

Assessment of Public Comment

The Department received roughly ninety comments on the proposed regulations governing public use of the Wildlife Management Area (WMA) system. We reviewed their substance, relevance, and merit and provide a summary of the comment and response below.

Comment:

- 1) Riding horses on WMAs should not be restricted as the activity poses no adverse effects.
- 2) Riding bicycles should not be restricted. Class 1 electrical bicycles should be treated as bicycles and not included in the definition of motorized vehicles.

Response:

Since horseback riding and cycling present similar use issues and can have similar impacts, they are addressed together below.

The WMA system comprises some 250,000 acres; only 5% of total DEC lands and less than 1% of the total area of the state. This land is set aside for wildlife conservation and wildlife-dependent recreation (e.g. watching wildlife, hunting); these are the primary goals for the management of the WMA system. Other uses can be permitted if they do not interfere with these primary goals. Horseback riding and cycling are not by definition dependent on the presence of wildlife.

The Department must analyze the cumulative impact of proposed activities when considering impacts. Whereas the impact from a single or a few riders may be minimal; the repeated and frequent impact from several riders to wildlife, habitat, or activities such as hunting or birding may be significant, warranting restricting access to a trail or sections thereof.

It is important to note that the proposed regulation is not a ban on the use of horses or bicycles on WMAs; most WMA roads are and will remain open to both uses. The Department can designate other areas where these activities may be allowed if it determines they do not interfere with the primary goals.

The Department is currently developing Access and Public Use Plans for each WMA. These "APUPs" will provide specific detail on allowed public use and facilities open to the public such as roads, trails, and boat launches. The public will have an opportunity to comment during the comment period.

Regarding comments opposing the inclusion of certain "pedal-assisted" or Class 1 electrical bicycles (e-bikes) as motorized vehicles in Part 51.0, (b) Definitions, classifying all bicycles with an electric motor as electrical bicycles and under the definition of "motor vehicles" allows for more consistent and enforceable regulations of a rapidly-evolving class of vehicles. The pedal-assist electric motor allows electric

bicycles to easily maintain 20 mph. Faster speeds can cause more erosion and increase other impacts on wildlife and other WMA visitors.

Bicycles, including e-bikes, can be used as an aid in trapping, hunting, or wildlife observation for persons with a disability. A hunter with a disability can apply for a non-ambulatory permit or for access to special Motorized Access Program for Persons With Disabilities routes. Commonly known as MAPPWD routes, they allow a person with a disability to travel on routes regularly closed to the public.

Comment:

Dogs should not be required to be on leashes. Dogs need to train and exercise year-round. Electrical collars or a test of obedience could substitute for leashes.

Response:

The WMA system is managed specifically to benefit wildlife and provide opportunities for wildlife-dependent recreation. Unleashed dogs can chase, frighten, or injure wildlife and can interfere with wildlife-dependent activities.

Some modes of hunting employ dogs in retrieving or finding game. Pursuant to ECL 11-0923 and promulgated in regulation 6 NYCRR Part 66, the Department has designated specific dates to allow hunters to train dogs off-leash on wild game. As ECL 11-0923 requires written landowner permission at all times for dog training with captive game or artificial devices, hunting dog trainers have the option to apply for a Temporary Revocable Permit to conduct dog training using domestic game or artificial devices on a WMA. Dogs are also allowed off-leash during open hunting seasons when being legally used for hunting and accompanied by an appropriately licensed hunter and under the control of the hunter or handler.

Dog walking, while not wildlife-dependent, can be compatible with the primary goals of WMAs provided dogs are leashed and kept under the owners' immediate control.

Electrical collars are not a suitable substitute for physical leashes because dogs that are otherwise well behaved can bolt after wildlife, defeating the collar. For the same reason, obedience training, by itself, is not a suitable leash substitute.

Some activities restricted on the WMA system may be more compatible in other state properties with wider management goals.

Comment:

- 1) Other than for hunting or trapping, the discharge of firearms (i.e. target shooting) should be prohibited anywhere on the WMA system, particularly at Tonawanda and Oriskany Flats WMAs.
- 2) Target shooting should be allowed on WMAs.

Response:

Unrestricted target shooting can be dangerous, injure wildlife, damage habitat, and lead to the accumulation of lead. Increased target shooting has caused significant problems at some locations, such as Tonawanda and Oriskany Flats WMAs. However, target shooting can prepare the public to become safe, effective, and humane hunters. The Department proposes to prohibit target shooting on WMAs except at Department-designated locations possibly including formal target shooting ranges. The Department may also develop and promulgate rules and times of operation for any such sanctioned locations or ranges.

Comment:

- 1) Three inches of snow or ice is insufficient to protect the ground from snowmobiles and snowmobiles could interfere with big game hunting.
- 2) Snowmobile trails should be allowed through WMAs and the public should be involved in their planning.
- 3) Snowmobiles should not be allowed anywhere within the WMA system.

Response:

Snowmobiles are used for transport and recreation and to facilitate hunting and trapping during the winter months. Snowmobile trail sections through WMAs are often short and connect longer routes. When travelling on sufficient snow and on trails designated as open by DEC, snowmobiles can have a negligible impact. The requirement for three inches of snow is consistent with requirements by New York State Office of Parks, Recreation, and Historic Preservation. The intent of this requirement is to ensure that there is a sufficient cushion of protective snow between the snowmobile and the ground. Defining a specific period for snowmobile operation further protects WMA trails and habitat, and helps prevent user conflicts. If snowmobile use is such that it removes this ice or snow cover then the activity is no longer permitted and subject to termination. In addition, Part 51.8(d) provides additional protection for vegetated trail surfaces and edges.

The overlap between when conditions allow the use of snowmobiles and late season dates is very limited, between December 13 and January 1 for the Southern Zone and during the late bowhunting season in limited areas of the Northern Zone, December 6 to December 12. Considering snow patterns in New York it is unlikely that there is suitable snow cover that coincides with either of these periods except occasionally in limited areas. Given that snowmobile use will require a minimum of three inches of ice or snow and the low number of routes through the WMA system, the Department concludes that the likelihood of conflicts between big game hunting and snowmobile use is very small.

These regulations provide sufficient measures to allow snowmobile use in a way that will not cause ecological harm or interfere with the primary goals of the WMA system.

Comment:

Electrical motors should not be allowed on watercraft.

Response:

Electric motors on watercraft are quiet, do not pose a risk of fuel spillage, and enable hunting, trapping, fishing, and the quiet observation of wildlife. Their impact is no greater than rowing or paddling.

Comment:

The regulation should specify if downed or green wood could be legally used as fuel and whether fires would be allowed during New York's no-burn window.

Response:

The Department recognizes the intent of Part 51.8(a) is to allow fires for cooking or warmth, requiring a source of fuel. The Department will add a paragraph to allow the use of dead wood as fuel, consistent with 6 NYCRR Part 190, Use of State Lands. The provisions and conditions for use of fire are year-round.

Comment:

Drones (aka Unmanned Aerial Vehicles (UAVs)) should be explicitly included in the definition of "motorized equipment" and their use prohibited within the WMA system.

Response:

Having a motor, UAVs fall within the definition of motorized equipment and are subject to the restrictions of other motorized equipment.

Comment:

Possession of some mechanized implements commonly used for hunting, trapping, or fishing should be allowed while afield.

Response:

The Department recognizes that some implements fitted with a motor are commonly used for wildlife-dependent activities and revises Part 51.8(C) to allow use of these commonly used implements for hunting, trapping, or fishing.

Comment:

- 1) Prohibit use of alcohol and marijuana (*Cannabis spp.*) in the WMA system.
- 2) "Legal" should be added before "Guardian" in the proposed 51.8 (K).

Response:

Use of both substances is legal in New York. NYS ECL § 11-1203 prohibits hunting while intoxicated by alcohol or any other drug. The New York State Penal Law (PEN § 240.20) prohibits disorderly conduct. Driving while intoxicated with alcohol or another drug is also prohibited by the Penal Law. These regulations enable law enforcement to address situations that could arise from someone being under the influence of either substance in the WMA system.

“Guardian” is used in NYS Alcoholic Beverage Control Law § 65-c and 6 NYCRR Part 190. The change is unnecessary and potentially confusing.

Comment:

The Department should open more hiking trails through the WMA system.

Response:

The Department designates trails through the WMA system to provide access for wildlife observation, hunting, and trapping; hikers are welcome to use these trails. The placement and location of trails are limited by their effect on ecology, wildlife, and wildlife-dependent recreation. The Department is developing Access and Public Use Plans for each of the WMAs that address the placement and allowed use of trails. The public can comment on draft plans during the public comment periods.

Comment:

- 1) Will hunters have exclusive use of season-long hunting tree stands they install ?.
- 2) Allow placement of hunting stands ten days before the start of the season.
- 3) Allow placement of stands for hunting water dogs.

Response:

No exclusive use of tree stands is implied by the proposal. When vacant, the tree stand could be occupied by another hunter actively hunting. The regulatory proposal allows placement of tree stands starting at the beginning of and left in place for the duration of the big game, migratory gamebird, or turkey season. These provisions allow for adequate time to install a tree stand so that it can be utilized for the duration of the season. These rules are consistent with 6 NY CRR Part 190.8 governing the use of State Forests.

Placement of stands for use by hunting dogs legally aiding a hunter is covered by section 51.8(g) and subject to the same conditions.

Comment:

The term “Regional Manager” in the regulations should be replaced with “Regional Wildlife Manager.” Use of “the Department” in the regulations could lead to confusion.

Response:

The term “Regional Manager” has been used without causing misunderstanding in the existing regulations. In addition, “Regional Manager” is defined as the Regional Wildlife Manager in the Applicability and Definitions section, §51.0 (b)7.

The term “Department” is used to include staff in addition to the Regional Manager, including staff outside the DEC region such as for review of a multi-region Temporary Revocable Permits (TRP) by Central Office. Review of such TRPs is always coordinated with the regions. Naming only the RWM in the regulations would be unnecessarily restrictive.

Comment:

Prohibit the use of lead ammunition within the WMA system because of its harmful effects.

Response:

The Department has convened a multi-agency working group to fully understand the lead issue, evaluate alternatives, and ultimately recommend measures to reduce the accumulation of lead from ammunition in wildlife and game meat. See <https://www.dec.ny.gov/outdoor/48420.html> for more information.

Comment:

Prohibit hunting.

Response:

General opposition to hunting is out of the scope of the proposed regulations.