference to “mature” or “trophy” bucks reflects a misconception about the potential outcome of an antler restriction program despite Department efforts to educate hunters about this issue. Bucks typically do not reach maturity (maximum body mass and antler growth) until the ages of 4.5-7.5 years, and hunters and non-hunters should not expect a noticeable increase in bucks in these age classes due to an antler restriction program as proposed, particularly in areas with high hunting pressure.

Comment: Many hunters opposed to the proposed rulemaking stated that their primary reason for hunting is for meat, not antlers, or they consider every deer taken to be a “trophy.” Many further stated that implementation of antler restrictions encourages a “trophy” hunting mentality. This sends the wrong message to young/new hunters and will decrease the public’s support for hunting. Hunting is about traditions, values, family time, food and or survival but not about trophy hunting or hunting for sport. Creating regulations for big bucks is unethical. One comment indicated that antler restriction regulations force all hunters into a mid-level stage of hunter development (trophy hunter as defined by Professors Robert Jackson and Robert Norton of the University of Wisconsin-La Crosse and the dominionistic/sport hunter category as defined by Dr. Stephen Kellert of Yale University).

Response: The Department supports hunting for population control and as a means to procure venison. Public opinion surveys indicate that non-hunters broadly support deer hunting for population control and to obtain food. However, their support levels drop dramatically for deer hunting that is perceived as trophy hunting or hunting for sport.

Comment: Many supporters of the proposed rulemaking indicated that they already are practicing some form of voluntary antler restrictions. Some suggested they believe their efforts are being thwarted by hunting on neighboring properties, others suggested their programs have been successful and believe mandatory antler restrictions implemented by the Department will be successful as well. Other comments simply stated that voluntary antler restrictions do not work without explanation.

Many of those opposed to proposed rulemaking support promotion of voluntary antler restrictions commenting that supporters of the proposed rulemaking often hunt on private land where they can establish whatever voluntary restrictions they want, that mandatory antler restrictions favor private landowners who can control hunting pressure on their lands and have the luxury to wait for more than one opportunity, and that reducing the yearling buck harvest can be accomplished through education not regulation. Some further noted that the proportion of yearling bucks taken annually in New York has been declining over time without regulation, and mandatory antler restrictions are not needed.

Response: The Department agrees that in the absence of regulatory change, hunters are fully able to practice antler restrictions voluntarily. The Department recognizes that voluntary antler restriction programs on small parcels can be impacted by hunting strategies on surrounding lands. However, the growth of hunting cooperatives engaged in voluntary antler restrictions throughout New York and North America is a testament to potential success of voluntary programs. The Department encourages hunters interested in protecting young bucks and seeing

older, larger bucks to work with local hunting clubs and neighboring landowners to develop cooperative voluntary antler restriction programs. Cooperative programs build community among hunters and landowners and actively engage participants in the deer management decisions for their hunting lands. Voluntary efforts provide the greatest program flexibility for landowners and hunting cooperatives.

Comment: Many supporters of the proposed rulemaking stated that NYS buck harvest management is outdated and antler restrictions reflect better and progressive deer management inline with the Quality Deer Management (QDM) movement that is growing throughout New York and the country. Antler restrictions will result in a “healthier” deer herd with more natural balance to the age and sex structure of the herd. Antler restrictions will result in more, older bucks available for breeding, reducing reproductive stress on yearling bucks and generating overall greater breeding success. New York has adult deer sex ratios that are far out of balance (10-15 adult females to 1 adult male) and that this results in poor breeding success and delayed breeding season leading to late born fawns with lower chance of survival.

In contrast, some opposed to the proposed rulemaking stated that antler restrictions are not biologically necessary in New York and that deer breeding is not problematic. Some further stated that statements from antler restriction proponents about the deer herd being “out of balance” are nonsense. The problems with deer hunting in NY is not deer breeding dynamics, but some hunters expecting their experience to be like hunting shows on TV.

Response: The Department disagrees with the claim that the current deer management program is outdated or that antler restrictions reflect better deer management. The New York State deer program is based upon sound science and functions to serve the people of New York with a resource that is healthy and productive and maintained at population levels consistent with the interests of landowners, farmers, wildlife recreationists, and the public at large. Antler restrictions actually complicate deer management by making one of the primary indices of deer population change (annual buck take per square mile) unreliable for an indeterminate period of time.

Protection of young bucks is one of the four cornerstones of the Quality Deer Management Association, and implementation of mandatory antler restrictions would be in line with QDM philosophy. However, QDM is predominantly a tool for private landowners to implement on scales much smaller than what the Department is mandated to manage. Incorporation of the full gamut of QDM practices, notably the intense habitat manipulation, is impractical and unfeasible by the Department.

The Department also contends that the New York State already has a healthy deer herd and antler restrictions are unnecessary to improve herd condition. The phrase “a healthy deer herd” can mean many things to many people. To some, having a healthy deer herd means being able to see a lot of deer. To others, it may mean seeing older bucks with large antlers. From a biological perspective, common indices of deer herd health include yearling antler beam diameters, yearling weights, age at first breeding and adult breeding success. The first three measures are all strongly correlated with habitat quality and to some degree, date of birth. An antler restriction does not address habitat quality. Current research being conducted in NY indicates that deer breeding occurs within the normal, expected time frame for northern latitudes

and approximately 95% of adult does are being bred successfully. Thus having more adult bucks in the population through an antler restriction is unlikely to have any noticeable impact on these parameters of deer herd health.

Additionally, the adult deer sex ratio prior to the breeding season in southeastern New York currently averages about 2.3 adult females to adult males. This level is more than adequate to achieve great breeding success and is much more balanced than the claims made by some antler restriction proponents in comments received for this rulemaking.

Comment: Many opposed the expansion of the antler restriction area due to the reduced opportunity to harvest bucks. Comments indicated that with few Deer Management Permits (doe tags) available, antler restrictions will remove most opportunity for deer harvest, negatively affecting local butchers and making it difficult for hunters to get meat for their families. Comments suggested that venison is a particularly important source of food for families during the current tough economic times with high unemployment. Additionally, comments suggested that antler restrictions are unfair for the hunters that can only hunt for 1-2 days or seniors or hunters with disabilities that cannot as easily hunt, that older bucks are harder to harvest, and a common hunting technique of driving deer may no longer be possible.

Response: The Department agrees that antler restrictions will result in a dramatic decrease in buck harvest opportunity for the short term and likely a slight decrease in harvest opportunity for the long term. In addition, in areas where DMPs are unavailable or in short supply, overall deer harvest opportunity will be substantially limited, particularly in the first year or two of program implementation.

Comment: The penalty for a mistake is very severe, ranging from \$200 to \$2,000 with up to one year in jail and possible revocation of your hunting license. An error counting points turns a well-intentioned hunter into a criminal.

Response: The penalty for the illegal harvest of a deer is established in the Environmental Conservation Law, Section 71-0921 and constitutes a misdemeanor. Each misdemeanor “shall be punishable by imprisonment for not more than one year or by a fine of not less than two hundred and fifty dollars nor more than two thousand dollars, or by both such imprisonment and fine.” The Department also recognizes that these issues are frequently handled at the discretion of the enforcement officer and court system.

Comment: The healthier deer population created by antler restrictions will improve water quality for the Department of Environmental Protection.

Response: The Department does not anticipate any impacts to water quality as a result of an antler restriction program.

Comment: DEC says they don't see a critical biological need for antler restrictions, but there is no biological reason not to implement antler restrictions.

Response: At the present time, the Department sees no specific biological or management benefit associated with the antler restriction program. We believe it is primarily a social issue, and it is clear that hunters are deeply divided.

Comment: Many comments mentioned the antler restriction program operating in Pennsylvania as a reference to what might be experienced in New York. Some comments referred to the program as a "great success," while others referred to the program as "a failure." Other comments mentioned that antler restrictions were tried by some western states and stopped because of concerns of non-compliance and selective removal of biggest animals.

Response: Hunter perceptions of the success of antler restriction programs elsewhere appear to reflect their underlying support or opposition for mandatory antler restrictions. Success should be determined based on pre-established criteria. In Pennsylvania, one of the goals of their antler restriction program was to reduce harvest rate of yearling bucks, and by this measure, their program has been successful. Similarly, in our pilot antler restriction program in New York, we have successfully reduced the yearling portion of our buck take, one of the stated goals of the program. The other key goal of our pilot program was to increase hunter satisfaction levels, and our survey results indicate mixed response in hunter satisfaction.

Several western states have experimented with antler restriction programs and subsequently discontinued the programs after experiencing a high degree of illegal kills. However, biologists in Pennsylvania estimate the illegal kills associated with their antler restrictions at less than 5% of total harvest. Similarly, the Department has no reason to believe that illegal kills have increased in the current pilot antler restriction area.

Comment: Some supporters of the proposed rulemaking suggest that New York should produce "great deer" like other states, while opponents of mandatory antler restrictions suggested that the antler restriction advocates have unrealistic expectations and overlook the poorer habitat conditions within the proposal area.

Response: Because of the relatively poor soil conditions common throughout the proposal area, deer in these Wildlife Management Units typically have less antler growth within a given age class as compared to deer elsewhere in New York. An antler restriction as proposed would reduce harvest of 1.5 year old bucks that on average have 4 total antler points and shift harvest pressure predominantly to 2.5 year old bucks that on average have 7 total antler points.

Comment: Antler restrictions will increase hunter's willingness to take antlerless deer.

Response: The Department has not observed increased hunter success rates on Deer Management Permits (doe tags) in our pilot antler restriction units. However, because an antler restriction program will result in a multi-year period of reduced buck harvest opportunity, there

is potential that the proposed antler restriction may have increased antlerless harvest rates, particularly in units with low deer densities. In WMUs 3A and 4X, additional antlerless harvest might negatively impact the deer population. In units with deer populations at or near the objective level, additional antlerless harvest would not be problematic.

Comment: Conflicting opinions were provided regarding the impact of antler restrictions on deer herd genetics. Some writers stated that antler restrictions will improve herd genetics for antler growth. Others commented that antler restrictions protect bucks with genes for lesser antlers, and antler quality in the herd will deteriorate over time unless inferior bucks are removed.

Response: The Department does not anticipate any significant or noticeable impact on herd genetics as a result of an antler restriction program as proposed, if the majority of the yearling bucks are protected by the minimum antler point standard.

Comment: Implementation of antler restrictions promotes adaptive management.

Response: The Department began the adaptive management process by creating a pilot antler restriction program in the southern Catskills. The Department has continued to monitor the impacts of this program by surveying hunters and tracking harvest trends. To continue the adaptive management process, the pilot program should be fully evaluated and future management decisions should be based upon the experience of this test case. Implementation of new antler restriction areas prior to full evaluation of the pilot program would bypass a critical aspect of the adaptive management process.

Comment: Supporters of the proposed rulemaking suggested that antler restrictions will enhance hunter safety by forcing hunters to be more selective with their shots at deer. Conversely, opponents of the proposed rulemaking suggested that antler restrictions will decrease hunting safety because hunters must count antler points they may miss key shot opportunities and take hurried, less desirable shots.

Response: The Department is unaware of any data suggesting a connection between antler restrictions and hunter safety. Deer hunting in New York is currently a very safe activity and will continue to remain safe if hunters follow the key principles of hunting safety.

Comment: Expanding the antler restriction area will improve compliance with the regulations.

Response: The Department believes that large contiguous areas with consistent regulations minimizes confusion among hunters and may reduce accidental non-compliance.

Comment: Some writers suggested that hunters interested in meat should shoot a doe. Others commented that older bucks have heavier bodies and provide more meat than young bucks.

Response: In 2009, Deer Management Permits (doe tags) will either not be available at all or require preference points in 5 of the 8 WMUs included in the proposed rulemaking. Hunters in these units that do not participate in the bowhunting or muzzleloading seasons will not likely have the option to shoot a doe.

The Department agrees that 2.5 year old and older bucks typically weigh more than 1.5 year old bucks. However, data from New York's current pilot program indicate that the total number of bucks taken with antler restrictions has remained on average about 30% below pre-antler restriction levels. Despite a majority of the harvested bucks being 2.5 years old or older, the total amount of venison provided by the annual harvest in the pilot antler restriction units is estimated to be about 25% less than the amount of venison provided by annual harvests prior to implementation of antler restrictions.

Comment: Many writers expressed approval of the exemption for young hunters. Others also noted that young hunters are the least experienced, may be less successful, and that the exemption also reflects the importance of having the "freedom to choose" for generating and maintaining interest in deer hunting.

Response: The Department agrees that exempting hunters under the age of 17 should be part of any mandatory antler restriction program in New York. The minimum age for hunting big game with a firearm was reduced from 16 to 14 years of age in 2008.

Comment: The Department received several comments regarding the February 2009 survey that was conducted in the 8 Wildlife Management Units prior to formally proposing expansion of the antler restriction area. Several hunters who support mandatory antler restrictions commented that the DEC guidelines requiring 67% support with no more than 20% strong opposition prior to proposing regulations for antler restrictions is unfair and a simple majority approach should be used. Additionally, these writers suggested that DEC is requiring significant effort from antler restriction proponents to pursue implementation. In contrast, several hunters who oppose mandatory antler restrictions thought the survey results were biased because DEC withheld information about the pilot program from survey participants. Further, these writers indicated that survey results unfairly favored antler restriction supporters because respondents who indicated "moderate opposition" were not included in DEC guidelines for evaluating hunter sentiment. Other writers thought all hunters should have been surveyed for a more accurate assessment. Still other writers commented that reliance on opinion surveys rather than biological data is inappropriate.

Response: Because antler restrictions are not necessary for proper biological management of New York's deer herd but rather reflect social values and desires among hunters, the Department has asked proponents to demonstrate that substantial grassroots interest exists among hunters in an area prior to the Department conducting a rigorous scientific assessment of hunter opinion.

Additionally, because mandatory antler restrictions would represent a major change to the hunting tradition in New York, the Department believes it is appropriate that the potential program change be supported by a supermajority of affected hunters and not strongly opposed by more than 1/5th of hunters. Information about the existing antler restriction program was not provided to survey recipients in order to avoid biasing respondents. The survey was conducted in a scientifically sound manner using a random sample of hunters that hunt the 8 WMUs under consideration. Support and opposition levels for some units and confidence intervals for all units “bracketed” the guidelines established by the Department. This means that the data could be interpreted to either support moving forward with a formal rulemaking proposal for antler restrictions or to support taking no action. Given the equivocal results, the Department opted to move to the formal rulemaking process to use the 45-day public comment period as an opportunity to further clarify the attitudes of deer hunters and other stakeholders towards antler restrictions in this area.

Comment: Some comments suggested that support for mandatory antler restrictions is coming from small faction of wealthy, elitist hunters who are dictating their beliefs onto everyone else. Other comments suggested that the Department puts too much weight on the position of hunting clubs and sportsmen’s federations that may not actually represent hunter sentiment.

Response: The Department’s surveys regarding antler restrictions involved randomly selected hunters throughout New York. Support and opposition for mandatory antler restrictions appears to span the economic gradient and varying positions can be found within and outside of hunter organizations.

Comment: Hunters, in general, are not aware of the pending regulations, and they are poorly educated about the ramifications of antler restrictions.

Response: The Department adhered to the requirements of the State Administrative Procedures Law in proposing this regulation, including publication of the proposed rulemaking in the State Register and posting the proposal and supporting documents on the Department’s website.

The Department also attempted to educate hunters about the potential ramifications of an antler restriction program through materials available on the Department’s website and during staff presentations at public meetings on the issue. However, the Department has had long-standing concern that hunters may hold misconceptions about the status of New York’s deer herd and unrealistic expectations of the potential outcomes of an antler restriction program.

Comment: Mandatory antler restrictions are unfair to gun and muzzleloader hunters, because bowhunters have the first opportunity to pursue bucks.

Response: This scenario exists with the current season structure, and antler restrictions would not give bowhunters any new advantages.

Comment: New York already has big bucks without antler restrictions.

Response: The Department agrees. However, antler restrictions would likely yield a slightly greater take of 2.5 year old and older bucks than is currently occurring in the proposal area in the absence of antler restrictions.

Comment: Young bucks protected during regular season will be vulnerable during late season due to antler drop.

Response: The majority of bucks retain their antlers through the end of the late muzzleloading season in New York's Southern Zone. The Department does not see this as a critical issue.

Comment: Some comments suggested that antler restrictions will result in mistake kills being left in the woods in attempt to avoid a penalty. Other comments suggested that levels of poaching will increase or that the number of posted properties will increase if antler restrictions do result in more "trophy deer."

Response: The Department has no reason to believe that the level of illegal or mistake kills or amount of land posted has increased in the current pilot antler restriction area due to changes in the deer population.

Comment: Several hunters stated that they would no longer buy a license if antler restrictions are mandated.

Response: The Department acknowledges that some hunters may change their license buying behavior, but the Department does not anticipate significant increases or decreases in license sales due to implementation of mandatory antler restrictions.

Comment: Concern was expressed from hunters in areas adjacent to the WMUs in the proposed rulemaking that hunting pressure would increase in their areas due to hunters choosing not to hunt in the antler restriction units.

Response: The behavior of hunters in the current antler restriction units indicates that most hunters demonstrate substantial fidelity to their primary hunt locations.

Comment: Antler restrictions will polarize deer hunters and undermine DEC's deer management program.

Response: It is quite evident that New York hunters are already very polarized on this issue.

Comment: Several hunters opposed to the proposed rulemaking suggested that antler restrictions complicate deer management because the relationship between age-class and antler size is a complicated dynamic and the buck take index is no longer reliable to track population changes. DEC has maintained decades of data on the condition, harvest and population of deer and, this proposal would not allow for future comparisons of such data. Additionally, some comments expressed concern that the proposed rulemaking makes Citizen Task Forces useless and irrelevant, since it makes the buck harvest index useless and allows for buck population and therefore total population increases in disregard of the task force stakeholders and their recommendations.

Response: The Department agrees that antler restrictions complicate deer management and render the annual buck take index unreliable as an index to population size. Citizen Task Forces are used to provide recommendations for socially acceptable deer population levels and the Department typically translates these recommendations into buck take objectives. With implementation of antler restrictions, the buck take is dramatically impacted and the buck take index is not a reliable target to reflect desired population size. Other indices to the population size, such as the Bowhunter Sighting Log data, must be relied upon more heavily to evaluate changes in deer populations.

Comment: Some hunters stated they have observed very few deer that would meet the antler restriction standard.

Response: Bucks that are protected through an antler restriction have a high chance of surviving to older age classes. The number of older deer that meet the antler restriction standard should increase after the first year of program implementation.

Comment: Some hunters commented that the existing pilot antler restriction program has not been fully evaluated and that no further expansion of antler restrictions should occur until data from the pilot program indicates expansion is appropriate. Preliminary results indicate only 1 of 2 goals of the pilot antler restriction program is being met: yearling buck take has been reduced, but hunter satisfaction levels are not increasing.

Response: The Department originally discussed the existing antler restriction program as a 3-year pilot program. After three years of implementation, it was apparent that a greater time frame was needed for program impacts to develop and for more thorough assessment of the changes in deer harvest and hunter attitudes, behavior and satisfaction. Given the deep divisions among hunters regarding antler restrictions that were evident during the public comment on the proposed rulemaking, the Department agrees that expansion of antler restrictions to other WMUs should not occur until data from the pilot program has been fully assembled and analyzed.

Comment: The supporters of antler restrictions had several years to organize support and get buy-in from local legislators, but antler restriction opponents only had 45 days to be heard during the public comment period.

Response: Antler restrictions have been the subject of correspondence, meetings, and media coverage for several years. The specific rulemaking proposal was published in accord with State Administrative Procedures Act requirements like most other Department proposed rules.

Comment: The proposed rulemaking violates the North American Wildlife Conservation Model because the proposal benefits some but not all New Yorkers, the original pilot antler restriction program has not been completely evaluated, and current science from other states with mandatory antler restrictions is conflicting.

Response: The Department believes that antler restriction programs can fit within the framework of the North American Model of Wildlife Conservation because antler restrictions will not alter the Department's ability to maintain a resource available equally to all New York citizens or to apply scientific principles in the management process. The Department proposed rulemaking as a means to clarify public sentiment for expansion of the antler restriction program, recognizing that the primary impetus for program change is based upon social interest among hunters rather than identified management or biological needs.

Comment: Opinions varied in regard to antler restriction impacts on the deer population. Some supporters of the proposed rulemaking suggested that antler restrictions will help preserve the species or will result in a lower deer density and yield healthier deer and a healthier ecosystem. Several comments were received from hunters and non-hunters opposed to the proposed rulemaking on the grounds that antler restrictions will increase deer populations without consideration of what the habitat can support, increase browse pressure on wintering grounds (possibly greater winter mortality), or increase deer-vehicle collisions. Additionally, an organization representing farmers throughout New York expressed concern about limiting harvest opportunity and potential increase in crop damage

Response: Implementation of antler restrictions would neither enhance nor compromise the Department's ability to preserve the white-tailed deer species in New York. Antler restrictions will not affect the management objective for an area. However, greater buck survival will result in larger post-hunt buck populations.

Comment: In addition to receiving comment on the proposed rulemaking, the Department also received many suggestions for variations of the proposal. Common suggestions included:

- Antler restrictions should be implemented statewide or for other specific WMUs (e.g., 4F, 4N)
- Modify restriction (4-pts/side, or width restriction or combination width/point restriction)

- Reduce the buck bag limit to one buck per hunter per season or adjust the regulations to allow the 1st buck to be any buck with antlers 3 inches or longer and 2nd buck with antler point restrictions
- Antler restrictions should be for gun season only
- Shorten the hunting season
- Reduce hunting pressure on bucks by issuing buck tags through a lottery system
- Seniors or hunters with disabilities or first-time hunters should be exempt from any antler restriction regulations
- The penalty for mistake kills of sublegal bucks (less than the proposed 3 point on one side minimum) should be modified
- Use an earn-a-buck approach
- Require that button bucks be reported on the buck tag
- Discontinued the antler restriction program in WMUs 3C-3J since, in the 2007 survey, hunter support did not meet the 67% support thresholds but did exceed 20% opposition
- Halt antler restriction proposals until data from pilot program indicates need for expansion
- Halt antler restriction proposals until legislation passes to moderate the penalty for mistake kills
- Require antler restrictions on state land only

Response: The Department appreciates the additional suggestions, but these suggestions are beyond the scope of the proposed rulemaking.