



July 28, 2014

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Submitted as a PDF via [Regulations.gov](http://Regulations.gov)

Dear Mr. Adamson,

Winter Wildlands Alliance (WWA) is a national advocacy organization representing the interests of human-powered winter recreationists across the U.S. We are dedicated to our mission of promoting and preserving winter wildlands and a quality human-powered snowsports experience on public lands. Collectively, WWA represents over 50,000 members and 35 grassroots partner organizations in 10 states across the snowbelt.

Founded in 2000, WWA grew out of a recognition that human-powered winter recreation needs a strong, coordinated voice at the national level. Our advocacy has long focused on ensuring that our members and the broader community of backcountry ski, snowshoe, snowboard and Nordic ski enthusiasts can pursue the experience they seek on public lands. National Forest System lands are home to some of the nation's most iconic winter landscapes, from the accessible terrain and abundant snowfall of Teton Pass and the Wasatch Range, to the remote challenge of Alaska or the high Sierra, with many miles of cross-country ski and snowshoe trails in between. For too long, an anything-goes approach to winter travel management planning has dominated, and we are glad to see that winter travel planning will now be mandatory across Forest Service lands. We welcome the opportunity to provide comments on this critical tool. As such, the comments and recommendations that follow are offered in the spirit of strengthening the proposed Travel Management Rule: Use by Over Snow Vehicles. The Forest Service still has a chance to issue a final rule that lays the groundwork to pursue our shared goals of resource protection, sustainable recreation, and minimization of user conflict.

The Agency has clearly shown it has the technical expertise and practical capacity to effectively develop, implement, and monitor travel management plans governing the use of off-road vehicles. Since 2005, this has been borne out across the vast majority of the National Forest System for wheeled vehicles, and on a handful of Western forests for over-snow use. These plans, in general, have been effective in their goals of identifying a sustainable roads system, as well as minimizing impacts to forest resources, wildlife and their habitat, and conflict between uses. This is a result of several things: robust public participation, responsiveness and a sense of urgency on the part of the Forest Service, and solid

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planning framework as a starting point. We are confident the public has interest in being similarly engaged in plans governing over-snow use, but this will be a missed opportunity unless winter travel management becomes an Agency priority and the final rule is strengthened to provide a solid platform for developing plans.

## **I. Importance of Winter Travel Management Planning**

The “Background and Need for the Rule” section of the proposed rule provides an informative, if somewhat concerning, glimpse into how the Forest Service sees its longstanding responsibility to manage winter motorized use, the opportunities rulemaking presents, and the need to address real issues in the face of a rapidly changing winter landscape. As the draft notes, off-road vehicle use has grown significantly over the past several decades<sup>1</sup> and that use, along with associated impacts, was a primary driver for the Forest Service in developing the 2005 Travel Management Rule. Also in the draft are references to rapid growth in bird photography, hiking, hunting and fishing and a note that according to recent NVUM data, most NFS visitation occurs during non-snow seasons, and at developed ski areas in winter. These details seem misplaced, but even limiting our scope to the two sources cited in the preamble yields some interesting counter-points:

- According to the same 2008-2012 NVUM data, the percentage of people who participate in cross-country skiing (5.3%) is nearly double that of snowmobiling (2.7%)<sup>2</sup>
- Forest Service research predicts a similar trend into the future, with undeveloped skiing (which includes ski touring, snowshoeing and cross-country skiing) projected as one of the top five growth activities in both percentage and number of participants (55-106%) by 2060. Motorized snow activities are projected to see one of the five lowest rates of participation growth over the same period.<sup>3</sup>

There are numerous other sources that show human-powered winter recreation is a large, and growing sector.<sup>4</sup> The inclusion of other, seemingly unrelated data points and the exclusion of this sort of data is unfortunate, should be corrected, and hopefully is not indicative of how the Forest Service views winter travel management planning, and the importance of considering human-powered use in that process.

Also absent is any recognition of the importance of travel management planning as a tool for providing quality recreational settings for a wide range of users. This is especially true during the snow season where access, especially for non-motorized users in undeveloped settings, is more limited, concentrated, and recreational in nature. Given the importance of non-motorized settings to some forest visitors, and the rapid growth of this user segment, this omission is concerning. The designation of motorized trails and areas has practical implications for where and when non-motorized use will occur

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<sup>1</sup> Outdoor recreation trends and futures: a technical document supporting the Forest Service 2010 RPA Assessment. Ken Cordell. [http://www.srs.fs.usda.gov/pubs/gtr/gtr\\_srs150.pdf](http://www.srs.fs.usda.gov/pubs/gtr/gtr_srs150.pdf)

<sup>2</sup> USDA Forest Service. National Visitor Use Monitoring Survey. 2012.

[http://www.fs.fed.us/recreation/programs/nvum/2012%20National\\_Summary\\_Report\\_061413.pdf](http://www.fs.fed.us/recreation/programs/nvum/2012%20National_Summary_Report_061413.pdf).

<sup>3</sup> Cordell, 2010.

<sup>4</sup> Winter Wildlands Alliance. 2014. Trends and Economic Impacts of Human-Powered Winter Recreation.

<http://winterwildlands.org/wp-content/uploads/2014/05/Economic-Impact.pdf>

too – this is true regardless of whether the Forest Service recognizes this impact, or not. Rather than casting winter travel planning as an unwelcome obligation foisted onto the Forest Service, this is an opportunity to show all users that their use is valid, and their participation is both welcomed and valued. We have seen this work in the past under other Subpart C plans, and are confident this can be the case again under a final rule for over-snow use.

## **II. Need for a Planning Timeline**

The draft rule makes no mention of when winter travel planning should, or will, be completed. While requiring the designation of roads, trails, and areas for over-snow vehicle use is a good first step, the Forest Service should provide a timeframe for implementation of this new Rule. It should be a clearly stated internal priority, perhaps tied to performance measures, for National Forests to complete winter travel planning. Otherwise, there is very little incentive for this task to be completed. A Rule on its own is meaningless unless implemented, and this rule in particular has been a long time coming. The Forest Service has had great success in the past with travel planning – with most forests completing, or at least starting, wheeled vehicle travel planning within 5 years of the Agency issuing the 2005 TMR. We strongly suggest that the Forest Service follow its own example and issue directives and internal incentives to complete winter travel planning within 5 years of finalizing this new Rule.

## **III. Impacts of Over-Snow Vehicle Use**

In the background and need section of the proposed Rule the Forest Service rightly states that many types of recreational activities are increasing on National Forest lands. However, the Agency blatantly fails to mention non-motorized winter recreational activities such as backcountry and cross-country skiing, and snowshoeing in this discussion. Human-powered skiing and snowshoeing predate almost every other winter use on National Forest lands. Across the country there are longstanding traditions of experiencing the quiet and solitude of a winter's landscape on foot. In addition, human-powered winter snowsports are evolving. Participation in backcountry skiing and snowboarding – either on telemark skis, alpine-touring skis, or splitboards – has become mainstream in the snowsports world and is growing exponentially<sup>4</sup>. As these are the activities most likely to be impacted by over-snow vehicle use it is important that the Forest Service address them in the background and need section.

Human-powered snowsports are disproportionately, and negatively, impacted in encounters with over-snow vehicles. While a skier or snowshoer may be, if anything, an annoyance for a motorized user to encounter, the opposite rarely holds true. Tracks from just one snowmobile can render an entire slope or groomed Nordic trail unsuitable for skiing. Skiing, particularly Nordic skiing, is an aerobic sport and breathing in snowmobile exhaust while exercising is unpleasant, unhealthy, and painful. Noise from snowmobiles carries great distances and can intrude on solitude even miles away. We more thoroughly explore these impacts below.

## **A. User Conflict**

In addition to the environmental impacts described above, OSVs can impact both the safety and enjoyment of human-powered recreationalists. Paramount among safety concerns are speed and avalanche risk. Modern OSVs can reach speeds well over 60 miles per hour but, unlike wheeled vehicles, they are not confined to roads where their movement patterns are predictable and avoidable. Given that one does not need to have any sort of training in order to operate an OSV, it can be very unsafe for them to share trails with non-motorized users. Hence, skiers and snowshoers are justly concerned about having OSVs racing past or bearing down upon them.

Avalanches are another major safety concern when motorized and non-motorized recreationalists try to share an area. Many of our members have shared stories of having snowmobiles high-mark above them when they are skinning uphill or have stopped to assess avalanche danger. This is extremely unsettling and dangerous for skiers and snowboarders, not to mention inconsiderate even in the rare absence of avalanche danger. Untracked snow is among the most valuable resources for winter recreationalists – skiers and snowmobilers alike. By high-marking above, or otherwise traveling on the same slope as a skier, snowmobiles track up the snow before skiers have a chance to enjoy it – even when it is clear that skiers are on a slope and are intending to ski it.

High-marking above a skier who is working their way uphill is not the only way in which OSVs can eliminate recreational opportunities for non-motorized users – it is simply the most dangerous way. If operated on a groomed Nordic ski trail OSVs can completely destroy the ski track. Likewise, snowmobile tracks create deep ruts in the snow that are incompatible with downhill skiing. These ruts are a safety concern as well, because hitting a snowmobile track while skiing down at a high speed can cause a skier to lose control. Given that snowmobiles usually traverse across an entire slope it is impossible for a skier to avoid these ruts. In addition, a skier may be unaware of ruts and unprepared to avoid them. As skiers generally try to avoid skiing slopes that have been tracked by snowmobiles they may choose an untracked slope and begin skiing uphill, only to have snowmobiles come through and track up the slope before they have had a chance to ski down. If the mountain is big enough or there are thick trees it is likely that the skier will not see the snowmobiles below and be unaware of the tracks until they ski into them.

Noise is another major driver of non-motorized/motorized conflict in the backcountry. As mentioned above, snowmobile noise can travel extremely far, particularly in an otherwise quiet soundscape. Skiers and snowmobilers alike head into the backcountry for solitude and silence. However, while a snowmobiler has control over the noise they experience – they can turn off their sled when they want to sit and appreciate the silence of a frozen world – skiers and snowshoers are at the mercy of motorized users. Even when skiing in Wilderness areas far removed from OSVs the distant whine of engines is often a constant companion. This problem will only get worse as snow-bikes – motorized dirt bikes converted with track and ski for over-snow use, – which are much louder than snowmobiles, continue to grow in popularity. While no amount of zoning can completely protect natural soundscapes, by limiting OSVs to restricted areas and taking sound travel patterns into consideration when designating

motorized areas, travel planning offers non-motorized users opportunities to protect and experience a quiet winter world.

## **B. Ecological Impacts**

Impacts of OSV use include the degradation of both air and water quality, effecting humans and the environment. Two-stroke engines, which represent the vast majority of OSV use on NFS land, are particularly onerous. A two-stroke snowmobile can emit as many hydrocarbons and nitrogen oxides as 100 cars and create up to 1,000 times more carbon monoxide<sup>5</sup>. In addition, snowmobiles, like other combustion engines, emit significant amounts of carbon dioxide<sup>6</sup>, which is classified as an air pollutant under section 302(g) of the Clean Air Act and is well-documented to contribute to climate change.

Two-stroke engines emit many carcinogens and pose a danger to human health<sup>7,8</sup>. Two-stroke engines emit dangerous levels of airborne toxins including nitrogen oxides, carbon monoxide, ozone, aldehydes, butadiene, benzenes, and extremely persistent polycyclic aromatic hydrocarbons (PAH). Several of these compounds are listed as "known" or "probable" human carcinogens by the EPA. Benzene, for instance, is a "known" human carcinogen and several aldehydes including butadiene are classified as "probable human carcinogens." All are believed to cause deleterious health effects in humans and animals well short of fatal doses<sup>9</sup>. In addition, two-stroke engines also discharge 25-30 percent of their fuel mixture unburned directly into the environment<sup>10</sup>. Unburned fuel contains many toxic compounds including benzene, toluene, xylene and the extremely persistent suspected human carcinogen Methyl Tertiary Butyl Ether (MTBE). Winter recreationists are especially at risk because the concentration of these emissions increases with elevation and cold<sup>11</sup>.

In a study on the Medicine-Bow National Forest, Musselman and Korfmacher documented a decline in air quality with increased snowmobile activity<sup>12</sup>. They measured higher ambient concentrations of CO<sub>2</sub>, NO<sub>x</sub>, NO, and NO<sub>2</sub> at a snowmobile staging site and found significantly higher concentrations of these air pollutants on days with significantly more snowmobile activity. The researchers concluded that snowmobile exhaust was degrading air quality.

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<sup>5</sup> Environmental Protection Agency, 2002. Environmental Impacts of Newly Regulated Non-road Engines: Frequently Asked Questions. Office of Transportation and Air Quality.

<sup>6</sup> U.S. Department of the Interior/National Park Service, 2000. Final Winter Use Plan, Final Environmental Impact Statement. Yellowstone National Park.

<sup>7</sup> Eriksson, K., D. Tjärner, I. Marqvardsen, and B. Järholm. 2003. Exposure to benzene, toluene, xylenes and total hydrocarbons among snowmobile drivers in Sweden. *Chemosphere* 50:1343–7.

<sup>8</sup> Reimann, S., R. Kallenborn, and N. Schmidbauer. 2009. Severe aromatic hydrocarbon pollution in the Arctic town of Longyearbyen (Svalbard) caused by snowmobile emissions. *Environmental science & technology* 43:4791–5.

<sup>9</sup> Environmental Protection Agency, 1993. Motor Vehicle-Related Air Toxics Study.

<sup>10</sup> Bluewater Network., 2002. Snowmobile Position Paper. Available: [www.bluewaternetwork.org/reports/rep\\_pl\\_snow\\_snowposition.pdf](http://www.bluewaternetwork.org/reports/rep_pl_snow_snowposition.pdf).

<sup>11</sup> Janssen, S. and Schettler, T., 2003. Health Implications of Snowmobile Use in Yellowstone National Park.

<sup>12</sup> Musselman, R.C.; Korfmacher, J.L. 2007. Air quality and snow chemistry at a snowmobile staging area in a Rocky Mountain subalpine forest, Snowy Range, Wyoming. *Environmental Monitoring and Assessment* 133: 321-334.

Not only do snowmobiles increase air pollution – quite significantly in areas where many machines are concentrated – this pollution settles into the snowpack and affects snow chemistry. Musselman and Kormacher (2007) found many changes to snow chemistry on snowmobile trails when compared to untracked powder. These changes included elevated numbers of cations and some anions and a significant drop in pH. Other studies have shown that snowpack concentrations of ammonium and sulfate positively correlate with snowmobile activity<sup>13</sup>. Concentrations of toluene and xylene in the snow are also positively correlated with snowmobile traffic<sup>14</sup>. Likewise, snowpack concentrations of benzene are higher in areas with heavy snowmobile use<sup>14</sup>. When the snow melts, these pollutants, which are stored in the snowpack throughout the winter, are released in a concentrated pulse and can seep into groundwater or enter surface water. However, the effects of this pollution are not well documented.

Air and water pollution are not the only natural disturbances that inevitably result from OSV activity. Silence is a valuable and fragile resource that can easily be shattered by snowmobiles<sup>14</sup>. Natural soundscapes are intrinsic elements of the environment, are necessary for natural ecological functioning<sup>15</sup>, and an integral piece of the human-powered winter experience. Noise from snowmobiles severely affects the winter soundscape and impacts both wildlife and other visitors. Animals exposed to high-intensity sounds suffer both anatomical and physiological damage, including both auditory and non-auditory damage<sup>16</sup>. In addition, in a strictly controlled study in Norway researchers documented that noise was the single most significant variable to negatively affect a cross country skier's recreational experience<sup>15</sup>.

Sounds can occur in both a continuous and intermittent manner. At high intensities, sounds can have a deleterious impact on human hearing if sustained for certain lengths of time<sup>17</sup>. Intermittent sounds or startle noises have been shown to have many effects on humans including annoyance, disruption of activity, increase in heart rate, vasoconstriction, increase in blood pressure, stomach spasms, headaches, stress, fetal convulsions, ulcers, and coronary disease<sup>17,17</sup>. However, the larger, more sophisticated, better protected human ear is capable of withstanding high intensity sounds which easily damage smaller, more simplistic ears of many species of wildlife<sup>17</sup> and thus animals may be more affected by noise compared to humans. Thus, a vehicle noise limit acceptable in urban areas may be capable of severely damaging the hearing of exposed wildlife populations<sup>17</sup>.

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<sup>13</sup> Ingersoll, G. 1998. Effects of snowmobile use on snowpack chemistry in Yellowstone National Park.

<sup>14</sup> Vittersø, J., R. Chipeniuk, M. Skår, and O. I. Vistad. 2004. Recreational Conflict Is Affective: The Case of Cross-Country Skiers and Snowmobiles. *Leisure Sciences* 26:227–243.

<sup>15</sup> Burson, S., 2008. Natural Soundscape Monitoring in Yellowstone National Park December 2007-March 2008. Yellowstone Center for Resources. USGS.

<sup>16</sup> Brattstrom, B.H., and Bondello, M.C., 1983. Effects of off-road vehicle noise on desert Vertebrates *in* R.H. Webb and H.G. Wilshire, editors. *Environmental effects of off- road vehicles: Impacts and management in arid regions*. Springer-Verlag. New, York, New York, USA.

<sup>17</sup> Baldwin, M.F., 1970. *The off-road vehicle and environmental quality: A report on the social and environmental effects of off-road vehicles, particularly snowmobiles, with suggested policies for their control*. Conservation Foundation. Washington, D.C., USA.

Indirectly, the noise generated by OSVs can adversely impact animals impairing feeding, breeding, courting, social behaviors, territory establishment and maintenance, increasing stress, and/or by making animals or their young more susceptible to predation<sup>18,19, 20, 21, 22, 23</sup>. According to the Environmental Protection Agency, noise acts as a physiological stressor producing changes similar to those brought about by exposure to extreme heat, cold, pain, etc.<sup>21</sup>.

A noise study from Yellowstone involving four-stroke machines, which are much quieter than two-stroke snowmobiles, found that under a “best case scenario” (upwind, no temperature inversion, soft snow) snowmobiles were audible at distances of up to a half mile<sup>24</sup>. When there was a temperature inversion or firm snow, or for those downwind of a snowmobile, the machines could be heard more than two miles away<sup>25</sup>. At Yellowstone’s Shoshone Geyser Basin, four-stroke snowmobiles were audible from 8 miles away<sup>16</sup>.

Over-snow vehicles can cause mortality, habitat loss, and harassment of wildlife<sup>25,26</sup>. While most animals are well adapted to survival in winter conditions, the season creates added stress to wildlife due to harsher climate and limited foraging opportunities<sup>27</sup>. Deep snow can increase the metabolic cost of winter movements in ungulates up to five times normal levels<sup>28</sup> at a time when ungulates are particularly stressed by forage scarcity and high metabolic demands. Disturbance and stress to wildlife from snowmobile activities during this highly vulnerable time is dire. Studies of observable wildlife

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<sup>18</sup> Luckenbach, R.A., and Bury, R.B., 1983. Effects of off-road vehicles on the biota of Algodones Dunes, Imperial County, California. *J. Appl. Ecology* 20:265-286.

<sup>19</sup> Wilshire, H.G., Bodman, G.B., Broberg, D., Kockelman, W.J., Major, J., Malde, H.E., Snyder, C.T., and Stebbins, R.C., 1977. Impacts and management of off-road vehicles. The Geological Society of America. Report of the Committee on Environment and Public Policy.

<sup>20</sup> Environmental Protection Agency, 1971. Effects of Noise on Wildlife and Other Animals. Prepared by Memphis State University

<sup>21</sup> Bury, R.L., 1978. Impacts of Snowmobiles on Wildlife. Transcript. 43rd North American Wildlife and Natural Resource Conference. WMI.

<sup>22</sup> Vos, D.K., Ryder, R.A., and Graul, W.D., 1985. Response of breeding great blue herons (*Ardea herodias*) to human disturbance in north central Colorado. *Colonial Waterbirds* 8(1):13-22.

<sup>23</sup> Baldwin, M.F., 1970. The off-road vehicle and environmental quality: A report on the social and environmental effects of off-road vehicles, particularly snowmobiles, with suggested policies for their control. Conservation Foundation. Washington, D.C., USA.

<sup>24</sup> U.S. Department of the Interior/National Park Service, 2000. Final Winter Use Plan, Final Environmental Impact Statement. Yellowstone National Park.

<sup>25</sup> Boyle, S. A. and Samson F.B., 1985. Effects of Non-consumptive Recreation on Wildlife: A Review. *Wildlife Society Bulletin* 13: 110-116.

<sup>26</sup> Oliff, T.K., Legg, K., and Kaeding, B., 1999. “Effects of winter recreation on wildlife of the Greater Yellowstone Area: a literature review and assessment.” Report to the Greater Yellowstone Coordinating Committee. Yellowstone National Park.

<sup>27</sup> Reinhart, D., 1999. Effects of Winter Recreation on Habituated Wildlife. National Park Service: Effects of Winter Recreation on Wildlife: 151-153.

<sup>28</sup> Parker, K.L., Robbins, C.T. and Hanley, T.A., 1984. Energy expenditures for locomotion by mule deer and elk. *Journal of Wildlife Management*. 48(2):474-488.

responses to snowmobiles have documented elevated heart rates, elevated glucocorticoid stress levels, increased flight distance, habitat fragmentation as well as community and population disturbance<sup>29</sup>.

In many instances, snowmobiles induce animal flight, causing increased energy expenditures. In Yellowstone National Park, for example, evasive maneuvers in response to snowmobiles have been documented in a number of species, including elk and mule deer. These maneuvers result in increased energy expenditures for the affected wildlife. For example, Aune (1981) reported flight distances of 33.8 meters for elk and 28.6 meters for mule deer in response to snowmobiles in Yellowstone<sup>30</sup>. The energy cost estimates calculated for these impacts were 4.9 to 36.0 kcal in elk and 2.0 to 14.7 kcal in mule deer per disturbance<sup>29</sup>. These energy expenditures are roughly equivalent to the necessary additional consumption of 4.3 - 31.7 grams of dry forage matter by elk and 1.8 - 12.9 grams by mule deer each time a disturbance occurs. Severinghaus and Tullar (1978) theorize that for white-tailed deer, during a 20-week winter with snowmobile harassment each weekend, "food enough for 40 days of normal living would be wasted just escaping from snowmobiles"<sup>31</sup>.

Additional information about the effects of OSVs on wildlife can be found in the Winter Wildlands Alliance report "Environmental Impacts From Snowmobile Use"<sup>32</sup>.

Given these impacts it is clear that the new OSV Rule must require a thorough and comprehensive analysis of snowmobiles and other over-snow vehicles as part of travel planning. While it is true that OSVs have different impacts than ORVs, this does not mean they have no impacts. Even when operating over several feet of snow, OSVs still significantly impact the environment and others who may be trying to enjoy it. By zoning the backcountry so that both OSVs and non-motorized users have places to recreate and by taking a comprehensive view of landscape to determine where OSVs are and are not appropriate, travel planning is an opportunity to reduce user conflict and protect sensitive winter ecosystems.

#### **IV. The Draft Rule's Area Definition is Problematic and Should Not Change from the 2005 Definition**

We are concerned that the proposal would permit snowmobile travel over extremely large areas that would functionally be too vast to effectively manage or minimize impacts across. Section 212.1 proposes to change the definition of an "area" to a space ". . . that is smaller, and, except for over-snow vehicle use, in most cases much smaller, than a Ranger District." This proposed definition appears to violate Executive Orders 11644 and 11989 (and therefore the court order), necessitates an Environmental Impact Statement to analyze the impacts of this change under NEPA, and will result in problems and

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<sup>29</sup> Baker, E. and Bithmann, E., 2005. Snowmobiling in the Adirondack Park: Environmental and Social Impacts. St. Lawrence University, Department of Biology.

<sup>30</sup> Aune, K.E., 1981. Impacts of Winter Recreationists on Wildlife in a Portion of Yellowstone National Park, Wyoming. Master's thesis. Montana State University.

<sup>31</sup> Severinghaus, C.W. and Tullar, B.F., 1978. Wintering Deer versus Snowmobiles. New York State Department of Environmental Conservation.

<sup>32</sup> <http://winterwildlands.org/wp-content/uploads/2014/05/Environmental-Impacts-from-Snowmobile-Use.pdf>

potential conflict during implementation. Barring further guidance from the Forest Service in a final rule, this definition change is seriously concerning and would result in ineffective land management, particularly when combined with other problematic elements of the proposed rule like the “open unless closed” approach. We strongly encourage the Forest Service to retain the original definition of an area found at §212.1, permitting designations for over-snow use to be smaller and in most cases much smaller, than a Ranger District – doing so would allow a level of granularity during analysis that is required.

**A. The Draft Rule’s definition for Area designations as applied to OSVs violates Executive Orders 11644 and 11989**

Executive Orders 11644 and 11989 require that the designation of areas and trails shall be located to minimize:

- (1) “damage to soil, watershed, vegetation, or other resources of the public lands.
- (2) “harassment of wildlife or significant disruption of wildlife habitats.
- (3) “conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.”

A literal read of the draft rule’s definition would allow units to designate areas for snowmobiles that are smaller, but typically not much smaller, than a Ranger District. Ranger Districts vary in size greatly, especially in the West, where they can be 300,000 acres or larger. Open area designations could be hundreds of thousands of acres under the proposed rule, or larger if they are contiguous across districts within a unit, or on adjacent units. With snowmobiles becoming increasingly powerful, once hard to reach backcountry areas are becoming easier to access. The Agency’s proposed definition is so lenient that many units could take a status quo approach for OSV management, designating most of a forest as open, with little change on the ground. Impacts and conflicts associated with the current management paradigm are documented in the preamble for the proposed rule<sup>33</sup> and in this letter. Designating enormous open areas will allow these impacts to continue unabated, without taking the required steps to minimize impacts during a designation process. This sort of hands off approach will certainly not minimize and could even exacerbate these impacts. In addition, the proposal to not analyze trails within these vast areas would almost certainly fly in the face of the Executive Orders.

In addition, the Forest Service did not adequately explain why a change to the Area definition is needed. It is arbitrary and capricious for the Forest Service to change how an “area” is defined without an adequate explanation as to why the definition from the 2005 TMR, is insufficient. The 2005 definition gave discretion to designate large areas in some instances, while still having these areas be “much smaller than” a Ranger District. As demonstrated by those forests that chose to include OSV travel management when they wrote travel plans under the 2005 TMR (such as the White River, Clearwater, and Gallatin National Forests), the existing definition provides plenty of discretion for local decision

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<sup>33</sup> Use by Over-Snow Vehicles (Travel Management Rule), 79 Fed. Reg. 34678 (proposed June 18, 2014) (to be codified at 36 C.F.R. pts. 212 and 261).

makers and allows for OSV use across a broader landscape. There is no need to differentiate OSVs. By differentiating OSVs and defining “area” differently in the winter the Forest Service is subtly implying that forests should use large areas for OSV designations. This actually removes discretion from local managers and pushes them to use the “allowed unless prohibited” policy outlined in Section C. The final rule should leave designation decisions in the hands of local forest officials, without pressuring them to allocate vast swaths of forest as open to OSV use. The rule should be a neutral tool and therefore should not make special provisions for OSVs.

In practice, it would be much more effective to limit area size if only for the impact that it has on planning. For example, analyzing where on a landscape motorized use is truly appropriate rather than making a sweeping decision that covers an entire mountain range is a more specific decision-making process that is easier to grasp and results in decisions that are easier to enforce. We agree that open area designations make sense for snowmobiles in many situations but the proposed change in the definition is unneeded, and will make compliance with the EO minimization criteria hard to demonstrate.

**B. The Draft Rule’s area definition will be difficult, if not impossible, to effectively implement**

Decisions to authorize cross-country travel in any area must be predicated on site-specific analysis and public participation under NEPA. The analysis required to comply with NEPA when designating large open areas would be extremely onerous. Units will need to do a site-specific analysis for all resources within an area designation. This would require the standard “hard look” under NEPA analyzing direct, indirect, and cumulative impacts. For instance, the agency will need to analyze the site specific impacts, including the impacts from noise pollution, to threatened, endangered or sensitive wildlife species, Management Indicator Species, important game species, non-motorized recreational users, places that are protected or proposed for protection such as Recommended Wilderness Areas, and roadless character from allowing this cross-country travel provision. The agency will need to analyze impacts on water and air quality as well. This is just a short list of the site specific environmental impacts that must be analyzed. A generic environmental review will not be adequate. The requisite environmental analysis of the impacts from designating hundreds of thousands of acres for OSV use is far beyond the capability of any individual forest unit.

**C. Executive Order compliance with the proposed rule will be difficult or impossible to attain for units**

Large open area designations as big as ranger districts do not comply with the language or intent of Executive Order 11644. This EO is clear based on its language and purpose that "open" designations must be site-specific and cannot be large blanket designations that cover huge areas. The purpose of this EO is to ensure that the use of off-road vehicles will be controlled and directed to protect resources, promote safety, and minimize conflicts. It is impossible to control and direct the use of OSVs if open areas are hundreds of thousands of acres in size. Second, the EO states that the Forest Service must identify "zones of use" by designating "specific areas and trails" where use may be permitted, and

"areas" where use may not be permitted. Designation of "such areas and trails" must protect resources, promote safety, and minimize conflicts. Thus, it is clear that the Forest Service must designate "specific" areas as open or designate "areas" as closed. By using the word "specific" to characterize open areas but not closed areas, the language of the EO demonstrates that the intent is to make smaller, site-specific, designations of open areas and larger closure designations that are not as site-specific. Furthermore, the Forest Service must apply the minimization criteria such that "areas and trails shall be located" to minimize damage to resources, harassment of wildlife, and conflicts with other users. Again, this indicates that "areas" are site-specific designations that are specifically "located" to avoid harm. Blanket open areas that cover most of a ranger district are not consistent with EO language stating that open designations are "specific" areas that are "located" by the agency in certain places.

#### 1. Executive Order's requirement to minimize impacts

All National Forest land that would be impacted by an open area designation must be evaluated using the minimization criteria from the Executive Orders. Two recent U.S. District Court decisions regarding the minimization criteria for travel management planning provide clarification about what is required when evaluating the criteria: *Idaho Conservation League (ICL) v. Guzman*, 2011 WL 447456 (D. Idaho Feb. 4, 2011), and *Center for Sierra Nevada Conservation et al., v. United States Forest Service* (Eldorado National Forest), case # S-09-2523 (E.D. CA. May 26, 2011). In *ICL v. Guzman*, the court held that the Forest Service must not only *consider* the minimizing criteria found in Executive Order 11644, as amended, but must also demonstrate how the agency *applied* those minimization criteria. The *Eldorado* decision affirmed this requirement.

If a winter travel management plan's NEPA documentation does not adequately reflect how the Forest Service *applied* the minimization criteria in the Travel Management Plan designations, the agency's decision is in violation of the Travel Management Rule. It is not enough to simply consider the minimization criteria with respect to area designations; the agency must also demonstrate how the minimization criteria were then implemented or applied in the designation decision process, consistent with the objective of minimizing impacts.

These cases are consistent with the 2009 decision from the Northern District of California in which the court held that the Bureau of Land Management must comply with the same Executive Orders by placing "routes specifically to minimize 'damage' to public resources, 'harassment' and 'disruption' of wildlife and its habitat and minimize 'conflicts' of uses." *Ctr. for Biological Diversity v. U.S. Dept. of Interior*, ---F.Supp.2d---, 2009 WL 7036134 (Sept. 28, 2009) ("CBD").

If the proposed definition is codified, many units will propose area designations nearly the size of entire ranger districts. At this scale, it will be difficult, if not impossible, for the agency to demonstrate and document how it applied the criteria in its area designations, consistent with the objective of minimizing impacts. It will be easier for the agency to comply with the minimization criteria if area designations are smaller in size. To this end, the current area definition should not be changed.

#### 2. Executive Orders' requirement to ensure Areas open to OSV use are well marked

The Executive Orders state that federal agencies: *shall ensure that areas and trails where off-road vehicle use is permitted are well marked...*

Exec. Order No. 11,644, Section 5, 37 Fed. Reg. 2877 (Feb. 8, 1972) as amended by Exec. Order No. 11989, 42 Fed. Reg. 26959 (May 24, 1977). Even with the publication of winter MVUMs, it is imperative that the Forest Service post signs and demarcate where OSVs are allowed. On the ground signage remains an important education tool to ensure compliance with winter plans. The proposed rule allows units to designate extremely large areas in their winter planning process. If the Forest Service retains this language in the final rule, the agency should anticipate excessively large area designations that are hundreds of thousands of acres. The Forest Service must comply with this provision in the Executive Orders, which could be extremely difficult – if not impossible – if landscape level area designation do not have clear physical boundaries. Units may find themselves in violation of the Executive Orders requirement to ensure open areas are well marked if they follow the draft rule’s approach for area designations.

#### **D. The Draft Rule’s definition for Area could result in conflict at the unit level**

Across the West unregulated motorized winter use has degraded the quality and safety of many places for non-motorized recreation. Historically, steeper roadless slopes, ridges, cirques, couloirs and bowls were places where non-motorized users could naturally separate and recreate without the need of designated non-motorized areas. However, modern snowmobiles can negotiate terrain previously inaccessible to them. These advances in snowmobile technology have eroded the natural separation that previously limited conflict between motorized and non-motorized recreationists. The proposed area definition does not offer an adequate solution to this conflict and, in fact, will only exacerbate the problem.

There are several examples of where the Forest Service has successfully reduced conflict between motorized and non-motorized winter recreation through designating zones for each use. For example, the Chugach National Forest split Turnagain Pass into motorized and non-motorized zones in the 1970’s and management scheme has effectively eliminated conflict between OSVs and human-powered recreation since its implementation. Likewise, the White River National Forest zoned the Vail Pass backcountry such that there are motorized areas and trails as well as non-motorized areas and trails, separating motorized and non-motorized users and drastically reducing conflict. These, and other, examples clearly demonstrate the value of separating motorized and non-motorized winter recreation. Because technological limitations no longer provide a de-facto separation of uses it is imperative that the Forest Service create this separation through smaller-scale designations.

The agency’s proposed area definition will allow units to designate open areas that are hundreds of thousands of acres, nearly the size of an entire ranger district. As explained above, if a unit does fully utilize this lenient area designation, impacts and conflicts could continue unabated. Should this happen, the only recourse for non-motorized recreationists, citizens and organizations concerned about user-conflict and the conservation of forest resources may be to object and possibly litigate irresponsible

decisions. We, therefore, urge the Forest Service to retain the original definition of an area as written in the 2005 Travel Management Rule. Doing so will establish a responsible framework for units to follow, foster smarter planning, and will help ensure that winter planning is not unnecessarily mired in conflict.

#### **E. Large area designations are not enforceable and will lead to ineffective land management**

The proposed area designation will make entire landscapes available to OSVs. This means law enforcement officers (LEOs) will be responsible for patrolling more land to ensure public safety and compliance. Much of the land swept up in large area designations will be in the backcountry, in hard to reach places that are time consuming for LEOs access. Significant budget cuts have resulted in fewer LEOs available for patrols, which only exacerbates the burden on the agency's law enforcement program. It is therefore reasonable to assume that, if nearly an entire ranger district is designated as open to OSV use, monitoring and enforcement will likely not occur for most places. In fact, it is worth noting that this is already the case and the Forest Service currently recognizes this is an issue. The proposed definition will allow this problem to continue unabated and will create a management situation the agency is simply unprepared to handle.

It is reasonable to expect many units to take the easiest approach when undergoing winter planning. The proposed area definition will enable units to simply blanket an entire district as open to OSVs without taking into account on-the-ground knowledge and observation. For example, we are concerned that units will attempt to overlay area designations across entire districts ignoring physical conditions, rider preferences (e.g., areas that are most/least popular, access to developed facilities; problem areas, and so forth), presence of private land owners, destinations popular with human-powered recreationists, occurrence of winter wildlife and water. Conditions vary widely across the landscape, and management prescriptions should vary with site-specific conditions to account for site-specific impacts - the proposed area definition is simply too blunt an instrument to adequately address this need.

It is important that the Forest Service create enforceable and responsible winter plans. These plans should:

- Designate routes and open areas based on on-the-ground knowledge and observation.
- Designate and manage separate, contained, areas for motorized and non-motorized recreation. These areas should be defined by landscape-level landmarks such as ridgelines, roads, or rivers. For example, on the Sawtooth National Forest, winter recreation areas in the Wood River Valley are delineated by ridgelines. Some are designated for motorized or non-motorized use only, and some are left open for shared use. Using natural features as boundaries is critical in winter, when other landmarks may be covered with snow.
- Create routes leading to and within designated areas. This makes enforcement easier, contains noise, and discourages illegal incursions into areas off-limits to motorized use.
- Create buffers around residential areas, ecologically sensitive zones and designated non-motorized areas such as cross-country ski trails
- Limit motorized staging areas to a few points that law enforcement officers can quickly access and reliably find violators as they return to their passenger vehicles.

**Recommendation:** The proposed definition for an area designation is not compliant with the Executive Orders' minimization criteria and requires the Forest Service to develop an Environmental Impact Statement because it could cause significant impacts. The Forest Service should narrow the area definition to ensure that impacts are minimized per the Executive Orders. To this end, we urge the Forest Service to refrain from changing the existing definition for area. Finally, the Forest Service should also make clear that an area available for cross-country travel does not need to be established on each National Forest.

**F. Minimization criteria must be applied to trails within designated open areas**

While on the surface it may appear logical to not require analysis of trails within a larger area where cross-country travel is permitted, a more thoughtful consideration of this issue reveals many reasons why this proposal is untenable. By not analyzing trails within areas, the proposed rule attempts to avoid a clear requirement to show that those routes will not have a negative impact on the environment or other users. Thus, there is no way to ensure that the minimization criteria outlined in Executive Order 11644 are applied to trails designated within motorized areas. Under §212.55 (a) the Forest Service is obligated to consider the effects of roads, trails, and motorized areas on cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest lands, and the need for and availability of resources for maintenance and administration of motorized routes and areas. In addition, §212.55 (b) specifies that the Forest Service must consider, with the objective of minimizing, effects from motorized routes and areas on forest resources, wildlife and their habitats, conflicts with other uses or different types of motor vehicles, and compatibility of motor vehicle use with existing conditions in populated areas. All of these criteria which apply to wheeled motorized vehicles and must be considered upon designated routes and areas for motorized use apply to OSVs and must be considered and minimized when designating routes and areas for OSV use.

Prior to designating trails as open to OSV use, regardless of whether cross-country use already exists, it is critical that the Forest Service analyze how such a trail system will impact other uses in the area (concentrated or increased motorized use may crowd out human-powered users), natural resources (trails bring increased air/water/noise pollution due to increased use, produce negative effects on wildlife, etc.), and user safety (snowmobiles move markedly faster on groomed trails than through powder). The wording in the draft rule does not indicate whether impacts of trails would need to be analyzed at all. Nor is it clear whether trail grooming plans would fall under travel management planning or some other process. Forgoing analysis of trail impacts is counter to applying the minimization criteria established in Executive Order 11644 and we request that the Forest Service clarify their language and intent in this regard.

Official trail systems attract and concentrate use above and beyond that found in dispersed-use areas and grooming programs come with their own set of impacts. While Winter Wildlands Alliance is not opposed to OSV trails – groomed or otherwise - it is important that the Forest Service analyze the impacts of increased use and consider what effect a motorized trail system may have on non-motorized users and the environment prior to authorizing new trails. Through thoughtful analysis and with public input the Forest Service can plan out appropriate routes for OSV trails and minimize conflicts with other uses, natural resources, and wildlife.

Many OSV trails follow existing Forest Service roads. These snow-covered roads are an important recreation amenity for non-motorized users as well as motorized users. Single-track trails are often difficult to follow in the winter and many skiers and snowshoers, particularly families or less-experienced users, utilize snow-covered roads for winter outings. The safety and enjoyment of visiting National Forests lands for these individuals is considerably diminished in the presence of OSVs because of the speed at which many OSVs travel and the air and noise pollution that they cause. Therefore, most skiers and snowshoers avoid using roads that are also used by OSVs. Proper analysis is required to ensure that there is equal opportunity for everybody to utilize these routes and to determine which roads are best suited for OSVs and which provide valuable non-motorized opportunities. While it is appropriate to designate many Forest Service roads as OSV routes, some provide valuable non-motorized opportunities in the winter and non-motorized designations for these routes may be appropriate.

In addition to considering the impacts of designating existing roads for OSV use, it is imperative that the Forest Service always undertake careful analysis prior to designating trails – new or otherwise - as open to OSV use. New, unanalyzed, trail systems have led to increased user conflict in the past<sup>34</sup>. Again, we emphasize that while providing OSV trail systems is in itself not problematic, the Forest Service must analyze how these trails affect existing uses in an area. Much of the conflict between skiers and OSVs is the result of increased OSV traffic displacing skiers from areas they have historically used. Because trails attract users, designating new OSV trails in areas with established ski use will almost certainly displace skiers. However, by undertaking a thorough analysis before designating new trails the Forest Service can avoid or reduce conflict by locating trails away from important backcountry ski areas or create new opportunities by also designating non-motorized trails and areas.

It is important to analyze trail systems to assess their ecological impact as well. Scientific evidence suggests that popular winter trails can fragment habitat and wildlife populations. Winter trails through surrounding wilderness areas or other core areas create more “edge effect” and thereby marginalize the vitality of some species<sup>35</sup>. OSV trails can also facilitate competition between wildlife species by allowing species that are less well-adapted for over-snow travel to move into habitat that would be inaccessible to them in the absence of a compacted trail. For example, OSV trails may enable coyotes to utilize lynx habitat that is not normally accessible to them<sup>36, 37, 38</sup>. Coyotes aggressively compete with, or prey upon, a number of different vertebrate species, including Canada lynx, that are adapted and limited to deep snow<sup>39</sup>. Given the potential for OSV trails to impact wildlife habitat use, it is imperative that such trails be properly analyzed prior to being incorporated into an official winter travel plan.

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34 <http://winterwildlands.org/wp-content/uploads/2014/06/Winter-Recreation-Planning1.pdf>

35 Baker, E. and Bithmann, E., 2005. Snowmobiling in the Adirondack Park: Environmental and Social Impacts. St. Lawrence University, Department of Biology.

36 Koehler, G.M., and Aubry, K.B., 1994. Lynx. pp. 74-98 in L.F. Ruggiero, K.B. Aubrey, S.W. Buskirk, L.J. Lyon, and W.J. Zielinski, eds. *The Scientific Basis for Conserving Forest Carnivores: American Marten, Fisher, Lynx and Wolverine in the Western United States*.

37 Buskirk, S.W., Romme, W.H., Smith, F.W., and Knight, R.L., 2000. An overview of forest fragmentation in the southern Rocky Mountains. pp. 3-14 in *Forest fragmentation in the southern Rocky Mountains*, Boulder: University Press of Colorado.

38 Brunnel, K.D., Fliners, J.T., and Wolfe M.L., 2006. Potential Impacts of Coyotes and Snowmobiles on Lynx Conservation in the Intermountain West. *Wildlife Society Bulletin*, 34(3): 828-838.

We are especially concerned about the proposed lack of analysis for trails within OSV areas given that the proposed rule expands the definition of an “area”. The expanded definition could conceivably mean a forest could declare almost an entire ranger district to be an “area” and an analysis of OSV impacts at such a large scale would be insufficient. We strongly disagree with this expanded definition and have previously gone into more detail on this point but we want to emphasize that the existing definition of “area” in the 2005 TMR is sufficient to allow for cross-country OSV use. This definition states that an area is “smaller, and in most cases much smaller, than a Ranger District.” As most ranger districts are tens and often hundreds of thousands of acres in size, even an area “much smaller than a Ranger District” would allow ample room for cross-country travel. OSV use areas will almost certainly be significantly larger than ORV use areas and as such it is essential to analyze impacts from OSV trails within these areas. While we recognize that analysis of ORV trails within designated areas is not required, that use presents a fundamentally different set of impacts because the scale of open-areas for ORV use is so much smaller than that proposed for OSVs. As there will certainly be more trails within these larger OSV areas it is imperative that the Forest Service analyze these trails. To do otherwise would not meet the requirements of §212.55 and would violate Executive Order 11644. This EO requires designation of “specific areas and trails” that are permitted for use, not just designation of “areas” that are not permitted for use. Designation of areas AND trails must occur for use of OSVs and impacts resulting from these designations must be analyzed and addressed.

**Recommendation:** We recommend that Forest Service change the language in the final rule to require that all OSV trails undergo thorough analysis through travel planning. We suggest removing the reference to §212.55 that indicates trails within areas open to cross-country OSV use do not need detailed analysis. Instead, clarify that designated and mapped OSV trails, no matter the overall management status of the surrounding area, have increased impacts on other users, wildlife, and forest resources that should be analyzed independently from the impacts of broader cross-country travel.

#### V. Consistency vs. Confusion, Closed vs. Open Policies

The Forest Service has not provided adequate rationale to support its decision to allow snowmobile areas to be managed as either “allowed unless prohibited” or “prohibited unless allowed.” This dual designation scheme, combined with the fact that snowmobile management decisions can be made at the district or smaller level, will create confusion between neighboring districts and neighboring forests. The possibility of one district/forest designating their management area under one regimen, and another choosing the opposite, is very possible.

The attempt to justify this decision by asserting that the impact of over-snow vehicles on snow is different than the impact of wheeled vehicles on soil fails. We have already described OSV impacts in great detail in section III of these comments. While it is true that some impacts are different between ORVs and OSVs, OSVs still create impacts and conflicts that would be better addressed with a prohibited unless allowed management scheme. In addition, in this proposed rule the Forest Service ignores one of the main points noted in the 2005 proposed and final TMR: the need for a consistent policy that applies across forests. The Forest Service made that point clear in its prior rule and the same rationale applies

for OSV management. The Forest Service clearly explained why a consistent policy was necessary to ORVs but has not explained why this is not the case for OSVs.

This clear failure to adequately explain the proposal to not adopt the consistent and commonsense management scheme maintained for summer motorized vehicles where areas are closed, unless designated as open, becomes even more obvious when looking at the failure of past motor vehicle enforcement efforts. The Forest Service is not provided with sufficient funding to install adequate signs or replace those that are stolen or vandalized. The “allowed unless prohibited” policy creates an incentive for irresponsible motorized users to remove closure and boundary signs. When the management scheme places the burden on the land manager to maintain signs and barriers that indicate where closure boundaries exist, enforcement fails and the natural resources, wildlife, and other forest users face the consequences.

This problem is exacerbated when the management system is not consistent, and so motorized users will not know whether an area is “allowed unless prohibited” or “prohibited unless allowed” without those signs as indicators. A clear message needs to be given to motorized users that their activity is allowed only in those places where the Forest Service has specifically verified that wildlife, such as lynx and wolverine, and other forest resources such as water, air, and forest soundscapes, will not suffer.

Instead, the Forest Service should adopt a regulation with a consistent management scheme that is more easily administered and understood by the general public. Furthermore the final regulation should provide for a clear enforcement mechanism when violations of closed areas occur. For summer use, the burden is on motorized users to know which areas and trails are legal for motorized travel, and by what type of vehicle. If they are on trails or in areas that are not displayed on a motor vehicle use map, they can be ticketed. The final rule should make it clear that the same enforcement mechanism will be used for over-snow vehicle use. This would be more easily implemented with a “prohibited unless allowed” classification.

Executive Order 11644 required land management agencies to “establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” Creating a confusing and inconsistent management structure fails to adequately “control and direct” over-snow vehicle use.

Furthermore, a designation practice of open unless closed presumes that OSVs are appropriate everywhere with sufficient snow, but that the Forest Service has the option to close areas where impacts are severe. Closed unless open is more consistent with the intent of the Executive Orders by requiring that, before motorized use is allowed, the Forest Service must show that impacts to resources have been minimized.

**Recommendation:** We recommend that the Forest Service adopt a regulation that requires over-snow vehicles be managed in a consistent manner under a prohibited unless allowed management structure. There is no rational reason to allow forests and ranger districts to adopt potentially inconsistent

management regimens, which would only confuse forest visitors and make enforcement of closures more difficult, if not impossible.

## VI. Incorporation of Prior Decisions

We understand some of the reasons why the draft rule proposes to allow incorporating or recognizing past decisions governing the management of over-snow vehicles. Stakeholders have already spent time providing input, Forest Service staff have analyzed impacts, and money has been spent on the development, enforcement and monitoring of these plans. People may have become accustomed to on-the-ground designations, and in many cases, they are working. Where comprehensive plans exist that included robust public participation, demonstrably meet the minimization criteria, and are still timely, those decisions should indeed be allowed to stand. In general, these are plans that have come under Subpart C of the 2005 Travel Management Rule.

But, as drafted, the rule does not adequately address several important considerations in carrying forward past decisions. In particular, we are concerned about the piecemeal approach to planning that incorporating decisions covering only parts of a district or unit would force, the absence of any time restriction on prior decisions, and the lack of a clear requirement for the Forest Service to show how past decisions considered the minimization criteria. These issues bring up both pragmatic and legal considerations that we consider below, and which we feel must be remedied in the final rule and the directives that follow.

### A. **Partial Past Decisions**

The draft language regarding public involvement and the incorporation of prior decisions governing over-snow vehicle use over part of an administrative unit is confusing – allowing for multiple interpretations – and should be clarified in the final rule. It reads:

“§ 212.81(b) of the proposed rule would provide that public notice with no further public involvement is sufficient if an administrative unit or Ranger District has made previous administrative decisions, under other authorities and including public involvement, that allow, restrict, or prohibit OSV use on NFS roads, on NFS trails, and in areas on NFS lands over the entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur and no change is proposed to these previous decisions.”

Where only a portion of an administrative unit or Ranger District receives adequate snowfall for over-snow vehicle use, it makes sense to create a plan governing use over only that portion of the landscape. If an existing plan governs use over that entire snow-covered portion of a Ranger District or administrative unit – and it met public involvement requirements and minimization criteria – that plan should not need to be revisited. But, prior decisions governing use on only a portion of a landscape that receives adequate snowfall for OSV use should not be allowed to carry forward.

Prior partial decisions form a starting point, but should be considered in an analysis that takes a landscape scale approach, rather than a piecemeal one that would result if prior decisions covering portions of a ranger district were allowed without further analysis. Existing Forest Plan standards and guidelines, Forest orders, or other decisions under 36 CFR § 295 are a good foundation for comprehensive planning, but they are not comprehensive travel plans. We are particularly concerned that pairing an “open unless closed” approach to travel planning with prior partial decisions would result in very little actual planning. For example, a small-scale winter plan that covers only a small portion of a district that was undertaken to deal with a “hot spot” of conflict between user groups could be upscaled to serve as the winter plan for the whole district. We are also concerned about the pairing of the proposed definition for open “area” designations that would enable units to designate areas that are nearly the size of an entire ranger district with prior decisions being carried forward. For example, Recreation Opportunity Spectrum (ROS) designations made in a forest plan revision process could be repurposed to fulfill the agency’s Subpart C obligations. The draft rule’s “open unless closed” proposed management paradigm when combined with the provision that allows units to carry forward past decisions creates an enormous loophole wherein units could completely bypass true winter planning.

To understand the potential impacts of closing or opening a certain area, it is necessary to consider management of adjacent lands as well. This idea is nothing new to the Agency, as evidenced by cumulative effects analyses and the emphasis on an all-lands approach in the new forest planning rule. We simply ask that the Rule is consistent with what the Forest Service does, and does well, for other resources and in other seasons.

If, instead, the draft intended for only comprehensive plans to be carried forward (and partial plans where only that part of a district or unit receives adequate snow) this section is less concerning. Either way, the language should be modified in the final rule and we strongly encourage the Forest Service to only carry forward those decisions that are comprehensive (for the given landscape), demonstrate how they meet the minimization criteria, involved the public, and are sufficient to address current conditions.

## **B. Decision Half Life**

Conditions across the National Forest System – in both the landscape of winter recreation, and the landscape itself – have undeniably changed over the past several decades. More people are recreating in the winter, and in different ways. Technological advances in snowmobiles and ski equipment have allowed more people to explore deeper into the backcountry. New species are listed as threatened, endangered, or sensitive. Climate change is here, and we are already seeing impacts on our mountain snowpack<sup>39</sup>. These rapid changes on the National Forest System are coupled with a troubling lack of any time restriction on the incorporation of prior decisions in the draft rule.

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<sup>39</sup> Mote, Philip W., Alan F. Hamlet, Martyn P. Clark, Dennis P. Lettenmaier, 2005: DECLINING MOUNTAIN SNOWPACK IN WESTERN NORTH AMERICA\*. Bull. Amer. Meteor. Soc., 86, 39–49

Section 212.54 “Revision of Designations” reads, in part: “Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to § 212.51 may be revised as needed to meet changing conditions.” (Section 212.81(c) of the proposed rule would have these same criteria apply to OSV designation, without providing any further guidance on required analysis to determine whether conditions have changed, or obligating revision of prior decisions if changed conditions exist. We feel this is inadequate.

We recommend extending the allowable timeline for incorporation of past comprehensive decisions back to 2005, or 10 years at the onset of development of an OSV designation process, whichever is less. Decisions younger than that could still be updated, as needed, if conditions warrant it. Simply carrying forward prior decisions without further analysis to see if conditions warrant revision is not sound management. A simple timeline is one approach to address this – demonstrating that prior decisions are still adequate for current conditions is another.

### **C. Validity of Prior Decisions**

Two issues about the incorporation of prior decisions have already been raised: there is no time restriction on prior decisions, so an administrative unit or Ranger District could rely on something that is woefully out of date and in need of revision; and, the draft appears to allow for prior decisions governing OSV use to parts of an administrative units or Ranger Districts to continue to apply with no further analysis, thereby using a piecemeal approach to planning. Further, with an “open unless closed” approach, a localized decision could stand-in for a comprehensive plan or a unit could repurpose a decision made in a forest plan revision that is loosely related to OSVs to satisfy its Subpart C obligations. Perhaps most concerning, is that there is no mention in the draft rule of the application of the minimization criteria as required by Executive Order 11644, and the Court Order. There is reference to other authorities, but no demonstration that decisions under those authorities applied the minimization criteria.

The minimization criteria must be applied for any travel management decision to be valid – this is true whether the plan is old or new, partial or comprehensive. As written, the draft rule falls short on this important point. The onus of responsibility must be on the Forest Service to show – in the record – that minimization criteria have been considered and applied when prior comprehensive decisions are carried forward. Otherwise such decisions will not comply with the requirements of the Executive Order.

**Recommendation:** To address these concerns, the agency should eliminate the “open unless closed” management approach and not change the definition for area designations. Fixing these problematic elements to the draft rule will, by extension, address some of our concern about carrying forward past decisions. Secondly, the final rule should include language stating that, in order for any past decision to be carried forward, the unit must demonstrate how the Executive Orders' minimization criteria were applied in its NEPA-related documentation as part of the planning process. Last, only plans that were comprehensive (for the given landscape) and still adequately address current conditions should be carried forward without revision.

## VII. Protecting Roadless Areas, including Agency Recommended Wilderness

Former Chief of the Forest Service, Dale Bosworth called “unmanaged recreation,” including use of ORVs and snowmobiles, one of the “top four threats” to our National Forests. Increases in the volume of use, size of vehicles and advances in ORV and OSV technology are degrading the wilderness character of many Forest Service recommended wilderness areas and other roadless areas. In many instances, OSVs are accessing roadless areas and are creating a constituency that feels entitled to continue their use in these places. This use is causing significant impacts to the character of roadless areas and forest resources. For example, despite a long-standing recommendation for wilderness designation, the Forest Service continued to allow winter motorized recreation throughout additions to the Hoover Wilderness on the Bridgeport Ranger District of the Humboldt-Toiyabe National Forest in California. As a result, Congress did not designate as Wilderness all of the areas recommended by the agency when it passed its omnibus public lands legislation early in March 2009. Rather, those portions where the Forest Service allowed snowmobile use inside recommended wilderness were designated as a winter recreation area, which is intended for use primarily for winter motorized vehicle recreation. The agency’s management of its recommended wilderness directly reduced the potential for wilderness designation.

### **Recommendation**

Clearly, roadless areas, the last vestiges of non-wilderness peace and quiet, must be protected from ORV and OSV use. We support the Forest Service policy for managing non-conforming uses in Recommended Wilderness and Wilderness Study Areas in Region 1 and encourage the Forest Service to codify this policy nationally in the final rule. To this end, we request that the Forest Service amend 36 CFR § 212.55(e), Congressionally designated wilderness areas and primitive areas of the proposed rule, to read as follows:

(e) Wilderness areas, primitive areas, Inventoried Roadless Areas, agency recommended wilderness areas, and wilderness study areas. National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas, ~~or~~ primitive areas, Inventoried Roadless Areas, areas recommended for wilderness in land and resource management plans, or wilderness study areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

## VIII. Conclusion

Winter travel planning is an opportunity to identify and address conflicts and impacts associated with OSV use and draft a management strategy for OSVs that considers where they fit in the context of the larger landscape and all of its components. For too long winter travel management has been overlooked despite winter being a critical season for wildlife and a beloved time of year for snow-based recreation of all types. By stepping back and re-assessing where on the landscape motorized use is truly appropriate, the Forest Service and those who participate in the winter travel planning process will be

able to take steps to reduce user conflicts and ensure that high quality winter recreation opportunities exist for all users. However, without a strong rule that provides a framework for managing and protecting opportunities for all winter uses, not just OSVs, and clearly states what is and is not acceptable, winter travel planning will not live up to its full potential. The draft rule mostly misses the opportunity to better manage the backcountry and may not even meet the minimum of what the Forest Service is required to do by the Executive Orders and Court Order.

The final OSV Rule should reflect the recommendations made in these comments. This would be easiest to accomplish by simply removing the OSV exemption from Subpart B of the 2005 Travel Management Rule, and adding language on the value of cross-country snowmobile travel so that individual Forests could still designate open areas. This approach would bring winter travel management planning in line with travel management during other times of the year, and ensure consistency across all National Forests. If the Forest Service is adamant about preserving this exemption, we recommend the following changes be incorporated into the final OSV Rule:

- The final rule should be consistent with the 2005 TMR and require the responsible official to designate a system of routes and areas where OSV use is prohibited unless allowed.
- The definition of “area” should remain the same as in the 2005 TMR and all OSV trails, regardless of whether they are within a motorized area or not, should be analyzed before being designated as open.
- Only plans that address a whole Forest or Ranger District, minimize user conflict and resource damage, and had meaningful public involvement should be carried forward. If the Forest Service can’t demonstrate how the above issues were addressed, and that a plan is still sufficient to address current conditions, the plan should be redone. Allowing past decisions without showing how the “minimization criteria” are met is inconsistent with Executive Order 11644 and 11989, which the agency clearly must follow in issuing this rule.

We thank you for the opportunity to comment on this draft rule. Winter travel planning is a top priority for Winter Wildlands Alliance, our partners and our members. We look forward to working with National Forests across the country as this rule is implemented.

Sincerely,



Mark Menlove  
Executive Director  
Winter Wildlands Alliance