



January 28, 2021

TO: Wildlife Committee, Fish and Wildlife Commission  
FR: Joel Sisolak, Planning and Recreation Manager, Lands Division  
CC: Cynthia Wilkerson, Lands Division Manager Wildlife Program  
Eric Gardner, Wildlife Program Director  
RE: Electric Bicycles (E-Bikes) Background Information

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There is increasing demand for riding e-bikes on State lands. WDFW currently limits the use of e-bikes to roads and trails open to motorized vehicles. WDFW has authority under Federal and State law to limit e-bike use, but the increasing popularity of e-bikes, plus emergent regulation of e-bikes on other public lands in Washington, have led WDFW to review its current practices to determine where and when e-bike use might be compatible with WDFW's fish, wildlife and ecosystem conservation mission.

This memo provides background information about e-bikes, current approaches to regulating e-bikes in Washington on other public lands, and some steps we plan to take in reviewing our current management of e-bikes on WDFW-managed lands.

### **Background**

An electric bicycle or "e-bike" is a bicycle with two or three wheels, a saddle, fully operative pedals for human propulsion, and an electric motor. If the wattage exceeds 750, it is no longer classified as a bicycle, but instead as a motor vehicle for the purposes of consumer protection.

E-bikes are generally considered as safe and sturdy as traditional bicycles and move at comparable speeds. E-bikes vary in size and shape with different types closely aligned with those of regular bicycles. Most of the e-bikes used on WDFW-managed lands are electrified mountain bikes (e-MTBs).

An e-MTB is an e-bike that can be pedaled under human power alone, pedaled with assistance from an electric motor, or propelled via a throttle-engaged motor. e-MTBs are capable and primarily designed for off-road use, with wider, lugged tires, a sturdier frame, and front or dual suspension systems.

Use of mountain bikes and e-MTBs has become increasingly popular for traveling into and through WLAs, including off road, for the purposes of recreation and/or hunting. Currently, mountain bikes are allowed on non-motorized multi-use trails, and e-MTBs are treated as motorized vehicles and restricted to roads and trails where motorized vehicles are allowed. Some WLA managers report the use of mountain bikes and e-MTBs in closed and sensitive areas and express concerns about impacts on wildlife

and habitat in areas previously inaccessible to most recreationists. The growing popularity of mountain bikes and especially e-MTBs heighten these concerns.

The ability to ride in previously inaccessible areas is part of the appeal of e-MTBs to users. “Long, slow climbs become quicker. Lunchtime rides become more interesting because you can ride farther and see trails that otherwise wouldn’t have been possible in such a short time. And whole new trails systems are accessible as the assist opens up terrain that would be too steep, loose, rocky, or brutal on a standard pedal bike.”<sup>1</sup>

Advocates for e-bikes argue that e-bikes should be allowed wherever traditional bicycles are allowed on public lands, including non-motorized trails that allow mountain bikes. Electric bicycles benefit riders who may be discouraged from riding a traditional bicycle due to limited physical fitness, age, disability or convenience.

This ability to go farther, higher and faster is what concerns conservation groups. “One of the problems with the mechanical improvements of mountain bikes (including the addition of electric motors) over the years has been a greater ecological footprint. The distance one can travel, and the places one can access has increased tremendously. This means mountain bikers ‘chew up’ trails and landscapes and the potential for displacement of wildlife is vastly amplified.”<sup>2</sup>

### **Regulation of E-bikes on Federal Lands**

The US Department of Interior (DOI), as well as twenty-six state governments, including Washington, have adopted an industry-designed three-tiered classification system to differentiate among models with varying capacities.

Class 1	A bicycle equipped with a motor that assists only when the rider pedals, and ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.
Class 2	A bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that stops assisting when the bicycle reaches the speed of 20 miles per hour.
Class 3	A bicycle equipped with a motor that assists only when the rider pedals, ceases to assist when the bicycle reaches the speed of 28 miles per hour, and is equipped with a speedometer.

In August 2019, the Secretary of the DOI issued [Order 3376: Increasing Recreational Opportunities through the use of Electric Bikes](#) authorizing the use of low-speed e-bikes (less than 750 watts and less than 20 miles/hour) on trails and paths where traditional bicycles are allowed. The order effectively classified e-bikes as non-motorized and directed the heads of Fish and Wildlife Service (FWS), National

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<sup>1</sup> Gulley, A. “The Rise of the Electric Mountain Bike,” *Outside Online*, Jan 7, 2019, <https://www.outsideonline.com/2379031/rise-electric-mountain-bike>

<sup>2</sup> “Impacts of Mountain Biking,” *The Wildlife News*, June 18, 2019, <http://www.thewildlifeneeds.com/2019/06/18/impacts-of-mountain-biking/>

Park Service (NPS), Bureau of Land Management (BLM) and Bureau of Reclamation (BOR) to develop a proposed rule update to be consistent with the order.

Order 3376 did not change much for NPS and lands managed by FWS, which already largely restrict bikes to paved trails. However, according to reporting in the *Colorado Sun*, the order posed complicated issues for BLM, which manages tens of thousands of miles of trails designated as non-motorized trails.<sup>3</sup> BLM published its [Final Rule](#) in October 2020, which amends its off-road vehicle regulations at 43 CFR Part 8340 to add a definition for e-bikes and, “where certain criteria are met and an authorized officer expressly determines through a formal decision that e-bikes should be treated the same as non-motorized bicycles, expressly exempt those e-bikes from the definition of ORV at 43 CFR 8340.0-5(a).” The BLM rule is not self-executing, meaning it doesn’t change existing allowances or exclusions of e-bikes on BLM-managed lands. It gives local managers in each BLM field office authority to determine where to allow e-bikes following an environmental review (NEPA) of potential impacts.

BOR issued a [notice of proposed rulemaking](#)<sup>4</sup> on 4/13/20 with a comment period through 6/12/20. BOR also proposed to adopt the definition of e-bikes laid out by Secretarial Order 3376, including the 750-watt maximum and three classes of electric bicycle. The notice states that this proposed rule is excluded from NEPA analysis under DOI categorical exclusion, 43 CFR 46.210(i). However, BOR would address site-specific issues “in accordance with applicable legal requirements, including the National Environmental Policy Act of 1969 (NEPA).”

BOR’s proposed rule excludes e-bikes from its definition of motorized vehicles and amends its current procedure for designating areas for off-road vehicle use to read:

The appropriate regional director should generally allow E-bikes whose mechanical features are being used as an assist to human propulsion on roads and trails upon which mechanized, non-motorized use is allowed, in compliance with the requirements of this section, unless the authorized officer determines that E-bike use would be inappropriate on such roads and trails. If the appropriate regional director allows E-bikes in accordance with this paragraph, an E-bike user shall be afforded the rights and privileges, and be subject to all the duties, or non-motorized bicycles.

In September 2020, the USDA Forest Service issued proposed guidance for managing e-bikes on national forests and grasslands that is similar to BLM’s. The Forest Service also adopts the standard definition for an e-bike and a three-tiered classification for e-bikes and align with BLM’s proposed e-bike rules in requiring site-specific decision-making and environmental analysis at the local level to allow e-bike use.<sup>5</sup> The Forest Service diverges from BLM by defining e-bikes as a class of motor vehicle.

In a January 20, 2021 email, Acting Assistant Director for Recreation, WWSR, Heritage and Trails for the Pacific NW Region Bryan Mulligan writes, “These changes should align with and support the agency as we engage in future travel management planning efforts as we consider emerging technologies (such as

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<sup>3</sup> Blevins, J. “E-Bike rules for BLM, Forest Service trails both thrill and rile backcountry users,” *The Colorado Sun*, Oct 29, 2020, <https://coloradosun.com/2020/10/29/ebike-rules-blm-forest-service-thrill-rile-backcountry-users/>

<sup>4</sup> <https://www.federalregister.gov/documents/2020/04/13/2020-07213/off-road-vehicle-use>

<sup>5</sup> <https://www.federalregister.gov/documents/2020/09/24/2020-21128/forest-service-manual-7700-travel-management-chapter-7700-zero-code-chapter-7710-travel-planning>

e-bikes) that are changing the way people access and recreate on NFS lands.” Mulligan anticipates the Forest Service directives to be finalized in spring of 2021.

### **E-bikes on Washington State Lands**

In 2018, the Washington State legislature passed SB 6434 pertaining to the category and use of electric assist bicycles (e-bikes) within the state. SB 6434 amended RCW 46.04.169, 46.04.071, 46.20.500, and 46.61.710; and added a new section to chapter 46.37. The law expanded the definition of bicycles to include e-bikes, defines three classes of e-bike and updates rules around use of e-bikes. Where a local jurisdiction doesn’t have specific laws on the books, the default under the law is that Class 1 and 2 e-bikes can go where traditional bikes can go. However, the law clarifies that e-bikes cannot be ridden on a trail that is designated as non-motorized and that has a natural surface made by clearing and grading the native soil with no added surfacing materials. Exceptions may be made by a local authority or agency of this state that has jurisdiction over a particular trail. Manufacturers and retailers are required to permanently affix a label that contains the classification number, top assisted speed and motor wattage.

On Department of Natural Resources (DNR) managed lands, “E-bikes or electronic bikes are considered motorized vehicles and are therefore allowed only on DNR trails that allow off-road vehicles.”<sup>6</sup> However, DNR is exploring greater access for e-MTBs in some locations. Currently, DNR is collaborating with EMBA on a 1-year pilot that allows e-MTBs onto a new trail network in Darrington, Washington called the North Mountain Bike Trail System.<sup>7</sup>

In addition to allowing e-bikes on State Park long-distance trails and Park roads, Washington State Parks and Recreation Commission (Parks) allows pedal-assist e-MTBs (Class 1 and 3) on natural surface trails. Parks’ interpretation of existing Washington Administrative Code (WAC) led them to conclude that Parks law enforcement could not issue citations for the use of Class 1 or 3 e-bikes on trails that allow non-motorized bicycles. Parks did not consider impacts on habitat or wildlife in its determination.

### **Americans with Disabilities Act (ADA) Title II § 35.137 Mobility devices.**

Some e-bike advocates have recommended allowance of e-bikes as a mobility device for individuals with a disability. Under Title II, § 35.137 (b)(1), “A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to § 35.130(h).”

§ 35.137 (b)(2) provides “assessment factors” for “determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section.” The assessment factors include the following:

(i) The type, size, weight, dimensions, and speed of the device;

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<sup>6</sup> <https://www.dnr.wa.gov/test#mountain-biking>

<sup>7</sup> <https://www.evergreenmtb.org/darrington-north-mtn>

(ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The facility's design and operational characteristics (*e.g.*, whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and

(v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

Currently, riders with a disability can be considered for a special use permit on case-by-case basis to allow them to ride e-bikes where it is otherwise not allowed at this time.

#### **Other Considerations:**

The 69-page document<sup>8</sup> issued by BLM with its final rule includes a response to comments in support and opposed to the BLM rule. These responses could be useful for informing WDFW's own position on allowing or restricting e-bikes on WDFW-managed lands.

Spokane County is also reviewing its rules on e-bikes. Currently, e-bike use is prohibited on all Spokane County owned and managed natural surface trails. The county [conducted a survey in October 2020](#) with 874 respondents that also could provide some insight into how the public views the use of e-bikes on public land.

WDFW needs to have its own process to consider the use of e-bikes on WDFW-managed lands. The topic will be added to the list of topics discussed during consultations with Tribes about recreation on state lands. Beginning in February 2021, EMBA plans to convene a working group of stakeholders and land managers on the subject of e-MTBs on single track natural surface trails and has invited WDFW to participate.

Because the technology is relatively new, there is limited research on the impacts of e-bikes on wildlife, habitat and other recreationists, *e.g.* equestrians and hikers. Any future process by WDFW to change its management of e-bikes should fully consider the compatibility of e-bike use with WDFW conservation goals and existing uses of trails and have a robust engagement process to ensure transparency and thoroughness in the agency's deliberations.

#### **Next Steps**

In the near-term, WDFW will continue to manage e-bikes as motorized vehicles. With very limited exceptions and consistent with SB 6434, e-bikes will be allowed on trails and roads where motorized

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[https://www.blm.gov/sites/blm.gov/files/BLM%20E%20Bike%20Final%20Rule%20Clean%209.22.20\\_Revised%20to%20Sec%20Signature%20Block\\_10.1.20.pdf](https://www.blm.gov/sites/blm.gov/files/BLM%20E%20Bike%20Final%20Rule%20Clean%209.22.20_Revised%20to%20Sec%20Signature%20Block_10.1.20.pdf)

vehicles are allowed, but not on non-motorized trails with natural surfaces. WDFW will clarify its current policy via publication on the WDFW website and outreach to partners and stakeholders.

In the longer-term, WDFW will:

- Complete a scan of Washington State local jurisdictions for local regulations and processes to address the use of e-bikes on natural surface single track trails
- Gather input from across WDFW programs, including Enforcement, on potential challenges and opportunities associated with managing e-bikes on WDFW-managed lands
- Discuss the potential impacts and benefits of e-bikes with Tribal, state and federal government partners in Washington.
- Gather input from stakeholders, including motorized and non-motorized trail users and hunting groups, to gauge their level of interest and/or position on e-bikes.
- Develop e-bike policy and rules (statewide and/or site-based), if needed.