



Defending the Planet One Beat at a Time

**1550 Larimer St., #645
Denver, CO 80202**

October 6, 2004

VIA U.S. CERTIFIED MAIL & ELECTRONIC MAIL

Yellowstone National Park
Winter Use Proposed Rule
P.O. Box 168
Yellowstone NP, WY 82190

Re: Proposed Special Regulations Amending 36 CFR Part 7 (relating to Special Regulations, Areas of the National Park System) for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway.

Dear Sir or Madam:

The members of Rock the Earth, a national nonprofit corporation, hereby submit comments on the Proposed Special Regulations Amending 36 CFR Part 7 (relating to Special Regulations, Areas of the National Park System) (“Proposed Rule”) for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway (jointly, the “Parks”). It is our opinion based on all of the evidence in the public record, that the National Park Service (“NPS”) and U.S. Department of the Interior made the correct decision when they published the Final Environmental Impact Statement (“2000 FEIS”) and Record of Decision for the Yellowstone and Grand Teton National Parks and John. D. Rockefeller, Jr. Memorial Parkway (“2000 ROD”) on November 22, 2000,¹ eliminating recreational snowmobile and snowplane² use from the Parks by the

¹ As modified by the final rule published in the *Federal Register* on January 22, 2001 (66 FR 7265), and codified at 36 CFR 7.13 (Yellowstone National Park), 36 CFR 7.21 (John D. Rockefeller, Jr. National Parkway) and 36 CFR 7.22 (Grand Teton National Park). These regulations were further amended by NPS on November 18, 2002 (67 FR 69473), generally postponing implementation of the phase-out of snowmobiles for one year, and then amended again on December 11, 2003.

² The Proposed Rule includes a definition of “oversnow vehicle”, which includes a snowmobile, a snowcoach or “other motorized vehicle that is intended for travel primarily on snow...” 66 FR 51537.

winter of 2003-2004. Therefore, the NPS should have promulgated regulations implementing Alternative 1 of the Temporary Winter Use Plans Environmental Assessment, dated August 20, 2004 ("EA").

Further, it is our belief that no new information contained within the record, including the Draft Supplemental Environmental Impact Statement, published on March 29, 2002 (67 FR 15223) ("DSEIS") and the Final Supplemental Impact Statement published on February 24, 2003 (68 FR 8618) ("FSEIS"), the Record of Decision (68 FR 16548) ("2003 ROD") or the EA warrants any alteration of those remedies recommended and adopted in the FEIS and 2000 ROD. Therefore, in commenting on the Proposed Rule, it is our view that the NPS should have reaffirmed the remedies adopted by the 2000 ROD and adopted Regulations implementing Alternative 1 of the EA. In addition, it is our opinion that the EA overall, is inadequate support for this proposed rule and is violative of the National Environmental Policy Act of 1969, 42 U.S.C. §§4321, *et seq.*, *as amended* ("NEPA"), as the Proposed Rule will result in a significant impairment of the Parks' resources. Finally, the Proposed Rule implementing the selected alternative of allowing for 720 snowmobiles per day into Yellowstone and 140 into Grand Teton NP and the John D. Rockefeller, Jr. Memorial Parkway, is arbitrary and capricious.

I. Rock the Earth.

Rock the Earth ("RtE") is a Pennsylvania nonprofit corporation with a national membership of concerned citizens who regularly utilize the national park system, year-round, for recreational activities. Its members regularly seek the peace, quiet and solitude of the national park system for reflection, spiritual inspiration, and exercise, while engaging in recreational activities which include hiking, camping, photography, meditation, snow-shoeing, cross-country skiing and non-motorized water sports. RtE members will be directly affected by the Proposed Rule in that a decision by the NPS to allow continued snowmobile usage within the Parks will diminish visitors'/members' ability to experience the Parks in their natural state, thereby reducing visitor enjoyment.

RtE members have several grounds for concern. Yellowstone and Grand Teton National Parks are prominent among the meager segment of the Earth that remains for the activities we as individuals revere. It is our collective conclusion that as informed citizens, it is our responsibility to present this case for protecting these treasured fragments of the Earth. Continued use of snowmobiles in these pristine areas will devastate the naturally wild environment. High air quality, untainted wildlife habitat, raw terrain and an aura of silence are critical to the bliss we have discovered in the parks. Therefore, we find it not only our right, but also our responsibility to be concerned.

II. The Proposed Rule Based on the EA Violates NEPA.

NEPA requires that an EIS (as opposed to an EA) be conducted when major federal actions that will significantly affect the quality of the human environment. See 40 CFR §1502.3. The Council on Environmental Quality defines “significantly” at 40 CFR 1508.27, and includes the following factors to be considered:

- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, **wetlands, wild and scenic rivers, or ecologically critical areas.**
- (4) The degree to which the effects on the quality of the human environment are likely to be **highly controversial.**
- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks....
- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. **Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.**
- (10) Whether the action threatens a violation of Federal, State or local law or requirements imposed for the protection of the environment.

40 CFR §1508.27(b); EA, at 5-6. (emphasis added)

Throughout the history of the snowmobile controversy, the NPS has recognized that snowmobiles have a significant impact on the Parks and on the quality of the human environment, necessitating the commencement of an EIS. Not only are the Parks of unique quality and are internationally recognized as ecologically critical areas containing threatened and rare species, but given the controversy surrounding this issue in years’ past, this action is “significant” on that basis alone, requiring an EIS. Public review and comment of various plans (draft, final, supplemental and now temporary) have occurred multiple times in the past 5 years, been subjected to hundreds of thousands of public comments. As is stated in the plain language of the regulations, “significance” necessitating a full EIS cannot be avoided by simply terming the latest EA as a temporary action. Further, with the impending winter season quickly approaching, it seems that rather than undertaking “hard look” at the impact that 860 snowmobiles per day would have on the Parks, the NPS arbitrarily and capriciously sets a standard without adequate environmental analysis completed. In fact, the NPS admits that even with restricted access of less than historic average snowmobile access, further study of snowmobiles is necessary to determine their impacts on the Parks. 69 FR 54074. Finally, as is demonstrated herein, the mere action of implementing Alternative 4 from the EA

amounts to a violation of Federal requirements imposed from the protection of the environment, thus requiring a full EIS under NEPA.³

III. NPS Mandates Require that Snowmobiles be Banned from the Parks and that the NPS Promulgate a Rule that Implements Alternative 1 of the EA.

The NPS is guided by the United States Constitution, public laws, treaties, proclamations, Executive Orders, regulations, directives of the Secretary of the Interior and Assistant Secretary for Fish and Wildlife and Parks, as well as NPS guidance documents. The fundamental purpose of the National Park System as set forth in the Organic Act, 16 U.S.C. 1, 2-4, and reaffirmed by the General Authorities Act, 16 U.S.C. 1a-1 through 1a-8, *as amended* (“Organic Act”), mandates the conservation of park resources and values. The Organic Act of 1916, *as amended*, states in Section 1:

The Service thus established shall promote and regulate the use of the Federal areas known as the National Parks...by such means and measures as to conform to the fundamental purposes of the said Parks...which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 U.S.C. 1, 2-4. Likewise, the General Authorities Act, as amended by the Redwood Act (March 27, 1978, P.L. 95-250, 92 Stat. 163, 16 U.S.C. 1a-1) (“General Authorities Act”), affirms the basic tenets of the Organic Act and provides additional guidance on National Park System management:

The authorization of activities shall be construed, and the protection, management and administration of these areas shall be conducted in light of the high public value and integrity of the National Park system and shall not be exercised in derogation of the values and purposes for which these various areas have been established.

16 U.S.C. 1a-1 through 1a-8, *as amended*. Finally, the federal Clean Air Act, 42 U.S.C. 7401 *et seq.* (“CAA”) also provides that federal land managers are to “assume an aggressive role in protecting the air quality values of land areas under his jurisdiction” and to “err on the side of protecting the air quality-related values for future generations.” The CAA also requires the prevention of any future impairment and the remedying of any existing impairment in Class I federal areas, which includes Yellowstone and Grand Teton National Parks.

³ Although we argue that the EA is inadequate to pass NEPA legal muster, based on the circumstances surrounding this issue, for the remainder of this comment letter we will assume for sake of argument that the NEPA process is not deficient with the adoption of the EA and draft Finding of Significant Impact and that an EIS is not necessary to move forward with implementation of an Interim Winter Use Plan. Rather, our argument then becomes that the selected remedy (Alternative 4) in the EA is incorrect.

Therefore, based on the Organic Act and the General Authorities Act, both of which demand that areas designated as National Parks be conserved, preserved and that uses contrary to these principals must not be allowed, along with the fact that the CAA requires the elimination of uses which impair air quality, the NPS should have declined to promulgate the Proposed Rule and instead should be promulgating a rule that implements Alternative 1.⁴

Looking beyond statutory law, Executive Orders also support a conclusion that NPS should revert to the Alternative 1 of the EA and should not adopt the Proposed Rule. Areas and trails for off-road vehicle use shall be located in areas of the national park system only if the agency head determines that off road vehicle use in such locations will not adversely effect their natural, aesthetic or scenic values. Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, 37 FR 27 (1972); *See also* 2000 ROD, at 12; 2003 ROD at 18; 2004 EA at 11. Executive Order 11644 was amended by Executive Order 11989, Off Road Vehicles on Public Lands, 42 FR 101 (1978), which states:

[t]he respective agency head shall, whenever he determine that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects.

Executive Order 11989, 42 FR 101 (1978).

Federal regulations similarly limit the use of snowmobiles on National Park lands. The primary federal regulation that addresses such snowmobile use is found at 36 CFR 2.18, which generally prohibits the use of snowmobiles on National Park lands, except where designated and “only when their use is consistent with the park’s natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, **and will not disturb wildlife or damage park resources.**” 36 CFR 2.18(c) (*emphasis added*).⁵ The restatement of these principles in the Redwood Act is intended to serve as the basis for any judicial resolution of competing private and public values. In the Redwood Act, Congress provided that when there is a conflict between conserving resources and values and providing for the enjoyment of them, conservation is to be the primary concern. 16 U.S.C. 1a-1; *See also* 2000 ROD, at 12; 2003 ROD at 18; 2004 EA at 12.

⁴ In the 2003 ROD, NPS states, “Given the mandate of the Organic Act, to preserve and provide for public enjoyment, some level of adverse impact from visitor use during the winter is acceptable, if the parks mitigate the impacts to the greatest extent practicable.” 2003 ROD, at 20.

⁵ In addition to the regulatory requirements found in 36 CFR 2.18, it is important to note that regulatory changes were also made to enact the recommendations in the 2000 FEIS and the ROD. *See* 36 CFR 7.13 (k) (Yellowstone National Park); 36 CFR 7.21(a) (John D. Rockefeller, Jr. Memorial Parkway); 36 CFR 7.22(g) (Grand Teton National Park).

Finally, National Park Service guidance documents and policy interpreting the laws, regulations and Executive Orders supports the selection of the recommended remedy in the FEIS and the 2000 ROD, and therefore supports the selection of Alternative 1 in the EA and rejection of the Proposed Rule. NPS Management Policy 1.4.3 contains an NPS obligation to “conserve and provide for enjoyment of park resources and values.” Contained within this management policy is the mandate that the NPS managers “must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources” and “when there is a conflict between conserving resources and providing for enjoyment of them, conservation is to be predominant.”⁶ See NPS Management Policy 1.4.3; 2000 ROD, at 13; 2004 EA at 11-12.

The NPS Management Policies also prohibit the impairment of park resources and values, thus ensuring that the parks will continue to exist in a condition that “will allow the American people to have present and future opportunities for enjoyment of them.” See NPS Management Policy 1.4.4 (The Prohibition on Impairment of Park Resources and Values); 2004 EA at 12.⁷

Other substantive NPS Management Policies that support the basis for this comment letter can be found in NPS Management Policies 4.7.1 (Air Quality),⁸ 4.9 (Soundscape Management),⁹ 8.2 (Visitor Use),¹⁰ 8.2.3 (Use of Motorized Equipment),¹¹ 8.2.3.1 (Off-road Vehicle Use),¹² and 8.2.3.2 (Snowmobile Use).¹³

⁶ “Resources and values” have been defined by the NPS in NPS Director’s Order #55, to include the ecological, biological and physical processes that created the park, scenic features, natural visibility, natural soundscapes, water and air resources, native plants and animals, the park’s role in contributing to national dignity, the high public value and integrity, and the benefit and inspiration provided to the American people by the national park.

⁷ What constitutes an “Impairment” of park resources and values is defined in NPS Management Policy 1.4.5. What constitutes “Park Resources and Values” is defined in NPS Management Policy 1.4.6. See also NPS Director’s Order #47 (natural soundscapes).

⁸ NPS Management Policy 4.7.1 (Air Quality), requires the NPS to seek to perpetuate the best possible air quality in the Parks to: 1) preserve natural resources and systems; 2) preserve cultural resources; and 3) sustain visitor enjoyment, human health, and scenic vistas. 2004 EA at 14.

⁹ NPS Management Policy 4.9 (Soundscape Management), requires the NPS to preserve, to the greatest extent possible, the natural soundscapes of parks, to restore degraded soundscapes to the natural condition wherever possible, and to take action to prevent or minimize all noise that, through frequency, magnitude or duration, adversely affects the natural soundscape. See also, 2000 ROD, at 13; 2004 EA at 14-15.

¹⁰ NPS Management Policy 8.2 (Visitor Use), guides the NPS to prohibit conduct or activities which would impair the park resources or values, create unsafe or unhealthy environment for other visitors or employees, are contrary to the purposes for which the park was established, or unreasonably interfere with the atmosphere or peace and tranquility, or the natural soundscape maintained in wilderness. 2004 EA at 15-16

¹¹ NPS Management Policy 8.2.3 (Use of Motorized Equipment), states that the NPS will strive to preserve or restore the natural quiet and natural sounds associated with the physical and biological resources of parks.

¹² NPS Management Policy 8.2.3.1 (Off-road Vehicle Use), states that routes and areas may be designated for off-road motor vehicle uses only in locations where there will be no adverse impacts on the area’s natural, cultural, scenic, and esthetic values and in consideration of other visitor uses. 2004 EA at 16-17.

¹³ NPS Management Policy 8.2.3.2 (Snowmobile Use), states that, “NPS administrative use of snowmobiles will be limited to what is necessary to manage public use of snowmobile routes and areas; to

For the reasons that follow, the presence of snowmobiles in the Parks is not only inappropriate, but contrary to laws, regulations, policies and guidance controlling the creation and use of the parks. The use of snowmobiles in the Parks causes adverse impacts and damage to the park resources, disturbs wildlife and impairs the Parks by reducing air quality, natural soundscapes and as a result, diminishes visitor experiences.

IV. The Negative Impact that Snowmobiles Have on Visitor Experience Warrants Rejection of the Proposed Rule and Implementation of EA Alternative 1.

NPS Management Policy 8.2 sets forth the standard that the NPS is to follow to insure that visitors' uses of the parks are being adequately protected. At the outset, that Policy states: "Enjoyment of park resources and values by the people of the United States is part of the fundamental purpose of the parks." NPS Management Policy 8.2. To provide for enjoyment of the parks, the NPS will encourage visitor activities that:

- Are appropriate to the purposes for which the park was established;
- Are inspirational, educational, or healthful and otherwise appropriate to the park environment; and
- Can be sustained without causing unacceptable impacts to park resources or values.

NPS Management Policy 8.2. Furthermore, the NPS will not allow visitors to conduct activities that:

- Would impair park resources or values;
- Create an unsafe or unhealthful environment for other visitors or employees; or
- Unreasonably interfere with: the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic or commemorative locations within the park.

NPS Management Policy 8.2.

Over 140,000 people visit the Parks during the winter season, and while visitors have a range of winter recreation opportunities, ranging from primitive to developed, it is the NPS' obligation to ensure that such recreational experiences are offered in an appropriate setting—that such experiences do not take place where they will irreparably impact air quality, wildlife, cultural areas or the experiences of other parks' visitors, or

conduct emergency operations; and to accomplish essential maintenance, construction, and resource protection activities that cannot be accomplished reasonably by other means." 2004 EA at 17.

other parks' values and resources.¹⁴ By all accounts snowmobile use, in current numbers, and in numbers allowed by the Proposed Rule, is in conflict with the use of the parks' facilities by other user groups.¹⁵ For trails open to both motorized and non-motorized users, non-motorized users express dissatisfaction with the sound, odor, and quantity of snowmobiles. These vehicles affect the solitude, quiet, clean air, and other resource values that many people expect and wish to enjoy in national parks.¹⁶ Parks have documented health hazards from snowmachine emissions, harassment and unintended impacts on wildlife from groomed trails and their use, degradation of air-quality-related values and impacts on the natural soundscape.¹⁷ RtE members join many others in strongly objecting to the degradation of inherent parks' values, as well as how these impacts affect people and their recreational opportunities.

Under a regulation based upon EA Alternative 1, opportunities to view wildlife¹⁸ and scenery would not be reduced for the Parks.¹⁹ Furthermore, there would be a major beneficial effect on visitors' ability to experience natural quiet and solitude with the implementation of such a regulation.²⁰ In addition, there would be a major reduction in vehicle emissions that would provide a major beneficial improvement in opportunities to experience clean air in all three Parks.²¹

The Proposed Rule provides for continued snowmobile access to the Parks. It also will place "Best Available Technology" restrictions on all recreational snowmobile use in the Parks. Even so, when compared with the EA Alternative 1, the Proposed Rule would still lead to diminished visitor experiences, diminished quiet and solitude to many visitors, and decreased opportunities to experience clean air, especially on peak days.²²

Overall, implementing regulations based on EA Alternative 1 provides for major improvements to visitors' respective experiences in the shortest possible timeframe. But, as will be demonstrated further, implementation of the Proposed Regulations will also result in continuing negative impacts to air quality and adversely impacting the natural soundscapes of the Parks, so as to undercut the majority of visitors' overall experience and thus failing to remove the impairment to park resources in the shortest possible time.

¹⁴ See FEIS, Chapter I, page 6.

¹⁵ *Id.*, at 7; EA, at 4.

¹⁶ *Id.*

¹⁷ FEIS, Chapter I, page 7.

¹⁸ This is because all areas currently open to oversnow vehicle traffic would still be open, but accessible only by snowcoach rather than snowcoaches and snowmobiles. Most winter visitors rate wildlife viewing as a primary or important reason for visiting the parks. EA, at 130-131.

¹⁹ *Id.*

²⁰ EA, at 131. Most survey respondents felt that natural quiet and solitude was important to the quality of their park visit. FSEIS, Chapter III, at 109, 127-129. A recent study indicates that respondents ranked experiencing tranquility, peace, quiet, and getting away from crowds as highly important. FSEIS, Chapter III, at 135.

²¹ EA, at 131. Clean air is important to most visitors. 2003 ROD, at 22; FSEIS, Chapter III, at 110. See also, Section V, *infra*.

²² EA, Table 10 at 42-23.; See also Sections V and VI, *infra*.

V. The Negative Impact that Snowmobiles Have on Air Quality Warrants Rejection of the Proposed Rule and the Implementation of EA Alternative 1.

As was demonstrated in the FEIS and ROD, the effect of snowmobile emissions on air quality was identified as a primary concern for visitors, with respect to health, natural resources, and aesthetic and wilderness values.²³ For example, on high snowmobile use days in Yellowstone National Park, the visual evidence and odor of snowmobile exhaust was apparent in some areas.²⁴ In selecting the original alternative in the FEIS banning snowmobiles from the Parks by 2003-2004, the NPS concluded that there would be major beneficial effects in air quality in the Parks.

Likewise, under Alternative 1 of the EA, the Parks would see the greatest improvement to air quality in the shortest period of time.²⁵ In fact, the EA unambiguously states, “The largest improvements are seen under Alternative 1, because it would greatly reduce the number of [Over Snow Vehicles (“OSVs”)].”²⁶ After full implementation, emissions rates of carbon monoxide (“CO”), respirable particulate matter (“PM_{2.5}”), and hydrocarbons (“HC”) would all be reduced—not only below current levels, but under Alternative 1, CO, PM_{2.5}, Nitrogen Oxide (“NO_x”), and HC would all be equal to or well below the levels that would be emitted under *any other* Alternative in the EA.²⁷

Under current conditions, the total emissions in tons per season (tps) are the following: CO=1,864 tps; PM_{2.5}= 10 tps; NO_x=2 tps; and HC=608 tps.²⁸ Upon full implementation of Alternatives 1, the parkwide total emissions will be dramatically reduced as follows: CO will be reduced by 1788 tps (to 76 tps); PM_{2.5} will be reduced by approximate 10 tps (to less than 1 tps); NO_x will remain steady (a 2 tps); and HC will be reduced by 607 tps (to 1 tps).²⁹ In comparison, under the Preferred Alternative, as implemented by the Proposed Rule, no contamination constituent would be reduced to levels anywhere close to that which would be achieved under Alternative 1 and, in fact, **NO_x will actually increase by 57 tps** (to 59 tps).³⁰

In addition, while the Proposed Rule requires that all snowmobiles comply with Best Available Technology air emission restrictions (beginning with the 2005 model year), the methodology to certify the snowmobiles will be the Family Emission Limit (“FEL”)³¹, in which the manufacturers will self-certify compliance.³² Furthermore, the

²³ FEIS, Chapter I, at 25.

²⁴ *Id.* The effect of hydrocarbons, carbon monoxide, and particulates emitted by snowmobiles on *water* quality was also a concern.

²⁵ See EA, at 90, 95.

²⁶ EA, at 95.

²⁷ EA, at 90.

²⁸ EA, Table 29, at 90.

²⁹ *Id.*

³⁰ *Id.*

³¹ 40 CFR 1051.

compliance tests are to occur during manufacturing, not after commencement of use and would not account for wear and tear or other modifications that could be made by users.³³

The Preferred Alternative would not achieve nearly the same beneficial impacts on air quality as those found in Alternative 1 of the EA. In comparison to four-stroke snowmobiles (as required by the Proposed Rule), snowcoaches operating within EPA's Tier 1 standards are cleaner, especially given their ability to carry up to seven times more passengers.³⁴ Even EPA Region 8 found it necessary to comment on the EA, urging that this interim plan emphasize the use of snowcoaches: "Given that for every environmental resource, snowcoaches are the environmentally preferred mode of transportation, we suggest that the snowcoach promotion measures should be preserved as part of this interim plan." September 20, 2004 letter of Kerrigan G. Clough, Deputy Regional Administrator, EPA Region VIII. In the end, it is obvious (and as the EA concludes), that Alternative 1 is the "environmentally preferred alternative," based on NPS' own criteria.³⁵

VI. The Negative Impact that Snowmobiles Have on the Natural Soundscape Warrants the Rejection of the Proposed Rule and Implementation of EA Alternative 1.

Not only will air quality be improved to the greatest extent and in the most expeditious manner by the adoption of Alternative 1, but there will also be major positive effects on the natural soundscape—both in degree and in the size of the sections of the park that will not be subjected to audible noise—despite the use of "quieter" equipment under the Proposed Rule. As stated in the EA, "[a]n important part of the NPS mission is to preserve or restore the natural soundscapes (also referred to as natural quiet) associated with units of the National Park System."³⁶ The NPS goes on to emphasize the importance of natural soundscapes in the Parks:

NPS policy is to facilitate, to the greatest extent practicable, the protection, maintenance, or restoration of natural soundscapes in a condition unimpaired by inappropriate sounds. Every visitor who so desires should have the opportunity to enjoy natural soundscapes and to hear the sounds of nature without impairment.

³² "Use of the FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS BAT requirements." 69 FR 54075.

³³ "Some snowmobiles may produce more emissions as they age." *Id.* "Snowmobile manufacturers may demonstrate that snowmobiles are compliant with BAT air emissions requirements by submitting a copy of their application used to demonstrate compliance with EPA's general snowmobile regulation to the NPS." *Id.*

³⁴ 69 FR 54076, *citing* Lela and White (2002).

³⁵ EA, at 39; Draft FONSI, at D-7.

³⁶ EA, at 61.

EA, at 61.³⁷

Overall, under Alternative 1 in the EA the natural soundscapes will be present over more acres, a greater percentage of time. Compared to the Proposed Rule, the implementation of a rule adopting Alternative 1 should result in many fewer acres in which noise is audible more than 10% of the time.³⁸ Under Alternative 1, with average background conditions and ideal atmospheric and snow conditions, noise will be audible more than 10% of the time in only a few areas of the park, compared to Alternative 4 under the Proposed Rule, where even on a non-peak day, snowmobiles would be audible between 65-75% of the day, climbing to 90% of the day on peak days on the more traveled areas of the park.³⁹ The results are even more dramatic when one looks at the acreage in which noise is audible more than 50% of the time under the same conditions. Under the Alternative 1, noise would be audible more than 50% of the time ***on no acres!***⁴⁰ Under the Proposed Rule, most of the area contained within the Parks would have audible motorized noise more than 50% of the time.

By almost any measure, the implementation of the Proposed Rule will have the greater impact on areas in which no noise is expected, thereby affecting the natural soundscape the least by a substantial margin. In fact, the EA admits that Alternative 4, implemented by the Proposed Rule, ***“would cause moderate, adverse, direct and short-term impacts in roadway corridors, developed area, and backcountry areas. On peak days, there could be major adverse effects on all of these areas.”*** EA, Table 10, at 42 (emphasis added). Complicating matters further is the fact that in order to assess compliance with BAT for sound emission restrictions, snowmobiles will be tested using a method that is 20 years old (SAE J192 (revised 1985)). Although this testing method was updated in 2003, the NPS has decided to utilize the 1985 model for determining BAT.⁴¹ Furthermore, in recently uncovered documents, there is anecdotal evidence that even the newer, 4-stroke snowmobile engines that meet the requisite BAT under the Proposed Rule and are allegedly quieter than a standard 2-stroke engine, are not in fact below required limits of 73 decibels.⁴²

In light of the fact that Alternative 1 to the EA expeditiously causes this important change on the soundscape, thereby positively enhancing visitors' winter use experiences in the Parks and removing this impairment to park resources in the shortest possible time, the NPS should promulgate regulations that implements Alternative 1 and should withdraw the Proposed Rule.

³⁷ See also NPS Management Policy 4.9, fn. 9, *supra*, NPS Management Policy 8.2.3, fn. 11, *supra*.

³⁸ EA, at 107-108.

³⁹ EA, at 112.

⁴⁰ EA, at 107.

⁴¹ 69 FR 54075; EA, at 22.

⁴² See <http://www.thememoryhole.org/nps/snowmobiles.htm>

VII. The Proposed Rule Should Be Rejected As No New Information Contained in the EAWarrants Selection of Any Alternative Other Than Alternative 1.

One of the principal claims by the business communities and park concessioners in the “gateway communities” surround the Parks is that the elimination of snowmobiles in the Parks will cause a devastating economic hardship on those who rely on the income from snowmobile rentals and sales.⁴³ Furthermore, such interests claim that “snowcoaches only” is not financially feasible.⁴⁴

The fact of the matter is that the social and economic impacts related to the elimination of most snowmobile use in the Parks was thoroughly considered by the NPS prior to selecting the chosen remedy in the FEIS and publishing the 2000 ROD. The NPS concluded that the negative economic impacts to snowmobile vendors could be mitigated to a high degree by providing oversnow access using mass transit snowcoaches.⁴⁵ As set forth in the 2000 ROD, considering the economic impacts, three years was found to be an appropriate period of time to allow for conversion to an NPS managed snowcoach system, in which snowmobile operators could take advantage of the existing technology for snowcoaches, and to realize the investment that they had previously made in snowmobiles.⁴⁶

The 2003 ROD contained no new information that would alter these conclusions concerning economic impacts in the Greater Yellowstone Area. In fact, the 2003 ROD acknowledges “impacts of any alternative beyond the gateway communities is negligible,”⁴⁷ and that “none of the FSEIS alternatives would have more than negligible impacts on . . . gateway communities” other than West Yellowstone, MT.⁴⁸

In addition to the 2003 ROD, the EA does not support the selection of Alternative 4 over Alternative 1. The NPS relied on a Winter Visitor Survey conducted in 2002-2003 to formulate its conclusions in the EA. The survey revealed that about 38% of snowmobilers “would not visit the park if guided tours were required, even with the provisio for 20% non-commercially guided snowmobiles.”⁴⁹ Based on this information, the Alternative 4 low-impact scenario greatly distorts the percentage of snowmobile visitations given that the preferred alternative would require 100% guided tours.⁵⁰ Therefore, the focus should be placed on the Alternative 4 high-impact scenario in comparison to Alternative 1. In comparing the Alternative 1 low-impact scenario to the Alternative 4 high-impact scenario, Table 42a of the EA shows that no substantial differences exist between the effects these two Alternatives will have on winter visitation,

⁴³ 2000 ROD, Attachment B, Summary of Public Comments to FEIS, at B-9-B-10; EA, Appendix C, 8.5.3.1.

⁴⁴ *Id.*

⁴⁵ 2000 ROD, at 19.

⁴⁶ 2000 ROD, at 21.

⁴⁷ 2003 ROD, at 23.

⁴⁸ *Id.*

⁴⁹ EA, at 118.

⁵⁰ 69 FR 54082.

local business, and total employment.⁵¹ Thus, the EA has not provided the necessary new information to warrant a selection of Alternative 4 over Alternative 1.

While the decrease or loss of snowmobiling opportunities in the parks readily equates to an “adverse economic impact,” these impacts “are not considered irreversible or long term in the context of the total economy.”⁵² It is possible that the negative regional impacts of some alternatives (such as banning snowmobiles) could be offset by a change in the type and mix of visitors coming to the parks. In fact, based on the analysis conducted by the NPS, *the gains to non-snowmobilers generally outweigh the losses to snowmobilers and local businesses*. 69 FR 54081. (emphasis added)

Therefore, despite claims by businesses in the gateway communities that banning snowmobiles will have an irreversible, permanent, and dramatic negative impact on the local economy, the evidence to date does not support such claims and, in fact, contradicts them.

VIII. Conclusion

For the third time in 4 years, the NPS is being asked to review the Winter Use Plans for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway. After over a decade of study, in 2000, the NPS issued a comprehensive and complete ROD and 2001 rulemaking, which, upon implementation, was to ban all recreational snowmobile use in the Parks. Despite this complete and thorough study, the NPS once again reviewed the issue, resulting in the FSEIS, the 2003 ROD and rulemaking of December 11, 2003, which rulemaking, ROD and SEIS were overturned by the U.S. District Court for the District of Columbia. Now, the NPS, rather than following the instructions of the District Court and reinstate the 2001 Rulemaking, the NPS hastily undertook an EA, the result of which has led to the Proposed Rule. It is clear based on the evidence in the record, including that put forth in the EA, draft FONSI and Proposed Rule that no new information persuasively proves that the NPS was incorrect in their 2000 decision.

The expeditious removal of snowmobiles is mandated under all applicable legal authority; it is clearly based on all scientific information collected to date; and it is overwhelmingly recommended by the majority of visitors and experts who have reviewed the data and public commentators at every step of this long and drawn-out process. In addition to a flawed substantive decision, the Proposed Rule violates the procedural requirements of NEPA in that the decision underlying the Proposed Rule will result in significant impact to the Parks yet was made without the benefit of a full EIS, unlike previous decisions on this very issue. Therefore, on behalf the members of Rock the Earth, we strongly register our position that the NPS, once again, adopt the alternative

⁵¹ EA, at 124.

⁵² EA, at 166; DSEIS, Chapter IV, at 285-286; FSEIS, Chapter III, at 105-109.

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that removes this impairment to the Parks in as expeditious of manner by amending the Proposed Rule to implement Alternative 1 from the EA.

Thank you for your consideration.

Sincerely,

Marc A. Ross
President
Rock the Earth