

RESPONSE TO COMMENTS
SUPERINTENDENT'S COMPENDIUM
Western Arctic National Parklands
2020

The compendium is a list of designations, closures, permit requirements and other authorizations and restrictions adopted pursuant to authority in the Code of Federal Regulations (CFR) applicable to areas administered by the National Park Service (NPS). On January 15, the NPS published proposed changes for the 2020 compendium and invited public comment on those proposed changes through February 15. A summary of substantive comments and NPS responses is provided below. No response or summary is provided for general statements of support, or "votes" either for or against a proposed change. The NPS welcomed feedback received during the comment period and notes that many suggestions received during that period have been incorporated into final compendiums.

E-bike Comments and Responses

1. Comment: A commenter suggested the definition of an e-bike be modified. The commenter noted that the proposed definition of an e-bike includes cycles with either two or three wheels. The commenter noted that a "bicycle" by definition is limited to two wheels. The commenter also stated that three wheeled devices are more likely to damage vegetation along single-track trails since the wheelbase may be wider than the trail.

1. NPS Response: The definition of "low speed electric bicycle" in the Consumer Product Safety Act includes devices with two or three wheels. 15 U.S.C. 2085. The NPS also includes three-wheeled cycles within its definition of "e-bike" so that these devices are not categorically excluded from areas where they may be appropriate. Based upon existing information, the NPS believes use of three-wheeled vehicles on single track trails will be infrequent and not likely to damage vegetation. The Superintendent retains the authority to restrict these devices in certain locations to protect resources or for other reasons.

2. Comment: A commenter stated that allowing e-bikes and e-trikes on trails open to traditional bicyclists would cause conflicts with other users and consequently should only be allowed on roads and parking areas.

2. NPS Response: The NPS has evaluated the roads, parking areas, and trails where traditional bicycles are authorized and, based on existing information, does not believe user conflicts are likely with the addition of e-bikes in those locations. The Superintendent retains the authority to close areas to e-bikes to prevent user conflict or for other reasons.

3. Comment: Some commenters stated the provision proposing to allow e-bikes is inconsistent with nationally applicable NPS regulations because they do not meet the regulatory definition of “bicycle” in 36 CFR 1.4.

3. NPS Response: The NPS agrees that e-bikes do not meet the definition of bicycle in NPS regulations because e-bikes are not “solely human powered”. This means they are not specifically regulated by 36 CFR and therefore may be managed under the Superintendent’s authority in 36 CFR 1.5(a)(2) to “designate areas for a specific use or activity or impose conditions or restrictions on a use or activity”.

4. Comment: One commenter said that the e-bike proposal was overly restrictive in limiting e-bikes to roads, parking areas, and trails in Alaska NPS units.

4. NPS Response: NPS regulations at 36 CFR 4.30 limit traditional bicycles to public roads, parking areas and designated administrative roads and trails. Under Federal law applicable to Alaska, “nonmotorized surface transportation for traditional activities . . . and for travel to and from villages and homesites” is allowed notwithstanding any other provision of law. 16 USC 3170(a). Because e-bikes have a motor, they do not fall under this provision. The NPS policy memorandum recognizes the Superintendent’s authority to manage e-bikes differently than traditional bicycles based on considerations involving public health and safety, natural and cultural resource protection, and other management activities and objectives. The decision of the NPS to limit e-bikes to roads, parking areas and trails that are open to traditional bikes (unless noted in this compendium) will ensure the NPS manages e-bikes in Alaska the way it manages e-bikes outside of Alaska. This helps achieve a consistent management framework for use of e-bikes within the National Park System. In addition, the NPS has no data on the level of bicycle use on more than 20 million acres that are not in designated wilderness. Given the lack of information, NPS is not able to assess the potential impacts to park resources and associated management challenges that could occur from allowing e-bikes in those vast areas. Consequently, NPS has determined that e-bike use in Alaska NPS units will be allowed only on roads, parking areas, and trails that are open to traditional bicycles.

5. Comment: One commenter stated that prohibiting e-bikes on trails in designated wilderness would also close sport and subsistence hunting opportunities.

5. NPS Response: Because of the 1964 Wilderness Act prohibition on “motor vehicles, motorized equipment . . . [or] other form of mechanical transport,” NPS does not have authority to allow e-bikes in designated wilderness. Nothing in ANILCA modifies this prohibition with respect to e-bikes. NPS notes that e-bikes are a new and emerging form of technology. Accordingly, such devices have not been traditionally used by sport or subsistence hunters. This action does not establish any closures or restrictions on sport or subsistence hunting. These activities may continue to occur on NPS lands in the same manner as before.

6. Comment: One commenter stated the procedures for closing areas to e-bikes should be those in 43 CFR Part 36, which implements access under ANILCA (16 USC 3170 and off-road vehicles).

6. NPS Response: Department of the Interior regulations at 43 CFR 36.11 implement the special access provisions in ANILCA discussed above. They also address off-road vehicle (ORV) use. E-bikes are motorized and therefore do not fall under the special access provisions implemented by section 36.11. Neither are they ORVs. For this reason, the closure procedures at 43 CFR 36.11 do not apply.

Dogs/Pets Comments and Responses

Comment: NPS received comments on possession and use of dogs in Alaska NPS units and how national regulations in 36 CFR 2.15 apply.

NPS Response: National NPS regulations on pets apply in Alaska NPS units unless Federal statutes or more specific NPS regulations for Alaska provide otherwise. For example, if an area of the park is closed to pets under regulatory authority provided in 36 CFR 2.15(a)(1), the following would be allowed regardless of the closure: 1) possession of a qualified service animal pursuant to the Americans with Disabilities Act, 2) use of sled dogs as “nonmotorized surface transportation” pursuant to the Alaska National Interest Lands Conservation Act (16 USC 3170(a)), 3) NPS administrative use of a dog to support wildlife management activities pursuant to 36 CFR 1.2(d), 4) use of a dog to aid in hunting activities in accordance with nonconflicting state law pursuant to 36 CFR 2.15(b), and 5) use of a dog by Federal, State, or local law enforcement in performance of their official duties pursuant to 36 CFR 2.15(f).

The commenter also asked about leash requirements for hunting dogs. Under national NPS regulations, pets are required to be leashed. However, national regulations exempt from the leash requirement dogs “used in support of [hunting] activities in accordance with applicable Federal and State laws and in accordance with conditions which may be established by the superintendent.” In Alaska, wildlife may be taken with the aid or use of a dog in certain circumstances (including use of bird dogs for hunting waterfowl). If a hunter is lawfully taking wildlife with the aid or use of a dog, the leash requirement does not apply while engaged in this activity.

There is also confusion about the status of dogs who are “working” as sled dogs or in support of NPS administrative activities. Under national NPS regulations, pets are defined as “a dog, cat or any animal that has been domesticated.” 36 CFR 1.4. There is no regulatory definition for “working dog.” A dog being used for NPS administrative purposes still meets the definition of “pet.”

The commenter also states that dogs are a form of nonmotorized surface transportation which is authorized by ANILCA. NPS agrees that dogs can be a mode of nonmotorized surface transportation and when being used in this capacity, ANILCA provides for that use notwithstanding NPS regulations to the contrary. However, sled dogs are still considered pets

under NPS regulations. Accordingly, when not being used as “nonmotorized surface transportation,” NPS regulations regarding pets apply. Because Federal law authorizes sled dogs as a mode of transportation in NPS units, the Superintendent has determined it is appropriate to use discretion afforded under NPS regulations to authorize leaving pets—which includes sled dogs—unattended and tied to an object.

The compendium for Western Arctic National Parklands is approved and all previous versions are rescinded.

VALERIE AMUNDSON  Digitally signed by
VALERIE AMUNDSON
Date: 2020.03.11
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For Maija Lukin

Superintendent

Date