

Report on:

**MODELS FOR EQUINE-BASED USE OF
STATE FISH & WILDLIFE LANDS**

Submitted to:

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EXECUTIVE SUMMARY

In June of 2009 the Equestrian Land Conservation Resource examined three models—New Jersey, Pennsylvania and New Mexico—for equine-based use and enjoyment of state game lands (commonly known as Wildlife Management Areas or WMAs) and formulated general recommendations for horsemen in other states seeking access to the same.

In New Jersey horsemen have the opportunity to purchase specific horseback riding permits and ride on designated WMAs. In Pennsylvania, horsemen and other non-hunting, non-motorized users are allowed to use designated routes on game lands. Those routes may be expanded by permit, approval of which is contingent upon a credible maintenance plan to be carried out by the applicant organization. In New Mexico, horse riders and other non-consumptive users of wildlife may purchase a permit that allows access to many WMAs under certain limitations and conditions. That permit system is derived from a gubernatorial and legislative initiative to promote interest in wildlife by non-hunting user groups.

Many horsemen cherish viewing wildlife and prefer their engagement in this activity to be equine-based. Individuals with physical challenges sometimes rely on equines for this activity.

Cultivating positive relationships with fish and game personnel is critical to the goals of gaining and maintaining access to WMAs. Horsemen seeking access to WMAs are urged to learn about the core priorities of the state game agency and the mechanisms within the department that allow non-hunting uses of the lands, for example, viewing wildlife.

Horsemen are also encouraged to find ways to provide something of value in exchange for access to the natural resources they propose to access. This is consistent with the approach of recreational user groups succeeding in endeavors for access to other types of public lands across the country like forest and park lands. The purchase of a land use permit is a potential avenue for contribution. Permits have the benefit to land managers of facilitating the tracking of land usage. On the other hand, land use permits have been known to discourage volunteerism.

Consistent, reliable volunteerism can be a very important avenue for contribution. Horsemen are encouraged to be creative in finding ways to help game agencies. Litter cleanup is always appreciated. Wildlife and habitat restoration is another potential area of contribution. Under some circumstances, horsemen may be in a position to offer equipment that a state game agency needs but does not have for a project at zero or minimal cost. These arrangements should always be documented and authorized in a volunteer agreement or similar document. The written agreement will make it clear to everyone what is and is not authorized, and if something unexpected happens, the document will help to resolve the situation quickly.

While volunteerism may be helpful to game agencies, it must be recognized that it also presents challenges, particularly in the way of safety and liability concerns. Horsemen are therefore also encouraged to find ways to assist game agencies in managing the risks associated with volunteer endeavors and to exercise patience as they attempt to address agency concerns.

BACKGROUND

The Equestrian Land Conservation Resource was approached by one of its member organizations for assistance in finding ways to improve and formalize the relationship between the equestrian trail community and the fish and game agency in that state. In that particular state, equine-based activities are excluded from most fish and game lands (commonly known as Wildlife Management Areas or WMAs) and precariously allowed on certain WMAs under terms that are not well defined. As a result, horsemen feel the agency does not recognize them as being legitimate users of game lands. The organization asked ELCR for examples of ways in which state fish and game agencies may formally permit equine-based use of WMAs and ways in which equestrians may, in turn, offer something of value to the agencies.

ELCR invited member organizations from across the country to help identify models for equine-based use and enjoyment of game lands. Prior research had established that in at least some states equines are summarily excluded from WMAs as a matter of policy. Three programs stood out as particularly interesting models: 1) New Jersey, where the game agency sells horseback riding permits for use on designated WMAs; 2) Pennsylvania, where there are designated trails for non-motorized use, including horse use, on game lands and where the game agency accepts applications to add trails to the existing system; and 3) New Mexico, where access to wildlife on game lands by horseback riders is not only tolerated but encouraged through a legislative initiative.

The detailed findings from research and interviews of officials at fish and game agencies in these three states are provided below, followed by conclusions and then appendices containing supplemental materials.

FINDINGS

New Jersey Division of Fish & Wildlife

Ray Porutski at the New Jersey Division of Fish & Wildlife was interviewed about that agency's horseback riding program. New Jersey may be the only state that sells specific horseback riding permits for riding on (designated) Wildlife Management Areas (WMAs). Information about the horseback riding permit may be found at these two URLs:

<http://www.state.nj.us/dep/fgw/wmaregs.htm#horseback>

<http://www.njfishandwildlife.com/als/websalesintro.htm>

Mr. Porutski said that horseback riding has been allowed on certain WMAs for at least as long as the WMAs have existed, 40 years or more, and that the horseback riding permit has probably been in place for that long. Interestingly, he said the deer hunting permit has not been around as long as the horse riding permit.

There are no official horse trails, said Mr. Porutski. Horseback riders go on deer trails and old roads. No new trails are created, nor are existing trails or paths officially maintained. The

agency sells about 700 permits in a year at \$25 each. Compared to the 100,000 or so hunting permits it sells, the revenue from horseback riding permits is just a drop in the bucket. However, the permits are helpful as a way for the agency to keep track of horseback users.

His agency feels that horseback riders are one of several legitimate constituents in a multi-user landscape; however, riders, along with hikers, bikers, bird watchers and so forth, are outside the core priority, which is the hunter group. I told him that some Fish & Wildlife officials in other states have argued that allowing horses on WMAs would necessarily violate provisions of the federal Pittman-Robinson Act. (See APPENDIX I— “What Does It Mean to Have Trails on Pittman-Robertson Funded Land?” by Gene W. Wood, Ph.D.). He said he does not share this interpretation of the Pittman-Robinson Act. He said that more likely, allowing horses will lead to interference with hunting, which his agency has had to deal with.

At some point in the recent past, complaints from hunters about interferences by horseback riders grew to a point where the agency felt compelled to act. Rather than kicking horses off the land they tried an education program, which improved the situation. As part of the campaign they developed a letter to give to horseback riders that spells out the dates for the most popular hunting seasons. The letter also educates riders about how to be sensitive to the needs of hunters when they are out on WMAs. Materials from the New Jersey Division of Fish & Wildlife regarding the agency’s horseback riding program may be found in APPENDIX II of this report.

A second issue the agency has dealt with is erosion. Accordingly, they have regulations prohibiting horses (as well as bikes and so forth) from traversing certain areas and structures such as embankments.

Mr. Porutski noted that the New Jersey legislature recently unanimously passed a law allowing bow hunting on Sundays on private lands and WMAs. He noted that horse people opposed the ban but did not produce evidence that bow hunting would be a real threat to rider safety. In his opinion, horseback riders should be mindful that hunting seasons occur during limited times throughout the year, whereas horseback riding is not so restricted.

I asked Mr. Porutski whether there was anything that horseback riders could do volunteer-wise to benefit the agency. Obviously, trail maintenance is not a Fish & Wildlife priority but I was hoping he could identify other areas where the efforts of horse people could be useful to F&W. He said that increased volunteerism would be welcome in the form of WMA cleanup days, as litter is a persistent problem.

Pennsylvania Game Commission

Mike Pruss at the Pennsylvania Game Commission (PGC) was interviewed about horse use on state game lands. Currently, the PGC oversees some 1.4 million acres of game lands divided into six regions. Historically, secondary uses, meaning uses other than hunting, were unregulated. Not surprisingly, there were user conflicts. There were also problems such as erosion.

The Commission did a review of the situation complete with public hearings. The result of that process was that the six regions were asked to evaluate existing trails and decide which should remain open and which should be closed. They considered trail design and sustainability as criteria. For example, there were horse trails that went too steeply up slopes and through wet areas, thus negatively impacting water and soil quality. Some were damaged from overuse, in some cases by commercial trail guide businesses. Those trails were closed. In addition, terminal trails and loop trails were dropped in favor of connecting and through trails.

In the end, DESIGNATED ROUTES were established for non-motorized uses, including hiking, biking, horseback riding and, of course, hunting. Again, all uses outside hunting are considered secondary. There are about 1400 miles of DESIGNATED ROUTES. Information about the trails, including descriptions and maps, may be found at the following URL:

<http://www.pgc.state.pa.us/pgc/cwp/browse.asp?a=480&bc=0&c=69913&pgcNav=>

The page says the following regarding uses of DESIGNATED ROUTES:

DESIGNATED ROUTES for Horses and Bicycles

For each region, there is a list of designated routes. These route designations, which total more than 1,000 miles, are in compliance with State Game Lands use regulations that went into effect on February 1, 2003. Under the new regulations, anyone who rides a non-motorized vehicle, conveyance or animal on State Game Lands must do so only on designated routes. Such riding activities will not be permitted, except on Sundays or on roads open to public travel, from the last Saturday in September to the third Saturday in January, and after 1 p.m. from the second Saturday in April to the last Saturday in May. This does not apply to anyone lawfully engaged in hunting, trapping or fishing on State Game Lands.

The DESIGNATED ROUTES are comprised largely of old roads, some of them paved and some of them surfaced with gravel or shale or other materials. These trails require very little maintenance, although litter remains an issue. There are some connector-type trails that cut through woodlands. Local riding clubs that are affiliated with the Pennsylvania Equine Council are good about keeping the trails maintained and clean. Wildlife law officers patrol state game lands and enforce not only hunting regulations but also those that govern secondary uses of the lands.

Unlike the situation in New Jersey, the PGC does not charge for secondary uses of state game lands; one does not need a permit to ride a horse on DESIGNATED ROUTES. The Commission has considered the need for a general game land secondary use permit fee.

The Commission will allow trails to be added to the DESIGNATED ROUTES under certain circumstances. First, a qualified organization must apply for a Special Use Permit, the form for which may be found at this URL:

http://www.pgc.state.pa.us/pgc/lib/pgc/sgl/game_land_special_use_permit.pdf

The organization must have a solid plan for how the route will go, what purpose it will serve and how it will be maintained, and the organization must have the ability to carry out the maintenance plan. Pennsylvania Equine Council has applied for and obtained Special Use Permits and so have smaller trail organizations affiliated with PEC.

After the application is filed the applicant and the local land manager will physically go over the proposed route together, and an environmental evaluation and report in the form of a checklist will be completed and considered. If the route will go through private land, the PGC requires a copy of a written agreement or letter of intent in which the landowner grants permission to have the trail on his or her land.

Approval necessitates additional paperwork and yields a five-year permit that binds the organization to fulfill its promise and plan to maintain the new DESIGNATED ROUTE. The Permit states that the agency is not liable in connection with the trail.

The Special Use Permit is most likely to be granted if the proposed route will in some way produce a benefit for hunters, for example, by connecting up with and leading into private land. A route that is completely contained on state game land is not strong candidate for approval.

Since moving to the system of DESIGNATED ROUTES there have been less complaints about user conflicts. Hunters have occasionally complained about secondary users stirring up wildlife thereby interfering with hunting. Turkey hunting is particularly subject to this type of interference because the birds may only be hunted in the morning and if they are disturbed they take a long time to travel back to the original spot.

I asked Mr. Pruss how horse use impacts Pittman-Robinson funding if at all. He said that spending *any* P-R money on *any* secondary use, not just horse trail use, is considered a diversion of funds and creates a risk that the state agency will lose *all* the P-R money it receives. Pittman-Robertson funds are apportioned annually to the PGC for funding of U.S. Fish & Wildlife Service (USFWS) grant-approved activities. The PGC spends funding and is reimbursed 75% of its expenses on approved activities related to wildlife and habitat management and public hunting access. USFWS audits state fish and game agencies for their use of P-R monies.

The Pennsylvania Game Commission has passed its P-R audits but the agency nonetheless remains sensitive to the dangers of catering too much to secondary users. As an example, Mr. Pruss mentioned a parking lot. If the agency were to use any P-R money to expand a parking lot in order to accommodate horse trailers, or if it spent P-R money to build hitching facilities, that could place the state's entire P-R program in jeopardy. In the PGC's case, that would mean losing significant funding for wildlife protection.

Going back to the issue of a state game land user fee, I told him that some horse people I have talked to do not mind paying to play, so to speak. What they fear is that their money will be swept up by state general funds and not applied for the benefit of the lands. Interestingly, he noted that while revenues of some agencies can be raided by the state, the Pittman-Robinson Act prohibits states from doing so to money raised from the sale of hunting licenses. He also noted that state agencies in Pennsylvania may accept donations for particular purposes. This could be

an option for secondary users wishing to become legitimized by paying their way, so to speak, but it still begs the question of whether the money could be protected from raiding by the state general fund.

Finally, I asked Mr. Pruss how horse people can be of more service to fish and game agencies in addition to keeping the lands clear of litter. He said that horse people could be helpful by advocating for legislation that will benefit state wildlife programs. I also asked him whether the PGC would be open to accepting volunteer assistance from horsemen with substantive wildlife restoration work, such as habitat establishment, eradication of invasive species, etc. Said Mr. Pruss, “we currently do volunteer habitat projects with various conservation and civic groups on State Game Lands, so I would think we would be willing to do the same types of habitat projects with any serious group of volunteers.”

New Mexico Department of Game & Fish

The New Mexico Department of Game and Fish (NMDGF) takes a relatively open approach to use of its lands by people who enjoy wildlife-associated recreation other than, or even in addition to, hunting and fishing. The agency has a program called Gaining Access Into Nature, or GAIN for short. (Materials about the New Mexico Department of Game and Fish’s Gain Access Into Nature (GAIN) Program may be found in APPENDIX III of this report.)

Generally speaking, in order to legally ride a horse, view wildlife, photograph, hike, bike, ski or snowshoe on game lands of New Mexico, one must purchase a GAIN permit, which is a specific use-type permit, plus a Habitat Management and Access Validation (HMAV) permit, which is a general-type permit that all users must purchase in addition to their specific use-type permit. For example, a hunter must purchase a hunting license and an HMAV, and if he or she wishes to horseback ride or do any other GAIN activity, he or she will need a GAIN permit for that as well. An exception would be hunting off horse back, for which a GAIN permit is not required.

The GAIN program stems from the policy of the state of New Mexico “to encourage and promote wildlife-associated recreation in New Mexico and to provide for public participation in the use of available natural resources in a manner that will benefit the general public in its enjoyment of public assets and the state and its political subdivisions in increased economic development.” This quote is taken from ARTICLE 4, Section 17-4-33 of New Mexico’s Propagation of Fish and Game Statute, entitled *Gaining access into nature program; policy; additional powers of state game commission*.

To go along with this recreation-friendly policy is a recreational use statute that is fairly protective of landowners:

17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.

A. Any owner, lessee or person in control of lands who, without charge or other consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency, grants permission to any

person or group to use his lands for the purpose of hunting, fishing, trapping, camping, hiking, sightseeing or any other recreational use does not thereby:

- (1) extend any assurance that the premises are safe for each purpose; or
- (2) assume any duty of care to keep such lands safe for entry or use; or
- (3) assume responsibility or liability for any injury or damage to, or caused by, such person or group;
- (4) assume any greater responsibility, duty of care or liability to such person or group, than if such permission had not been granted and such person or group were trespassers.

B. This section shall not limit the liability of any landowner, lessee or person in control of lands which may otherwise exist by law for injuries to any person granted permission to hunt, fish, trap, camp, hike, sightsee or use the land for recreation in exchange for a consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency.

There are normal GAIN permits and there are “special opportunity” GAIN permits. The latter are awarded by lottery system and cover participation in unique, department-sponsored special events, including wildlife tours; bighorn sheep and turkey trapping and relocation efforts; prairie chicken and electro-fishing surveys; etc.

Normal GAIN permits cover, as mentioned earlier, general wildlife-associated recreational activities such as horseback riding, hiking, bird watching, etc. A statewide annual GAIN permit with HMAV is \$20 and a temporary five-day GAIN permit with HMAV is \$9. Both fees assume the permit is purchased through a licensed vendor and include a \$1 vendor fee.

When and where each GAIN activity is allowed and under what conditions is spelled out in a document entitled “GAIN activities on Wildlife Management Areas,” which is included in APPENDIX III. On some WMAs horseback riding is allowed year-round, unrestricted. On others it is not allowed at all. Falling between these two extremes are several scenarios. Examples include the following: riding is allowed but opportunities extremely limited (i.e., the terrain would be challenging for equines); riding is allowed only during certain times of the year but even during off times licensed hunters may ride horses during their hunts; riding is allowed but certain areas of the WMA are closed to horses; riders on roads may not need a GAIN permit and HMAV but will need them if they venture off-road; and so forth.

Clint Henson at NMDGF was interviewed to find out a little more about the GAIN program. The following four questions were addressed:

- 1) Why does NMDGF feel that the GAIN program is consistent with the Pittman-Robertson Act or at least does not violate its provisions?
- 2) GAIN is a young program. Does the agency have reason to expect that it will produce significant amounts of revenue for over time?
- 3) How was it determined which WMAs horses would be allowed on and under what circumstances and limitations?

4) Does NMDGF see any downsides to accepting assistance with core wildlife projects from non-agency personnel or contractors? (“Core” means part of the actual Fish and Game mission, as opposed to mere litter cleanup or something of that nature.)

5) Would NMDGF be open to approach by a horse-related organization, such as a local affiliate of Back Country Horsemen of America, seeking to provide consistent, reliable assistance with core wildlife projects?

In an email Mr. Henson explained how the GAIN permit system became implemented:

GAIN was implemented as a governor initiative to provide more outdoor recreation to the people of NM. There was hope that other non consumptive users, such as wildlife photographers and bird watchers could “pay their part” to support State Wildlife Management Areas, however it is also a desire of the Game and Fish to protect those areas and wildlife from too much use. So it is a catch 22 to desire a lot of use to generate income versus protecting the resource. The initial GAIN activities were “tours” which people would draw for an opportunity to go with a game warden on either a management activity or just to see wildlife. The Department knew that the \$70 permit fee would not cover the cost to give the tour. As we phased in a permit system for users to access the properties themselves, we did not know how many people would buy the permits. Current count for last years permit sales (first year) is 304 annual permits (\$15) and 1484 temporary permits (\$4) for a total of \$10 496. I doubt if this has covered the administrative costs of the program. Most complaints about the program so far is 1. why do I need a permit, and 2. the permit costs too much. (The count of the permits sold last year may change as vendor reports are updated, but I think that it is close.)

James Hirsch at NMDGF had the following to add:

When Gaining Access into Nature (GAIN) was first created there were concerns that the program would not be accepted by the Federal Aid Program. However, GAIN has been accepted as an appropriate program for Federal Aid properties.

The intent of GAIN is to provide wildlife-associated recreation not previously offered on Game & Fish properties. The Federal Aid Program is OK with wildlife-associated recreation as long as it doesn't conflict with the original purpose of the property. Additionally, the activity should be wildlife-associated. For example, you can allow mountain biking on a property for the purposes of bird watching or wildlife viewing. However, you can not allow a mountain bike race because the purpose of the event is a race not wildlife-associated recreation.

Our Federal Aid Performance Reports and Plans address GAIN projects and activities. We are currently developing interpretative trails and signs for three of our properties (Heart Bar, Red Rock, and Edward Sargent), and plan to install interpretative signs on three other properties (Colin Neblett, Humphries, and Rio Chama). We have also made improvements on an auto tour route and installed interpretative signs at our Bernardo

Waterfowl Area. All of these are compatible with the original intent of the properties and supported by Federal Aid.

We found it helpful to discuss our plans with the U.S. Fish and Wildlife Service. Our Grants Manager with the USFWS is Ms. Penny Bartnicki, who is based in Albuquerque.

Mr. Henson also explained that habitat work is done primarily by NMDGF personnel and contractors. The main reason for this is that the equipment needed for many of the projects is beyond what normal types of volunteers would be expected to know how to use and have access to, such as chain saws, fencing tools, ATVs and such; and some work requires special licenses such as that for herbicide application. Also, the New Mexico Constitution has provisions that prohibit state agencies, including the NMDGF, from giving anything away for free (donating) to the public or accepting free labor for itself. Therefore, on the occasions where outsiders have helped on projects they have received tangible benefits. For example, workers involved in a tree clearing project were given the wood from trees they felled. Mr. Henson said that there is one WMA that is heavily used by Boy Scout troops and the agency has involved the Boy Scouts in conservation projects from time to time.

Mr. Henson acknowledges that his agency, like many state agencies across the country, do not have the resources needed to accomplish do all the projects it would like to and that volunteerism could potentially fill some of the gaps. However, he believes that safety and liability are significant concerns with respect to accepting volunteer assistance with wildlife projects. Making sure that workers know what they are doing and have the training and the ability to keep themselves, other workers and the wildlife safe is extremely important. Working with special equipment, whether a helicopter, net gun, electro shocker or chainsaw, or what have you, limits what volunteers can do safely.

NMDGF does utilize some volunteer work and is open to approach by volunteer horsemen. Again, Mr. Henson:

I know that it is common for us to use horses to pack in fish to high mountain lakes. I believe that some of that is done with volunteers. Many of our officers that work in wilderness areas have their own horses so they rarely use volunteers. I think that we expect all our users to be stewards of the lands and to not only pack out your own trash but any other trash. We have other users, back packing groups that have expressed interest in helping us with trail maintenance and construction; however we are not at that point yet. We are still evaluating where we want trails and getting the archeological and NEPA clearances done if needed.

Mr. Henson referred to equestrian use of WMAs as a “non-consumptive” use on par with other non-consumptive uses like hiking, biking and bird watching. He was resistant to apply the term “secondary use.” In New Mexico, he said, the public has been critical of the idea of lands being held in trust by a public agency only for the benefit of hunters and not other wildlife-loving recreationists, even though the WMAs were purchased with sportsman dollars through the Pittman-Robertson program.

The agency fields requests for all kinds of uses of WMAs. People have even requested use of the lands for civil war reenactments and weddings. A couple of the WMAs have become immensely popular with non-hunting types of users and not surprisingly, NMDGF has experienced user conflicts, particularly hunter interference. In one instance a game warden locked the gate on a WMA property in order to give hunters some peace. This led to such public outcry that the governor proposed a program designed to balance the interests of hunters and other types of wildlife-loving recreationists while still complying with the provisions of the Pittman-Robertson Act. The governor proposed GAIN as the vehicle for opening more State land to other uses. The New Mexico legislature took the ball and authorized NMDGF to develop the GAIN program. NMDGF was already in the process of implementing GAIN when the locked gate incident occurred. The incident did much to speed up the process.

Through GAIN, non-consumptive recreationists can legitimately use WMAs without interfering with hunting or wildlife welfare. As mentioned earlier, each WMA is unique in terms of the types of uses allowed or not allowed and the conditions and limitations on usage. The WMAs all differ in terms of how and why they were purchased, what they are like terrain-wise, and how they are managed. In developing the usage rules the agency consulted with the local conservation officer of each WMA to find out what activities were then being conducted on the land and what activities, in the opinion of the officer, should be allowed to continue. The seasonal restrictions are imposed not only with respect to hunting seasons but also with respect to wildlife reproductive seasons.

Mr. Henson said that NMDGF is aware of the concern held by some fish and game agencies of other states over whether allowing non-hunting use of WMAs could potentially jeopardize Pittman-Robertson funding. However, he notes that NMDGF modeled GAIN after similar systems in other states and that the U.S. Fish and Wildlife Service is aware of GAIN and yet has not audited NMDGF, nor expressed concerns about GAIN. Mr. Henson said that since the restrictions imposed on usage are designed to protect hunting and wildlife welfare, NMDGF believes that GAIN does not violate Pittman-Robertson.

Mr. Henson did provide an example of something that was determined to be an inappropriate use of land purchased with Pittman-Robinson funds, which is allowing third parties to use the land to accommodate their broadcast signal towers. Apparently, one of the WMAs in New Mexico has a mountain on it on which NMDGF has a radio tower. When NMDGF started allowing broadcasters to put private towers on the land, the federal government forced New Mexico to reimburse for the federal part of the money that was used to purchase that land through the Pittman-Robertson program.

I asked Mr. Henson whether he was aware of any negative bias against horses versus any of the other non-consumptive wildlife users within NMDGF. He said no and noted that in New Mexico, it is common for hunters to use horses when hunting because the terrain can be challenging. In addition, he had the following to say:

Horse use is so common in NM that it was natural for the Department to include it as a permitted activity. Reasons for certain areas to be closed to horse use is due to the specific area, meaning it is too small or unsafe. There are only 4 of 28 areas where

horses are not allowed. Other areas we list as allowed but riding opportunities are limited. We don't want people to travel a great distance with horses and be disappointed with the experience.

CONCLUSIONS

Models for equine-based use of game lands exist in at least New Jersey, Pennsylvania and New Mexico. In New Jersey horsemen have the opportunity to purchase specific horseback riding permits and ride on designated WMAs. In Pennsylvania, horsemen and other non-hunting, non-motorized users are allowed to use designated routes on game lands and those routes may be expanded by permit, approval of which is contingent upon a credible maintenance plan to be carried out by the applicant organization. In New Mexico, horsemen may purchase a permit that permits non-consumptive use of certain WMAs under certain limitations and conditions. That permit system is derived from a gubernatorial and legislative initiative to promote interest in wildlife by non-hunting user groups.

Many horsemen cherish viewing wildlife and prefer their engagement in this activity to be equine-based. Individuals with physical challenges sometimes rely on equines for this activity.

Cultivating positive relationships with fish and game personnel is critical to the goals of gaining and maintaining access to WMAs. Horsemen seeking access to WMAs are urged to learn about the core priorities of the state game agency and the mechanisms within the department that allow non-hunting uses of the lands, for example, viewing wildlife.

Horsemen are also encouraged to find ways to provide something of value in exchange for access to the natural resources they propose to access. This is consistent with the approach of recreational user groups succeeding in endeavors for access to other types of public lands across the country like forest and park lands. The purchase of a land use permit is a potential avenue for contribution. Permits have the benefit to land managers of facilitating the tracking of land usage. On the other hand, land use permits have been known to discourage volunteerism.

Consistent, reliable volunteerism can be a very important avenue for contribution. Horsemen are encouraged to be creative in finding ways to help game agencies. Litter cleanup is always appreciated. Wildlife and habitat restoration is another potential area of contribution. Under some circumstances, horsemen may be in a position to offer equipment that a state game agency needs but does not have for a project at zero or minimal cost. These arrangements should always be documented and authorized in a volunteer agreement or similar document. The written agreement will make it clear to everyone what is and is not authorized, and if something unexpected happens, the document will help to resolve the situation quickly.

While volunteerism may be helpful to game agencies, it must be recognized that it also presents challenges, particularly in the way of safety and liability concerns. Horsemen are therefore also encouraged to find ways to assist game agencies in managing the risks associated with volunteer endeavors and to exercise patience as they attempt to address agency concerns.

APPENDIX I

What Does It Mean to Have Trails on Pittman-Robertson Funded Land?

By Gene W. Wood

Land managed under Pittman-Robertson (P-R) funding offers some challenges to recreational horseback riders. Before getting specific about trails, it is necessary to understand P-R itself. P-R Funding Funds generated by the Federal Aid in Wildlife Restoration Act of 1937 , commonly called the Pittman - Robertson Act (P-R), have been used to assist individual states in the purchase of substantial amounts of land to be held in public trust for wildlife restoration. In recent years, equestrians have advanced the argument that as these lands are a part of the public trust, they should be available for other recreational uses, particularly recreational trail horse use, in addition to recreational hunting and related sports.

Lands purchased with the assistance of P-R funds are managed by state wildlife agencies, and are typically referred to as game management areas or game lands. The agencies have traditionally denied requests for or minimized recreational access to such lands except for the purposes of hunting or activities judged to be closely related to hunting, such as field trails, hunting dog training, target shooting sports, and hunter safety training. Over the last decade, the huge increase in demand for trail experiences of a wide variety have led to these denials being challenged in an array of venues that have ranged from the local offices of state wildlife agencies to the hearing rooms of state legislatures.

It often has been the case that equestrian trail users have stumbled into these sessions largely unprepared to make specific, factual arguments. Lands that have been purchased and managed with P-R funds matched with hunting license dollars or other monies generated within the state wildlife agency should be considered as legally designated for hunting and hunting allied recreation. Any other uses of these lands will almost have to be based on the generosity of the state wildlife agency and their hunter constituency.

However, all game management areas are not this tightly defined by purchase and management funding sources. Large amounts of game management area acreage in the nation are privately owned, usually by corporations. Those owners can dictate the terms of game management area leases. The state wildlife agency in consultation with the U. S. Fish and Wildlife Service can then determine whether or not P-R funds can be legitimately spent for game management on such areas.

In addition, large amounts of federal lands and lands managed by state agencies other than the state wildlife agencies are often under game management area agreements. These areas are typically multiple-use lands, and it would be up to the state wildlife agency and their federal partners as to whether or not they could make legitimate use of P-R monies on such lands without removing their multiple-use potential. If the multiple-use potential on such lands is significantly reduced by a game management area agreement with a public agency, then that agreement should be reviewed.

The arguments over whether or not game management areas or game lands can or should be used for recreational activities such as equestrian trails will have to be made on a case by case basis. Each area is going to have a somewhat different history. The following questions should be asked. How did the land come to be held in public trust? Was some type of enabling legislation required, and if so, what was the nature of that legislation? And, what were the sources of monies for purchase and management? Where funds from the general treasury have been used, unless some legislation has specified single use for the land, equestrian trail users will have some basis for argument. However, to the extent that P-R funds are the predominant source of support, latitude to accommodate uses other than hunting and hunting related activities will be greatly reduced.

Fundamentals of P-R The fundamental facts regarding P-R are as follows: a) the clear purpose and intent of Congress was and continues to be provision of the individual states and U. S. territories with federal monies to assist in the restoration of wildlife and wildlife habitat; b) the monies can be spent only on a "wildlife-restoration project" (Section 2), shooting sports target ranges, and hunter safety training; c) P-R monies can not be used to pay for more than 75% of a federally approved state project; d) the remainder of the funding must come from state wildlife agency funds; e) agency funding may be generated from a number of sources including hunting license fees, state wildlife agency land resource utilization revenues (e.g., sales of timber, oil, or minerals), or state legislature appropriations from the state's general fund. Furthermore, that the Congress clearly intends for expenditures of these funds to focus on huntable wildlife is demonstrated by the importance of the number of hunting licenses sold in a state as a factor in the formula used to determine apportionment among the states.

In short, P-R funds are focused on the purpose of huntable wildlife restoration and the provision of safe recreational hunting and related sports. State agency monies used for matching funds that have come from the state general fund might offer a crack in the wall for non-hunting recreationists, but then only if the newly proposed recreational activities can be shown to not interfere with wildlife restoration efforts.

The Historical Context In the 1930s, natural resource conservation programs brought a psychological, as well as an economic uplift to an American citizenry that faced legendary poverty and natural resource destitution. The Roosevelt New Deal program was heavily weighted to ventures into natural resource restoration projects aimed at infusing federal money into the national economy by attempting to repair and restore degraded lands. Modern conservation historians argue about the real conservation successes of those programs, but in that time, the politicians, bureaucracies, and the general citizenry believed in the good of it all.

While federal conservation programs increased in number and size under the New Deal, state programs were less prosperous. This posed a substantial problem for wildlife conservation. Wildlife resources were the property of the people held in trust by their government. That trust was totally the responsibility of the individual state governments until 1900 when the Lacey Act gave the federal government law enforcement authority over the interstate transport of game taken in violation of state game laws, and the control over imported wild animals. The migratory bird treaties with Great Britain in 1916 and Mexico in 1918 gave the federal government

ultimate authority over all migratory birds in the nation. The Migratory Bird Hunting Stamp Act of 1934 became the major source of funding for migratory waterfowl restoration.

While the restoration of resident wildlife remained the responsibility of the individual states, most state wildlife agencies were barely surviving in the 1930s. If the states were to continue with this responsibility, and if they were going to have anything left to be responsible for, they were going to have to have federal assistance. To facilitate that assistance there would have to be a statute that not only created a funding pipeline but that also created the funds that would flow through it.

The Legislation From the North American Wildlife Conferences in 1936 and 1937 emerged a proposal to place a federal excise tax on hunting arms and ammunition to raise funds that would be apportioned to the states for the purpose of wildlife restoration. Secretary of the Senate Committee on Wildlife Resources Bill Shoemaker drafted the bill. On to this stage stepped Senator Key Pittman (Nevada) and Congressman A. Willis Robertson (Virginia). They crafted legislation to raise such funds through a 10% federal excise tax. (This amount was raised to 11% in 1954.)

That Congress had in mind the restoration of "game" seems obvious based on the wording in Section 1 of the Act where it is required that a state expecting to qualify for P-R funds ".shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said state fish and game department, ." With this wording, Congress clearly guaranteed that at least hunting license revenues would be available to provide matching funds for their apportionment of the P-R monies.

The Congress clearly defined the limits on P-R funds as usable for 75% of the cost of a "wildlife restoration project." Such project was defined in Section 2 of the Act as meaning:

".selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition .of such areas . as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including . research into problems in wildlife management . and preliminary or incidental costs . [associated] with such projects."

Amendments that expanded the revenue potential and objectives for P-R funds included the following:

1970 -- Public Law 91-503 reallocated revenues derived from the 10% excise tax on pistols and revolvers from the general treasury to the Wildlife Restoration Fund. One half of these monies were to be used for the support of hunter safety programs and the construction of public target ranges. The rest was to go to wildlife restoration projects.

1972 -- Public Law 92-558 created an 11% excise tax on bows, arrows and their parts and accessories to be used as P-R funds. One-half of these monies were to be used for hunter

education and the development of target ranges, while the other half went to the Wildlife Restoration Fund. (Actual initiation of this amendment was delayed until 1975.)

1989 -- Public Law 101-233 provided that those funds from interest-bearing accounts controlled by the Secretary of the Treasury and used to fund the North American Wetlands Conservation Act through 2005 be transferred to the Wildlife Restoration Fund beginning in 2006.

Eligibility for receipt of P-R funds is strictly limited to state fish and wildlife agencies. In addition, these agencies must present documentation that the appropriate fish and wildlife conservation laws are in place, and that the hunting license fees are protected from transfer from control by the state fish and wildlife agency. In addition, the state agency must present certified documentation of the number of hunting license buyers in the state.

Under Section 4, the Secretary of the Interior may retain up to 8% of total P-R revenues for the purpose of administration of the Act and the Migratory Bird Conservation Act. This responsibility is assigned to the U. S. Fish and Wildlife Service. State fish and wildlife agencies work with their respective U. S. Fish and Wildlife Service regional directors to obtain project approvals.

Funds are allotted for approved projects on a formula basis. The six territories of the United States may each receive one-sixth of 1% of the revenues collected from excise taxes on pistols, revolvers, bows, and arrows following the Secretary's deduction for administrative purposes. The remaining 91% is then apportioned among the states based on the percentage of the population of all the states taken collectively that is accounted for by a given state. No state may receive more than 3% and not less than 1% of these funds.

Revenues from excise taxes on sporting arms (rifles and shotguns) and ammunition are apportioned among the states after the Secretary's retention of up to 8%. The formula ranking is based 50% on the percentage of land area in the 50 states accounted for by a given state, and 50% on the percentage of all paid state hunting license holders in the 50 states accounted for by a given state. No state can receive more than 5% of the available funds and not less than 0.5%.

Levels of Funding P-R funding is highly important to the wildlife management and research efforts in every state. The annual amounts of P-R funds going to the states and territories range from \$ 268,000 to \$7,187,000 and average \$2,750,000. Total funding to the states and territories since the first payments were made in 1939 is \$4.14 billion. The approximate total of P-R funds apportioned to the states and territories for fiscal years 1996-2002 is \$1.27 billion or about 31% of the 1939-2002 total. (For detailed information on funding by state and year see the web site <http://federalaid.fws.gov>.)

Recent Challenges In 1996, Earthlaw sued Colorado officials in federal court to prevent the expansion of a state prison on to lands purchased with P-R funds. The Court found that the expansion of the prison would do irreparable harm to wildlife that use the area as habitat. It also ruled that citizens may bring suit to stop state officials from the misuse of monies designated for wildlife conservation. (see *Sportsman's Wildlife Defense Fund v. Interior*, 1996 WL738948)

More recently, in 1999, the U. S. Fish and Wildlife Service came under attack in the Congress for alleged misuse of P-R funds. In hearings by the House Committee on Resources, Ms. Becky Norton Dunlop, a former Assistant Secretary for Fish, Wildlife and Parks in the Department of the Interior, testified that in her opinion, the Fish and Wildlife Service was spending money in excess of that needed to support administration of the Act. Allegedly, the Service had spent administrative funds for purposes other than game species restoration. She called for the Congress to tighten the Act to specify its focus on huntable wildlife, and to reduce the administrative allotment from 8% to 3-4%. Testimony from a retired National Wildlife Refuge Manager echoed many of the same sentiments.

Amending P-R In American democracy, when the general populace believes that a statute does not fit the current situation in society, efforts are undertaken to either repeal or amend that statute. From a general natural resource conservation perspective, any attempt to repeal P-R would be a mistake both in intent and the political consequences for anyone undertaking such an effort.

Any attempt to broaden P-R to make it more accommodative of activities that allow support of non-hunting recreation also would be a mistake. The gun lobby, led by the National Rifle Association, would oppose any such attempt. Propositions for any such amendment would be a waste of time. In fact, any such attempts likely would prove to be counter productive by galvanizing opposition to any broadening of uses at administrative discretion.

About Trails The purposes of P-R funds under the Act as amended to date are aimed at the production of game species and provisions for recreational hunting of game species and recreational use of firearms and archery equipment. No P-R monies can be spent directly on recreational trails other than for hunting or hunting related activities without a clear violation of the Act.

However, there may be some reasonable possibilities for recreational trails on lands purchased or managed with P-R funds. The first condition that must be met is that no proposed activity can significantly interfere with the feeding, breeding and sheltering of wildlife or the legal recreational hunting of that wildlife. It is likely that the burden of proof for the compatibility of proposed trail recreation and wildlife restoration and hunting would be on the trail people. This seems only reasonable, and it is achievable.

How might compatible uses of these lands be developed? I suggest starting by approaching the state wildlife agency and whatever entity owns the land when the former is not the owner and offer a recreational trails program to them. Offer to design, install, monitor and maintain trails in a manner that does not conflict with the production of game species or the hunting of such species. Offer to assure that such trails will be kept at safe distances from target shooting areas.

Offer to partner with the agency or agencies to develop funding for trail design, installation, monitoring, and maintenance. Develop a strong volunteer assistance effort, but remember that the agency knows that volunteer efforts do not get into place without expenditures of time and money on its part. In addition, agencies experienced with volunteer programs know that volunteer efforts, with some notable exceptions, are often ephemeral over long periods of time.

Figure out how you will deal with that problem in order to get a more empathetic ear from the agency.

In the densely populated eastern U. S., game management areas are most heavily used on Saturdays during the hunting season, but most eastern public lands are closed to Sunday hunting. In such cases, offer to prohibit Saturday riding during the hunting season. Encourage Sunday riding. Furthermore, with respect to hunting season, any public area heavily hunted for big game should be off limits to recreational trail riding during the gun season. Archery season is usually not a problem.

In my opinion, trail traffic should be minimal and allowed only as absolutely necessary on game management area roads open to vehicular traffic. Hunters tend to like to drive through some of their old hunting areas during the off season. In addition, many people who may not even hunt may drive through these areas simply for the pleasure of driving through the countryside. Trail traffic and vehicular road traffic make an awkward mix at best and a dangerous one at worst.

Wildlife openings or food plots usually represent a major habitat management investment by the state agency in the East. Be sure that you offer to avoid these openings to the extent practicable. Volunteer to prohibit the grazing of horses in such areas. Utility rights-of-way are often used as linear wildlife openings. Do not use these as trails.

Demonstrate your concern for wildlife by developing a rider's code of conduct when encountering wildlife on the trail. For example, never pursue wild animals on horseback. When encountering wild animals with dependent young wait for the adults to take the young animals out of the situation. If the adults leave the young, you must leave the site immediately. The adults will return for their babies.

With respect to water quality protection, offer how you will avoid, minimize and mitigate damage to surface waters, stream and lake banks, and streamside and lakeside vegetation.

Finally, acquaint the agency with the Leave No Trace? and Back Country Horsemen of America principles aimed at ensuring a harmonious relationship between the recreational users of trail horses and pack stock and the land. Above all offer yourself a concerned conservationist.

Why would state wildlife agencies want to cooperate with trail recreationists? As all professional wildlife people know, there has been an alarming decline in the percentage of Americans who hunt. In addition, there has been an alarming increase in the percentage of Americans with a negative attitude towards recreational hunting. Game management programs need more people who do not hunt to come to a level of compatibility with those who do.

Appropriately moving game management areas towards a wider array of uses combined with increased efforts to educate the non-hunting public could engender an enlarged empathetic constituency. Public servants who manage the wildlife resources must remember that all citizens of their respective states are their constituency. Those constituencies must remember that the wildlife restoration projects began more than 60 years ago, and had it not been for the foresight of the hunters and allied interests, most of these lands would not be available for public use at all.

In addition, they must remember that the Federal Aid in Wildlife Restoration Act has very definite sideboards. Finally, the agencies should remember that there is a difference between drawing a line in the sand and slamming the door.

* * *

Dr. Wood is a long-time horseman and retired Professor of Clemson University's Department of Forestry & Natural Resources. This article is reproduced here with his permission.

APPENDIX II

**Materials From New Jersey Division of Fish & Wildlife Regarding
Horseback Riding Permit Program**

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State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

Division of Fish and Wildlife
Central Region Office
One Eldridge Road
Robbinsville, NJ 08691

MARK N. MAURIELLO
Acting Commissioner

MEMORANDUM

TO : Cynthia Higgs, Kentucky Fish and Wildlife
FROM : Ray Porutski, Regional Superintendent
DATE : May 20, 2009
SUBJECT : Horseback Riding Permit Information

As per our telephone conversation, I am enclosing the information we discussed.

Should you need any additional information, please feel free to contact me at
(609) 259-2132.

7:25-2.3

As amended, R.1983 d.336, effective August 15, 1983.
See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).
Current text replaced text on drugs and marijuana.
Amended by R.1995 d.578, effective November 6, 1995.
See: 27 N.J.R. 1890(a), 27 N.J.R. 4283(a).

7:25-2.4 Alcoholic beverages

No person or persons shall consume or have in possession or control any intoxicating beverage or any beverage containing alcohol while on any land or water area under the control of the Division of Fish, Game and Wildlife, except that organized groups may, with written permission or other authorization from the Division, possess or consume alcoholic beverages on designated Wildlife Management Areas.

As amended, R.1983 d.336, effective August 15, 1983.
See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).
Exception for "organized groups" added.

7:25-2.5 Restricted areas and hours

(a) No unauthorized person or persons shall enter upon in any manner any land or water areas controlled by the Division of Fish, Game and Wildlife between the hours of 9:00 P.M. and 5:00 A.M. (2100 and 0500 hours) EST or EDT as listed in Trenton, New Jersey, whichever is in effect on the given date.

1. This shall not preclude a person engaged in lawful and proper hunting, trapping or fishing activity or other activities authorized by the Division.

2. No person shall enter any area designated with signs by the Division as "restricted" or "closed" without first obtaining written permission from the Division.

As amended, R.1983 d.336, effective August 15, 1983.
See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).
(a)1 and 2 clarified.

7:25-2.6 Division Fish Hatcheries

(a) No unauthorized person shall take or attempt to take fish by any means, or feed, molest, disturb, kill, net or attempt to net any fish in or from the waters of State Fish Hatcheries, except the public may take or attempt to take fish in or from those waters specifically posted for public fishing by the Division of Fish, Game and Wildlife.

(b) In the Pequest Wildlife Management Area, no unauthorized person shall take or attempt to take fish by any means, or feed, molest, disturb, kill, net or attempt to net any fish within the restricted area posted as being a portion of, or adjacent to, the outflow of the Pequest Trout Hatchery.

(c) In the Pequest Trout Hatchery, the taking or attempting to take fish by any means, or feeding, molesting, disturbing, killing, netting or attempting to net any fish in the "Fishing Education Pond" is prohibited unless specifically authorized by the Division.

As amended, R.1983 d.336, effective August 15, 1983.

Supp. 11-20-95

ENVIRONMENTAL PROTECTION

See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).
"No unauthorized person" was "No person"; posting exception added.
Amended by R.1995 d.578, effective November 6, 1995.
See: 27 N.J.R. 1890(a), 27 N.J.R. 4283(a).

7:25-2.7 Outboard motors

(a) No person shall operate or use any boat or other flotation device using an engine commonly known as an outboard motor, inboard motor or inboard-outboard motor on any freshwater lake or pond located within a Wildlife Management Area (note (c) below) without written permission from the Division.

1. This section does not preclude the use of battery-powered electric motor on these areas, with exception as noted in (b) below.

(b) On Prospertown Lake in Ocean County only manually operated boats are permitted.

(c) On Union Lake Wildlife Management Areas in Cumberland County, a person may operate a boat equipped with not more than one outboard motor, and this motor shall not exceed 10 horsepower.

As amended, R.1983 d.336, effective August 15, 1983.
See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).
(a), (b) and (c) replaced existing (a) and (b).

7:25-2.8 Horseback riding

(a) No person shall ride a horse in or on any land or water area controlled by the Division without first procuring a proper and valid permit from the Division of Fish, Game and Wildlife. The permit is to be in the possession of the horseback rider at all times when riding a horse in these areas.

1. The riding of horses on or over any wildlife food area, dams, cultivated fields, gardens or lawns shall be unlawful at all times.

2. On State Wildlife Management Areas where such activity may be permitted, it shall be done only in designated areas.

(b) The fee for any individual permit for horseback riding on State Wildlife Management Areas shall be \$25.00 per calendar year. All horseback riding permits will expire on December 31, of each year.

1. The prospective permittee shall maintain public liability and property damage insurance for the period of authorized use, with an insurance company recognized to do business in the State of New Jersey, in the amount of \$100,000/\$300,000 personal liability and \$50,000 property damage, or \$300,000 aggregate.

DIVISION OF FISH, GAME AND WILDLIFE

7:25-2.11

2. Each application to ride horseback must be accompanied by a statement from the applicant's insurance carrier denoting the insurance coverage as it applies to the riding of a horse on a State Wildlife Management Area.

(c) The Division may issue group horseback riding permits, covering a specified time period, to the Equine Advisory Board of the State Department of Agriculture. No fee will be charged for these permits.

1. The Department of Agriculture when applying for such a permit will provide the Division with a complete application for a permit, on a form to be provided by the Division. A copy of the valid permit must be posted at the New Jersey Horse Park facility or in possession of the event coordinator. Each participant must possess a copy of a completed registration form, which will be provided by the Division.

i. The Department of Agriculture will be required to provide proof of insurance in the amounts specified at (b)1 above for the group permits they sponsor.

(d) The Division may also issue group horseback riding permits to clubs or organizations on a daily basis. The fee for such a permit will be \$75.00 per day.

1. The prospective group permittee shall maintain public liability and property damage insurance according to the insurance requirements delineated at (b)1 above.

2. At least five days before the event, the club or organization applying for such a permit will provide the Division with an application for a permit which includes a roster of riders who will be participating in the event.

3. Each group permit application must be accompanied by a statement from the applicant's insurance company specifying the insurance coverage as it applies to the riding of horses on State WMA's.

4. A copy of the valid permit and roster must be in possession of at least one of the participating riders. For the purpose of this section, a group will be defined as two or more riders.

(e) The Division may determine and designate the areas where the riding of horses is permitted and the number of permits to be issued per area during any one time period. Permittees shall be liable for any damage that may occur as a result of their horseback riding activities.

(f) This section shall not preclude a person participating in a field trial, during the period of time stated in the field trial permit under authority of N.J.A.C. 7:25-2.14, from riding a horse in designated Wildlife Management Areas without a horseback riding permit.

(g) The use of horse drawn carriages on all designated wildlife management areas will require an individual or group permit from the Division. The insurance coverage

requirements set forth in (b)1 above for horseback riders shall apply to horse drawn carriage riders.

As amended, R.1983 d.336, effective August 15, 1983.

See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).

Permit text clarified; (b)2, (c), (d) and (e) added.

Amended by R.1995 d.578, effective November 6, 1995.

See: 27 N.J.R. 1890(a), 27 N.J.R. 4283(a).

7:25-2.9 Swimming

(a) Swimming and bathing are prohibited on all State Wildlife Management Areas except those designated by the Division where a State appointed lifeguard is on duty.

1. No wading is permitted except for the purpose of hunting, trapping or fishing.

2. For the purpose of this section, the use of such devices as vehicle inner tubes, surf boards, inflatable mats or underwater breathing devices commonly known as "scuba" (self contained underwater breathing apparatus) gear shall be considered as swimming or bathing.

As amended, R.1983 d.336, effective August 15, 1983.

See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).

(a)2 added.

Case Notes

In constitutional challenge by unincorporated organization whose members advocated and practiced a "clothing-optional lifestyle" to local ordinance barring nude sunbathing on township beaches, ordinance held constitutional and generally enforceable in township; ordinance unenforceable on beach located on State-owned lands inside township boundaries. *Tri-State Metro Naturists v. Lower Twp.*, 219 N.J.Super. 103, 529 A.2d 1047 (Law Div.1987).

7:25-2.10 Camping, picnicking and vending

(a) Camping or picnicking is prohibited on all Division controlled areas, including State Wildlife Management Areas. For the purpose of this section, "camping" means any temporary shelter such as a tent, trailer, recreation vehicle, sleeping bag, hut or other structure that a person or persons use as sleeping, resting, or living quarters.

(b) This shall not preclude a person with proper permission or other authorization from the Division from picnicking on the designated areas of the Pequest Trout Hatchery.

(c) No person shall sell or offer for sale any food, beverage or other merchandise on any State Wildlife Management Area without first obtaining a written permit from the Division of Fish, Game and Wildlife.

As amended, R.1983 d.336, effective August 15, 1983.

See: 15 N.J.R. 840(a), 15 N.J.R. 1374(c).

(a): picnicking prohibited; "structure" was "lodging place" under "camping".

(b) and (c) added.

7:25-2.11 Fires

No person shall set or cause to be set, start, build or maintain any fire on any State Wildlife Management Area

MODELS FOR EQUINE-BASED USE OF STATE FISH & WILDLIFE LANDS
Equestrian Land Conservation Resource



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

Division of Fish and Wildlife
Central Region Office
One Eldridge Road
Robbinsville, NJ 08691
(609) 259-2132

MARK N. MAURIELLO
Acting Commissioner

Dear 2009 Horseback Bridle Trail Permittee:

You have been issued your 2009 Bridle Trail Permit for use on the 16 designated wildlife management areas listed below. Please be sure to have your permit with you at all times while riding. No person shall ride a horse in or on any land or water controlled by the Division without first procuring a proper and valid permit. The riding of horses on or over any food area, dams, firelines, or field which has been cultivated or planted shall be unlawful at all times. On wildlife management areas where such activity may be permitted, it shall be done only in designated areas and by permit.

Flatbrook and Whittingham, Sussex County
Black River, Morris County
Capoolong Creek and Alexauken Creek, Hunterdon County
Assunpink, Monmouth County
Colliers Mills and Greenwood, Ocean County
Medford, Burlington County
Glassboro, Gloucester County
Millville, Union Lake and Peaslee, Cumberland County
Higbee Beach and Tuckahoe, Cape May County
Winslow, Camden County

We would like to make you aware of some hunting season dates that are very popular, and advise you that you may encounter numerous hunters afield:

<u>SEASON</u>	<u>DATES</u>
Pheasant	November 7, 2009 – February 15, 2010
Firearm Deer	December 7, 2009 – December 12, 2009
Permit Deer Shotgun	December 2, 3 and 4, 2009 December 7, 2009 – December 12, 2009 December 16, 17 and 18, 2009 January 9, 2010 – February 13, 2010
Youth Pheasant Hunt	October 31, 2009
Youth Deer Hunts	September 19, 2009 and November 14, 2009

NOTE: These dates are approximate and subject to change by the approval of the 2009 Game Code.

-1-

MODELS FOR EQUINE-BASED USE OF STATE FISH & WILDLIFE LANDS
Equestrian Land Conservation Resource

A complete listing of all hunting dates and regulations for the Fall 2009 season will be available in the August 2009 issue of the Fish and Wildlife Digest. Digests will be available at your local hunting license selling agent, or by calling this office.

A complete listing of field trial dates is available by calling (609) 259-2132.

Please be aware that during some field trial events live ammunition or blank poppers are being used. Please stay away from these events while they are in progress.

I would also like to remind you that the wildlife management areas are multi-use. You will occasionally encounter other user groups, such as the United Bow Hunters, Horse Park of New Jersey Events and field trial groups to name a few. Please cooperate with these groups while riding, since there will be occasions that they too have a permit for the grounds.

The constructed jumps you may encounter on various trails within the Assunpink Wildlife Management Area belong to the Monmouth Hunt Club. The Monmouth Hunt Club has a lease with the Division and these jumps are used by their members for training purposes. **Recreational riders are not to use these jumps for any activity. Horse and carriage drivers are restricted to main and secondary roads; you may not drive off road or on any established horseback riding trails.**

Sincerely,

Raymond J. Porutski
Regional Superintendent

APPENDIX III

**Materials About the New Mexico Department of Game and Fish's Gain Access Into Nature
(GAIN) Program**

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Uses Of Wildlife Management Areas



It Is Lawful:

- For any person to hunt, fish, or trap on this Wildlife Management Area (WMA) only with a proper and valid license and Habitat Management and Access Validation (HMAV) during specified open seasons.
- For any person to engage in any other activity such as hiking, snowshoeing/skiing, or bicycling only with a proper and valid Gaining Access Into Nature (GAIN) permit and HMAV.
- To conduct a commercial activity on any WMA only after first obtaining the proper Commercial Permit.
- To camp (if the WMA is open to camping) for no more than 9 consecutive days. Licensed hunters and their guests may camp during their permitted hunt.
- To have an open fire only if it is contained in a metal fireplace or charcoal grill.

It Is Unlawful:

- To operate any motorized vehicle or bicycle off established roads or on closed roads within WMAs.
- To deface or remove any rocks, minerals, plants, firewood or man-made features from any WMA.
- To excavate, injure, destroy, or remove any cultural resources or artifacts from any WMA.
- To violate the provisions of posted signs on WMAs.
- To use or possess any hay or feed that is not certified as "weed free".

For more information, visit: www.wildlife.state.nm.us or call (505) 476-8000.

MODELS FOR EQUINE-BASED USE OF STATE FISH & WILDLIFE LANDS
Equestrian Land Conservation Resource

 GAIN activities on Wildlife Management Areas					
Property	Wildlife viewing, photography, hiking, biking, skiing	Horseback riding	Camping	Fishing *	Hunting *
Pecos Complex (Clancy, Morly, Tettero, Koch)	Year-round. Bicycling allowed only on established roads.	Allowed, but opportunities are extremely limited.	Year-round. Koch area: Primitive camping only in designated area.	Year-round. Special trout and regular waters.	No hunting opportunities.
Charette Lakes	March 1-Oct. 31. Bicycling allowed only on established roads.	Allowed but opportunities are extremely limited.	March 1-Oct. 31	March 1-Oct. 31	Waterfowl during season, October-January.
Colin Neblett	Tolby and Mawrick trails open year-round except closed May 15-July 31. Clear Creek Trail open year-round. Bicycling prohibited on all trails.	Tolby and Mawrick trails closed May 15-July 31. Clear Creek closed year-round.	Only licensed deer and elk hunters may camp in designated areas during their hunt.	Year-round. Regular fishing regulations.	Bear, deer, elk, turkey and small game.
Elliott Barker	April 1-May 14 and Aug. 1-Dec. 14. Bicycling allowed only on established roads.	April 1-May 14 and Aug. 1 - Dec. 14.	Only licensed hunters may camp in designated areas only during hunt.	Allowed, but limited opportunities because of previous forest fire.	Bear, deer, elk, turkey, and small game.
McAllister Lake	March 1-Oct. 31. Access allowed only Sundays, Tuesdays and Thursdays during waterfowl hunting seasons (October-January). Bicycling allowed only on established roads.	Allowed, but opportunities are extremely limited.	Not allowed.	March 1-Oct. 31. Regular trout waters.	Waterfowl during season, October-January.
Rio de los Pinos	Year-round. Bicycling allowed only on established roads.	Year-round.	Year-round.	Year-round. Special trout and regular trout waters.	Access to BLM and U.S. Forest Service lands.
Urreca	July 1 - Dec. 14 and April 1 - May 14. Bicycling allowed only on established roads.	July 1 - Dec. 14 and April 1 - May 14.	Only licensed hunters may camp in designated areas only during hunt.	No fishing opportunities.	Deer, elk, and small game.
Wagon Mound	Year-round. Bicycling allowed only on established roads.	Year-round.	Not allowed.	No fishing opportunities.	Waterfowl during season, October-January.
Bluebird Mesa	Year-round, but subject to U.S. Forest Service winter road closure. Bicycling not allowed.	Year-round.	Not allowed.	No fishing opportunities.	Bear, deer, elk, turkey, and small game.
Edward Sargent	Year-round. Bicycling allowed only on established roads. All users restricted to designated areas from May 15 - June 30, and during elk hunts in September and November. Please see specific area restrictions on map posted at area entrance.	Year-round. Restricted to designated areas May 15 - June 30 and during elk hunts in September and November. Licensed hunters may ride during their hunt.	Allowed only in designated areas from July 1 - Nov 15. Licensed hunters may camp only in designated areas during their hunt.	Year-round. Special trout waters. Fishing limited to designated areas from May 15 - June 30.	Bear, deer, elk, turkey, and small game.
Jackson Lake	Year-round. Access restricted to property west of Highway 170. Bicycling allowed only on established roads.	Allowed, but opportunities are extremely limited.	Not allowed.	Year-round. Regular fishing regulations.	Waterfowl during season, October-January.
Ladd S. Gordon Waterfowl Complex (Bernardo)	Access restricted to auto tour route, trails, and viewing sites. Visitors do not need a GAIN permit or HMAV. Tour route closed Dec. 29, Dec. 31, Jan. 19 and Jan. 21. Bicycling not allowed.	Not allowed.	Not allowed.	April 1 - Aug. 31. Regular fishing regulations.	September teal hunting in season, Waterfowl in season, October-March.
Ladd S. Gordon Waterfowl Complex (La Joya)	March 15 - Aug. 31. Users of open roads do not need a GAIN permit or HMAV. Users off open roads need a GAIN permit and HMAV.	March 15 - Aug. 31. Rides off open roads need a GAIN permit and HMAV.	Not allowed.	April 1 - Aug. 31. Regular fishing regulations.	September teal hunting in season, Waterfowl in season, October-March.
Rio Chama	Memorial Day weekend through Nov. 15, except during deer and elk hunts. Bicycling allowed only on established roads.	Memorial Day weekend - Nov. 15, except during deer and elk hunts. Licensed hunters may ride during their hunts.	Designated areas Memorial Day weekend - Nov. 15. Licensed hunters may camp during hunts.	Year-round. Special trout waters. Some seasonal access restrictions.	Deer, elk, turkey, small game, September teal.
Water Canyon	Year-round, except during deer and elk hunts. Bicycling allowed only on established roads.	Year-round, except during elk, deer hunts. Licensed hunters may ride during their hunts.	Not allowed, except licensed hunters may camp during their hunt.	No fishing opportunities.	Deer, elk, bear, turkey, small game. Coyotes, rabbits, Himalayan tahr Jan-March (no dogs).
William Humphries	Memorial Day weekend through Nov. 15, except during deer and elk hunts. Bicycling allowed only on established roads.	Memorial Day weekend - Nov. 15, except during deer and elk hunts. Licensed hunters may ride during their hunts.	Designated areas Memorial Day weekend - Nov. 15. Licensed hunters may camp during hunts.	No fishing opportunities.	Deer, elk, bear, turkey, and small game.
Bear Canyon	Year-round. Bicycling allowed only on established roads.	Allowed, but opportunities are extremely limited.	Year-round in designated areas.	Winter trout waters and warmwater fishing.	No hunting opportunities.
Bill Evans Lake	Year-round. Bicycling allowed only on established roads.	Allowed, but opportunities are extremely limited.	Year-round in designated areas.	Regular fishing regulations. Winter trout water.	No hunting opportunities.
Heart Bar	Year-round. Bicycling allowed only on established roads. North bank of the West Fork of the Gila River closed to all access March 1 through Aug. 31.	Year-round. North bank of the West Fork, Gila River closed March 1 through Aug. 31.	Year-round in designated areas.	Year-round. Special trout waters.	No hunting opportunities.
Lake Roberts	Year-round. Bicycling not allowed.	Allowed, but opportunities are extremely limited.	Not allowed on wildlife area, but allowed on adjacent U.S. forest lands.	Year-round. Special trout waters.	No hunting opportunities.
Mimbres	Year-round. Bicycling not allowed.	Allowed, but opportunities are extremely limited.	Not allowed.	Not allowed.	No hunting opportunities.
Red Rock	Year-round. Activities allowed in designated areas only. Bicycling allowed only on established roads.	Year-round in designated areas only.	Not allowed.	Limited fishing opportunities.	No hunting opportunities.
Socomo-Escondida.	Year-round. Bicycling not allowed.	Year-round.	Not allowed.	Year-round. Regular fishing regulations.	Turkey, small game, and waterfowl.
Brantley	Year-round. Bicycling not allowed.	Not allowed.	Not allowed on wildlife area, but allowed in state park.	Year-round. Regular fishing regulations.	Deer, small game, waterfowl. Coyotes, rabbits year-round (no dogs).
Lesser Prairie Chicken Areas	Activities allowed June 30 - Feb. 15. Bicycling allowed only on established roads.	June 30 - Feb. 15.	Not allowed.	No fishing opportunities.	Small game. Coyotes, rabbits Nov. 1 - Feb. 15 (no dogs).
Sandhills Prairie	Activities allowed June 30 - Feb. 15. Bicycling allowed only on established roads.	June 30 - Feb. 15.	Not allowed.	No fishing opportunities.	Coyotes, rabbits Nov. 1 - Feb. 15 (no dogs).
Seven Rivers	Year-round. Bicycling not allowed. Activities allowed only in designated areas. Please see specific area restrictions on map posted at wildlife areas.	Not allowed.	Not allowed.	Year-round. Regular fishing regulations.	Small game, September teal, waterfowl, limited-draw deer, pheasants.
William S. Huey	Year-round. Bicycling not allowed. Activities allowed only in designated areas. Please see specific area restrictions on map posted at wildlife areas.	Not allowed.	Not allowed.	Year-round. Regular fishing regulations.	Small game, waterfowl, limited-draw deer, pheasants, turkeys.

* Please refer to Big Game and Trapper, Small Game and Waterfowl, and Fishing Rules and Information booklets for specific season rules and dates. www.wildlife.state.nm.us

GAIN Frequently Asked Questions

What is GAIN?

Gaining **A**ccess **I**nto **N**ature (GAIN) is a program offered by the Department of Game and Fish. Many Wildlife Management Areas (WMAs) are being opened to additional wildlife associated recreation activities beyond traditional uses of hunting and fishing. Depending on the WMA, wildlife viewing and wildlife photography opportunities are accessible by hiking, bicycling, skiing, snowshoeing, and horseback. These activities are designed to offer new incentives to recreate and to draw attention to the conservation of public trust wildlife and the habitats they depend on.

Which Wildlife Management Areas are open to GAIN activities?

Open areas include: Pecos River Complex (Bert Clancy, Mora, Terrero, and Jamie Koch areas), Charette Lakes, Colin Neblett, Elliott Barker, McAllister Lake, Rio de los Pinos, Urraca, Wagon Mound, Bluebird Mesa, Edward Sargent, Jackson Lake, Ladd S. Gordon Waterfowl Complex (Bernardo and La Joya), Rio Chama, Water Canyon, William Humphries, Bear Canyon, Bill Evans, Heart Bar, Lake Roberts, Mimbres, Red Rock, Socorro-Escondida, Brantley, Lesser Prairie Chicken Areas, Seven Rivers, William Huey, and the Sandhills Prairie Conservation Area.

Who needs a GAIN Permit?

Anyone 18 years or older must purchase a Permit and a Habitat Management and Access Validation (HMAV) to access one of the above WMAs for a GAIN activity. Children younger than 18 do NOT need a Permit. Examples: A family of 4, with 2 children younger than 18, only need 2 GAIN Permits with HMAVs. However, a family of 4, with 2 children older than 18, need 4 GAIN Permits with HMAVs.

If I am hunting or fishing on a WMA, do I need a GAIN Permit?

No. A current New Mexico hunting or fishing license with a HMAV allows holders to hunt or fish on WMAs during any season for which they are legally licensed.

If I have a current hunting or fishing license with a HMAV, can I hike, bicycle, ski, snowshoe or horseback ride on a WMA (if allowed) without purchasing a GAIN Permit?

No. Hunting licenses are for hunting; fishing licenses are for fishing and GAIN permits are for GAIN activities permitted on each WMA. You must purchase a GAIN permit to hike, bicycle etc.

The only exception to this is Colin Neblett where, as per a JPA with State Parks, a person is good to go for any allowable GAIN activity with a GAIN permit or a park permit or a hunting or fishing license, but only for the timeframe indicated on the hunting or fishing license. For example: You may participate in GAIN activities during the 5 days you have an elk hunting license on the Colin Neblett. You may also participate in GAIN activities for the several months fishing is permitted if you have a fishing license. Again, this is allowed only because there is a State park at that particular area.

Do I need a GAIN Permit and HMAV to access U.S. Forest Service or BLM lands?

No. However, a HMAV is required to hunt, fish, or trap on U.S. Forest service or BLM lands.

Where can I purchase a GAIN Permit and/or HMAV?

From any Department office, license vendor, or through the Department's online license system.

How much are the fees?

Each person 18 years or older, must purchase a GAIN Permit and a HMAV to participate in any GAIN activity. Permits available include:

- An **Annual** GAIN Permit is \$15 + HMAV \$4 = \$19.
- A **Temporary** (5 consecutive days) GAIN Permit is \$4 + HMAV \$4 = \$8.
- A \$1 vendor fee may be charged if you purchase it from a license vendor.
- If you purchase it online, a \$4.95 vendor fee will be charged.
- Both types are valid statewide.

Are there discounted GAIN Permits for seniors, mobility impaired, or veterans?

No.

Do I need another HMAV if I purchased one with my hunting or fishing license?

No. Only one HMAV must be purchased each year.

What are "Special Opportunity GAIN Permits"?

These special GAIN Permits allow participants to become involved in unique, Department-sponsored wildlife tours, bighorn sheep and turkey trapping and relocation efforts, prairie chicken and electro-fishing surveys, etc. Special Opportunity GAIN Permits are available through a drawing. Visit the Department's website for more information and applications.

What is a "Site-based Shelter Use Permit"?

These permits are available for the Jamie Koch Wildlife Area Community Shelter north of Pecos, NM. Reservations are made on a first-come, first-served basis for up to 4 consecutive days. The cost is \$25/day. For reservations, contact the Santa Fe office at (505) 476-8101. Individuals using the Jamie Koch Area Community Shelter do NOT need a GAIN Permit or HMAV when covered by a Site-based Shelter Use Permit.

Where are GAIN Permits Available?

Individual GAIN Permits and HMAVs are available from any Department office or license vendor. Other GAIN Permits are available from the Department's office in Santa Fe.

When are GAIN Permits valid?

The Annual Permit is valid from April 1-March 31. The Temporary Permit is valid for 5 consecutive days. Closures may occur during certain times of year.

What is a "Commercial Use Permit"?

A Commercial Use Permit is a permit that allows a person or business to conduct any activity on a WMA for pay or compensation. The exception is a hunting activity conducted by a Department registered outfitter or guide.

Who needs a "Commercial Use Permit"?

Any person or business conducting any activity for pay or compensation on a WMA needs a Commercial Use Permit. They may include fishing guides, wildlife viewing guides, horseback riding outfitters, etc. Anyone using the services of one of these guides ALSO must have a GAIN Permit and HMAV. Fisherman contracting the services of a guide on one of the WMAs, must only have a current fishing license with a HMAV. However, the fishing guide must have a Commercial Use Permit.

Do I need a guide to take part in a GAIN activity?

No.

Where can I find a list of the hunts taking place on specific WMAs?

Visit the Department's Web site at www.wildlife.state.nm.us/, or call: (505) 476-8000, or obtain a copy of a Big Game Hunting and Trapping or Small Game and Waterfowl Hunting rules and information booklet available at any Department office or license vendor.

What are LEGAL activities on a GAIN WMA?

Any person, holding a valid GAIN permit and HMAV may, unless specifically prohibited:

- View and/or photograph wildlife.
- Hike, horseback ride, snowshoe, ski, or bicycle if specifically allowed at that WMA.
- Camp (if the WMA is open to camping) for no more than 9 consecutive days. Licensed hunters and their guests may camp during their hunt.
- Have an open fire only if it is contained in a metal fireplace or charcoal grill.

What are activities are ILLEGAL on a GAIN WMA?

It is illegal for a person to:

- Operate any motorized vehicle or bicycle off established roads or on closed roads within a WMA.
- Deface or remove any rocks, minerals, plants, firewood or man-made features from a WMA.
- Excavate, injure, destroy, or remove any cultural resources or artifacts from a WMA.
- Violate any of the provisions of signs posted on WMAs.
- Use or possess any hay or feed that is not certified "weed free".

What specific activities are allowed on each WMA listed above?

See the list of Specifically Allowed Activities on the Department's website www.wildlife.state.nm.us.

Where can I get More Information?

Visit the Department's Web site at www.wildlife.state.nm.us or call: (505) 476-8000.



Gaining Access Into Nature



GAIN Program

Gaining Access Into Nature (GAIN) is a program offered by the Department of Game and Fish. Many Wildlife Management Areas (WMAs) are being opened to additional wildlife-associated recreation activities beyond traditional uses of hunting and fishing. Depending on the WMA, these new activities are wildlife viewing and wildlife photography, opportunities that are accessible by hiking, bicycling, skiing, snowshoeing, and horseback riding. These activities are designed to offer new incentives to recreate and to draw attention to the conservation of public trust wildlife and the habitats they depend on.

Wildlife Management Areas Open To GAIN Activities

Pecos River Complex, Charette Lakes, Colin Neblett, Elliott Barker, McAllister Lake, Rio de los Pinos, Urraca, Wagon Mound, Bluebird Mesa, Edward Sargent, Jackson Lake, Ladd S. Gordon Waterfowl Complex, Rio Chama, Water Canyon, William Humphries, Bear Canyon, Bill Evans, Heart Bar, Lake Roberts, Mimbres, Red Rock, Socorro-Escondida, Brantley, Lesser Prairie Chicken Areas, Sandhills Prairie Conservation Area, Seven Rivers, and William Huey WMAs.

Permits and Fees

• Individual GAIN Permits

To participate, each person 18 years or older, must purchase a GAIN Permit and a Habitat Management and Access Validation (HMAV). Those younger than 18 may recreate without a permit at allowed places and times. A statewide Annual GAIN Permit with HMAV is \$20 and a Temporary 5-Day GAIN Permit with HMAV is \$9. Both include a \$1 vendor fee.

• Special Opportunity GAIN Permits

These GAIN Permits allow participants to be involved in unique, Department-sponsored wildlife tours, bighorn sheep and turkey trapping and relocation efforts, prairie chicken and electro-fishing surveys, etc. These special permits are available through a drawing. Visit the Department's Web site for more information.

• Site-based Shelter Use Permit

Applications for the Jamie Koch Wildlife Area Community Shelter (north of Pecos) are accepted at the Santa Fe office only. Reservations are made on a first come, first served basis for up to 4 consecutive days. The cost is \$25/day. For reservations, contact the Santa Fe office at (505) 476-8101.

• Commercial Use Permits

A commercial permit is required by any person or business conducting any activity for pay on any WMA. Exceptions are hunting activities conducted by Department registered outfitters. No commercial activity is allowed until the applicant obtains approval of a completed application from the Department. Please visit the Department's Web site for more information on rules and fees.

Availability

Individual GAIN Permits are available from Department offices and license vendors. Other GAIN Permits are available from the Department's Santa Fe office.

Hunting and Fishing On WMAs

A current New Mexico hunting or fishing license with a HMAV allows holders to hunt or fish on WMAs during any seasons for which they are legally licensed.

GAIN Permit Year

April 1-March 31. Closures may occur during certain hunting seasons and elk calving.

For More Information

Please visit the Department's Web site at www.wildlife.state.nm.us or call (505) 476-8101.