May 27, 2020

U.S. Fish and Wildlife Service
MS: JAO/1N
5275 Leesburg Pike
Falls Church, VA 22041

Dear Director,

Thank you for the opportunity to comment on the Fish and Wildlife Service’s proposed regulations governing the use of electric bicycles, or e-bikes, within the Fish and Wildlife Service, RIN 1018–BE68. We support the Fish and Wildlife Service’s efforts to issue new regulations to adapt to changing technologies and recreation patterns, manage electric bicycles in a clear and consistent way both internally and in coordination with fellow agencies, and allow for the use and enjoyment of electric bicycles by Americans seeking connection to natural experiences nationwide.

The PeopleForBikes Coalition (“PeopleForBikes”) is the national trade association representing companies that manufacture and distribute bicycles, bicycle parts and bicycle accessories; as well as the national advocacy group that works for better policies and infrastructure for bike riding. The U.S. bicycle business contributes $88 billion annually to our economy and supports more than 780,000 jobs. PeopleForBikes represents more than 1.3 million individuals who support bicycling.

Our mission is to put more people on bikes more often and make every bike ride better for everyone. Bicycling moves people efficiently and keeps people active and healthy. Electric bicycles are a natural extension of this work and have been a focus of ours for more than five years. In 2014, acknowledging the growth in electric bicycle ridership and the patent similarities in both federal consumer product standards and regulations and the experience of bicycles and electric bicycles, PeopleForBikes took the lead to develop a 21st century framework to regulate and manage e-bike use in the United States. It is critical that the U.S. synchronize terms and policies across government entities so that access rules are easy for everyone to understand. Federal land management agencies are crucial to this evolution, as many of the best biking experiences in the U.S. are on federal public lands.

While e-bikes are federally regulated for the purposes of consumer product safety, e-bikes are not consistently defined or managed across federal land management agency policies, and most agencies have regulated e-bikes generically as a motor vehicle. The lack of terms to define the different types of e-bikes on the market today is a major barrier to providing appropriate rules for their use, and creates confusion for land managers, public safety officials, consumers and retailers.

E-bikes are not specifically defined in laws that govern the management of federal public lands, but they are defined in federal law for other purposes. Pursuant to 15 U.S.C. § 2085, electric bicycles are “consumer products,” subject to the same consumer product safety standards as bicycles. In practice, they are designed, equipped, look like, and ride much like traditional bicycles and are easier to operate through the assistance of a small electric motor that is activated to assist the rider when pedaling. They are explicitly not “motor vehicles” subject to federal motor vehicle safety standards pursuant to 49 U.S.C. § 30102. In short, the federal government has long treated e-bikes
like bicycles from a product standpoint.

The current federal land management regulatory framework for e-bikes leads to inconsistent rules for e-bikes and precludes logical policies regarding their access. E-bikes must be regulated similarly to bicycles in order to provide for their safe operation, consistent regulation and reasonable use. As more state and local governments expand e-bike access, federal policies must also coordinate with policies in the communities that surround them.

Recognizing confusion around e-bike technology and definitions, in 2015, U.S. e-bike manufacturers drafted model legislation, which specified three classes of e-bikes to regulate critical issues around e-bike speed, wattage, and motor engagement; create consistency with the three main forms of product that are currently on the marketplace and within the federal Consumer Product Safety Commission definition of an electric bicycle; and allow for distinct regulation of different classes of e-bikes on recreational trails.

E-bikes sold in the U.S. are labeled according to these class designations. Twenty-six states (and counting) have codified this system into their traffic statutes with few issues. These are the three classes:

- **Class 1**: Bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 20 mph.
- **Class 2**: Bicycle equipped with a throttle-actuated motor that ceases to provide assistance when the e-bike reaches 20 mph.
- **Class 3**: Bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 28 mph.

In states that have codified the three classes of e-bikes, many state land management agencies have updated their regulations to allow more than one class of e-bikes where bikes are allowed to travel. Land managers appreciate that the three classes of e-bikes allow them flexibility to designate various classes depending on the facility and local conditions.

**The Need for New Regulations Addressing E-Bikes**

There are many benefits of improving e-bike policies on federal lands managed for recreation that serve both visitors and employees alike. E-bikes increase access for many types of people who have now have a chance to bike on public lands, as well as simplify access to a broader range of facilities that might not have been appealing to visit by bike, but are more appealing by e-bike. More people can access places that are fully suited for recreation and visitation on public lands, instead of concentrating around trailheads and visitor centers. This disperses use and can alert land managers to trail and road conditions in more remote areas of our public lands. Land managers also frequently report that e-bikes increase their visitor services capacities, and give their staff the ability to carry heavier loads without the assistance of a motor vehicle and provide practical accessibility to more remote parts of Fish and Wildlife Service refuges.

New rules for e-bikes can provide commonsense solutions for pressing issues such as traffic congestion, parking, maintenance backlogs and emissions reduction. More and more people are using e-bikes, especially those who wish to continue riding a bicycle but are limited by age, disability or physical capacity. As a new recreation option, their use can bring the pleasure and freedom of bicycling to many more types of users and facilitate recreation for many new demographics.
In addition, more Americans are purchasing and riding e-bikes on a regular basis. Electric bicycles are the fastest growing category of bicycle sales in the U.S. market, and we anticipate that their rapid adoption by customers will continue for many years to come. For example, in 2015, 9,533 e-bikes were sold in the U.S. (though independent bicycle retailers). In 2019, this number had grown to 106,944, representing a more than 1,000% increase over four years. Simply put, Americans will continue to purchase e-bikes and bring them to federal lands for both transportation and recreation purposes well into the future. It is critical that the agencies that administer our federal lands have sensible policies to guide this growing use.

The characteristics of an e-bike – a hybrid technology that combines human and motor power and closely mirrors traditional bicycles – necessitate regulatory changes so that land managers can effectively and logically integrate e-bikes into public lands to ensure improved recreation opportunities for the Americans who seek them.

**Aspects of the Proposed Rule We Support**

We support the general framework of the proposed e-bike rule. The following specific areas are critical to successful e-bike management on Fish and Wildlife Service lands, and we support their adoption:

- Defining and recognizing the three classes of electric bicycles.
- Encouraging refuge managers to permit e-bikes access where bicycle use is allowed (subject to our additional comments below).
- Applying the rules for traditional bicycles to electric bicycles when they are being ridden.

The issue of e-bike access merits some special attention. Fish and Wildlife Service refuges offer a wide range of bike riding experience for Americans to enjoy. E-bikes use in the vast majority of these areas will be non-controversial and have little to no effect on other visitors. The use of all classes of e-bikes on roads (including the shoulder), in bicycle lanes, and on wider, improved bicycle paths will be appropriate in most cases. In more complicated areas (e.g. non-motorized dirt roads and non-motorized, natural surface singletrack trails), we recognize that there will be areas where it is appropriate to limit, or even restrict, access to all or certain classes of e-bikes. The bike industry believes strongly in supporting our partner groups and being good stewards as local officials consider e-bikes for use in these areas.

PeopleForBikes has long supported local land management decisions regarding where e-bikes may be used on non-motorized dirt roads or natural surface singletrack trails that are open to bicycles. With local land manager engagement and oversight, e-bikes can be successfully integrated into many trail systems on federal lands, and the proposed rule allows the appropriate local distinction of what classes could and should be allowed where. While PeopleForBikes does not support a blanket allowance of e-bikes on all non-motorized trails where bikes are allowed to travel (and we do not interpret the proposed rule as instituting such a policy), we support more modern and sensible policies around e-bikes, select access on non-motorized trails and local-level discretion as to where and how e-bikes are allowed. The proposed rule strikes an appropriate balance of these issues by vesting decisions in the hands of the appropriate land manager and permitting them to make management decisions based on public health, safety, resource protection and other management needs. We would however, encourage additional modification to the rule, as outlined below, to clearly state that the appropriate land managers have the authority to regulate e-bikes based on their class.
Recommendations

PeopleForBikes proposes the following amendments to new paragraph (m) in § 27.31 General provisions regarding vehicles under Subpart C—Disturbing Violations (additions bolded and underlined; deletions in strikethrough):

(m) **The refuge manager shall designate roads or trails where electric bicycles may be ridden. E-bikes may be ridden on roads or trails that are open to motorized vehicles, including the shoulder or bicycle lane of such roads or trails, and shall be afforded all the rights and privileges, and shall be subject only to the duties, of user of a non-motorized bicycle in those areas.** If the refuge manager determines that electric bicycle (also known as an e-bike) use, or the use of a particular class of e-bike, is a compatible use on roads or trails that are closed to motorized vehicles, any person using the motorized features of an e-bike as an assist to human propulsion shall be afforded all the rights and privileges, and be subject to all of the duties, of the operators of non-motorized bicycles on roads and trails. An e-bike is a two- or three-wheeled electric bicycle with fully operable pedals, a seat or saddle for the rider, and an electric motor of not more than 750 watts (1 h.p.) that meets the requirements of one of the following three classes:

(1) **Class 1 e-bike** shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

(2) **Class 2 e-bike** shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

(3) **Class 3 e-bike** shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

These proposed amendments accomplish four items:

1. **Clarify access to roads that are open to motor vehicles and duties when on those roads**

   It is our understanding that e-bikes are currently allowed on Fish and Wildlife Service lands that are open to motor vehicles. Continuing to permit that use would not constitute a change from current policy. The rationale of the proposed rule assigns many of the same characteristics of people who ride non-motorized bicycles to those who ride electric bicycles, and would allow e-bikes in many of the same mechanized, non-motorized locations, trails and infrastructure as traditional bicycles.

   However, as drafted, the rule appears to require that a refuge manager specifically determine whether all roads and trails are compatible with e-bike use, even if that road or trail is already open to motor vehicles. This “compatibility determination” should not be required on motorized routes. The proposed rule must be clarified to confirm that e-bikes continue to have access to roads or trails where motorized vehicles are allowed, and state the rights and duties that e-bikes have while ridden in those locations. Those rights and duties should be the same as a bike rider, and not the rights and duties of the driver of a motor vehicle, such as a car.

2. **Require refuge managers to designate where an e-bike can be ridden and provide explicit authority to designate access based on class**
Land managers in general appreciate that the three classes of e-bikes allow for local level control to determine what types of e-bikes are appropriate for a variety of types of infrastructure. Although riders of all classes of e-bikes generally use these devices consistently with how traditional bikes are operated, and seek comparable experiences, the type of power activation and top motor-assisted speed that distinguish the three classes necessitate a more granular level of decision making and allowances based on individual classes. In the absence of this detachment in regulation, land managers are faced with a starker, more binary access decision, at the detriment of the area’s users and local-level decision authority.

While the rule as written seems to contemplate that e-bikes may be regulated based on their class, it is not explicitly stated. We suggest that the refuge managers’ authority on this point be made clear, as it will be critical to effective implementation of this rule. We believe that this authority is important to making appropriate access designations and fostering productive relationships between refuge managers, e-bike riders and other trail users. There will be instances where land managers will need to restrict e-bike access based on the class of electric bicycles. The authority of refuge managers on this issue should be clear to foster better decision-making.

3. **Eliminate the requirement that the e-bike motor may only be used to assist human propulsion**

The key distinction between a Class 2 electric bicycle and a Class 1 or 3 electric bicycle is the rider’s ability to propel the bicycle in the absence of pedaling, with the use of a throttle located on the handlebars. Class 2 electric bicycles have operable pedals that riders frequently use to propel the bicycle. It is clear that this throttle enables people, who would not be able ride a bicycle in the first place, to begin propelling the bicycle in the absence of physical strength or capability to pedal. Once the bike is in motion, riders generally use the pedals for a bike-like experience, and to continue keeping the bicycle moving forward. However, the ability to utilize their throttle feature is often critical to the effective use of the Class 2 e-bike by the rider, particularly if they have a diminished pedaling capacity due to their physical abilities.

A regulation that prohibits use of an electric bicycle without pedaling is impractical, unenforceable and dismissive of the purpose and value of a Class 2 electric bicycle. While we are uncertain whether this is the intention of the draft rule, we interpret the draft rule as allowing the use of Class 2 electric bicycles (where permitted), but requiring the rider to pedal at all times rather than using the e-bike’s throttle. We believe that such a rule is likely to create more management problems than it solves. Land managers and other trail users will have significant difficulty discerning when a Class 2 e-bike rider is coasting vs. when they are using a throttle. It is also likely to be ignored, as most people will utilize the full functionality of their bicycle. Finally, it could lead to bad land management decisions, as access designations are made by inaccurate assumptions that differ from the on-the-ground conditions.

Class 2 electric bicycles are suitable for many types of infrastructure and the typical class 2 e-bike rider is looking for the bike experience available on many bike paths and roads. Americans ride Class 2 e-bikes throughout the United States, utilizing their throttle-powered capabilities, without incident in these areas every day. We believe the draft regulation should be modified to contemplate the actual capabilities of the device being regulated rather than impose requirements on the e-bike rider that are likely to be ignored or never enforced. In short, land managers should have the authority to permit Class 2 electric bicycle use, under throttle-power, in appropriate areas (such as bike lanes and on paths that are suitable for their use).
Acknowledging the actual capability of the device being regulated will be a more effective long-term management strategy for Class 2 e-bikes on federal lands. Taking into account the capabilities of the electric bicycle will enable land managers to make informed decisions about where to allow e-bikes rather than premising their access on unrealistic assumptions about rider behavior. It will also allow Class 2 e-bike riders to enjoy their bike riding experience without being fearful of violating federal regulations when they stop pedaling.

4. Require seat or saddle to avoid confusion with scooters

Although 15 U.S.C. § 2085 does not specify that a bicycle must be equipped with a seat or saddle, this is a critical differentiating factor between an electric bicycle and other electric powered mobility devices, and a key distinction of a bicycle. We urge you to require that e-bikes be equipped with a seat or saddle so that e-bikes remain easily separable from other types of electric mobility devices that are designed to be stood upon, and there are no unintended regulatory consequences from this rulemaking. This specification could serve the agency in later rulemaking iterations as it subsequently explores potential modifications to access, or to update regulations pertaining to electric scooters, Segways, hoverboards or other devices.

Thank you for your consideration of our comments, concerns and priorities regarding proposed rulemaking RIN 1018–BE68. We are available to answer any questions about electric bikes and their use on federal public lands.

To discuss this matter further, please be in touch with our policy counsel Alex Logemann (alex@peopleforbikes.org, (720) 256-3646).

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