

TITLE XVIII

FISH AND GAME

CHAPTER 215-A

OFF HIGHWAY RECREATIONAL VEHICLES AND TRAILS

ATV and Trail Bike Operation on State Lands

Section 215-A:41

215-A:41 Intent. –

I. The general court declares it to be in the public interest to balance the demand for ATV and trail bike trails on state lands:

- (a) With other, non-motorized recreational trail uses;
- (b) Potentially conflicting management goals for state lands; and
- (c) Protection of wildlife and ecologically important areas.

II. In furtherance of the public interest, the bureau, in cooperation with the department of fish and game and all other state agencies that are custodians of the property involved shall work to develop a system of trails for ATVs and trail bikes on both public and private lands that:

- (a) Uses, to the greatest extent possible, private lands, under voluntary agreement with landowners;
- (b) Uses public lands that can host ATV and trail bike trails that are compatible with existing uses and management goals and plans;
- (c) Is managed cooperatively with formally established ATV and trail bike clubs recognized by the bureau;
- (d) Is regularly monitored for overuse, compliance with laws and regulations, and environmental degradation, with curtailment of trail use if such conditions are found to exist;
- (e) Ensures safe and legal use through consistent enforcement of all laws as set forth in this chapter; and
- (f) Provides opportunities for public input in all decisions regarding development of new or significantly revised trail systems on state lands.

Source. 2002, 233:16, eff. July 1, 2002.

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OFF HIGHWAY RECREATIONAL VEHICLES AND TRAILS

ATV and Trail Bike Operation on State Lands

Section 215-A:42

215-A:42 ATV and Trail Bike Trails. –

I. No ATV or trail bike trail shall be established after the effective date of this paragraph or subsequently maintained on state-owned property unless all of the following conditions are met:

(a) The property has been evaluated by the bureau in cooperation with the department of fish and game and the department of resources and economic development, division of forests and lands, and other state agencies that are custodians of the property using the coarse and fine filter criteria, established under RSA 215-A:43, and has passed such criteria as determined by the commissioner of the department of resources and economic development and the executive director of the department of fish and game.

(b) A memorandum of understanding (memorandum) exists between the bureau, the fish and game department, the department of resources and economic development, division of forests and lands, and all other state agencies that are custodians of the property. The memorandum shall include, but not be limited to, the responsibilities that each agency has in monitoring, maintaining, and enforcing relevant laws relative to the trail and the type of OHRV permitted on approved trails. The bureau shall enter into the memorandum only if it is certain that proper monitoring and maintenance of the trail shall occur, either through its own resources or those of others. The fish and game department shall enter into the memorandum only if it can commit sufficient resources to reasonably monitor for proper ATV or trail bike use on the property and enforce the applicable laws.

(c) A written agreement is in effect between the bureau and a locally-organized ATV or trail bike club recognized by the bureau that details the club's ongoing responsibilities, including but not limited to, monitoring the use and condition of the trail, erecting signage, educating operators, performing maintenance, and monitoring compliance with laws and regulations. Should the club fail to fulfill some or all of its responsibilities, the bureau or its agent may assume such responsibilities provided sufficient resources are available and committed.

(d) A management plan exists for the property that specifically allows ATV or trail bike use on the property, and the ATV or trail bike trail does not otherwise conflict with the management plan. Any state agency proposing to establish or change a management plan that affects ATV or trail bike use on state property shall publicize such plan and provide the public with the opportunity to comment on the plan before enactment.

II. An ATV or trail bike trail on state-owned property may be closed to ATV or trail bike use by the bureau, if the bureau finds that:

(a) ATV or trail bike use on the property is not in conformance with this chapter;

(b) Responsibilities assumed by the locally-organized ATV or trail bike club pursuant to subparagraph I(c) are not being met; or

(c) Provisions of the memorandum between the state agencies as entered into pursuant to subparagraph I(b) require such closure.

III. The bureau may not permanently close a trail under paragraph II to ATV or trail bike use except upon a request made to the commissioner of resources and economic development to act under RSA 216-F:2, III, and not without first holding a public hearing in the local area in which the trail is located. Such hearing shall be noticed to the requesting party and the governing body of the affected municipalities and advertised at least 14 days prior to the hearing in a newspaper of statewide circulation and also in any local newspapers to the cities

and towns in which the state property is located.

Source. 2002, 233:16. 2003, 295:7, eff. July 1, 2003.

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CHAPTER 215-A

OFF HIGHWAY RECREATIONAL VEHICLES AND TRAILS

ATV and Trail Bike Operation on State Lands

Section 215-A:43

215-A:43 Evaluation Process. – Any new ATV or trail bike trail proposal on state-owned property shall be evaluated by the department of resources and economic development using a 2-step process.

I. The new ATV or trail bike trail proposal shall be considered to have passed the initial screening process if the following coarse filter criteria are met:

- (a) There are no deed restrictions, laws, or purchase funding source restrictions that prohibit the use of ATVs or trail bikes on the property.
- (b) Less than 90 percent of the property is composed of the following types of areas in combination:
 - (1) Exemplary natural communities as defined in RSA 217-A:3, VII as identified by the natural heritage bureau;
 - (2) Habitat necessary for the successful breeding or survival of federal or state listed endangered or threatened species; and
 - (3) Forested wetlands consisting of group IIB forest soils as defined and mapped by the Natural Resources Conservation Service or non-forested wetlands as defined by the department of environmental services.
- (c) If it is to be a self-contained trail network, at least 700 contiguous acres are available within which the trail network can be situated, in either single state ownership or as a combination of abutting state properties.
- (d) If it is to be a trail corridor link, the trails which are being connected exist or will exist when the trail corridor link is established, or shortly thereafter.
- (e) The use of ATVs or trail bikes on the property does not conflict with the purpose for which the property was acquired by the state as provided by law, or as attested to by letters from grantors, department memoranda, historic records, or other credible documents, or, if such conflict exists, it has been set aside by some legal means that includes a formal review process by the custodial state agency.
- (f) The use of ATVs or trail bikes on the property is not prohibited by an existing management plan for the property.

II. A new ATV or trail bike trail proposal that has passed the initial screening process of the coarse filter criteria under paragraph I shall proceed into a planning and layout phase and shall be considered to have passed such phase if the following fine filter criteria are met:

- (a) The new trail is supported by an organized ATV or trail bike club recognized by the bureau.
- (b) ATVs or trail bikes operated on the trail will comply with maximum decibel limit established by law.
- (c) Adequate parking exists or will be developed for the type of trail being proposed and the number of expected riders.
- (d) The bureau has given due consideration to local planning and zoning ordinances.
- (e) The proposed trail does not pass through a parcel with deed restrictions.
- (f) The bureau has given due consideration to local noise and obnoxious use ordinances.
- (g) The proposal is reasonably compatible with existing uses.
- (h) The proposal does not violate federal, state, or local laws.
- (i) The proposal includes a monitoring and response system designed to detect and correct adverse environmental impacts.
- (j) The proposed trail layout incorporates existing motorized travel corridors whenever possible.
- (k) The proposed trail layout minimizes further fragmentation of blocks of forestland by locating trails on

areas with existing development whenever possible.

(l) The proposed trail does not pass through a sanitary protective area of a public well as determined by the department of environmental services.

(m) The proposed trail is not located on earthen dams, dikes, and spillways unless approved by the department of environmental services.

(n) The proposed trail avoids areas having soil types classified as important forest soil group IIA or IIB as defined and mapped by the Natural Resources Conservation Service, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

(o) The proposed trail is not within 100 feet of the ordinary high water mark of first and second order streams, 330 feet of third order streams, and 600 feet of fourth order and higher streams, except for purposes of stream crossing, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

(p) All stream crossing structures meet 5-year flood design criteria.

(q) The proposed trail is not within 200 feet of any water body, forested or non-forested wetland, or vernal pool, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

(r) The proposed trail avoids elevations over 2,700 feet.

(s) The proposed trail avoids important wildlife habitat features for species of concern.

(t) The proposed trail avoids known locations of federally and state listed endangered or threatened species, or their habitat, as specified on a site-specific basis by the fish and game department.

(u) The proposed trail avoids known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory.

(v) The proposed trail avoids alteration or disturbance of unique geologic features, formations, and designated state geologic waysides, as specified on a site-specific basis by the state geologist.

(w) The proposed trail avoids alteration, disturbance, and adverse impacts to cultural and historic resources.

(x) The proposed trail is not within 330 feet of known raptor nest trees, or within 650 feet of trees with eagle or osprey nests, or as specified on a site-specific basis by the fish and game department.

(y) The proposed trail is more than 650 feet from eagle winter roosting areas and 330 feet from the edge of wetlands containing heron rookeries, or as specified on a site-specific basis by the fish and game department.

(z) The proposed trail layout has a safe and appropriate trail design.

(aa) Safety standards for highway crossings are met.

(bb) Any planned use of the proposed trail with other uses is safely accommodated.

(cc) Local enforcement officers have been contacted to review and provide input regarding enforcement issues.

III. The bureau shall hold at least one meeting to inform the public and local cities and towns of the plan and layout for a proposed ATV or trail bike trail, consistent with the fine filter criteria in paragraph II, and to provide an opportunity for the public to comment. Information on the plan and layout shall be made available to the public at a place in the local area in which the proposed trail is to be located, at the bureau's office in Concord, and on a public accessible Internet site maintained by the bureau. The meeting and the places to obtain the information on the plan and layout shall be advertised at least 14 days prior to the meeting in a newspaper of statewide circulation and also in any local newspapers to the cities and towns in which the state property is located.

IV. No person shall operate an OHRV wider than 50 inches or over 1000 pounds on any state-owned trails, except that no person shall operate an OHRV wider than 65 inches or over 2,000 pounds unladen dry weight on:

(a) Any state-owned trails in Coos county; and

(b) The Ammonoosuc recreational trail from Haverhill to Bethlehem and the Warren recreational trail in Warren, in Grafton county.

V. This section shall not apply to the change in use designation of rail trails to include ATV and trail bike use.

VI. The property acquired for the purposes of developing ATV and trail bike trails in the city of Berlin by the department of resources and economic development, division of parks and recreation, bureau of trails, and any abutting land donated or acquired after the effective date of this paragraph, shall hereby be known as Jericho Mountain state park.

VII. Notwithstanding the provisions of this section to the contrary, at Jericho Mountain state park:

(a) An ATV or trail bike trail may be established and subsequently maintained within Jericho Mountain state

park even though it:

(1) Is within 330 feet of a known raptor nest provided that it is not within 650 feet of trees with eagle or osprey nests; or

(2) Fails to comply with the criteria in RSA 215-A:43, II(o) and (q) to the extent that it is utilizing an existing surface roadway located within the protected area which would reduce adverse environmental impacts.

(b) Site specific waivers of the criteria specified in RSA 215-A:43, II(o) and (q) are only allowed on trails in Jericho Mountain state park provided that all of the following criteria are met:

(1) There is no practicable alternative location of the trail that would meet the criteria in RSA 215-A:43, II;

(2) The proposed trail location and construction is the least impacting alternative; and

(3) Conditions of the site specific waiver are authorized in writing by:

(A) The department of resources and economic development, in agreement with the fish and game department, for waivers at Jericho Mountain state park that will have no impact on water quality; or

(B) The department of resources and economic development, in agreement with the fish and game department and the department of environmental services for waivers at Jericho Mountain state park that may have an impact on water quality.

[Paragraph VII(c) effective until January 1, 2016 at 12:01 a.m.; see also paragraph VII(c) set out below.]

(c) A person may operate an OHRV within Jericho Mountain state park which weighs up to 2,000 pounds unladen dry weight and is no wider than 65 inches on specifically designated trails within Jericho Mountain state park, provided that, in addition, the bureau of trails may permit operation of wider or heavier 4-wheel drive motor vehicles, as referenced in the Jericho Mountain state park master development plan, registered as OHRVs, at specific times and on specific trails.

[Paragraph VII(c) effective January 1, 2016 at 12:01 a.m.; see also paragraph VII(c) set out above.]

(c) A person may operate an OHRV within Jericho Mountain state park which weighs up to 2,000 pounds unladen dry weight and is no wider than 65 inches on specifically designated trails within Jericho Mountain state park.

VIII. [Repealed.]

Source. 2002, 233:16. 2003, 295:8-10. 2005, 236:5. 2007, 341:1. 2010, 343:10, eff. Sept. 18, 2010. 2011, 184:1, eff. June 14, 2011. 2012, 84:1, 4, eff. May 23, 2012. 2013, 32:1, eff. May 20, 2013; 34:1, eff. July 30, 2013; 34:2, eff. Jan. 1, 2016. 2015, 33:3, 4, eff. May 7, 2015; 33:5, eff. Jan. 1, 2016 at 12:01 a.m.