

Regulatory Impact Statement

1. Statutory authority:

The Commissioner of the Department of Environmental Conservation (DEC), pursuant to Environmental Conservation Law (ECL) section 3-0301, has authority to promote the management of the wildlife resources of New York State. ECL section 11-0303(2) gives DEC authority to promulgate regulations to manage wildlife with consideration for public safety. ECL sections 11-0903(8), and 11-0903(10) gives DEC the authority to adopt regulations establishing manner of take for bear and deer.

2. Legislative objectives:

The statutory provisions listed above authorize the department to establish by regulation, certain basic wildlife management tools, including methods of take and possession. These tools are used by the department to maintain desirable wildlife species in ecological balance with sound management practices and in a manner compatible with public safety.

3. Needs and benefits:

This rulemaking is necessary to increase antlerless deer harvest in specific Wildlife Management Units where needed, allow big game hunters to hunt during the entire daily period of ambient light, simplify bear hunting regulations in the Adirondacks, and enhance hunter safety while big game hunting with a firearm.

September Season for Antlerless Deer

This rulemaking will propose a 9-day season for antlerless deer in mid-September using firearms in WMUs 3M, 3R, 8A, 8F, 8G, 8J, 8N, 9A, and 9F, and using bowhunting equipment in WMUs 1C, 3S, 4J, and 8C. In these units, management objectives are to

decrease the deer population or maintain a stable population, and increased antlerless harvest is needed to achieve these objectives. Deer Management Permit (DMP) availability in these units exceeds hunter applications, and hunters need new opportunity to use existing tags. Timing the season in mid-September allows deer to return to normal behavior patterns prior to the start of the bowhunting season in October.

Allow Antlerless Harvest in the Early Muzzleloader Season in WMUs 6A, 6F, and 6J

This rulemaking will again allow deer of either-sex to be taken during the early muzzleloader season in WMUs 6A, 6F, and 6J.

To reduce harvest of antlerless deer in WMUs 6A, 6F, and 6J, beginning in 2015 and 2016, DEC restricted hunters in those units to taking only antlered bucks during the early muzzleloader season. Since then, deer abundance has increased significantly in WMU 6A and slightly in WMUs 6F and 6J, reflecting the higher quality habitat and more mild winters of WMU 6A in the St. Lawrence Valley. The average harvest of antlered bucks increased in WMU 6A by 80% between 2014-15 and 2019-20 and by 50% and 20% in WMUs 6F and 6J, respectively.

Harvest patterns of antlered deer in WMUs 6F and 6J suggest population dynamics that are similar to other Adirondack units, where hunters have continued to be able to take deer of either-sex during the early muzzleloader season. Throughout the Adirondacks, including WMUs 6F and 6J, deer populations appear more strongly influenced by winter severity than by the low level of antlerless deer taken by hunters (0.1 – 0.3 antlerless deer taken per square mile).

It is appropriate to reinstate the option for hunters to take deer of either-sex during the early muzzleloader season. Based on past harvest records and because the landscape in WMU 6A is more accessible to hunters, the hunting pressure and potential harvest of antlerless deer is greater than in the heavily forested WMUs 6F and 6J. Thus, DEC expects that allowing hunters in WMU 6A to take deer of either-sex during the early muzzleloader season will contribute to stabilizing the population in that unit. In contrast, in WMUs 6F and 6J, DEC expects the either-sex opportunity will merely provide nominal opportunity for hunters without incurring a significant population impact, consistent with the limited harvest of antlerless deer in other Adirondack units. The management objective for all three of these units is to maintain a stable population. This objective can be achieved by restoring antlerless harvest during the early muzzleloader season.

Remove Outdated Regulations for Deer Tag Use in September

Prior to 2014, the annual hunting license year began October 1 rather than September 1 as it does now. At the time, hunters in the Northern Zone could use leftover regular season tags from the previous year when hunting deer or bear in September, as it was still part of the same license year. With a September 1 start to the license year, there are no longer carry-over tags. DEC regulations still errantly contain inconsistent language related to deer tag use in September. This rulemaking will remove that outdated text.

Extend Big Game Hunting Hours

This rulemaking would extend the legal hunting hours for deer and bear to begin 30 minutes before meteorological sunrise and end 30 minutes after meteorological sunset.

New York has the most restrictive deer hunting hours in the United States. All other states allow deer hunting beginning ½ hour before sunrise or earlier, or simply specify daylight hours, and 46 of 50 states allow deer hunting until some period (mostly ½ hour) after sunset. Other states report similarly positive safety experiences of hunters and non-hunters during these periods as during full daylight hours.

Simplify Bear Hunting Seasons in the Adirondacks

The current bear season structure in the Adirondack region allows bears to be taken with centerfire firearms for 72 out of 79 days, with a 7-day period when bears can only be taken with a muzzleloader, crossbow, or bow. The current season framework includes a confusing overlap of bowhunting season and the early bear season during which firearms and bows could be used. This rulemaking will simplify the bear hunting framework in the Adirondacks by consolidating all seasons into one regular bear season during which hunters may take bear with bows, crossbows, muzzleloaders, shotguns, or centerfire rifles. This will reduce confusion as to which implements are legal through the season.

Because most bears are taken incidentally by deer hunters who happen to encounter a bear, and because modern muzzleloaders are nearly as effective at taking bear as centerfire rifles, we anticipate little, if any, impact to the bear harvest and bear population due to this change.

Fluorescent Orange or Pink Clothing

This rulemaking will require anyone hunting big game with a firearm or accompanying someone hunting big game with a firearm to wear a solid or patterned fluorescent orange or fluorescent pink hat or vest/jacket. Wearing highly visible

fluorescent orange or pink has been proven an effective safety strategy while hunting. The fluorescent material radiates natural sunlight back to an observer and highly contrasts the surrounding landscape. Fluorescent clothing is most effective in low light conditions, such as dusk and dawn, but loses effectiveness in complete darkness with artificial light sources.

An observer needs to immediately recognize that they are seeing a person and not a target animal when afield hunting. Observing the fluorescent orange or fluorescent pink color creates a psychological trigger of caution, hazard or danger, causing the observer to pause to identify their target and what lies beyond their target.

This proposed regulation will improve safety and minimize risk for New York's hunters. From 2009 through 2020, almost 30% of all hunting-related shooting incidents were associated with big game hunting where there were two parties involved. During this same period, half of all hunting-related shootings that resulted in a fatality were two-party big game hunting incidents (13 of 26 total fatalities). Due to the number of participants, seasons where hunters pursue big game with a firearm have the highest hunter densities and therefore the highest likelihood of a hunter being involved in a shooting incident. Requiring fluorescent orange or fluorescent pink for hunters pursuing big game with a firearm has the highest likelihood of reducing hunting-related shooting incidents.

4. Costs:

The costs associated with adopting the proposed regulation entail normal administrative costs to implement and enforce the deer and bear management programs and provide related outreach to inform hunters of these changes. These costs

are minimal and entail such things as production of press releases and updates to the department's website and annual hunting and trapping regulations guide.

5. Local government mandates:

The proposed rule does not impose any mandates on local governments.

6. Paperwork:

The proposed rule does not create a need for additional paperwork.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

Do not change antlerless harvest strategies. Without increasing antlerless harvests through a September antlerless season, deer population management objectives will not be achieved in those WMUs. In WMUs 6F and 6J, maintaining the antlered deer-only requirement during the muzzleloader season would continue to limit hunter opportunity.

Issue more Deer Management Permits (DMPs). In the WMUs identified for the September antlerless season, issuing more DMPs is not a practical option. DMPs have been widely available to all interested hunters in those units, with leftover tags remaining each of the past few years. In WMUs 6F and 6J, DEC cannot lawfully issue DMPs. In WMU 6A, DEC could issue DMPs before reinstating antlerless harvest during the muzzleloader season. However, because DMPs can be used during all seasons, allowing DMPs but not either-sex hunting during the muzzleloader season would be confusing for hunters.

Do not change big game hunting hours. Keeping the daily hunting hours as sunrise to sunset will preserve New York as an outlier from the norms used across the rest of the country and will continue to restrict hunters from utilizing all periods of ambient light to harvest deer.

Extend the daily hunting hours for big game to 30 minutes before sunrise to 15 minutes after sunset or some other variation. This alternative would be an improvement over the existing limits, yet most states have hunting hours that end 30 minutes after sunset.

Do not change bear hunting seasons in the Adirondacks. Retaining the current bear hunting season framework will perpetuate a confusing overlap in hunting opportunities.

Do not require fluorescent clothing in 2021. Currently, fluorescent orange or pink is only required for junior big game hunters and their licensed adult mentors. We could continue to restrict the requirement to only this group. Supervised junior hunters are among the safest of any age group and represent a small portion of the hunting population, so we would not be addressing the majority of two-party incidents where hunter orange or pink would be beneficial.

Require more coverage than a fluorescent hat or fluorescent jacket/vest. The current proposal requires a hunter to wear a solid or patterned fluorescent orange or pink hat or vest/jacket. An alternative would be to require both a hat and vest/jacket. The most

critical aspect of fluorescent orange or pink clothing is that it be visible from all directions to maximize the likelihood that a hunter will be seen. This can be accomplished with the requirement as proposed.

Require fluorescent clothing for all hunters who pursue game using a firearm. The proposal is specific to hunters pursuing big game with a firearm, but the fluorescent orange or pink requirement could be expanded to include small game hunters as well (e.g., game birds, waterfowl, rabbit, hare, squirrel). Due to the method most often used for hunting small game – a shotgun firing shot pellets – when two-party incidents occur, they are much less likely to result in a fatality. Additionally, the distance shot pellets travel is less than a bullet or slug used for big game.

Require fluorescent clothing for all hunters regardless of the type of implement used. Hunters who use a bow or crossbow are shooting at game at much closer distances than hunters using a firearm, so misidentification of their target or what is beyond it is very unlikely. The distance an arrow/bolt can travel is significantly less than a bullet or slug from a firearm.

Generally, hunters who use a bow or crossbow are not involved in two-party hunting-related shooting incidents where fluorescent orange or pink would be beneficial. The victims of hunting-related shooting incidents are almost always other firearms hunters and not bow or crossbow hunters.

9. Federal standards:

None.

10. Compliance schedule:

The regulated community will be required to comply with these regulations upon their adoption.