



THE WILDLIFE SOCIETY
MONTANA CHAPTER

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Proposed Rule for Designated Routes and Areas for Motor Vehicle Use
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The Montana Chapter of The Wildlife Society is a professional association of wildlife biologists active in wildlife research, management, education, and administration. We are affiliated with The Wildlife Society (TWS), a national professional society for wildlife biologists. Membership in the Montana Chapter TWS is diverse and includes wildlife biologists employed by state and federal resource management agencies, Tribes, universities and secondary schools, industries (timber, mining, power generation), non-profit entities and consulting firms. The goal of the Montana Chapter of The Wildlife Society (TWS) is scientific management of Montana's wildlife resources and their habitats. The principle objectives of the Society are: (1) to develop and promote sound stewardship of wildlife resources and of the environment upon which wildlife and humans depend; (2) to actively participate in programs designed to diminish human-induced environmental degradation; (3) to increase awareness and appreciation of wildlife values; and (4) to seek the highest standards in all activities of the wildlife profession. Additional information about the Montana Chapter TWS can be found at our website (<http://www.montanatws.org>).

The ability of the Forest Service to maintain natural resource values and the productivity of national forest lands, while accommodating commercial and recreational uses of our national forests, is predicated upon institution of management policies and practices that are future-focused and sustainable, in the long term. We are alarmed at the extent to which unregulated/irresponsible motorized recreation continues to harm fish and wildlife resources, vegetation communities, soils, water quality and wetlands and at the landscape scale, the extent to which the condition and function of our watersheds have been degraded. We concur that off-road vehicle use is one of the greatest threats to the long-term health of our National Forests and we applaud the Forest Service for undertaking the task of instituting regulations designed to enable management of motorized recreation as a sustainable use of public lands.

We found some sections of the July 15, 2004 Federal Register unclear and want to make note of some general concerns, as follows:

- The fact that a "trail" can be designated as "open to motorized use" or "closed to motorized

use” is confusing to recreational users and diminishes the enforceability of proposed new rules, as well as current travel designations. To reduce confusion surrounding new rules, and to more clearly portray use designations on the envisioned “use map,” we propose that the term “route” be applied to trails designated for motorized use while confining use of the term “trail” to trails where motorized use is not allowed. Such a change in terminology would also be compatible with the stated goal of the Forest Service to develop a more comprehensive system of travel management that focuses more on “management of uses” on National Forest roads and trails, rather than their construction and maintenance. Another limitation of applying the term “trail” to motorized use is that the commonly accepted concept of a “trail” is not relevant to emerging “hybrid” motorized conveyances that can be expected to be employed by recreationists in the future.

- In the absence of a stated, ambitious timeline to designate “roads” and “trails” open to motorized use, use of unplanned and unauthorized routes can be expected to continue unabated, with a corresponding accumulation of resource damages – some of which will no doubt require costly reclamation. In the absence of adequate funding to remediate damages past and on-going damage, it is vitally important to prevent further damage from occurring.
- In the absence of provisions to establish and fund enforcement of the proposed new travel designations, the utility and effectiveness of the proposed new rules may be inadequate to address the problems associated with inappropriate/irresponsible motorized recreational pursuits.
- Addressing snowmobile use separately from other motorized uses, under the erroneous assumption that snowmobiles do not cause the same impacts that motorized uses do, does not advance the objective of ensuring sustainable recreational use for all forms of motorized recreation. The new rules must acknowledge the well-documented impacts of snowmobile recreation to wintering wildlife, including subnivian species, vegetation, water quality and other resource values.
- To achieve the stated goal of allowing the Forest Service to “create a more comprehensive system of travel management,” we think that it is important that travel planning be coordinated at the Forest level, rather than the District level. Consistency in travel planning at the Forest level could be expected to promote public understanding of “use maps” while providing clarity and consistency in enforcement of travel restrictions.
- Our current understanding of several sections of the proposed new rules is that they may actually weaken the ability of the Forest Service to protect resources subject to damage by motorized vehicles (refer to specific comments on sections 212.1, 212.52(b), 212.55, 212 New Subpart C, 261.13 and Removal of Part 295).
- Changes in the new rules pertaining to monitoring are very confusing. We are concerned about the apparent discontinuation of use of monitoring data provided by the public or other resource management entities by the Forest Service in making management decisions. Creation of a separate section of regulation of snowmobile use, based upon the unsubstantiated premise that the impacts of snowmobiles are substantially less than those caused by other motorized

vehicles, appears to have also exempted off-road/off-trail snowmobile use from monitoring requirements.

- We are concerned that the proposed rules may not adequately protect traditional, “quiet” forms of recreational, including hunting and fishing, while also maintaining habitat security for wildlife species that are hunted, trapped and fished – in favor of compliance with the new, very subjective criteria of “provision of recreational opportunities” and “access” – in the absence of public input.

Our concerns about the impacts of motorized recreation are reinforced by two references that Montana Chapter TWS members contributed to:

Effects of recreation of Rocky Mountain wildlife: a review for Montana. 1999. Joslin, G; Youmans, H., coords. Committee on Effects of Recreation on Wildlife, Montana Chapter of the Wildlife Society. 307 p. This report and the accompanying, partially annotated bibliography are available online: (<http://www.montanatws.org/pages/page4.html>)

Effects of Winter Recreation on Wildlife of the Greater Yellowstone Area: A Literature Review and Assessment. 1999. Olliff, T. and Legg, K. and Kaeding, B. eds. Greater Yellowstone Winter Wildlife Working Group. 303p.

We offer specific comments on the proposed new rules as follows:

36 CFR 212.1 Definitions.

Suggested change in terminology: use of the word “route” to denote trails designated for motorized use. The fact that a trail can be designated for motorized use or for non-motorized use only, is confusing to recreationists and law enforcement personnel. We can’t envision how the envisioned “**use map**” can eliminate this confusion, unless a different term is applied to trails designated for motorized use. We suggest use of the word “route” to denote trails designated for motorized use, and application of the term “trail” to trails where motorized use is not allowed.

We also recommend clarity and consistency in identifying where motorized recreation is allowed in National Forest lands, and adjacent jurisdictions. We propose use of the following standard to promote public understanding and effective enforcement:

“Motorized vehicle use by recreationists on federal lands is restricted to federal, state, and dedicated county routes and to those routes designated by the agencies to be open to motorized vehicle use.” (similar to Montana Code Annotated 77-1-804(6))

Road or trail under Forest Service jurisdiction. This is an entirely new and confusing definition that appears to circumvent the Congressional ban on rule-makings pertaining to R.S. 2477 and the current moratorium on processing R.S. 2477 claims for prescriptive easements. It is concerning that right-of-way designations by an “authorized officer” of the Forest Service could be made without an environmental assessment and public notification and participation (requirements of NEPA).

Snowmobile. The proposed definition states, “A motor vehicle that is designed exclusively for use over snow and that runs on a track or tracks and/or a ski or skis.” The term *exclusively*, as used in the definition, would seem to extend to various types of motorized vehicles that have been “permanently retrofitted” to utilize tracks or skis, which circumvents the intent of this definition. Snowmobiles should be considered just another form of “motor vehicle,” rather than defined separately from other motorized conveyances. The method of traction or propulsion of currently used and emerging “hybrid” motorized vehicles is much less relevant to the resource problems that the proposed new rules are intended to address – than the defining attribute that they are motor vehicles (with the exception described in 212.1 for a mobility-impaired person using a wheel chair or mobility device suitable for indoor use).

Unauthorized or unclassified road or trail. Previously, the term “unauthorized” did not appear in the CFR regulations. If a road or trail is listed in the official forest transportation atlas, by inference, does it become “authorized?” We certainly hope that this will not be the case. It is crucial that the Forest Service Manual and Handbook clearly define the requirements that must be met in order for a road or a trail to be listed in the atlas.

Use map. Current regulations do not define “use map” but we envision it as a critical provision of the new proposed rules. The “use” map will be an essential component of a travel plan and will promote 1) personal accountability and self-policing among recreationists themselves and 2) more effective enforcement of travel restrictions.

36 CFR 212.50 Purpose and Scope

A time frame needs to be attached to the sentence that states, “*After these roads, trails and areas are designated*, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations, is prohibited by 36 CFR 261.13.” If the new proposed rules are to be effective in curbing accumulating resource damages attributable to inappropriate/ irresponsible use of motorized vehicles, no more than two years should be allocated to accomplish this objective.

36 CFR 212.51 Designation of roads, trails and areas

As noted previously, public understanding of new proposed rules and the ability to enforce those rules would be advanced by use of the term “route” (instead of “trail”) to denote a trail that has been designated for motorized use. Furthermore, snowmobiles should not be exempt from this provision because of the impacts that unregulated snowmobiling **have** on wintering wildlife, including subnivian wildlife species. To ensure consistency within each national forest, travel planning should be done at the Forest level rather than at the District level. In the absence of consistency in travel planning at the Forest level, travel plans may not be clearly understandable to the public, or enforceable.

36 CFR 212.52 Public involvement in the designation process.

The current regulation allows for 60 days advance notice for public involvement. The proposed new rule does not provide a time frame for public participation. We recommend that 60 days notice be specified in the proposed rule.

We support the ability of the Forest Service authority to continue to implement temporary, emergency closures without advance public notice to provide short-term, emergency resource protection or to protect public health and safety.

Section 212.52(b) appears to severely weaken the existing provision to establish temporary emergency closures, removes monitoring language, and strives for “mitigation” rather than “elimination” of adverse effects (per Executive Order 11989). The Wildlife Society does not equate “mitigation” of impacts (in the preamble of the new rule) with “elimination” of impacts. The primary goal of a NEPA process is to identify and “eliminate” or “minimize” the potential for adverse impacts to occur – not to “mitigate” identified and potential impacts.

We are also concerned about the apparent elimination of existing language requiring monitoring (36 CFR 295.5) that states:

The effects of use by specific types of vehicles off roads on National Forest System lands will be monitored. If the results of monitoring, including public input, indicate that the use of one or more vehicle types off roads is causing or will cause considerable adverse effects on the factors and resource values referred to in Sec. 295.2, the area or trail suffering adverse effects will be immediately closed to the responsible vehicle type or types until the adverse effects have been eliminated and measures have been implemented to prevent future recurrence as provided in 36 CFR part 261. Forest Supervisors may delegate immediate closure authority to District Rangers or other forest officers in order to facilitate timely actions to meet these objectives. Designations, use restrictions, and operating conditions will be revised as needed to meet changing conditions.”

The Wildlife Society recommends reinstatement of the above language to ensure that the opportunity for the public and other agencies to provide monitoring information concerning resource impacts is maintained, and to assure that the Forest Service will consider such data when making a determination of whether considerable adverse effects are occurring. Members of The Wildlife Society have routinely provided monitoring data to the Forest Service documenting natural resource impacts attributable to ATV use and it is our hope that the Forest Service would continue to use this type of information in its assessments of impacts.

36 CFR 212.55 Criteria for designation of roads, trails and areas.

a) The proposed rule departs from the existing regulation in two fundamental ways, with respect to the criteria used to designate roads, trails and areas. First, the proposal does not specifically require managers to analyze “potential impacts” caused by off-road vehicles, as the current regulation requires. Deletion of this provision is contrary to sustainable management of soil, water, and wildlife resources and does not comply with NEPA. Second, it proposes addition of several new criteria to be used to designate roads, trails and areas, including “provision of recreational opportunities” and “access needs. In the absence of a definition for each of these criteria and an explanation of how each is monitored and assessed, both of these “criteria” are too subjective to serve as a basis for making decisions. As stated, these terms imply that individual perception and/or individual experience and interests can serve as decision-making criteria. Individual perceptions of “provision of recreational opportunities”

and “access needs” should not override tangible natural resource considerations that attend expansion of OHV use.

b) This section of the proposed rule reinforces the flawed provisions of section a). In addition, this section calls for “consideration of effects on the following, with the objective of minimizing: 1) Damage to soil, watershed, vegetation, and other forest resources; 2) Harassment of wildlife and significant disruption of wildlife habitats; 3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; 4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands and that the responsible official will also consider ” 5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors; and 6) Consistency with trail management objectives when designating trails and areas. Replacement of the current directive “to minimize” the aforementioned impacts by softer language (“include consideration of effects on the following, with the objective of minimizing..” implies that a “lower bar” will be established with respect to identifying impacts and potential impacts....and may even imply that something less than an environmental analysis (in compliance with NEPA) will be required under the new proposed rules.

c) This provision should not be used to open roads to OHV use without simultaneously closing illegal user-created routes. It is not clear what this section would allow for. There is some redundancy in the use of the word “consistent” and “consistency.”

In view of the importance of adhering to Executive Orders 11989 and 11644, the Montana Chapter of The Wildlife Society finds the proposed language in Section 212.55 less concise and thus less protective of natural resource values than the existing regulation language in 36 CFR 295.2 and request that the original language and requirements be reinstated.

36 CFR 212.56 Identification of designated roads, trails and areas.

We enthusiastically support adoption of “use maps” as referenced in the proposed rule. This measure is essential to conveying the responsibility for using public lands lawfully and responsibly to the public (rather than expect the Forest Service to sign every existing road, trail and area, individually). Use maps could provide the public with all of the information needed to clearly understand what types of travel are allowed on any given segment or parcel of public land. “Use maps” could also empower individuals to inform other recreationists of requirements; police their own ranks; and notify enforcement personnel of obvious violations.

Part 212, New Subpart C Snowmobile use

Purpose and scope. 36 CFR 212.80

In the current regulation, snowmobiles are regulated along with other off-road vehicles (36 CFR 295). The proposed rules would allow snowmobiles to be regulated separately, under the presumption that they have less significant natural resource impacts because they travel over snow rather than directly over ground. However, this premise is not substantiated by published literature, which clearly documents impacts of snowmobiles on soils, water quality, vegetation, wildlife, and other recreational

users. Several low density carnivore species require large expanses of undisturbed terrain for denning and foraging. In addition, subnivean mammal species (that inhabit underground burrows and forage at ground level beneath snow cover) are impacted by snow compaction, which can result in cascade effects in the food chain within a wildlife community.

This proposed new section appears to conflict with the language of Executive Orders that require federal agencies to manage off-road vehicle use in a manner that minimizes impacts on a range of resources as well as conflicts with other users of these lands. Separating management of snowmobile recreation from other motorized recreation also appears to be contrary to FS efforts to achieve integrated management, at the landscape scale.

261.13.1 Motor vehicle use.

This section is replete with double negatives that make it quite difficult to understand. We are concerned that snowmobiles are exempted from prohibitions listed in this section. The Wildlife Society disagrees that snowmobiles should be exempted from regulations that all other motorized vehicles must comply with. The new proposed rules should fully factor in management of snowmobile use on national forest lands.

This section again specifies that roads, trails, and areas be designated on an administrative unit or ranger district basis rather than at the level of a National Forest. We distinctly endorse travel management at the Forest level or even at the Regional level rather than at the level of small local units – to promote consistency, enforceability, and effective monitoring.

In addition, this section (as in previous sections of the proposed rule) does not specify a time frame for accomplishing designation of roads, routes and areas of use. Lack of a time frame for accomplishing these designations thwarts the intent of the rule since another portion of the rule specifically states, “The proposed rule would have no effect on the ground until designation of roads, trails and areas is completed at the field level, with opportunity for public comment.” This unscheduled approach would allow resource damage to continue to occur indefinitely.....until designations are made.....which may never occur if time frames are not set.

Removal of Part 295 Use of Motor Vehicles Off National Forest System Roads

We are concerned about proposed removal of Part 295 in its entirety. Of particular concern to TWS is loss of 295.6 which commits the FS to reviewing off-road vehicle management plans annually, and section 295.3, which provides for public participation.

Monitoring and annual review of off-road vehicle use and associated impacts are crucial to managing this activity as a sustainable use of Forest Service lands. The effect of repealing this section would be exacerbated by the fact that the proposal also repeals the current requirement for Forest managers to assess “potential impacts” of off-road vehicle use when developing management plans. This proposal conveys the appearance that managers will no longer be required to look ahead or to review and update their management plans on a regular basis. We strongly believe that provisions of 295.6 and 295.3 should be retained in the new proposed rules.

Thank you for your consideration of our comments on the proposed, new rules to designate routes and areas for motor vehicle use on our National Forests.

Sincerely,

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