

Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves regulations establishing safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

### ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. § 165.T13-114 is added to read as follows:

#### § 165.T13-114 Safety Zones; Blasting and Dredging Operations and Movement of Explosives, Columbia River, Portland to St. Helens, OR

(a) *Location.* The following areas are safety zones: (1) All waters of the Columbia River from Duck Club Light 6

across to Bachelor Island downstream to the point of Austin Point and across to Warrior Point at 45°50'31.2" N/122°46'51.6" W; 45°50'31.2" N/122°46'51.6" W; 45°49'37.2" N/122°47'16.79" W; 45°49'47.9" N/122°47'42.00" W; 45°50'56.4" N/122°47'16.79" W (NAD 83). (2) All waters encompassed within a circle with a radius of 500 feet centered on the barge KRS 200-6 at any time that it has explosives onboard.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Portland in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zones established in paragraph (a) or bring, cause to be brought, or allow to remain in the safety zones established in paragraph (a) of this section any vehicle, vessel, or object unless authorized by the Captain of the Port, Portland or his designated representative.

(d) *Enforcement Period.* The safety zones established in paragraph (a) or this section are applicable from 12:01 a.m. on October 28, 2009 through 11:59 p.m. on February 28, 2010.

Dated: October 30, 2009.

F.G. Myer,

*Captain, U.S. Coast Guard, Captain of the Port, Portland.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

#### RIN 1024-AD73

### Special Regulations; Areas of the National Park System

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule governs winter visitation and certain recreational use in Yellowstone National Park for the 2009-2010 and 2010-2011 seasons. This final rule is issued to implement the Finding of No Significant Impact (FONSI) for the 2008 Winter Use Plans Environmental Assessment (2008 EA) approved October 15, 2009, and will provide

visitors a range of winter recreation opportunities that are appropriate to the national park setting and do not unacceptably impact or impair park resources or values. The rule requires that most recreational snowmobiles operating in the park meet certain NPS air and sound emissions requirements, requires that snowmobilers and snowcoach riders in Yellowstone be accompanied by a commercial guide, and sets daily entry limits on the numbers of snowmobiles and snowcoaches that may enter the park. Traveling off designated oversnow routes will remain prohibited.

**DATES:** The effective date for this rule is December 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** John Sacklin, Management Assistant's Office, Yellowstone National Park, 307-344-2019.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park, Grand Teton

National Park, and the John D. Rockefeller, Jr., Memorial Parkway for several decades under the guidance provided by a number of sources. The history of the issue was discussed at length in the notice for the proposed rule, 73 FR 65784 (November 5, 2008) and in the 2008 EA.

After the proposed rule was published on November 7, 2008, the U.S. District Court for the District of Wyoming issued an order reinstating the 2004 final rule on winter use in the parks, without its sunset provisions, "until such time as NPS can promulgate an acceptable rule to take its place." The NPS complied with the court order and on December 9, 2008, republished the 2004 regulation without its provisions terminating snowmobile and snowcoach use after the winter of 2006-2007. That regulation, among other things, imposed a limit of 720 snowmobiles per day for Yellowstone, required that all recreational snowmobiles in Yellowstone be accompanied by a commercial guide, and required that all recreational snowmobiles operating in

the park meet NPS air and sound emissions requirements for reducing noise and air pollution.

The NPS is promulgating this final regulation to replace the reinstated 2004 regulation. It provides that the park will be open to an appropriate level of oversnow vehicle use for the winter seasons of 2009-2010 and 2010-2011. During this time, NPS will determine a long-term strategy for Yellowstone winter use.

**Rationale for the Final Rule**

*Overview of Winter Use Program*

This rule provides for the enjoyment of the park's amenities by authorizing strictly managed snowmobile and snowcoach use in the park for the next two winter seasons. The rule is designed to be consistent with recent trends in oversnow vehicle use while a new long-term winter plan and rule are prepared. This rule allows for 318 snowmobiles per day in Yellowstone, as shown in the following chart, with an additional 50 snowmobiles allowed at Cave Falls.

Park entrance/location	Commercially guided snowmobiles	Commercially guided snowcoaches
(i) North Entrance*	12	13
(ii) West Entrance	160	34
(iii) South Entrance	114	13
(iv) East Entrance	20	2
(v) Old Faithful*	12	16
(vi) Cave Falls	50**	0

\* Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessioner is the sole provider at both of these areas, this regulation allows reallocation of snowmobiles between the North Entrance and Old Faithful as necessary, so long as the total daily number of snowmobiles originating from the two locations does not exceed 24. For example, the concessioner could operate 6 snowmobiles at Old Faithful and 18 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing the availability of visitor services in Yellowstone.

\*\* These snowmobiles operate on an approximately 1-mile segment of road within the park where the use is incidental to other snowmobiling activities in the Caribou-Targhee National Forest. These snowmobiles do not need to be guided or to meet NPS air and sound emissions requirements.

This rule includes strict limits on the number of snowmobiles and snowcoaches allowed to operate within the park each day. Prior to the implementation of a managed winter use program in the winter of 2003-2004, an average of 795 snowmobiles entered Yellowstone each day, with peak days averaging approximately 1,400. This rule allows for 318 snowmobiles per day in Yellowstone, a reduction from the 720 snowmobiles authorized over the previous five winters (during which peak use never approached 720, and average use was about 36% of that limit).

For the past five winters, a managed winter use program has been in place. Visitors on snowmobiles must use snowmobiles that meet NPS

requirements for air and sound emissions (generally referred to in the 2008 EA as Best Available Technology (BAT)), but here referred to simply as NPS requirements to avoid confusion with use of the term best available technology under other environmental laws). Visitors must be accompanied by a commercial guide; visitors cannot snowmobile in Yellowstone without a guide. There is a daily limit on numbers of snowcoaches and snowmobiles. Speed limits are reduced in the busy travel corridors. The park is closed to oversnow vehicles (OSVs) at night. An extensive monitoring program is underway.

In the past five winters, an average of 259 snowmobiles (in an average of 35 commercially guided groups) have

travelled in the park each day, while snowcoach use averaged 31 per day. The peak day for snowmobiles was 557, while the peak day for snowcoaches was 60. During the past three winters, the park exceeded 318 snowmobiles on 63 of 252 days the park was open. This rule allows somewhat more than the recent annual average number of snowmobiles and snowcoaches to enter the park, but would not accommodate those recent higher use days for snowmobiles.

The most recent use levels indicate that the number of commercially guided snowmobile groups and the number of persons in those groups are very similar to those using commercial snowcoaches. In 2008-2009, the average number of snowmobile groups was 31 per day, while snowcoaches averaged 29 per day.

Each snowmobile group included an average of 8.9 people, while each snowcoach carried an average of 8.5 people.

#### *Resource Impacts From Winter Use*

Air quality is very good to excellent in the winter, despite frequent temperature inversions, which trap pollutants near the ground and affect air quality. NPS sound and air emission requirements, limits on numbers, and commercial guiding have all contributed to the improvements in air quality over historical (pre-2003) use. Only snowmobiles meeting NPS requirements are allowed. Currently, the snowmobiles use four-cycle engines that produce far less pollution than the two-cycle engines that were once used. Snowmobiles meeting NPS air emission requirements are very similar in their per passenger emissions to snowcoaches. Snowcoaches use more fuel on a per passenger basis than do snowmobiles. They average 2–4 miles per gallon while snowmobiles that meet NPS requirements get 20–26 miles per gallon. In addition, rough roads and soft snow conditions result in higher fuel consumption and high emissions for snowcoaches.

Winter use will have some effects on wildlife, just like every other form of visitor use of the park. Extensive studies of the behavioral responses of five species (bison, elk, bald eagle, trumpeter swan, and coyotes) to oversnow traffic showed that these animals rarely showed high-intensity responses (movement, defense postures, or flight) to approaching vehicles. The responses to normal snowmobile and snowcoach use that do occur do not cause the taking, frightening, or intentional disturbance that is prohibited by NPS regulations. Furthermore, thirty-five years of census data do not reveal any relationship between changing winter use patterns and elk or bison population dynamics. No wildlife populations are currently declining due to winter use (swan populations are declining, but this decline is being experienced regionally and due to factors unrelated to winter use in the park or region). Few animals are expected to be killed as a result of vehicle collisions. The best available information suggests negligible to minor effects for most species, with potential moderate effects for swans and eagles. Use will be well below levels previously studied by NPS wildlife biologists and well within the limits recommended by those studies. We conclude that winter use at the permitted levels does not pose a risk of unacceptable impacts or impairment to any wildlife population. All visitors

utilizing motorized oversnow vehicles travel with commercial guides, learning about and enjoying the abundant wildlife sightings.

Soundscapes are good to very good in the park. Snowmobiles that meet NPS sound requirements are noticeably quieter than traditional snowmobiles (at idle and while underway). In addition, snowmobiles with four-cycle engines that meet NPS requirements sound similar to snowcoaches in the winter and do not sound like traditional two-stroke snowmobiles. Commercial guiding further reduces sound levels and the amount of time that snowmobiles can be heard by reducing speeding and idling and by keeping the vehicles grouped. One concern is that some vehicles are too loud. However, monitoring results demonstrate that 94% of all high sound intensity events are caused by snowcoaches. Overly loud snowcoaches include both older, historic Bombardier snowcoaches that have not been modified or upgraded, as well as a number of modern snowcoaches. The NPS intends to implement sound and air emission requirements for snowcoaches in the long-term plan, subsequent to this rule, to address this concern. The percent of time that OSVs are heard has been a concern. As explained further below, however, NPS has determined that the percentage of time in which OSVs will be audible under this rule does not cause impairment or unacceptable impacts.

Based on a 2008 winter survey, NPS has found that visitors are enjoying the park, and they are satisfied with the management that is in place. Visitors will continue to find wildlife to be both wild and easily viewed. Under this rule, visitors will continue to find wildlife to be both wild and easily viewed. All visitors utilizing motorized vehicles will travel with commercial guides, learning about and enjoying the abundant wildlife sightings. A winter 2008 survey found a high level of satisfaction with soundscape conditions, wildlife, and the managed winter use program.

Personal exposure of employees to air pollutants has generally been greatly reduced from historic levels. Some monitoring from previous years indicated small exceedances of national standards for benzene and formaldehyde. The source could be snowcoaches or snowmobiles, or more likely both. Last winter's monitoring showed no exceedances of these standards.

#### *Impairment, Unacceptable Impacts, and Appropriate Use*

In addition to determining the environmental consequences of the alternatives, NPS policy requires consideration of impacts to determine whether actions would impair park resources. In managing National Park System units, the NPS may undertake actions that have both beneficial and adverse impacts on park resources and values. As the 2006 NPS Management Policies (Management Policies) explain (section 1.4.7.1), "Virtually every form of human activity that takes place within a park has some degree of effect on park resources or values, but that does not mean the impact is unacceptable or that the particular use must be disallowed." The NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources or values. Impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. The responsible NPS manager generally has discretion to determine what impacts are allowed that would not impair park resources or values.

The NPS is also required to conserve the resources and values of the National Park System units and to prioritize the conservation of park resources over their use whenever the two are found to be in conflict. The NPS complies with this mandate by ensuring that a proposed use of the park will not result in unacceptable impacts to park resources or values, and by further allowing impacts to park resources only when allowing the impacts is appropriate to fulfill the purposes of the park and is necessary (meaning that the impacts are unavoidable and incapable of further mitigation in light of the authorized appropriate use).

Over the last five winter seasons, the park was intensively managed in order to provide heightened protection to the environment and prevent the impairment of park resources and values. As discussed in the FONSI and based on the analysis in the 2008 EA and monitoring and studies over the past five years, the NPS has determined that no impairment of park resources or values occurred during those five years.

The NPS has also determined that implementation of Alternative 2 (Selected Alternative) and the final rule would not result in unacceptable impacts or impairment to park resources or values. As disclosed in the 2008 EA,

the adverse impacts to wildlife would be negligible to minor, due to moderate levels of visitor use (with possible moderate effects on swans and eagles). Guiding would minimize most of these effects. For soundscapes, the adverse impacts would be negligible to moderate, due to audibility and maximum sound levels. Exceedances of maximum sound levels by snowcoaches will be mitigated while this rule is in place through driver education and reducing snowcoach travel speed. This will be communicated during pre-season meetings with commercial guides and outfitters, and to individual drivers during park-sponsored orientation training. Air quality impacts are forecast to be negligible because the air and sound emissions requirements and strict daily entry limits will reduce emissions. Impacts on visitor and employee health and safety in Yellowstone are expected to be moderately adverse due to possible high snowcoach noise exposure levels. Avalanche danger at Sylvan Pass also creates moderate adverse impacts. Both the noise exposure issues and the avalanche danger would be mitigated in several ways.

As described in the 2008 EA, the NPS's threshold for considering whether there could be an impairment is based on *major* (or significant) effects. The 2008 EA identified less than major effects on wildlife, natural soundscapes, and air quality for Alternative 2. Indeed, while some major effects have resulted from snowmobile or snowcoach use over the past five years—which included some days where snowmobile usage was nearly double the daily limit now adopted—the NPS has determined that none of the effects associated with that usage caused any impairment of park resources. Guided by this analysis and the professional judgment of National Park Service managers, the NPS has determined that there would be no impairment of park resources or values from implementation of the final rule.

Finally, the NPS has determined that the impacts associated with the OSV use permitted over the next two winter seasons, which are described at length in the 2008 EA, are both appropriate and necessary to fulfill the purposes of the park.

Section 1.5 of Management Policies, "Appropriate Use of the Parks," directs that the National Park Service must ensure that park uses that are allowed would not cause impairment of, or unacceptable impacts on, park resources or values. A new form of park use may be allowed within a park only after a determination has been made in the

professional judgment of the park manager that it will not result in unacceptable impacts. In addition, section 8.1.2 of the Management Policies, "Process for Determining Appropriate Uses," directs the NPS to evaluate the proposed use's consistency with applicable laws, executive orders, regulations, and policies; consistency with existing plans for public use and resource management; actual and potential effects on park resources or values; total costs to the NPS; and whether the public interest will be served. Finally, section 1.5 of the Management Policies directs park superintendents to continually monitor all park uses to prevent unanticipated and unacceptable impacts. If unanticipated and unacceptable impacts occur, section 1.5 directs the superintendent to engage in a thoughtful deliberative process to further manage or constrain the use, or discontinue it.

#### *Environmental Assessment and Finding of No Significant Impact*

The 2008 EA and the 2009 FONSI supporting this final rule contain the above-described evaluation of the permitted OSV use. In addition, they demonstrate that no unacceptable impacts are anticipated as a result of the use. Finally, the Preferred Alternative in the 2008 EA establishes a comprehensive monitoring and adaptive management plan to address any unanticipated unacceptable impacts. On this basis, the NPS has determined that the proposed OSV use permitted over the next two winter seasons is appropriate to fulfill the purposes of the park.

The NPS has also determined that the proposed OSV use permitted over the next two winter seasons is necessary to fulfill the purposes of the park. The National Park Service Organic Act directs the NPS to promote the use of the national parks by such means and measures as to conform to the fundamental purpose of said parks, which purpose includes providing for the enjoyment of the scenery, natural and historic objects, and wildlife within the parks (16 U.S.C. 1). Section 8.2 of Management Policies confirms that enjoyment of park resources and values by the people of the United States is one of the fundamental purposes of all parks. That section further states: "To provide for enjoyment of the parks, the National Park Service will encourage visitor use activities that are appropriate to the purpose for which the park was established, and are inspirational, educational, or healthful, and otherwise appropriate to the park environment; and will foster an understanding of and

appreciation for park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and can be sustained without causing unacceptable impacts to park resources or values."

As explained in the 2008 EA, OSV use of Yellowstone National Park has been occurring since 1949, and snowmobiles have been used for 48 of the park's 137 years. Yellowstone is a large park, distances between attractions at Yellowstone are great, and some form of motorized vehicular access is needed to access various destination areas. Snowmobiles and snowcoaches are used for this purpose in the winter just as private vehicles and buses are used in the summer. They are both forms of transportation, not recreational activities unto themselves. Finally, snowmobiles and snowcoaches each provide very different experiences in that they provide varying levels of direct interaction with the park's resources and values.

The NPS received approximately 27,500 comments on the 2008 EA and 39,767 comments on the proposed rule. In many cases, the comments received on the proposed rule were very similar in content to those received on the 2008 EA. Numerous commenters expressed concerns that the Preferred Alternative and the rule, would violate the NPS Organic Act and would be inconsistent with the 2006 NPS Management Policies, among other things causing unacceptable impacts to park resources and values. The NPS believes most of these concerns are based on a belief that snowmobiles do not belong in the park, and should be replaced with snowcoaches. These concerns do not take into account recent monitoring and studies that show the nearly equal contribution of snowmobiles and snowcoaches to the concerns expressed by the commenters (and that snowcoaches are clearly the source of some concerns). Statistically, movement responses of wildlife were slightly higher for snowcoaches than for snowmobiles. Monitoring also indicates that commercially guided snowmobile groups and snowcoaches contribute similarly to the amount of time OSVs are heard. Snowcoaches also use more fuel on a per passenger basis than do snowmobiles. In short, neither OSV type provides a clear advantage with respect to environmental impacts. Recent monitoring and studies demonstrate that the regulated use of both snowcoaches and snowmobiles described in the Selected Alternative will not result in impairment of park resources or values,

nor will it result in unacceptable impacts on the park.

#### *Air and Sound Emission Requirements*

To mitigate impacts to air quality and the natural soundscape, the NPS is continuing the requirement that all recreational snowmobiles meet strict air and sound emissions requirements to operate in the park, with limited exceptions. For air emissions, all snowmobiles must achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide, relative to EPA's baseline emissions assumptions for conventional two-stroke snowmobiles. For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers (SAE) J192 test procedures (revised 1985). The Superintendent will maintain a list of approved snowmobile makes, models, and years of manufacture that meet NPS requirements. The certification is good for six years from the date on which a model is certified as meeting the requirements.

The NPS is continuing the requirement that began with the 2005 model year that all snowmobiles must be certified under 40 CFR part 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons (HC) and 120 g/kW-hr for carbon monoxide (CO). Snowmobiles must be tested on a five-mode engine dynamometer consistent with the test procedures specified by the EPA (40 CFR parts 1051 and 1065). Other test methods could be approved by the NPS.

The NPS is retaining the use of the FEL method for demonstrating compliance with its emissions requirements because it has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the park achieve the NPS's emissions requirements, unless modified or damaged (under this regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with NPS requirements and therefore not permitted to enter the park). Use of FEL will also minimize any administrative burden on snowmobile manufacturers to demonstrate compliance with NPS requirements because they already provide FEL data to the EPA. Further, the EPA has the authority to ensure that manufacturers' emissions claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the

certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, the NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This labeling will help to ensure that NPS emissions requirements are consistent with these labels. The use of FEL will avoid potential confusion for consumers.

The air emissions requirements for snowmobiles allowed to operate in the park should not be confused with standards adopted by the EPA in a final rule published in the **Federal Register** on November 8, 2002 (67 FR 68242). The EPA regulations require manufacturers to meet certain fleet averages for HC and CO emissions. For example, the Phase 1 standards required all snowmobile manufacturers to meet a fleet-wide average in 2007 of 275 g/kW-hr for CO and 100 g/kW-hr for HC, which represents a 30% reduction from the baseline emission rates for uncontrolled snowmobiles. Any particular make/model may emit more or less than the standard as long as the fleet average does not exceed the standard. Phase 2 and Phase 3 standards will be implemented in 2010 and 2012, respectively, effectively requiring the equivalent of a 50% reduction in both HC and CO as compared to average baseline levels. By comparison, NPS requires that all snowmobiles operating in the park meet a FEL of 120 g/kW-hr for CO and 15 g/kW-hr for HC. This means that snowmobiles operating in the park represent the cleanest that are commercially available.

To determine compliance with the sound emissions requirements, snowmobiles must be tested using SAE J192 test procedures (revised 1985; or potentially as further revised and adapted for use by NPS). The NPS recognizes that the SAE updated these test procedures in 2003; however, the changes between the 2003 and 1985 test procedures could yield different measurement results. The sound emissions requirement was initially established using 1985 test procedures (in addition to information provided by industry and modeling). To ensure

consistency in the test results, the NPS will at this time continue to use the 1985 test. The SAE J192 (revised 1985) test also allows for a tolerance of 2 dBA over the sound limit to account for variations in weather, snow conditions, and other factors. The NPS understands that an update to the 2003 J192 procedures may be underway, and the NPS will continue to evaluate these test procedures and possibly adopt them after these regulations are implemented. Other test methods could be approved by NPS on a case-by-case basis.

Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This exception to the SAE J192 test procedures maintains consistency with the testing conditions used to determine the sound requirement. This allowance for reduced barometric pressure is necessary since snowmobiles were tested at the elevation of Yellowstone National Park, where atmospheric pressure is lower than that under the SAE J192's requirements. Testing data indicate that snowmobiles test quieter at higher elevation, and therefore some snowmobiles may comply with the NPS's sound emissions requirements at higher elevations even though they do not when tests are conducted near sea level.

The NPS will annually publish a list of snowmobile makes, models, and years of manufacture that meet its emissions and sound requirements. Snowmobile manufacturers may demonstrate that snowmobiles are compliant with the air emissions requirements by submitting to the NPS a copy of their applications used to demonstrate compliance with EPA's general snowmobile regulation (indicating FEL). The NPS will accept this application information from manufacturers in support of conditionally certifying a snowmobile as meeting its air emissions requirements, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify a snowmobile at an emission level that would no longer meet the NPS's requirements, this snowmobile would no longer be considered by NPS to be compliant with its requirements and would be phased-out according to a schedule that will be determined by the NPS to be appropriate. For sound emissions, snowmobile manufacturers may submit their existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are

certified by an independent testing company as complying with all SSCC safety standards, including sound standards. This regulation does not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation. The NPS intends to continue to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program. When the NPS certifies snowmobiles as meeting its requirements, NPS will announce how long that certification applies. Generally, each snowmobile model will be approved for entry into the park for six winter seasons after it is first listed. Based on NPS experience, six years represents the typical useful life of a snowmobile, and thus six years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant. If a manufacturer recertifies a snowmobile model to NPS requirements for emissions and sound, it could be used for additional years. It is also based on EPA snowmobile emission regulations and the deterioration factors that are part of those regulations (EPA requires that if a manufacturer certifies its snowmobile will comply with EPA's emission regulations, the snowmobile will meet those regulations for a period of five years or 5,000 miles).

Individual snowmobiles modified in such a way as to increase sound and air emissions of hydrocarbons and carbon monoxide beyond the emission restrictions will be denied entry to the park. It is the responsibility of end users and guides and outfitters to ensure that their OSVs, whether snowmobiles or snowcoaches, comply with all applicable restrictions. Air and sound emission requirements for snowcoaches are described below. In Yellowstone, the requirement that all snowmobilers travel with commercial guides will assist NPS in enforcing these requirements, since businesses providing commercial guiding services in the park are responsible under their contracts with the park to ensure that their clients use only snowmobiles that meet the NPS's requirements. In addition, these businesses are required to ensure that snowmobiles used in the park are not modified in such a way as to increase sound or air emissions, and that snowmobiles are properly maintained.

Snowmobiles being operated on the Cave Falls Road, which extends approximately one mile into

Yellowstone from the adjacent national forest, will be exempt from air and sound emissions requirements. Because of the low level of impacts resulting from the light use of the Cave Falls Road, which is incidental to recreational use of the surrounding national forest, NPS has found it is not necessary to require these users to comply with requirements that address issues associated with use of the interior portions of the park.

Under concession contracts issued in 2003, 78 snowcoaches are currently authorized to operate in Yellowstone (and in the parkway between Flag Ranch and Yellowstone's South Entrance). Approximately 29 of these snowcoaches were manufactured by Bombardier and were designed specifically for oversnow travel. Those 29 snowcoaches were manufactured before 1983 and are referred to as "historic snowcoaches" for the purpose of this rulemaking. All other snowcoaches being used are passenger vans or light buses that have been converted for oversnow travel using tracks and/or skis. During the winter of 2008–2009, an average of 29 snowcoaches entered Yellowstone each day (during the prior winter, 2007–2008, an average of 35 snowcoaches entered the park each day).

As of the winter of 2009–2010, all snowcoaches must be commercially guided. These trained, knowledgeable operators help ensure that air and sound emission requirements are met, wildlife impacts are minimized, and visitor and employee safety is assured.

The University of Denver conducted winter emissions measurements in Yellowstone that involved the collection of emissions data from in-use snowcoaches and snowmobiles in February 2005 and February 2006. Results from that work indicate that snowcoaches and snowmobiles meeting NPS air emission requirements are now very similar in their per passenger emissions. This work also supports snowmobile air emissions requirements and the development of snowcoach air emission requirements. The snowcoach fleet should be modernized to reduce carbon monoxide and hydrocarbon emissions. However, road and snow conditions and low power-to-weight ratios of snowcoaches contribute considerably to air emissions. This means that even an upgraded snowcoach fleet operating in Yellowstone will have days for which fuel consumption and emission levels might be high.

In comparison with older carbureted snowcoaches, snowcoaches operating within EPA's Tier I standards are

cleaner. In 2004, EPA began phasing-in Tier II emissions standards for multi-passenger vans, and they will be fully phased-in during 2009. Tier II standards will require that vehicles be even cleaner than Tier I, and full emission controls will function more of the time.

During the duration of this temporary plan, all non-historic snowcoaches must meet air emission requirements, which will be the EPA emissions standards in effect when the vehicle was manufactured. This will be enforced by ensuring that all critical emission-related exhaust components are functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component where possible. If OEM parts are not available, aftermarket parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly. Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes. Individual snowcoaches may be subject to periodic inspections to determine compliance with emission and sound requirements.

The restrictions on air and sound emissions in this rule are not a restriction on what manufacturers may produce but an end-use restriction on which commercially produced snowmobiles and snowcoaches may be used in the park. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to "promote and regulate" the use of national parks "by such means and measures as conform to the fundamental purpose of said parks \* \* \* which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Further, the Secretary is expressly authorized by 16 U.S.C. 3 to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks. \* \* \*

" This exercise of the NPS Organic Act authority is not an effort by NPS to regulate manufacturers and is consistent with Section 310 of the Clean Air Act.

Since 2001, the park has been converting its own administrative fleet of snowmobiles to meet these NPS requirements. These newer machines have proven successful in fulfilling most of the NPS's administrative needs throughout the park. However, the NPS recognizes that some administrative applications, such as off-trail boundary

patrols in deep powder, towing heavy equipment or disabled sleds, search and rescue, or law enforcement uses, may require additional power beyond that supplied by currently available snowmobiles that meet the NPS's air and sound emissions requirements. In such limited cases, the NPS will sometimes need to use snowmobiles that do not meet the requirements this rule imposes upon recreational snowmobiles (which do not have these special needs because they travel only upon groomed roads as part of a tour group led by a commercial guide).

#### *Guided Tours and Group Size*

In order to mitigate impacts to natural soundscapes and wildlife, and for visitor and employee safety, all recreational snowmobiles and snowcoaches operated in Yellowstone must be led by a commercial guide, except for those snowmobiles being operated on the one-mile segment of the Cave Falls Road that extends into the park from the adjacent national forest. This guiding requirement has been found in practice to reduce conflicts with wildlife along roadways because these commercial guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercial guides are educated in safety, knowledgeable about park rules, and are required to exercise reasonable control over their clientele, which has reduced unsafe and illegal snowmobile use. Because of the contractual obligations to which commercial guides are subject, NPS has found this results in more effective enforcement of park rules. These guides receive rigorous multi-day training. They also are experts at interpreting the resources of the park to their clients. Commercial guides are employed by local businesses, not by NPS. Commercial guiding also tends to result in larger snowmobile parties than unguided use, which reduces the overall number of encounters with wildlife and reduces the amount of time that OSVs are audible (and, conversely, increases the interval of time that OSVs are not heard).

No more than eleven snowmobiles will be permitted in a group, including that of the guide. Except in emergency situations, guided parties must travel together and remain within a maximum distance of one-third mile of the first snowmobile in the group. These size and distance limits require that guided parties do not become separated, provide for sufficient and safe spacing between individual snowmobiles within the guided party, and allow the guide(s) to maintain control over the group to minimize the impacts on wildlife and

natural soundscapes. NPS thus expects that the continuation of the guiding requirement will facilitate compliance with park regulations and protect park resources.

Commercial snowmobile guides use a "follow-the-leader" approach, stopping often to talk with the group. They lead snowmobiles single-file through the park, using hand signals to pass information down the line from one snowmobile to the next, a system which has proven to be effective. Signals are used to warn group members about wildlife and other road hazards, indicate turns, reduce speed, and when to turn on or off the snowmobile. Further, all commercial guides are trained in basic first aid and CPR. In addition to first aid kits, they often carry satellite or cellular telephones, radios, and other equipment for emergency use. Guides are thus well-equipped to ensure that park regulations are enforced, wildlife are protected, and to provide a safer overall experience for visitors.

Since the winter of 2003–2004, all snowmobilers in Yellowstone have been led by commercial guides, resulting in considerable positive effects on visitor health and safety. Guides have been proven to be very effective at enforcing proper touring behavior, such as adherence to speed limits, staying on the groomed road surfaces, and other snowmobiling behaviors that are appropriate to safely and responsibly visit the park. Since implementation of the guiding program, there have been pronounced reductions in the number of law enforcement incidents and accidents associated with the use of snowmobiles, even when accounting for the reduced number of snowmobilers relative to historic use levels. The use of guides is also beneficial to wildlife, since guides are trained to respond appropriately when encountering wildlife.

#### *Snowmobile and Snowcoach Routes*

Snowmobiles and snowcoaches will continue to be restricted to designated oversnow routes, which are a subset of the same roads that are traveled by motor vehicles during the remainder of the year. In addition to most of the Grand Loop Road, certain side roads will be open for snowmobile use after noon, based on the successful experience of the NPS with temporal zoning on Firehole Canyon Drive. Virginia Cascades will be accessible only via ski and snowshoe.

The final rule also allows for up to 50 snowmobiles to enter Yellowstone on the Cave Falls Road, an approximately one-mile segment extending into the southwest corner of the park from the

Targhee National Forest. This short road segment does not connect to the rest of the oversnow routes in Yellowstone, and connects only to the national forest lands, which do not have air and sound requirements or guiding requirements. Use of this route is incidental to recreational use of the national forest lands, is far removed from the snowmobile use and the resulting impacts that occur within the interior of Yellowstone, and is therefore considered separately from the 318 snowmobile limit.

Snowmobile and snowcoach use in the two-mile road segment between Yellowstone's South Entrance and Flag Ranch in the John D. Rockefeller, Jr. Memorial Parkway will be governed by Yellowstone requirements (as is also discussed in the separate rule for the Parkway). That is all snowmobiles operating on this road segment must meet the commercial guiding, NPS air and sound requirements, daily use limits, and other requirements to operate in Yellowstone. Similarly, all snowcoaches operating on this road segment must meet Yellowstone requirements.

#### *Monitoring and Adaptive Management*

Scientific studies and monitoring of winter visitor use and park resources (including air quality, natural soundscapes, wildlife, employee health and safety, water quality, and visitor experience) will continue. As part of its adaptive management of winter use activities, NPS will close selected areas of the park to visitor use, including sections of roads, if these studies indicate that human presence or activities have unacceptable impacts on wildlife or other park resources that cannot otherwise be mitigated. A one-year notice will ordinarily be provided before any such closure is implemented unless immediate closure is deemed necessary to avoid impairment of park resources. The Superintendent will continue to have the authority under various provisions of this rule as well as 36 CFR 1.5 to take emergency actions to protect park resources and values.

The adaptive management program described in the 2008 EA provides park managers with a wide variety of tools to ensure that the goals and objectives of the winter use plans are being achieved. Some of the techniques available include adjustments in snowmobile or snowcoach use levels (up or down), adjustments in air and sound emissions requirements, visitor and guide education, timing of entries, and group sizes.

Adjustment to the daily entry limits for snowmobiles and snowcoaches is



one of several tools available to park managers to ensure that the goals and objectives of the winter use plan are maintained. Through adaptive management, if monitoring of use levels of snowmobiles and snowcoaches allowed under the FONSI indicates acceptable conditions, the NPS will increase use levels to the extent acceptable conditions can be maintained. Conversely, if monitoring of use levels of snowmobiles and snowcoaches allowed under the FONSI indicates unacceptable conditions, the NPS will reduce use levels to an extent that acceptable conditions can be maintained. In some cases, additional rulemaking would be required in order to adjust numbers.

The NPS is implementing a multi-year research proposal intended to specifically address the question of whether grooming of the Madison to Norris road segment in Yellowstone has led to alterations of bison movements and distribution. The question was identified in a report by Dr. Cormack Gates et al., entitled "The Ecology of Bison Movements and Distribution in and Beyond Yellowstone National Park" (2005). The research program will involve a linked series of experiments that will enable researchers to gain insight into how road grooming and other factors currently affect bison travel. The NPS has begun deploying cameras along travel routes to gain information on the relationship between road grooming and bison travel. The research program will include the analysis of existing data on GPS-collared bison, the tracking of additional GPS-collared bison, and use of the cameras, without necessitating the closure of the Gibbon Canyon road segment to public OSV travel. During the five year period, other roads or routes may be investigated to help understand the relationship between snow depth, grooming, and bison movement. For example, the Firehole Canyon Drive may be closed to oversnow travel and the Grand Loop Road gated to allow snowmobile and snowcoach travel, but not allow bison movement on the main road. Bison would then be forced to travel cross-country or along the ungroomed Firehole Canyon Road. Similarly, the Madison to Norris Road may be fenced or gated in the vicinity of the new bridge over the Gibbon River to restrict bison movement on the Madison to Norris Road and force bison to travel cross-country. Thus, bison movement in relation to snow depth may be tested without closing a main road. However, following the five years of data

gathering and analysis, the NPS, in consultation with the researchers, will consider closing the main Madison to Norris route to observe bison response. That decision will rely on the results of the data gathering and analysis and whether such a closure would be likely to yield informative data or conclusions. If implemented, such a closure would likely last several seasons.

#### *Maintaining Entry by Sylvan Pass*

Sylvan Pass will be open for oversnow travel (both motorized and non-motorized) for a limited core season, from December 22 through March 1 each year, subject to weather-related constraints and NPS capacities. A combination of avalanche mitigation techniques may be used, including risk assessment analyses as well as forecasting and helicopter- and howitzer-dispensed explosives. The NPS will continue to evaluate additional avalanche mitigation techniques and risk assessment tools in order to further improve safety and visitor access.

From March 2 to March 15, the NPS will maintain the road segment from the East Entrance to a point approximately four miles west of the entrance station to provide for opportunities for cross-country skiing and snowshoeing. Limited snowmobile and snowcoach use will be allowed in order to provide drop-offs for such purposes.

This approach both addresses the concerns of the communities and the National Park Service. The City of Cody, Wyoming, as well as Park County, Wyoming, and the State of Wyoming have clearly articulated the importance of this route to the community and the historical relationship between Cody and Yellowstone's East Entrance. They have spoken for the businesses near Yellowstone's East Entrance and how those businesses have been negatively impacted in recent years by the changing patterns of winter visitation and uncertainty regarding winter use in the park. They have stated how those businesses will continue to be adversely affected if the pass is closed to OSV travel in the winter. The community and businesses have also stated the value they place on the certainty of the road being open in the winter and the importance of that certainty to their businesses and guests. NPS acknowledges those values and concerns and has carefully weighed those considerations.

Avalanche control at Sylvan Pass has long represented a safety concern to the National Park Service. The 2000 Final Environmental Impact Statement (FEIS), the 2003 Supplemental Environmental

Impact Statement, the 2004 EA, and the 2007 FEIS all clearly identify the considerable avalanche danger on Sylvan Pass, which has been well known for many years. Approximately 20 avalanche paths cross the road at Sylvan Pass. They average over 600 feet of vertical drop, and the East Entrance Road crosses the middle of several of the paths, putting travelers at risk of being caught in an avalanche. NPS employees must cross several uncontrolled avalanche paths to reach the howitzer used for discharging those avalanches, and the howitzer is at the base of a cliff prone to both rock-fall and additional avalanche activity (the howitzer cannot be moved without compromising its ability to reach all avalanche zones). Artillery shells sometimes fail to explode on impact, and unexploded rounds remain on the slopes, presenting year-round hazards to both employees and visitors, both in Yellowstone and the Shoshone National Forest. Natural avalanches can and do occur, both before and after howitzer use. Using a helicopter instead of a howitzer also is a high-risk activity because of other risks, such as high winds, a helicopter contractor would have to incur.

The NPS may use a combination of techniques that have been used in the past (howitzer and helicopter), as well as techniques that may be available in the future. Area staff may use whichever tool is the safest and most appropriate for a given situation, with the full understanding that safety of employees and visitors comes first. Employees in the field make the operational determination when safety criteria have been met, and operations can be conducted with acceptable levels of risk. The NPS will not take unacceptable risks. When safety criteria have been met, the pass will be open; when they have not been met, the pass will remain closed. As with past winters, extended closures of the pass may occur, and the NPS will continue to provide notices of the road status.

#### **Summary of and Responses to Public Comments**

The NPS published a proposed rule on November 5, 2008 and accepted public comments through November 20, 2008. The NPS reopened the comment period on July 24, 2009 and accepted public comments through September 8, 2009. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: <http://www.regulations.gov>. A total of 39,767 comment documents were received.

1. *Comment:* The numbers of snowmobiles and snowcoaches that



should be permitted into the park should be set at numbers higher or lower than those proposed by the plan.

*Response:* A limit of 318 will produce an average considerably lower than those seen in recent years. With a limit of 720 over the last 5 years, snowmobile use did not average more than 300 per day. On most days, use was much lower than 300 (in January/February 2007, the average, for example, was 273), but the average was closer to 300 as a result of the higher numbers seen around Christmas 2006 and other peak days, when use rose as high as 543 per day. A limit of 318 will greatly reduce those peaks and thereby is expected to lower the overall average. For various reasons, it is not expected that the 318 daily limit will be reached during the next two winters. It will likely be difficult for all guides and outfitters to fill their allocations: different sizes of groups will probably create one or two unused snowmobiles per allocation, and last minute cancellations will probably leave some allocations unused. Also, using last winter as an example, one guide company had only 10 snowmobiles available to use, out of an allocation of 30. Thus, every day, 20 snowmobile allocations went unused. Finally, unless recent use patterns illustrated in the 2008 EA shift greatly, the 318 limit will not be reached every day or even often enough to produce an average more than 300. Also, as explained in the 2008 EA, NPS cannot allow higher numbers of snowmobile or snowcoaches to enter the park until the NPS analyzes their effects in an EIS, because higher numbers of snowmobiles and snowcoaches have the potential to create major adverse impacts. Additionally, at this time, NPS has not conducted sufficient analysis to determine whether higher numbers would cause unacceptable impacts or would otherwise be an appropriate use. In a long-term plan and EIS, alternatives with higher numbers of snowmobiles would be considered.

2. *Comment:* The method in which snowmobile limits should be set should be based on seasonal variations, adaptive management, annual maximums, high demand times (holidays), and/or concession contracts, as is the case for snowcoaches.

*Response:* As reflected in the analyses within the judicially vacated 2007 EIS providing for variable daily limits would have the potential to create major adverse impacts on park soundscapes, particularly on days when visitation exceeded 318 snowmobiles and 78 snowcoaches. Such impacts would have to be first analyzed in an EIS. Weekends are not necessarily the

busiest days; allowing higher visitation on weekends could deprive visitors the ability to enter on weekdays. Annual limits would provide variable daily limits as well and may result in major impacts. Such an alternative must be first analyzed in an EIS, and could be analyzed in the long-term plan and EIS. The decision includes an adaptive management program.

3. *Comment:* The NPS should phase out or ban snowmobiles, and transition to a snowcoach-only system.

*Response:* Current science suggests that a snowcoach-only system in Yellowstone could cause a number of impacts: major soundscape impacts, high fuel consumption, greater wildlife responses, and more damage to the snow road surface than from snowmobiles. At this time NPS has not conducted sufficient analysis to determine whether such a system would cause unacceptable impacts or would otherwise be an appropriate use. In a long-term plan and EIS, such a system would be considered.

4. *Comment:* The NPS should consider alternatives beyond the use of snowmobiles or snowcoaches, including plowing more roads in the winter to allow for vehicle use.

*Response:* As explained on 2008 EA pp. 2–8 to 2–9, plowing was dismissed as an alternative in this EA because doing so would add uncertainty and because many winter operators had already invested in oversnow equipment, assuming a plan similar to this one would indeed be implemented. The plowing option remains a possibility to consider in long-term winter use planning.

5. *Comment:* The current system of commercial guides should be modified to include non-commercial guides certifying individuals to lead groups, or the elimination of the requirement for a guide all together.

*Response:* The concept of non-commercial guiding or unguided access (both with training programs) has been analyzed in previous winter plans and will be evaluated in a long-term winter plan. Additionally, the NPS may consider the Certified Group Leader concept in its future long-term winter use planning. The NPS will consider non-commercial guides in long-term winter use planning. The interim plan will last for two winters, which is not sufficient time to design and implement pilot or test programs and study and report on their effects.

6. *Comment:* Snowmobile numbers should be regulated through variations in when and where snowmobiles can access the park, such as “snowmobile

only” days and/or limiting snowmobile use to certain areas of the park.

*Response:* Alternating kinds of visitation by week or day would be logistically difficult to implement and would not provide the consistency needed for effective trip planning for visitors in a short-term plan. In a long-term plan, the alternatives will consider a variety of spatial or temporal zoning as the comment suggests.

The requirement to use commercial guides has the effect of grouping all snowmobilers and many snowcoaches into certain time windows. Generally, these are two hour windows in the mornings and afternoons at the entrances and midday at Old Faithful. Outside of those periods commercial use is greatly reduced, and the opportunity to walk or ski in silence is more readily available. The NPS wishes to protect park soundscapes at all times of the winter, not just these less busy time periods. While visitors are certainly free to visit at less busy times to seek natural quiet, the NPS believes they also should be able to find it at other times. The NPS believes that adoption of the rule would offer ample opportunities for quiet.

7. *Comment:* The NPS should consider alternative elements that focus on non-motorized uses such as promoting cross country skiing, and snow shoeing.

*Response:* NPS will continue to facilitate non-motorized recreation and set ski tracks on the edges of snow roads. Snowshoers and cross-country skiers also have impacts on wildlife. The best available science indicates that cross-country skiers are more likely than snowmobiles to elicit a startle or flight response in wildlife as a result of their less regular use patterns and quiet approach to animals. Yellowstone is a large park, and it is 30 miles from West Yellowstone to Old Faithful and 50 miles from Mammoth Hot Springs to Old Faithful. Most visitors cannot ski or snowshoe these distances. For most visitors to enjoy locations in Yellowstone such as Old Faithful or the Grand Canyon of the Yellowstone, motorized access is necessary. Ski and snowshoe opportunities are available throughout the park, and many people access trailheads via snowmobile or snowcoach.

8. *Comment:* Only certain types of snowmobiles and/or snowcoaches with special technology should be allowed in the park.

*Response:* Electric snowmobiles could be used in Yellowstone under this winter use plan if they meet all other requirements. NPS is not aware of their commercial availability. Four-stroke

snowmobiles have been operated by concessioners within the park for the past six years. There are currently air and sound requirements for snowmobiles, and future requirements for snowcoaches are expected.

Snowmobiles that meet NPS air and sound requirements have considerably cleaner emissions and are quieter than snowmobiles that do not meet NPS requirements. The NPS continues to encourage snowmobiles (and snowcoaches) to employ improved technologies. NPS will continue to move towards air and sound requirements for snowcoaches, and snowcoaches will be required to adhere to noise and air emissions requirements, similar to those of snowmobiles.

9. *Comment:* The park should consider additional actions such as increasing law enforcement activities, lowering speed limits, stopping accommodation of winter use, prohibiting tours and allowing trips to set destinations only, and expansion of educational programs regarding winter use opportunities at Yellowstone.

*Response:* NPS will continue enforcement of its regulations. While an adjustment to speed limits may be analyzed further in the long-term winter use planning effort, a much lower speed limit would not allow access to Yellowstone's widely-spaced attractions. The NPS believes providing motorized oversnow access to the features of Yellowstone for the next two winter seasons helps fulfill the mission of the park to provide for visitor use and enjoyment of those resources. The current commercial guiding program provides an excellent way for the public to learn about the park and appropriate behavior. In the long-term plan, the NPS will evaluate alternatives that look at education programs for unguided or non-commercial guided opportunities.

10. *Comment:* The interim plan should be modified to include different timeframes for how long it would be in effect and different seasonal entry points.

*Response:* NPS believes the 2-year duration of the plan is necessary to provide adequate time to develop a new long-term winter use plan. In a long-term plan, the alternatives will consider a variety of spatial or temporal zoning as the comment suggests.

11. *Comment:* Winter use management should include either high fees for snowmobile use or subsidized snowcoach use.

*Response:* NPS will consider the fee suggestion in future long-term winter use planning.

12. *Comment:* NPS should create a lottery, permit, or reservation system to

limit winter use access, including a safety test or other educational component to assist the park in enforcement. Allocations among guides and outfitters should be fair and equal.

*Response:* Through the use of commercial guides, a reservation system is in place so that visitors can plan ahead for access to the park. Other allocation systems and education opportunities will be evaluated in the long-term winter use planning. The commercial guiding program has substantially assisted the park in improving compliance with park regulations.

13. *Comment:* Areas outside the park should be designated for snowmobile use, the park should be periodically shut down to allow for regeneration of the ecosystem, and snowmobiles should be required to stay on certain tracks if use is allowed in the Park.

*Response:* Whether areas outside the Park are also available for snowmobiling is not within the scope of this decision-making process. Snowmobiles in Yellowstone have always been restricted to park roads and have never been permitted off-road. The sheer size of Yellowstone means that more than one road is necessary to provide adequate visitor access. The No Action Alternative considered in the 2008 EA have closed the park and therefore better protected air quality. However, that alternative would have seriously limited access to much of the park for those not capable of skiing or snowshoeing long distances. Snowmobiles as well as snowcoaches offer visitors the opportunity to enjoy Yellowstone. With the requirement to use only snowmobiles that meet NPS air and sound requirements and are accompanied by a commercial guide, snowmobiles serve as a form of access to the features of Yellowstone, not a separate recreational activity.

14. *Comment:* NPS should require that winter users maintain 100 meter animal distance when stopping.

*Response:* The NPS requires visitors stay at least 100 yards (91 m) away from bears and wolves and at least 25 yards (23 m) away from all other animals—including bison, elk, bighorn sheep, deer, moose, and coyotes.

15. *Comment:* Snowmobiles should only be allowed for use by rangers, the disabled, or for emergency operations.

*Response:* Administrative use of snowmobiles is also managed by the NPS winter use plan, and as explained above, most NPS snowmobiles now meet NPS air and sound requirements. Similarly, researchers must also use snowmobiles that meet NPS air and sound requirements. Snowmobiles that

do not meet NPS air and sound requirements are used administratively only where necessary for the performance of park duties (for example, in deeper snow associated with boundary patrol).

Snowmobiles provide a different type of interaction with the park's attractions than do snowcoaches. Providing some level of access via both snowmobiles and snowcoaches provides for different kinds of enjoyment of the park's scenery and natural and historic objects and wildlife.

16. *Comment:* The interim plan should not use adaptive management to address existing park violations of NPS mandates.

*Response:* This rule does not authorize violations of any NPS mandates. NPS will continue enforcement of its regulations under any scenario, and the NPS will use adaptive management and monitoring results to make adjustments to the plan's implementation.

17. *Comment:* The 2004 rule should be retained, and the NPS should reaffirm its commitment to keeping Sylvan Pass open.

*Response:* Due to a pending appeal and other litigation related to reinstatement of the 2004 rule, relying on the reinstated 2004 rule would create substantial uncertainty regarding winter access, and NPS does not believe it is a viable option. In addition, there has been no current NEPA analysis or other determination that use at the levels authorized under that regulation is consistent with the NPS's statutory and other mandates. The findings of the 2007 EIS, as well as the court order vacating it, both suggest that those use levels are probably not consistent with those requirements. In order to help assure winter access to Yellowstone, the NPS is completing planning and rulemaking to replace the 2004 regulation reinstated by the Wyoming Court. A separate decision has been made, and separate regulations will be published, for Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway.

This decision continues the implementation of the Sylvan Pass Agreement (subject to weather-related constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities) during this interim plan. Management of the Pass will continue to be evaluated in a long-term plan.

18. *Comment:* The NPS air and sound requirements should be eliminated so that individuals can drive their snowmobiles on park roads.

*Response:* The NPS continues to require snowmobiles (and encourage snowcoaches) to employ improved technologies. Eliminating the air and sound requirements could lead to a return of historical conditions, which were found in 2000 to constitute impairment of park resources. Even if such use could be authorized, it would at a minimum have to be analyzed in an EIS. This comment will be considered in the course of the long-term planning process.

19. *Comment:* The 2008 EA selected an incorrect “no-action”, as it did not represent the current level of activity.

*Response:* NPS disagrees. When the 2008 EA was prepared, the 2007 rule had been vacated. No snowmobile or snowcoach use would have been authorized without action by the NPS, because the authorizations in the 2004 rule had expired pursuant to the sunset date provisions. After the 2008 EA was issued, the U.S. District Court for the District of Wyoming reinstated the 2004 rule without the sunset clauses, and as a result, up to 720 snowmobiles per day were allowed for the winter of 2008–09. Due to a pending appeal, there is still uncertainty regarding that reinstatement. As explained above, there has been no current NEPA analysis or other determination that use at the levels authorized under that regulation is consistent with the NPS’s statutory and other mandates. Accordingly, the No Action Alternative analyzed in the 2008 EA represents a more logical and useful benchmark against which impacts can be compared, and therefore continues to better satisfy the purposes of the no action alternative under NEPA.

20. *Comment:* The snowcoach-only alternative was improperly dismissed.

*Response:* A snowcoach-only transportation system would have numerous impacts and might not be the least impacting form of transportation. While NPS agrees that preservation of resources is key to the fundamental mandate of Yellowstone and the entire National Park System, the suggestion that the Yellowstone National Park enabling statute and the NPS Organic Act mandate snowcoach use is incorrect. These acts direct the agency to protect park resources and provide for enjoyment without incurring impairment. If NPS is to provide for any sizeable visitor access to Yellowstone in the winter, motorized vehicle use is necessary, and NPS believes that a limit of 318 snowmobiles per day and 78 snowcoaches per day effectively allows the agency to protect its resources while providing for visitation during this two-winter period.

21. *Comment:* The NPS has received a larger percentage of comments from the past planning efforts supporting a transition from snowmobiles to snowcoaches.

*Response:* The NPS has reviewed all comments received throughout the past and present winter use planning efforts in compliance with the NEPA and other relevant laws and regulations. The NPS is mandated to consider all of these comments in order to provide the decision-maker with a fully informed environmental analysis to base their decision on. NPS cannot base its decision simply on the sheer numbers of comments in support or against snowmobile, snowcoach, or solely non-motorized winter use. Snowcoach use has slowly and steadily increased. Somewhat more visitors still prefer to visit Yellowstone via snowmobiles. Snowcoaches do facilitate conversations between guides and visitors, but the guiding requirement for snowmobiles also has a similar result. If visitors double up on snowmobiles, the cost is comparable to snowcoach tickets for multiple individuals. Snowmobiles and snowcoaches both cause similar soundscape, wildlife and air quality impacts. Snowcoaches may consume more fuel per capita than do the snowmobiles that meet NPS air and sound requirements for use in Yellowstone. As the FONSI indicates, it is no longer clear that snowcoaches are the “least impacting” oversnow vehicles.

22. *Comment:* The Park should work with surrounding communities to educate the public regarding responsible and appropriate behavior within Yellowstone National Park.

*Response:* The current commercial guiding program provides an excellent way for the public to learn about the park and appropriate behavior. In the long-term plan, the NPS will evaluate alternatives that look at education programs for unguided or non-commercial guided opportunities.

23. *Comment:* The NPS should provide the public and use a transparent and candid interpretation of the findings related to snowmobile impacts on park resources.

*Response:* The NPS has used the most current information available in preparing the 2008 EA and this decision. That information has led to a new and better understanding of the contribution of both snowmobiles and snowcoaches to impacts on park resources.

24. *Comment:* The proposed rule and impact analysis violates the NPS’s Organic Act of 1916, findings within the 2008 EA, the court ruling of the U.S.

District Court for Wyoming, other previous decisions on this issue, and other provided court precedents.

*Response:* As a result of the Wyoming District Court’s order, the reinstated 2004 rule was in effect for the winter of 2008–2009. This interim rule would be in effect for two winter seasons. NPS believes the two-year duration of the plan is necessary to provide adequate time to develop a new long-term winter use plan. NPS believes the rule is consistent with all applicable court decisions concerning prior winter use plans, and other applicable authorities.

25. *Comment:* The methodologies of the analyses were flawed because it did not compare the impacts of snowcoaches versus snowmobiles adequately, consider the historical precedent of snowmobile use, and used existing concessioner contracts as the basis for use numbers.

*Response:* The computations in the 2008 EA were based on actual field measurements in Yellowstone, not on hypothetical modeling or estimates. Given the average passenger load on snowmobiles and snowcoaches in Yellowstone and the actual fuel economies of these vehicles, snowcoaches consume more fuel per passenger than snowmobiles. As indicated by the August 2008 peer-reviewed paper, “Portable Emission Measurements of Yellowstone National Park Snowcoaches and Snowmobiles” by Gary A. Bishop, Ryan Stadtmuller, Donald H. Stedman, and John D. Ray in the Journal of the Air and Waste Management Association (59:936–942), snowcoaches and snowmobiles are very similar in the per-passenger emissions. The soundscape modeling in the 2007 EIS (which was not challenged on this issue) indicated that a snowcoach-only alternative would cause major adverse effects to soundscapes. More recent monitoring information indicates snowcoaches are audible for similar time periods as commercially guided snowmobile groups. Also work on snowcoach sound indicates that the loud coaches include some modern vehicles, as well as those historic coaches that have not been retrofitted.

26. *Comment:* The false studies like the two-stroke emission test (where they used a very old, very out of tune two-stroke engine and compared the results against a brand new fuel efficient car) are a criminal use of taxpayer money.

*Response:* Current snowmobile emission information was based on modern snowmobiles that meet NPS air and sound requirements. Two-stroke snowmobile air emissions information used standard EPA emission factors.

27. *Comment:* The economic baseline analysis used in the 2008 EA should be 540 snowmobiles per day, as opposed to zero.

*Response:* As discussed above, the No Action Alternative analyzed in the 2008 EA represents the most logical and useful benchmark against which impacts can be compared, and therefore continues to best satisfy the purposes of the no action alternative under NEPA.

As discussed below, the economic analysis in this rule used a different baseline, based on the reinstated 2004 rule and its limit of 720 snowmobiles per day.

28. *Comment:* The NPS methodology for determining a comment period was improper and does not need to relate to the winter use season.

*Response:* Little time was available to complete the 2008 EA, so the public comment period on the EA in 2008 was quite limited. The NPS regrets any difficulties entering comments into its Web-based public comment system, but notes that comments sent by regular mail were also accepted. The NPS also provided an additional 45-day comment period on the proposed rule and took into account all comments received on the rule and 2008 EA. Thus a full 60-day comment period was provided on the proposed action.

29. *Comment:* NPS Management Policies prohibit the impairment of park resources and values, and snowmobile use constitutes an impairment.

*Response:* No impairment to park resources was found for the Selected Alternative.

30. *Comment:* No limit should be established for snowmobile access until impairment of park resources has been identified and proven. The standard of how impairment is applied to soundscapes is too strict.

*Response:* The Organic Act charges NPS with providing for enjoyment of the national parks “by such means as will leave them unimpaired.” However, nothing in the Organic Act suggests that impairment is the only consideration that may justify imposing limitations on use. The Organic Act clearly authorizes appropriate limitations on use as needed to protect park resources and values. Recreational uses may be prohibited if they are not an appropriate use, which does not necessarily mean that they cause impairment. NPS also manages uses so as to minimize conflicts among them. The NPS Management Policies explain when recreational and other uses may be prohibited or restricted. The natural soundscape is one of the “park resources and values” that NPS is

required to conserve and protect from impairment under the NPS Organic Act.

31. *Comment:* A potential precedent may be set that would restrict un-guided automobile use inside the park during the summer.

*Response:* This is a winter use plan not a summer plan. Issues and concerns are different in the winter than in the summer, and this plan does not set a precedent for summer visitation.

32. *Comment:* Unacceptable impacts to park resources were not adequately addressed in the 2008 EA—more action is needed to prevent the unacceptable impacts caused by snowmobile use within the park.

*Response:* The NPS finds that the negligible to moderate impacts of the Selected Alternative described in the 2008 EA and FONSI do not meet the criteria described in the FONSI for either unacceptable impacts or impairment, and are therefore consistent with the NPS’s statutory requirements under the Organic Act.

33. *Comment:* Snowmobiles that meet NPS air and sound requirements are not impacting the air quality within the park and give off fewer emissions.

*Response:* All snowmobiles allowed into the parks (with certain minor exceptions) must meet NPS air and sound requirements. These are the cleanest snowmobiles on the market. Impacts on air quality were analyzed and discussed in the EA and FONSI.

34. *Comment:* Air quality is adversely affected by the use of snowmobiles in the park, primarily due to exhaust, and that it is the duty of the NPS to prevent adverse impacts to air quality.

*Response:* Alternative 1 considered in the 2008 EA would close the park to visitor oversnow vehicle use and therefore fully protect air quality. However, Alternative 1 would deny access to much of the park for those not capable of skiing or snowshoeing. The Selected Alternative would allow only snowmobiles that meet NPS air and sound requirements into the park. Recent use levels have been similar to or higher than the levels expected under the Selected Alternative, and air quality has been very good to excellent in the park. It is therefore expected to remain very good to excellent.

35. *Comment:* Snowmobiles and snowcoaches have the same impact on air quality.

*Response:* Snowcoach use has been carefully analyzed in the winter use plan, particularly since their impacts upon park soundscapes, wildlife, and air quality are at times greater than those of snowmobiles. As indicated by the August 2008 peer-reviewed paper, “Portable Emission Measurements of

Yellowstone National Park Snowcoaches and Snowmobiles” by Gary A. Bishop, Ryan Stadtmuller, Donald H. Stedman, and John D. Ray in the Journal of the Air and Waste Management Association (59:936–942), snowcoaches and snowmobiles are very similar in the per-passenger emissions. Snowcoaches also use more fuel than snowmobiles, even accounting for the different passenger loads.

36. *Comment:* While the NPS claims to have independent “authority and jurisdiction to administer some provisions of the Clean Air Act” in the 2008 EA, the State of Wyoming has primacy under the Clean Air Act; therefore, the NPS has no authority to rely on air quality standards to limit snowmobile access in the park.

*Response:* NPS agrees the States of Wyoming, Montana and Idaho play a primary role in implementation of the Clean Air Act as it affects the park. However, as the Federal Land Manager, the NPS also has responsibilities to protect air quality and air quality-related values in the park. The Clean Air Act is not the sole applicable authority. As explained above, this is an exercise of the NPS Organic Act authority over use within the park, not an effort by NPS to regulate manufacturers, and it is consistent with Section 310 of the Clean Air Act. Air quality is expected to remain very good to excellent under the rule. The Organic Act reserves ample discretion to the Park Service to determine how best to provide for enjoyment of the Park. Thus, NPS has exclusive responsibility to determine the appropriate level and type of public access into national parks; indeed, many other national parks are closed entirely to motorized access in the winter.

37. *Comment:* The analysis of air quality was flawed, since air quality monitoring was not conducted along road corridors and the range of impacts from pollution was not fully accounted for in the analysis. The analysis of air quality impacts was improper since the NPS has not properly explained how an action would have “major” impacts on air quality within the park.

*Response:* The 2008 EA used new impact threshold definitions in order to address exactly the sorts of issues raised by this comment. The definitions for this EA were intentionally adjusted downward to be more conservative—that is, more protective—of park resources. The definitions are not based on parkwide metrics; rather, they are based on actual monitoring data, which are gathered at the two places where oversnow vehicle use is highest, Old Faithful and West Yellowstone. The NPS used the National Ambient Air

Quality Standards (NAAQS) in assessing air quality impacts because they provide an objective standard established by the EPA in order to protect air quality and protect public health.

38. *Comment:* The compaction of snow is a benefit of snowmobile use, as it prevents erosion.

*Response:* Snowmobile and snowcoach use under this rule is confined to a portion of the existing road system. The area of compacted snow comprises a negligible portion of the park acreage and has a negligible effect on overall snowmelt, runoff patterns, and erosion.

39. *Comment:* National parks are for the entire public, not just for environmentalists or special interest groups.

*Response:* National parks are open to the general public. Winter use management is intended to address specific issues while providing opportunities for all visitors to enjoy the parks consistent with NPS legal mandates and policies.

40. *Comment:* Studies have shown that black carbon emissions have adverse effects on the snowpack and should be analyzed before a rule is enacted.

*Response:* Monitoring of pollution deposition in the snowpack has been underway for more than 10 years, and this concern has not been identified in Yellowstone. As indicated in the 2008 EA, this monitoring will continue.

41. *Comment:* Many snowmobile operators drive too fast in the park

*Response:* All snowmobiles are to be commercially guided, which generally has eliminated speeding and other past problems. This is demonstrated, among other things, by the reduction in citations for such violations.

42. *Comment:* Banning or limiting all automobiles within the park should be explored, since snowmobiles are not the only motorized type of vehicle that creates impacts.

*Response:* Regarding automobiles in the summer, this is not a summer use plan, but rather a winter use plan, so such decision-making is beyond the scope of the rule. In the winter, the majority of the park has long been closed to automobiles, with the roads groomed for oversnow vehicle use. Plowing the roads for automobile use will likely be analyzed in the long-term winter use plan.

43. *Comment:* Snowmobile use adversely affects human health and safety because of air pollution, snowmobile accidents and crashes, and improper snowmobile operation.

*Response:* Concerning health and safety, results of the most recent personal exposure monitoring from winter 2008–2009 shows no exceedances of standards. With the requirement for commercial guiding, law enforcement incidents related to snowmobile use have dropped dramatically in the past five years, as compared to the 1990s, thus indicating fewer accidents and violations.

44. *Comment:* The analysis of health and safety is flawed because NPS must utilize health and safety metrics that have reasoned basis in relevant health standards for determining major health and safety impacts resulting from snowmobile use.

*Response:* NPS safety managers use OSHA and NIOSH metrics for measuring exposure of employees to sound and air pollution, which are standard measures used by safety professionals in determining hazards.

45. *Comment:* Snowmobile operators use caution and are polite to other users; I did not see any blue haze.

*Response:* NPS monitoring has shown dramatic improvements in winter conditions relative to historical use.

46. *Comment:* The cost of continuing snowmobile use at the park, conducting studies on this matter, and maintaining the East Entrance Road would be too much for the amount of snowmobilers that currently access the park. Furthermore, keeping Sylvan Pass open is too dangerous for park staff.

*Response:* Winter operations in Yellowstone are expensive for snowmobile or snowcoach access. The interim plan continues to implement the Sylvan Pass Agreement reached with the City of Cody, Park County, Wyoming, and the State of Wyoming. Sylvan Pass will be open only when safety criteria have been met.

47. *Comment:* The Park's assertion that the snowcoach-only alternative would have hazardous effects on oversnow travel is erroneous.

*Response:* If travel were restricted to snowcoaches only, a consequent increase in such traffic would result assuming visitation levels remain anywhere near current levels. This increase could compound the problems already seen in the park with rutting and damage to snow roads from coaches. That is why the NPS is implementing size and weight restrictions on coaches.

48. *Comment:* The Park informed commercially guided snowmobile businesses that 14 snowmobiles a day would be allowed per concessioner, yet the number now being proposed has been decreased to nine per day.

*Response:* NPS recognizes that some visitors will not be able to take snowmobiles into Yellowstone. However, most visitors will be able to take a snowcoach instead. Some visitors may have to adjust their plans and visit the park on different days.

49. *Comment:* The Park needs the revenue from snowmobiling activities, so entrance fees would have to be increased as a result of banning snowmobiles from entering the Park. Otherwise, the entrance fees should be increased in order to increase law enforcement patrols.

*Response:* Decisions regarding the appropriate type of winter use and numbers of snowmobiles and snowcoaches are made without regard to entrance fee revenues. Entrance fees related to winter use are a small part of Yellowstone's overall budget and a small part of the fee revenue that Yellowstone receives. Winter use accounts for 100,000 of the approximately 3.2 million people that visit Yellowstone each year.

50. *Comment:* Law enforcement efforts would not necessarily be decreased with the commercial snowmobile guide requirement, as is stated in the 2008 EA. Snowmobile use within the park requires increased law enforcement, since many snowmobile operators do not abide by the rules and regulations of the park.

*Response:* The NPS has reviewed the methodology used to calculate law enforcement incidents and believes they correctly show a decrease with the implementation of the managed use program, including commercial guiding. With the managed use program, the NPS believes that many of the incidents observed in the past (for example, snowmobilers speeding or going off road) rarely occur today.

51. *Comment:* The potential banning or limitations placed on snowmobile access to the park would create adverse impacts to surrounding businesses, tourists, as well as the NPS, since snowmobile outfitters and businesses that benefit from tourism would have to increase the cost of snowmobile tours for tourists.

*Response:* The 2008 EA and rulemaking analyzed socioeconomic impacts using IMPLAN modeling. Though this model does not incorporate every potential factor in the socioeconomic setting, it allows an objective analysis structure that may be applied to the entire planning area and cumulative impact study area. With respect to the number of snowmobile and snowcoach entries permitted under the Selected Alternative and resulting impacts on operators and visitors, the

permitted entries (318 snowmobiles and 78 snowcoaches) represent an 8.2% increase in snowmobiles and a 123% increase in snowcoaches compared to the 2007–2008 average of 294 snowmobiles and 35 snowcoaches per day. The percentage increases represented by the Selected Alternative are even larger compared to the 2008–2009 average of 205 snowmobiles and 29 snowcoaches per day. While the 2008–2009 use likely reflects visitor uncertainty brought on by recent court decisions, NPS does not think that use levels will increase considerably over the next two years that the Selected Alternative will be in effect. This is because of the current economic slowdown and because NPS does not expect a considerable increase in use over such a short period of time.

52. *Comment:* The economic interests that currently depend on snowmobiling could switch to business ventures related to snowcoaches and the NPS needs to consider the value of the natural surroundings in their analysis, since the park does not exist to provide profit for businesses located outside the park. They may switch to business ventures related to cross country skiing and snowshoeing.

*Response:* Gateway communities provide services to park visitors that the NPS cannot provide or has chosen not to provide. Through the planning process, the NPS determines appropriate type of winter use and numbers of snowmobiles and snowcoaches. Through the concessions contract process, the NPS then determines the nature of the business opportunities available and provides potential concessioners the opportunity to submit bid to provide those services. Businesses may then compete to provide those services in the park. The NPS recognizes that each type of use and access (snowmobile, snowcoach, ski, snowshoe) creates impacts and the impacts must be weighed with regard to the protection of park resources while providing for visitor enjoyment.

53. *Comment:* Snowmobile use inside the park creates undesirable impacts to soundscapes within the park, disrupts the quiet serenity the park offers in the absence of snowmobiles, and may very well be inconsistent with desirable conditions.

*Response:* Even with sound from cumulative effects of all oversnow vehicles, NPS expects soundscapes impacts to stay within moderate levels, levels that would be fully acceptable and would be consistent with its desired conditions and with the 2006 Management Policies. NPS agrees that winter serenity is important and

believes that the level of use permitted by the Selected Alternative (by snowmobiles that meet NPS air and sound requirements, combined with snowcoach use) will result in large portions of the day without the sound of oversnow vehicles.

54. *Comment:* NPS should explain the adaptive management thresholds (primarily soundscape thresholds), consistency with other NPS mandates, obligation to conserve park resources and leave them unimpaired throughout the entire park, legal basis for considering soundscapes as a park resource, what an unacceptable impact is, and baseline in gauging the impacts on snowmobile use on soundscapes.

*Response:* The adaptive management thresholds are a management tool only; they do not represent the unacceptable impacts or impairment thresholds described in section 1.4 of the Management Policies. Rather, they are a conservative measure used to alert the NPS manager that additional attention to a particular park resource or value is merited. By reacting to the exceedance of a conservative adaptive management threshold, NPS can seek to ensure that no unacceptable impacts or impairment occur. Accordingly, the fact that these thresholds have been exceeded in the past in no way undermines NPS's determination that "sound from recreational oversnow vehicles [is] well within acceptable ranges."

In backcountry areas and travel corridors, the OSV impacts were essentially compared against natural ambient. That is, the natural ambient was the existing ambient (minus the low percentage of aircraft sounds). In the Old Faithful developed area, the natural ambient was not measurable due to other existing non-natural sounds (the heating and ventilating systems in buildings adjacent to the monitoring site are continuously audible).

The 2008 EA contains an explanation of the relationship between major impacts, unacceptable impacts, and impairment. NPS notes that the term "major" as used in the 2008 EA is equated with "significant" effects within the meaning of NEPA. Accordingly, if a major impact were predicted, the NPS would prepare an EIS.

For soundscapes, one of the "clear bright lines" separating acceptable impacts from unacceptable impacts is whether implementation of an alternative would unreasonably interfere with the natural soundscape, be inconsistent with Yellowstone's purposes or values, impede the attainment of Yellowstone's desired future conditions, create an unsafe or

unhealthy environment, or diminish opportunities for current or future generations.

NPS understands that this "line" does not establish a "quantitative" standard as the commenter requests. However, the intensity of many impacts, and the manner in which those impacts translate into impairment or unacceptable impacts, cannot be described quantitatively. In such instances, they must rely on qualitative standards which are based on the NPS manager's best professional judgment.

The soundscape impact threshold definitions in the 2008 EA make clear that recreational oversnow vehicle noise is a subject of this EA and rulemaking; however, overflights and administrative vehicles are clearly identified as contributing to the cumulative soundscapes impacts, with appropriate mitigations also identified.

55. *Comment:* Newer snowmobiles, specifically ones that meet NPS air and sound requirements, do not create noise pollution—a majority of the impacts to soundscapes within the park emanate from NPS contractors.

*Response:* Recent monitoring indicates that commercially guided snowmobile groups and snowcoaches contribute similarly to the audibility of oversnow vehicles. Early in the managed winter use program, some contractors were using snowmobiles that did not meet NPS requirements. Newer contracts are correcting this problem, and the NPS continues to move towards a requirement that NPS and concession employees only use snowmobiles that meet NPS air and sound requirements.

56. *Comment:* The soundscapes impacts presented in the 2008 EA could be mitigated through further management of snowmobiles and snowcoaches by the NPS.

*Response:* The NPS has only recently understood that modern snowcoaches are also significant contributors to the concerns regarding loud oversnow vehicles, and the NPS is still working on methodologies and test procedures for sound testing of snowcoaches. The lack of a stable, long-term plan has slowed implementation of snowcoach sound and air emission requirements. An individual snowcoach represents a significant investment, and snowcoaches are operating under 10-year contracts that were awarded in 2003. Therefore the NPS believes the long-term planning process should establish the test procedures and specifics of snowcoach sound and air emission requirements.

57. *Comment:* Experiences on a snowmobile could not be replaced with

a snowcoach, such as the feeling of openness, experience of the scenery, experience of the ability to access public lands.

*Response:* NPS recognizes that snowmobiles and snowcoaches offer different types of experiences for visitors.

58. *Comment:* Snowmobile use has a negative impact on visitor experience from the noise, exhaust, and wildlife disturbance.

*Response:* A visitor survey in 2008 specifically addressed soundscapes and wildlife and found a high level of visitor satisfaction.

59. *Comment:* Snowcoach use should be increased based on past visitation trends, as snowcoaches could enhance the visitor experience.

*Response:* Snowcoach ridership has increased (except for the winter of 2008–2009 when uncertainty and economic concerns reduced all winter use). With more snowcoaches, NPS now understands that snowmobiles and snowcoaches both contribute to air quality, soundscapes, and wildlife impacts. Snowcoach limits have not been reached (the peak day in the last three years was 60 of 78 authorized). Based on these concerns, the NPS cannot increase snowcoach numbers during this interim plan. The number of snowcoaches to be allowed will be addressed in the long-term winter use plan.

60. *Comment:* The mission and purpose of the NPS is to preserve national parks for future generations; snowmobile use is considered both consistent and inconsistent with this purpose.

*Response:* The NPS mission is to preserve and protect the park resources while providing for visitor enjoyment. The managed winter use program during the past five winters has allowed that to occur.

61. *Comment:* The interim rule should be finalized by November 15, 2009, so people could plan for the coming season. The opening date caveat that assumes accumulation of sufficient snow is improper.

*Response:* When the NPS reopened the comment period on the proposed rulemaking in July, it notified the public of its intent to have a rule in place for the upcoming winter season, so that people could plan accordingly. The December 15 opening date for oversnow vehicle access has been flexible for different types of vehicles, depending on snow accumulation. When there is insufficient snow for snowmobiles or steel-tracked snowcoaches, rubber tracked snowcoaches have been allowed.

62. *Comment:* Snowmobiles are an important historical use; any recent decline in use is not related to demand but the current litigation that has occurred.

*Response:* NPS believes that uncertainty brought on by litigation (and recently, the economic downturn) has contributed to reduced snowmobile numbers.

63. *Comment:* Current requirements for guided snowmobile use put experiencing the park out of the reach many visitors.

*Response:* Yellowstone has always been an expensive place to visit in the winter, and the NPS understands that guiding and snowmobile technology requirements can add to the cost of a visit. The northern areas of the park can be visited via wheeled vehicle, where visitors are able to view many features and wildlife from the roadside or via short walks, ski, or snowshoe trips.

64. *Comment:* The visitor use survey raises legitimacy concerns, and the survey may be biased.

*Response:* The survey used appropriate methodologies to help begin to understand the human dimensions of wildlife and soundscapes. The methods and draft instruments were made available for public review as part of the Paperwork Reduction Act process.

65. *Comment:* The NPS finding that there would be impacts on visitor access and circulation under Alternative 1 in the 2008 EA is incorrect because not all reasonable alternatives were considered, the beneficial impacts were not considered, and the thresholds applied did not take into consideration the expiration of the 2004 rule.

*Response:* For reasons explained therein, the NPS considered two alternatives in the 2008 EA: No Action, which presumed no snowmobile or snowcoach access, and the Proposed Action, which called for 318 snowmobiles and 78 snowcoaches. A wide range of alternatives was considered in the earlier 2007 EIS, including the alternative specifically recommended by the commenter (allow access only from South Entrance to Old Faithful in the winter). In the 2007 EIS, major adverse impacts were found to visitor access and experience with this alternative (3A in that document). A wide range of alternatives will be considered in the long-term plan and EIS.

66. *Comment:* Snowmobiles provide the opportunity to enjoy the scenic nature of the parks.

*Response:* Snowmobiles and snowcoaches each provide various opportunities for visitors to enjoy the

park, and each provides different experiences for visitors.

67. *Comment:* Snowmobile use affects the scenic quality and landscapes of the park as a result of exhaust and haze.

*Response:* The impacts that the commenters are describing seem to be those that were experienced before the managed winter program took effect. Snowmobiles that meet NPS air and sound requirements and snowcoaches produce similar air emissions on a per passenger basis. The blue haze no longer occurs.

68. *Comment:* The use of snowmobiles in the park is adversely impacting vegetation, including impacting critical habitat.

*Response:* Snowmobiles and snowcoaches have always been limited to the roads that visitors use in the summer months. Off-road travel is prohibited in the park. The NPS is not aware of any effects to vegetation as a result of snowmobile or snowcoach use.

69. *Comment:* Snowmobile use in the park disrupts wildlife during the winter months when the animals are more vulnerable from such impacts as noise. Others feel snowmobile and snowcoach use does not disturb wildlife. Referenced studies should be considered.

*Response:* Thousands of observations of wildlife reactions to nearby oversnow vehicles have extensively documented patterns of behavioral responses in some bird and ungulate species. Substantial changes in behavior are uncommon, and none of the observed responses suggest immediate threats to the health or welfare of these wildlife populations. Furthermore, the populations of these species within the park have either grown or remained stable during the decades in which winter use expanded dramatically. The exception—the trumpeter swan—declined throughout the region due to causes unrelated to winter use. Although important research questions remain regarding the ecological effects of winter use at Yellowstone, no compelling evidence has emerged regarding impacts to the studied wildlife populations from recent research to support dramatic reductions in winter access to the park.

The rule will continue winter use at approximately the same levels as experienced in the past five years. All winter visitors to Yellowstone will be required to travel in a guided group, whether with a commercial snowmobile guide or in a guided snowcoach. Effects on wildlife are expected to be similar to those seen in the last five years, primarily negligible to minor (with possible moderate effects to swans and eagles).



70. *Comment:* NPS findings regarding the impacts of snowcoaches and snowmobiles on wildlife are inconsistent with the recommendations of NPS biologists.

*Response:* As discussed in the FONSI, there have been some ambiguous and somewhat inconsistent statements in past papers on wildlife impacts. NPS has determined, however, that the Selected Alternative is consistent with the biologists' actual recommendations.

The 2008 EA states, "White et al. erred in stating winter use should be limited to 50,000 oversnow visitors. [emphasis in original] Rather, they intended that the phrase read '<50,000 over-snow vehicles'" (White 2008). White 2008 is a citation to a memo from Dr. White available at [http://www.nps.gov/yell/parkmgmt/upload/correction\\_2006winuserpt.pdf](http://www.nps.gov/yell/parkmgmt/upload/correction_2006winuserpt.pdf) which clarifies that the intended limit was indeed 50,000 vehicles, not visitors. Had the record actually suggested a limit of 50,000 visitors, rather than vehicles, NPS would have noted as much in its discussion of the snowcoach-only transportation system in the 2007 FEIS, which would accommodate 129,600 oversnow visitors (120 snowcoaches × 12 passengers per coach × 90 days per season).

In some reports, park wildlife biologists have recommended that oversnow use be limited to the numbers observed during the "past three years [2001–2004] of their study." One example, a memo by P.J. White of November 9, 2008, has been interpreted by some to mean that snowmobile use should be limited to no more than approximately 260 snowmobiles per day and snowcoaches be limited to no more than approximately 30 per day (which were the averages those years).

Other papers by the same authors, however, discussed a wider time frame (1999–2006) and higher levels of use. The peer-reviewed scientific journal article, "Behavioral Responses of Bison and Elk in Yellowstone to Snowmobiles and Snow Coaches" by John J. Borkowski, P.J. White, Robert A. Garrott, Troy Davis, Amanda R. Hardy and Daniel J. Reinhart. *Ecological Applications* 16(5) 2006, pp. 1911–1925) makes it clear that the monitoring period they are referring to is 1999 through 2004. Average daily oversnow vehicle use ranged from 593 per day during the 2002 winter to 178 oversnow vehicles per day in 2004. Maximum daily numbers ranged up to 1168 oversnow vehicles during the study. Cumulative oversnow vehicle entries for the winter season for the West Entrance alone ranged up to 46,885 for the winter season (data are found on page 1915 of

the paper). At the conclusion (p. 1924), the authors state:

This study documented that winter visitors traveling on OSVs were essentially confined to the groomed roads, typically behaved appropriately when viewing wildlife, and rarely approached wildlife except when animals were on or immediately adjacent to the road. These attributes have allowed elk and bison in Yellowstone to habituate somewhat to OSV recreation, commonly demonstrating no observable response, and rarely displaying "fight or flight" responses when animals were off road. Further, available data provide no evidence that levels and patterns of OSV traffic during the past 35 years adversely affected the population dynamics or demography of elk and bison. Thus, we suggest regulations restricting the levels and travel routes of OSVs during our study were effective at reducing disturbances to bison and elk below a level that would cause measurable fitness effects. We acknowledge the potential for fitness effects to develop if OSVs or other stressors become more severe or prolonged. Thus, we recommend park managers consider maintaining OSV traffic levels at or below those observed during our study [1999–2004]. Regardless, numerous studies have shown that scientific findings rarely persuade people to alter their values or beliefs (e.g., Meadow et al. 2005). Thus, we suspect that varying interpretations of the behavioral and physiological response data will continue to exist because of the diverse values and beliefs of the many constituencies of Yellowstone National Park.

The Selected Alternative maintains the restrictive regulations that reduced disturbances and maintains OSV traffic levels well below those observed from 1999–2004, and is thus fully consistent with the recommendations of this peer-reviewed article and the biologists' subsequent clarifications.

71. *Comment:* The NPS did not adequately show that major impacts to wildlife (such as the road packing/grooming impacts to bison) are avoided under the current interim winter use plan.

*Response:* The issue of bison use of groomed roadways is addressed in detail in the 2008 EA. Impact threshold definitions were based on the best information from NPS wildlife scientists, the 2006 Management Policies, and federal laws. The NPS notes that the Selected Alternative would result only in negligible to minor effects on park wildlife (with possible moderate effects on swans), and that wildlife monitoring will continue.

72. *Comment:* Sylvan Pass and the East Entrance are an important point of access to the Park—a higher number should be used to satisfy demand and justify keeping the East Entrance open.

*Response:* The NPS will honor the agreement reached with the State of

Wyoming, Park County, Wyoming, and the City of Cody regarding Sylvan Pass. To that end, 20 snowmobiles and 2 snowcoaches per day are allocated to the East Entrance.

73. *Comment:* The East Entrance and Sylvan Pass should not be used because of the costs to keep the entrance open versus the revenue generated—the funds saved by closing this area could be used for other park operations.

*Response:* The NPS reached an agreement with the Sylvan Pass Study Group and this plan continues to implement the agreement (which recognizes weather-related constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities). Management of the pass will continue to be evaluated in a long-term plan.

74. *Comment:* The 15-day comment period on the draft rule was not sufficient time to offer comment, irrelevant of the NPS justification—this violates the intent of NEPA. Further, the NPS should have accepted email comments on this issue.

*Response:* The NPS provided 15 days for comment on the 2008 EA and a total of 60 days for comment on the proposed rule. The decision took into account all the comments received on the proposed rule and 2008 EA. The NPS Planning, Environment, and Public Comment (PEPC) web-based system allows for electronic submission of comments. The NPS regrets any difficulties entering comments into the PEPC system, but notes that comments sent by regular mail were also accepted.

75. *Comment:* The current interim plan did not include a full range of alternatives as required under NEPA. By changing the number of snowmobile allowed in the interim plan compared to what was previously allowed, and without providing a reasoned explanation, the NPS is not compliant with the Administrative Procedure Act (APA).

*Response:* As discussed in the purpose and need for the 2008 EA, this EA and rulemaking considered only those options that would have allowed the NPS to open the parks for an interim period without causing major impacts. NPS did not examine options that it knew, based on previous analyses, modeling data, or monitoring data, would cause major impacts. Such impacts must first be analyzed in an EIS. In order to ensure that some motorized access could occur for the upcoming winter, NPS proposed an approach it believed could likely be supported by a Finding of No Significant Impact, which required that

no major impacts from the decision could be experienced.

The past five years of monitoring and studies has provided the NPS with information that it did not have in earlier winter use decisions. Using current monitoring and science, the NPS is drawing different conclusions regarding winter use and the contributions of snowmobiles and snowcoaches to those impacts.

As the Supreme Court has recently clarified in *Federal Communications Commission v. Fox Television Stations* (2009), there is no heightened standard for agency policy changes. An agency need not provide a more detailed analysis for a new policy; it simply must provide the same level of reasoned analysis that should justify any agency decision. NPS has indicated the reasoning for the reduced numbers of snowmobiles in the 2008 EA.

76. *Comment:* The interim plan should have been an Environmental Impact Statement (EIS) level of analysis, as opposed to an EA, so the proposed rule is invalid. Furthermore, the level of analysis was flawed because the NPS has changed its definition of impacts between the various planning processes.

*Response:* The 2008 EA, which did not reveal any impacts greater than moderate, is an appropriate NEPA analysis document to support this interim winter use decision and rulemaking. The rule will continue a program which has been in place for the past five winters, and whose impacts are well understood through monitoring. While the interim plan is in place, a wider range of alternatives can be analyzed in a long-term plan and EIS.

Throughout the several recent winter use processes, NPS's desired conditions have remained the same. The definition of impacts has changed in recognition of the use of monitoring data versus modeling analysis to determine impacts. The 2007 EIS primarily used computer modeling, whereas the 2008 EA used the results from monitoring.

77. *Comment:* The interim plan/EA violated NEPA because it did not provide a proper level of analysis, would result in the impairment of park resources, and is pre-decisional because the proposed rule was released two days after the 2008 EA was available for public comment. The NPS should terminate the 2008 NEPA process.

*Response:* A final decision was not made in December 2008. NPS did not finalize this decision until nearly a year later, after also allowing an additional 45-day public comment period for the proposed rule. NPS sought to create an interim winter use plan that would probably not have a significant impact

on the environment, which among other things means that it would not require the preparation of an EIS. That does not mean, however, that NPS had prejudged the outcome of the process. The proposed rule called for implementing the Preferred Alternative in the 2008 EA, and the NPS solicited public comment on both. NPS issued its FONSI on October 15, 2009. That decision and this final rule took into account all the comments received on the 2008 EA and proposed rule.

78. *Comment:* There are potential inconsistencies with the NPS's previously published winter use National Environmental Policy Act (NEPA) documents. The 2008 proposed rule and the 2008 EA on which it is based do not address the bulk of EPA's written comments regarding the 2007 Final Environmental Impact Statement (EIS) for winter use plans in Yellowstone and Grand Teton National Parks. EPA has concerns with the proposed rule and has mitigation and monitoring recommendations. EPA will wait for the forthcoming EIS scoping period to revisit and clarify concerns with previous winter use analyses.

*Response:* The past five years of monitoring and studies have provided the NPS with information that it did not have in earlier winter use decisions. Using current monitoring and science, the NPS is drawing different conclusions regarding winter use and the contributions of snowmobiles and snowcoaches to those impacts. The definition of impacts has changed in recognition of the use of monitoring data versus modeling analysis to determine impacts. The 2007 EIS primarily used computer-based modeling, whereas the 2008 EA used monitoring.

79. *Comment:* Management should avoid unacceptable or major impacts and use a mitigated FONSI as one method to address impacts from snowmobile use.

*Response:* The Selected Alternative does do more than prevent unacceptable impacts: it avoids all impacts that are greater than moderate. It protects the very good to excellent air quality, minimizes impacts upon park wildlife, and protects park soundscapes. Also, the plan would implement an adaptive management program that managers could utilize to adjust visitation to protect park resources even more, if for some reason monitoring determines resources are not adequately protected during these two winter seasons. Furthermore, by reacting to the exceedance of a conservative adaptive management threshold, NPS can ensure

that no unacceptable impacts or impairment occur.

80. *Comment:* There is no evidence that my comments on previous efforts had been reviewed, so the NPS should ensure that comments submitted on the draft rule are reviewed and considered.

*Response:* All comments submitted on the 2008 EA and proposed rule were reviewed and considered. Comments made in prior planning processes are beyond the scope of this rule, but NPS did review and consider all timely comments in those processes and this one.

81. *Comment:* The NPS had conflicting statements about the environmentally preferred alternative between different NEPA efforts.

*Response:* The environmentally preferred alternative is determined by the range of alternatives that are being considered in the specific NEPA document. The 2007 EIS did not contain an alternative with the numbers of snowmobiles and snowcoaches that are in the Selected Alternative (318 and 78, respectively). Most alternatives called for more snowmobiles or snowcoaches, or had only limited portions of the park open to oversnow access. The Selected Alternative provides access to all park features in a highly managed program whose impacts are well understood.

82. *Comment:* Allowing snowmobile use is in conflict with purpose for which Yellowstone was established, the mandates of the NPS such as the National Park Service Act of 1916, and NPS Management Policies because of the impact this use has to wildlife, noise, and visitor experience.

*Response:* While NPS agrees that public enjoyment is part of the fundamental mandate of Yellowstone and the entire National Park System, the suggestion that the Yellowstone statute and the NPS Organic Act mandate some particular level or type of snowmobile use is incorrect.

While NPS agrees that preservation of resources is key to the fundamental mandate of Yellowstone and the entire National Park System, the suggestion that the Yellowstone statute and the NPS Organic Act mandate snowcoach use is incorrect. These acts merely direct the agency to conserve park resources and provide for enjoyment without incurring impairment. If NPS is to provide for any significant visitor access to Yellowstone in the winter, motorized vehicle use is necessary, and NPS believes that the limit of 318 snowmobiles per day and 78 snowcoaches per day is consistent with the park's mandate.

The NPS Management Policies state that "NPS managers must always seek

ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values.” (Section 1.4.3) This means that NPS managers must take reasonable, affirmative steps toward avoiding or minimizing adverse impacts, but it does not go so far so as to constrain the NPS’s discretion to allow impacts that the NPS deems necessary and appropriate to provide for the enjoyment or conservation of the park.

83. *Comment:* The scope of the interim plan was misdirected, as snowmobiles have a small impact when looking at the bigger picture.

*Response:* Historically, oversnow vehicle use (especially snowmobiles) caused most of the impacts associated with winter use in Yellowstone, for example, accounting for the majority of air pollution. During the past five years, with the managed use program, most of those historic issues have been addressed, and the NPS now understands that snowmobiles and snowcoaches are contributing similarly to winter use related impacts.

84. *Comment:* Because the definition of the word “natural” was misapplied by the NPS, and because snowmobiles travel along developed park highways and not off-road, the executive order that regulates off-road vehicles is not applicable and snowmobile use is not subject to special regulation.

*Response:* NPS recognizes that Executive Order 11644 (Use of Off-Road Vehicles on Public Lands, as amended by E.O. 11989) applies to all federal agencies that allow snowmobiling. The Executive Order defines off-road vehicle as “any motorized vehicle designed for or capable of cross-country travel \* \* \*.” That Executive Order requires federal agencies to promulgate regulations. The NPS regulation, which is found at 36 CFR 2.18, requires promulgation of special regulations like this rule.

85. *Comment:* The desired conditions established in the 2008 EA were not subject to public review and that public comment must be solicited on these conditions.

*Response:* The desired conditions in the 2008 EA were similar to the desired conditions identified in the 2007, 2004, 2003 and 2000 winter use plans and have been subject to public review in all those past planning processes.

86. *Comment:* Including a winter use monitoring plan in the scope of the 2008 EA was unnecessary since oversnow motorized vehicle use should not be permitted.

*Response:* The winter-specific monitoring complements other monitoring programs. For example, the

park monitors atmospheric deposition (including mercury), visibility (including ozone), and fine particulates at other stations.

87. *Comment:* There are resources that the NPS needed to further analyze such as subnivian fauna and climate change.

*Response:* A review of long-term climate trends was presented in the 2007 EIS and will be considered in the new long-term winter use plan. Subnivian fauna were dismissed as an impact topic because snowmobile and snowcoach use is confined to paved and hard-packed gravel roads that visitors use in the summer. Impacts to subnivian fauna, which may occur elsewhere as a result of cross-country motorized use, do not occur in Yellowstone.

88. *Comment:* NPS misinterprets the Organic Act, Yellowstone Park Act, Clean Air Act, General Authorities Act, the NPS Management Policies, Executive Orders, and the Park’s Master Plan. The proposed rule is fundamentally flawed. Some argue that these laws require that snowmobiles be banned, while others argue that conservation should not predominate over recreation.

*Response:* While the NPS agrees that public enjoyment is part of the fundamental mandate of Yellowstone and the entire National Park System, the suggestion that the Yellowstone statute and the NPS Organic Act mandate some particular level or type of use is incorrect.

Under 36 CFR 2.18, snowmobile use is prohibited except where specific routes are designated, on terms that, among other things, are consistent with park values and do not damage park resources. That regulation implements Executive Order 11644, as amended by Executive Order 11989, which applies to all federal agencies that allow snowmobiling.

Nothing in the Organic Act suggests that impairment is the only consideration that may justify imposing limitations on use. For example, the portion of the Organic Act that charges NPS with conserving the scenery, natural and historic objects, and wildlife within the parks can also justify limitations on use.

NPS Management Policies state that “NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values.” (section 1.4.3) This means that NPS managers must take reasonable, affirmative steps toward avoiding or minimizing adverse impacts, but it does not go so far so as to constrain the NPS’s discretion to allow impacts that the NPS deems necessary and appropriate to provide for

the enjoyment or conservation of the Park.

The NPS formulated this interim winter use plan for Yellowstone in full compliance with the appropriate laws, policies, and executive orders. The amount and type of snowmobile and snowcoach use, and the restrictions on that use, will allow visitors to enjoy the park while protecting park resources.

89. *Comment:* The proposed rule does not take into consideration the precedent related to providing non-commercial opportunities in national parks, as this action would set a precedent for banning other types of vehicles in other parks.

*Response:* The concept of non-commercial guiding or unguided access (both with training programs) has been analyzed in previous winter plans and will be evaluated in alternatives in a long-term plan. This is a winter plan, not a summer use plan and does not set a precedent for other seasons or types of visitor access, nor does it limit what may be studied in a long-term winter use plan.

90. *Comment:* The proposed rule is not consistent with the 2008 Wyoming Court Order, and does not provide the certainty that the order called for. The interim rule constitutes a final agency action subject to judicial review, so the NPS should not take final agency action on the interim rule.

*Response:* The NPS believes the interim rule is consistent with all applicable court orders.

91. *Comment:* Compared to snowmobiles, snowcoaches produce greater emissions so these snowmobiles that meet NPS air and sound requirements should be allowed in the park.

*Response:* As discussed above, snowmobiles and snowcoaches produce similar per-passenger emissions. NPS anticipates implementing NPS air and sound requirements for snowcoaches in the future, but not during these two winter seasons.

92. *Comment:* The plan is inaccurate because there is a lack of any measurable criteria.

*Response:* The adaptive management plan contains both quantitative and qualitative thresholds.

93. *Comment:* Poor air quality within the park stresses wildlife, deteriorates visitor experience, and contributes to climate change.

*Response:* The 2008 EA analysis looked at impacts to wildlife, soundscapes, and air quality which can directly or indirectly affect these resources. It identified minor impacts to wildlife, moderate impacts to

soundscapes, and negligible impacts to air quality.

94. *Comment:* Snowmobile use in the Park should be banned to reduce global warming, conserve oil resources, and to fight the “obesity epidemic.”

*Response:* Snowmobiles meeting NPS emission requirements get 20–26 miles per gallon—a fuel economy far better than traditional two-stroke snowmobiles, and similar on a per-passenger basis to snowcoaches. Skiers and snowshoers use snowmobiles and snowcoaches to access trails in the park.

95. *Comment:* The NPS overstated impacts to public and employee health and safety by analyzing the No Action Alternative.

*Response:* In taking a hard look at the impacts of the No Action Alternative (closing the park to guided snowmobile and snowcoach access), the NPS recognized some impacts would still occur as a result of administrative access needed to protect park resources. NPS deemed those impacts to be moderate for employee health and safety.

**Changes to the Final Rule**

After taking the public comments into consideration and after additional internal review, one change was made to the final rule, in addition to non-substantive editorial changes made to improve clarity of the rule. This change is as follows:

Paragraph 7.13(1)(6) has been revised to delete references to snowmobiles manufactured prior to 2004. The NPS certifies snowmobiles as meeting NPS requirements for a period of six years. Winter 2009–2010 will be the last winter model year 2004 snowmobiles that were certified as meeting NPS air and emission requirements will be allowed to operate in Yellowstone. Thus, in this final rule, previous

references to model year 2003 and earlier snowmobiles were deleted.

**Summary of Economic Analysis**

The results of the cost-benefit analysis indicate this regulation will have de minimis negative impacts. This determination is based on a consideration of current economic conditions, visitor trends from recent years and continued uncertainty of park policies from court decisions. In addition, this winter use plan will only be in place for a two-year interim period. In order to capture the widest range of possibilities, two scenarios were analyzed within this analysis. The “expected scenario” includes the impacts that are most likely to occur and the “maximum scenario” includes the worst possible impacts that might occur. NPS believes the expected scenario is most likely to occur. Given that, the selected alternative will not have an annual economic effect of \$100 million, and will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government relative to the baseline. Additionally, the selected alternative will not impose significant impacts on small businesses.

**Cost-Benefit Analysis**

The baseline conditions for this regulatory action are influenced by recent court decisions. When the Environmental Analysis was issued in 2008, the 2007 winter use regulation had been vacated and the authorization for snowmobile access in the 2004 winter use regulation had expired pursuant to its sunset provision. Thus, without regulatory action by NPS at that time, no snowmobile access would have been permitted, wheeled vehicle travel would have continued on roads that had

been traditionally plowed, and the park would have been open to skiing and snowshoeing.

In November 2008 the Wyoming District Court ordered the reinstatement of the 2004 regulation, without its sunset provision, until NPS promulgates a regulation to take its place. The result of that decision was the continued authorization for snowmobile and snowcoach access as provided by the 2004 regulation. While there has been no current NEPA analysis or other determination that snowmobile use at the levels authorized under that regulation is consistent with NPS statutory and other mandates, these conditions describe baseline for purposes of this regulatory analysis.

In addition the recent economic downturn has also influenced winter use. Use in the winter of 2008–2009 dropped from the previous winter in part due to economic conditions.

NPS constructed two baseline scenarios to capture the possible range of impacts. The “expected scenario” assumes that under baseline conditions snowmobile and snowcoach use will not exceed the levels permitted under the selected alternative. Indeed, to be conservative, NPS assumed that snowmobile and snowcoach use under baseline conditions in this scenario would equal that permitted under the selected alternative. That assumption is considered most likely to hold given recent trends in snowmobile use, the current economic downturn, the short two-year interim period, and the likelihood of continued uncertainty of the public regarding the winter use plan. Given that assumption, changes in snowmobile and snowcoach use under the selected alternative will be de minimis, as indicated in Table 1.

TABLE 1—WINTER SEASON SNOWMOBILE AND SNOWCOACH USE UNDER THE EXPECTED SCENARIO

Alternative	Entries		
	Snowmobile	Snowcoach	Total
Baseline .....	28,620	7,020	35,640
Selected Alternative .....	28,620	7,020	35,640
Change .....	0	0	0

The “maximum scenario” assumes that under baseline conditions snowmobile and snowcoach use will match levels permitted under the 2004 regulation. That regulation permits 720 snowmobiles and 78 snowcoaches to access YNP per day. Therefore, under the maximum scenario the selected alternative would reduce snowmobile

use by 402 entries per day (720 entries per day under baseline minus 318 entries per day under the selected alternative). Snowcoach use would not be reduced (78 entries per day under baseline minus 78 entries per day under the selected alternative). Therefore, as many as 36,180 snowmobile entries would be reduced in the maximum

scenario over the 90-day winter use season. NPS does not believe the maximum scenario is likely to occur given the downward trend of snowmobile use in recent winter seasons, the current economic downturn, the short two-year interim period, and the likelihood of continued

uncertainty of the public regarding the winter use plan.

TABLE 2—WINTER SEASON SNOWMOBILE AND SNOWCOACH USE UNDER THE MAXIMUM SCENARIO

Alternative	Entries		
	Snowmobile	Snowcoach	Total
Baseline .....	64,800	7,020	71,820
Selected Alternative .....	28,620	7,020	35,640
Change .....	-36,180	0	-36,180

**Benefits and Costs**

As indicated in Tables 1 and 2, the impacts of the selected alternative to snowmobile use range from a reduction of zero to 402 entries per day, with zero being the most likely to occur. Impacts to visitors are quantified as “consumer surplus,” which includes the maximum willingness to pay for such activities minus the costs of participation. Therefore, consumer surplus measures

the net benefits of visitation. These total consumer surplus changes are presented in Table 3, including total present values over the two-year period that the regulation will be in effect.

NPS estimates that businesses will not incur impacts from the selected alternative under the expected scenario. That conclusion is based on the changes in snowmobile and snowcoach use presented in Table 1, which are considered most likely. However, in the

unlikely event that the maximum scenario would occur, negative impacts would be incurred. Those impacts would be associated with the decrease in snowmobile use presented in Table 2. These impacts are termed “producer surplus,” which are a net benefits that measure similar to the consumer surplus values accruing to visitors. Total producer surplus changes for businesses under the selected alternative are presented in Table 3.

TABLE 3—QUANTIFIED CONSUMER AND PRODUCER SURPLUS IMPACTS FOR THE SELECTED ALTERNATIVE

	Expected scenario		Maximum scenario	
	Total present value	Amortized annual value	Total present value	Amortized annual value
Discount Rate:				
3 percent .....	\$0	\$0	-\$31,305,000	-\$15,884,000
7 percent .....	0	0	-30,729,000	-15,884,000

Office of Management and Budget Circular A-4 recommends a 7 percent discount rate in general, and a 3 percent discount rate when analyzing the impacts to private consumption. Values are 2003 dollars rounded to the nearest 1,000.

It is possible for visitors who do not access the park by snowmobile or snowcoach to incur increases in consumer surplus from decreased snowmobile use. In the current analysis, the expected scenario is most likely to occur with de minimis changes in snowmobile and snowcoach use; therefore, no impacts associated with this phenomenon would likely occur. Under the maximum scenario, this phenomenon would increase the consumer surplus of visitors who do not access the park by snowmobile or snowcoach. However, given recent visitor trends and the relatively low level of snowmobile and snowcoach use contemplated under the selected alternative, it is not possible at this time to estimate any such changes in visitor use. Therefore, while recognizing that such impacts to visitors are possible under the selected alternative; NPS is unable to quantify those impacts.

In addition to the potential impacts described above, NPS believes there may be a positive impact on “passive” users under the maximum scenario.

These users are individuals who do not directly use park resources and perhaps never intend to do so. Economists refer to the values these users hold using several different terms, including non-use values, passive use values, and existence values. The underlying motivations for these values include the satisfaction of knowing that a particular resource is protected or a desire to preserve the resource for future generations. Under the maximum scenario, these passive users may be more confident that park resources are being protected, and will therefore incur benefits arising from the knowledge that park resources may be more protected by the Selected Alternative. Under the expected scenario, however, de minimis changes in snowmobile and snowcoach use would occur and with commensurate impacts to these passive users.

Other benefits that could not be quantified include the potential reduction in costs of road grooming and maintenance, winter staffing, snowmobile safety hazards, and law

enforcement. In general, decreasing snowmobile activity under the maximum scenario may allow the park to redirect resources towards other activities that will protect park resources and address park management needs. Under the expected scenario, these impacts are expected to be de minimis.

**Explanation of the Selected Alternative**

The Selected Alternative was chosen because it best balances winter use with protection of park resources to ensure that the impairment of, or unacceptable impacts to, park resources and values does not occur. The Selected Alternative demonstrates the NPS commitment to monitor winter use and to use the results to adjust the winter use program. The results of the monitoring program, including data obtained regarding air quality, wildlife, soundscapes, and health and safety, were used in formulating the alternatives in the 2008 EA. The Selected Alternative applies the lessons learned over the last several winters relative to commercial guiding, which demonstrated, among other

things, that 100% commercial guiding has been very successful and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the park. Law enforcement incidents have been reduced well below historic numbers, even after taking into account reduced visitation. That reduction is attributed to the quality of the guided program.

The Selected Alternative uses strictly limited oversnow vehicle numbers, combined with air and sound emission requirements and 100% commercial guiding, to help ensure that the purpose and need for the environmental impact statement is best met. With access via snowmobile, snowcoaches, or non-motorized means, park visitors will have a range of appropriate winter recreational opportunities. With the significant restrictions built into snowmobile and snowcoach use, this plan also ensures that these recreational activities will not impair or irreparably harm park resources or values.

The Selected Alternative also supports the communities and businesses both near and far from the park and will encourage them to have an economically sustainable winter recreation program that relies on a variety of modes for access to the park in the winter. Peak snowmobile numbers allowed under the Selected Alternative are well below the historic averages, but the snowmobile and snowcoach limits should provide a viable program for winter access to the park.

### Compliance With Other Laws

#### *Regulatory Planning and Review (Executive Order 12866)*

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These conclusions are based on the report "Economic Analysis: Selected Winter Use Plan for Yellowstone National Park" (Best and Vigil, October 16, 2009).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) OMB has determined that this rule raises novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS has been the subject of numerous lawsuits regarding winter use management.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis has been conducted and contained in the report "Economic Analyses: Selected Winter Use Plan for Yellowstone National Park" (Best and Vigil, October 16, 2009).

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S. based enterprises.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. This rule addresses public use of national park lands, and imposes no requirements on other agencies or governments.

#### *Takings (Executive Order 12630)*

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. Access to private property located within or adjacent to the parks will be afforded the same access during winter as before this rule. No other property is affected.

#### *Federalism (Executive Order 13132)*

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

#### *Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required.

#### *National Environmental Policy Act*

The 2008 Winter Use Plans Environmental Assessment (2008 EA) was prepared and made available for public review and comment. A Finding of No Significant Impact (FONSI) was signed October 15, 2009. The 2008 EA and FONSI are available by contacting the Yellowstone National Park Management Assistant's Office or at <http://parkplanning.nps.gov/>.

#### *Consultation With Indian Tribes (E.O. 13175)*

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes.

The NPS has evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the previous winter use planning documents. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This

rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

#### Information Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

#### Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### Administrative Procedure Act:

Comment periods on the proposed rule were provided from November 5, 2008, through November 20, 2008, and from July 24, 2009, to September 8, 2009, for a total of 60 days.

This rule is effective on December 15, 2009. The National Park Service recognizes that new rules ordinarily go into effect thirty days after publication in the **Federal Register**. For this regulation, however, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective on December 15, 2009, the traditional date for commencement of the park's winter use season. This rule implements the winter use plans for Yellowstone and relieves the restrictions on the use of snowmobiles and snowcoaches that would exist in its absence. In addition, good cause exists for the effective date of December 15, 2009, for the following reasons:

(1) The NPS has in good faith publicly stated that the 2009–2010 winter season for Yellowstone National Park would commence on December 15, 2009, and the public and businesses have made decisions based on the widespread public knowledge of this opening date.

(2) The finding of no significant impact for this rule was signed on October 15, and was made available to the public for 30 days prior to the signing of this rule. By December 15, the public therefore will have had more than 60 days notice of the NPS decision.

(3) There would be no benefit to the public in delaying the effective date of this rule, given that there has already been substantial notice of the opening date and that the park will be open under conditions substantially similar to those in effect for the past three years, other than the reduced entry limits. The above-described harms to the public resulting from a procedural delay of this rule should therefore be avoided, and an effective date of December 15, 2009, is warranted.

*Drafting Information:* The primary authors of this regulation are John Sacklin, Management Assistant, Yellowstone National Park; Jason Waanders, Office of the Solicitor, and Phil Selleck, Regulations Program Manager, National Park Service, Washington DC.

#### List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ For the reasons given in the preamble, 36 CFR part 7 is amended as set forth below:

#### PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under DC Code 10–137 (2001) and DC Code 50–2201 (2001).

■ 2. Amend § 7.13 by revising paragraph (l) to read as follows:

#### § 7.13 Yellowstone National Park.

\* \* \* \* \*

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(17) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (l)(2) also apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, and other non-recreational users authorized by the Superintendent.

*Commercial guide* means a guide who operates a snowmobile or snowcoach for a fee or compensation and is authorized to operate in the park under a concession contract. In this section, “guide” also means “commercial guide.”

*Historic snowcoach* means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

*Oversnow route* means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate oversnow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated

oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

*Oversnow vehicle* means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach must comply with all requirements applicable to snowmobiles.

*Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

*Snowmobile* means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

*Snowplane* means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* (i) You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and must provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect through the winter season of 2010–2011.

(4) *May I operate a snowcoach in Yellowstone National Park?* (i) Snowcoaches may only be operated in Yellowstone National Park under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must meet NPS air emissions



requirements, which mean the applicable EPA emissions standards for the vehicle that were in effect at the time it was manufactured.

(iii) All critical emission-related exhaust components (as listed in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emissions-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(iv) of this section.

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2010–2011.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or

above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(v) These air and sound emissions requirements do not apply to snowmobiles being operated on the Cave Falls Road in Yellowstone.

(7) *Where may I operate my snowmobile in Yellowstone National Park?* (i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter of 2010–2011:

(A) The Grand Loop Road from its junction with Upper Terrace Drive to Norris Junction.

(B) Norris Junction to Canyon Junction.

(C) The Grand Loop Road from Norris Junction to Madison Junction.

(D) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(E) The Grand Loop Road from Madison Junction to West Thumb.

(F) The South Entrance Road from the South Entrance to West Thumb.

(G) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(H) The East Entrance Road from Fishing Bridge Junction to the East Entrance.

(I) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(J) The South Canyon Rim Drive.

(K) Lake Butte Road.

(L) In the developed areas of Madison Junction, Old Faithful, Grant Village, West Thumb, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(M) Firehole Canyon Drive, between noon and 9 p.m. each day.

(N) North Canyon Rim Drive, between noon and 9 p.m. each day.

(O) Riverside Drive, between noon and 9 p.m. each day.

(P) Cave Falls Road.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public

safety, avalanche conditions, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(i)(M) through (1)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes through the winter of 2010–2011:

(A) Fountain Flat Road.

(B) The Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(C) For rubber-tracked snowcoaches only, the Grand Loop Road from Upper Terrace Drive to the junction of the Grand Loop Road and North Entrance Road, and within the Mammoth Hot Springs developed area.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one of more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, and other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(iv) The guiding requirements described in this paragraph (l)(9) do not apply to snowmobiles being operated on the Cave Falls Road.

(10) *Are there limits established for the number of snowmobiles and snowcoaches permitted to operate in the park each day?* The number of snowmobiles and snowcoaches allowed to operate in the park each day is limited to a certain number per entrance or location. The limits are listed in the following table:

Park entrance/location	Commercially guided snowmobiles	Commercially guided snowcoaches
(i) North Entrance *	12	13
(ii) West Entrance	160	34
(iii) South Entrance	114	13
(iv) East Entrance	20	2
(v) Old Faithful *	12	16
(vi) Cave Falls	**50	0

\* Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessioner is the sole provider at both of these areas, this regulation allows reallocation of snowmobiles between the North Entrance and Old Faithful as necessary, so long as the total daily number of snowmobiles originating from the two locations does not exceed 24. For example, the concessioner could operate 6 snowmobiles at Old Faithful and 18 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing the availability of visitor services in Yellowstone.

\*\* These snowmobiles operate on an approximately 1-mile segment of road within the park where the use is incidental to other snowmobiling activities in the Caribou-Targhee National Forest. These snowmobiles do not need to be guided or to meet NPS air and sound emissions requirements.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle for more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds, or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from a state or province in the United States or Canada, respectively.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (I)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in

the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (I)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is subject to §§ 2.18(a) and (c), but not subject to §§ 2.18 (b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (I)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

(iii) Dog sledding and ski-joring are prohibited.

(iv) Bicycles are prohibited on oversnow routes in Yellowstone.

(16) *May I operate a snowplane in Yellowstone National Park?* The operation of a snowplane in Yellowstone is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* (i) Violating

any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

Dated: November 16, 2009.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

RIN 1024-AD82

#### Special Regulations; Areas of the National Park System

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule governs winter visitation and certain recreational use in Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway. This final rule is issued to implement the Finding of No Significant Impact (FONSI) for the 2008 Winter Use Plans Environmental Assessment (2008 EA) approved October 15, 2009, and will provide visitors a range of winter recreation opportunities that are appropriate to the national park setting, and that these activities do not unacceptably impact or impair park resources and values. The rule requires that recreational snowmobiles operating on Jackson Lake meet certain air and sound emissions requirements, and that such snowmobile use is for the sole purpose of accessing ice fishing opportunities on the lake. The rule sets daily entry limits on the numbers of snowmobiles allowed on Jackson Lake and on the Grassy Lake Road, and also designates the route between Flagg Ranch and the South Entrance of Yellowstone National Park for snowmobile and snowcoach use, subject to compliance with the daily entry limits and other requirements set out in the separate rule authorizing snowmobile and snowcoach use in Yellowstone National Park. Traveling off designated oversnow routes will remain prohibited.

**DATES:** The effective date for this rule is December 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gary Pollock, Management Assistant, Grand Teton National Park, 307-344-3428.

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades under the guidance provided by a number of sources. The history of the issue was discussed at length in the notice for the proposed rule, 73 FR 65,784 (Nov. 5, 2008) and in the 2008 Winter Use Plans Environmental Assessment (2008 EA).

After the proposed rule was published, on November 7, 2008, the U.S. District Court for the District of Wyoming issued an order reinstating the 2004 final rule on winter use in the parks, without its sunset provisions, "until such time as NPS can promulgate an acceptable rule to take its place." The NPS complied with the court order and on December 9, 2008, republished the 2004 regulation without its provisions terminating snowmobile and snowcoach use after the winter of 2006-07.

The NPS is promulgating this final regulation to replace the reinstated 2004 regulation beginning with the winter season of 2009-2010.

The EA, FONSI, and other documents pertaining to winter use management in the parks can be found at <http://www.nps.gov/yell/planyourvisit/winteruse.htm>, and at <http://www.nps.gov/grte/parkmgmt/planning.htm>.

##### Rationale for the Final Rule

This rule allows for a limited amount of snowmobile use in Grand Teton and the Parkway to provide a range of appropriate winter activities while protecting the integrity of park resources. It allows for winter anglers to access ice fishing opportunities on the large expanse of Jackson Lake, and for snowmobile access from the adjacent Targhee National Forest to and from Flagg Ranch, via the Grassy Lake Road. The rule also designates the route between Flagg Ranch and the South Entrance of Yellowstone for use by snowmobiles and snowcoaches, subject to any daily entry limits, air and sound emissions, guiding, and other such requirements that apply to oversnow vehicle travel within Yellowstone. The designation is necessary since winter travel through the South Entrance of Yellowstone begins and ends at Flagg Ranch, approximately two miles south of the Yellowstone boundary.

The rule is designed to protect against the adverse impacts that occurred from the historical types and numbers of oversnow vehicle use in the Park and the Parkway. Experience over the past several winters has shown that a limited number of snowmobiles, in combination with the NPS requirements for air and sound emissions on Jackson Lake, allows for a range of appropriate visitor experiences while ensuring that the integrity of park resources and values is not harmed. The NPS found that the regulations that were in effect over the past several winter seasons resulted in quieter conditions, and that impacts on air quality, wildlife, other resources, and visitor experience were acceptable. This rule limits the daily number of snowmobiles allowed on Jackson Lake and the Grassy Lake Road in order to better protect park soundscapes and other resources, and includes requirements for snowmobile air and sound emissions. It also eliminates certain oversnow vehicle routes.

This rule is consistent with the 2006 NPS Management Policies. In managing units of the National Park System, the NPS may undertake actions that have both beneficial and adverse impacts on park resources and values. However, the NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources and values. Impairment is defined in the 2006 NPS Management Policies in section 1.4.5 as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources and values.

The NPS is also required to conserve the resources and values of the National Park System units and to prioritize the conservation of park resources over their use whenever the two are found to be in conflict. The NPS complies with this mandate by ensuring that a proposed use of the parks will not result in unacceptable impacts to park resources and values, and by allowing impacts to park resources only when allowing the impacts is appropriate to fulfill the purposes of the park and is necessary (meaning that the impacts are unavoidable and incapable of further mitigation in light of the authorized appropriate use).

This rule initially limits the number of snowmobiles authorized in Grand Teton to 25 per day in order to provide access to ice fishing opportunities on the large expanse of Jackson Lake. The rule allows this limit to be adjusted upward or downward, not to exceed 40