

# MERCATUS CENTER

## REGULATORY STUDIES PROGRAM

### **Public Interest Comment on The National Park Service's Proposal to Amend Snowmobile Use Regulations in Rocky Mountain National Park <sup>1</sup>**

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The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of the impact of regulation on society. As part of its mission, RSP conducts careful and independent analyses employing contemporary economic scholarship to assess rulemaking proposals from the perspective of the public interest. Thus, this comment on the National Park Service's proposal to amend snowmobile use regulations in Rocky Mountain National Park does not represent the views of any particular affected party or special interest group, but is designed to evaluate the effect of the Agency's proposals on overall consumer welfare.

This comment first summarizes the National Park Service proposal, and its statutory and administrative authority for the proposal. It then reviews the data and analysis supporting the rule, and examines the implications of the proposed regulatory approach. The last section concludes with recommendations for applying market-based mechanisms to allow the National Park to be enjoyed by diverse users. The RSP Checklist is attached as an appendix to this comment. It examines and scores the proposal in terms of seven elements that are essential for good regulatory policy.

While the issues raised in this comment are specific to the snowmobile restrictions proposed for Rocky Mountain National Park, the same concerns likely apply to other proposals under consideration for restricting snowmobiling in other national parks.

#### **I. Summary of proposal and statutory authority**

The National Park Service (NPS) is proposing to amend regulations designating snowmobile routes inside Rocky Mountain National Park. This amendment would eliminate one of the two routes currently designated for snowmobile use, permanently ban snowmobile use of two previously used routes, and bring the remaining route into compliance with the general regulations.

This action is in response to a petition for rulemaking from a network of conservation organizations requesting that the NPS begin rulemaking to prohibit snowmobile use within units of the National Park System. After conducting a survey of parks, and convening a snowmobile "summit" with representatives from the Department of the Interior and the NPS, the NPS publicly announced in April 2000 its intention to propose changes to its regulations allowing snowmobile use in the various parks. This regulation amending snowmobile route designations

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<sup>1</sup> Prepared by Randy T. Simmons, Professor, Utah State University. The views expressed herein do not represent an official position of George Mason University.

in Rocky Mountain National Park is the second such regulation. The first of these regulations addressed Yellowstone National Park, and was issued in final form on January 22, 2001.

The NPS derives the authority for these actions from Executive Order 11644 and Executive Order 11989. EO 11644 established policies and procedures for managing off-road vehicle use on all public lands and requires agencies to identify areas and trails for off-road uses. It allows, therefore, the creation of snowmobile trails and areas within a National Park if the director determines the use will not adversely affect “natural, aesthetic, or scenic values.” The executive order also requires monitoring of snowmobile effects and that park policies be changed based on the findings.

If the director determines that continued snowmobile use will cause or is causing adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources, Executive Order 11989 requires the park to prevent these effects, including stopping all use by snowmobiles.

Existing general regulations governing snowmobile use in national parks state that:

The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited 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.

Rocky Mountain National Park has four routes designated as snowmobile routes:

1. Trail Ridge Road (a 16 mile trail including 10 miles on a plowed road shared with cars),
2. Summerland Park Snowmobile trail (a 1.1 mile trail closed to snowmobiles in 1997),
3. Bowen Gulch Access Route (a 0.6 mile trail closed in 1981), and
4. North Supply Access Trail (a 2 mile trail through the park providing access from the town of Grand Lake and 17 named snowmobile routes on National Forest lands).

The proposed rule would repeal the designations of all designated snowmobile routes in Rocky Mountain other than the North Supply Creek Access Trail.

## **II. Review of the analysis used to support the proposal**

Under Executive Orders 11644 and 11989 allowing snowmobile use within a national park solely for recreational use cannot be allowed if the use causes adverse impacts to park resources. Rocky Mountain National Park contains 414 square miles. There are just 18 linear miles of snowmobile trails within the park boundaries so any effects on the entire park are limited. The Environmental Assessment (EA) conducted to examine potential adverse impacts did not discover any data to justify the NPS preferred alternative, which is to end the current use of Trail Ridge Road by snowmobiles.

Some preliminary data on soil and sediment contamination from snowmobile use have been gathered but are insufficient to determine any effects. Studies conducted elsewhere are cited but they either do not apply to the park (one study is of lead concentrations but gasoline no longer contains lead) or are from sources that are not published in peer-reviewed literature (the Greater Yellowstone Coalition, for example). The EA notes that keeping Trail Ridge Road open allows for the potential for snowmobiles to affect wetlands and riparian communities from emissions or from illegally leaving the trail, but offers no data to demonstrate that such impacts are occurring in the park.

The EA did not identify any impacts on endangered, threatened, or rare species. It did raise concerns about potential effects on bighorn sheep, elk, moose or deer. It noted, however, that the current trails are not in areas where there is winter forage for these species.

Air quality issues are a significant concern with snowmobiles because fuel-inefficient, two-stroke engines power them. There are no data, however, that show that using snowmobiles on the 18 miles of trail within the 414 square mile park has any adverse effect on air quality in the park. The EA mentions some recent studies on the effects of air pollution enhancing the invasion of exotic plants but cites no data to tie that pollution to snowmobiles. According to the EPA, air quality in Colorado has improved substantially in recent years, and the NPS provides no evidence that air quality in Rocky Mountain National Park is an exception.

### **III. Implications for proposed regulatory approach**

Executive Order 11644 established policies regarding agencies' control of off-road vehicle use of public lands. The NPS uses that EO to justify closing Rocky Mountain National Park to snowmobiles except for the 2-mile stretch of the North Supply Access Trail. However, the EO also states that agencies are to minimize conflicts among competing users of public lands.

One conflict identified in the EA is the value conflict between snowmobilers and non-motorized recreationists. Snowmobilers travel relatively long distances in a day—as many as 32 miles on the Trail Ridge Road. Frequent stops to observe vistas or other features of the park are typical. Non-motorized recreationists cannot cover as much ground and, according to park surveys, are often in search of solitude and quiet. The EA notes that the experience of non-motorized recreationists will not be as “protected” if snowmobiles are allowed to continue to use Trail Ridge Road.

As a result, the NPS interprets minimizing conflicts as outlawing motorized users entirely. The EA does not say anything about the experience of the snowmobilers. Their experience is not only unprotected if they can no longer use the trail, it is prohibited. That prohibition is a significant loss to more than 4000 users of that trail each winter.

Few private managers of such a resource who recognized the exceptional value all types of recreationists place on that resource would minimize conflict by simply outlawing one use. Instead the manager would attempt to determine ways to reflect the values of all users. For example, it would be possible to designate a certain number of days as “no motorized noise” days. Skiers and snowshoers could make reservations to use the park on those days, and the manager could charge a higher price for the “naturally quiet soundscape.” Natural quiet may, in

fact, be the highest and best recreation use of the park, but because park managers are restricted in their ability to charge market rates, including differential rates for different types of users, we do not have good measures of what is the highest valued use.

The NPS claims that one reason the Summerland Park Snowmobile Trail was closed a few years ago is that users did not stay on the trails and the Park Service did not have the funds to police use. As noted above, Park Service funding rules, even under the Fee Demonstration Program, restrict park managers' ability to act like a private owner, by charging sufficient funds to monitor such uses. It is difficult, therefore, to respond to market demand or to even determine what actual demand is.

The NPS has never established what are considered acceptable noise levels within a park. Snowmobiles are significantly less noisy than they were even five years ago and they continue to improve. The snowmobiles meet federal noise level standards. But are those standards that ought to be accepted in parks?

A related question is what is an acceptable level of emissions. If there are serious threats to plant, animal, and aquatic communities, the NPS could consider a time period to phase out two-cycle snowmobiles in parks so that there is time for four-cycle snowmobiles to be developed. A better regulation than one designating the type of allowable motor, is one designating allowable emissions and allowing market forces to determine the best way to reach those levels. Currently, however, no market forces are at work on the problem because the NPS has proposed simply banning snowmobiles except in a few very rare cases.

#### **IV. Recommendations and Conclusions**

The NPS should conduct a better benefit-cost analysis that takes into account all of the park's constituents, not just the non-motorized users. In addition, the NPS might consider requesting authority from Congress to charge differential fees based on the type of use so that there could be a market test of the value of "noisy" and "natural quiet" days in the park. At the very least, the Park should experiment with ways of reducing conflicts between users instead of simply claiming one set of users is superior to another set. As the park's Organic Act states, the park was created "for the benefit and enjoyment of the people of the United States...with regulations being primarily aimed at the freest use of said park for recreation purposes by the public and for the preservation of the natural conditions and scenic beauties..." (38 Stat. 798). Banning snowmobiles from the park, especially without scientific justification, violates the "freest use of said park for recreation by the public" clause in the Organic Act.

These comments and recommendations apply to any park where snowmobiling is allowed. Since the NPS is in the process of reconsidering snowmobile use in all parks, the agency ought to consider ways of managing conflict instead of simply determining that one set of users is superior to another. It also could begin to establish noise and emissions standards for vehicles used in parks so that the snowmobile industry would have an incentive to address potential problems.

## Appendix I

### RSP Checklist

#### Snowmobile Use in Rocky Mountain National Park

Element	Agency Approach	RSP Comments
1. Has the agency identified a significant market failure?	<p>The National Park Service is attempting to eliminate perceived externalities of snowmobile use by restricting snowmobile use to a 2-mile access trail through the Park.</p> <p><b>Grade: F</b></p>	<p>Unrestricted snowmobile use has the potential to cause serious externalities. But current use in Rocky Mountain National Park is restricted to just 18 miles of trail and there are no data to support claims of externalities, except for conflicts with non-motorized recreationists.</p>
2. Has the agency identified an appropriate federal role?	<p>The National Park Service is responsible for managing the units of the National Park System.</p> <p><b>Grade: A</b></p>	<p>This park was created in 1915 “for the benefit and enjoyment of the people of the United States...with regulations being primarily aimed at the freest use of said park for recreation purposes by the public and for the preservation of the natural conditions and scenic beauties...” (38 Stat. 798).</p>
3. Has the agency examined alternative approaches?	<p>The Park service has not considered pricing or other rationing systems that private operators of a similar resource might use to resolve use-conflicts.</p> <p><b>Grade: F</b></p>	<p>The primary problem identified in the Environmental Assessment is that some non-motorized recreationists believe that seeing, hearing, and smelling snowmobiles degrades the park’s wilderness experience. The NPS should consider identifying motorized and non-motorized days and charging appropriate fees under the Fee Demonstration Program to fund monitoring and enforcement costs.</p>

Element	Agency Approach	RSP Comments
4. Does the agency attempt to maximize net benefits?	<p>By concentrating on potential costs of snowmobiling the agency offers no estimates of the recreational benefits enjoyed by the users of the 4000 snowmobiles using Trail Ridge Road each winter.</p> <p><b>Grade: F</b></p>	<p>The agency recognizes the high value of accessing the National Forest via the North Supply Access Trail, yet does not consider benefits from keeping the Trail Ridge Road open to snowmobiles. Nor does it consider potential recreation benefits from reopening Summerland Park Trail or Bowen Gulch Access Route.</p>
5. Does the proposal have a strong scientific or technical basis?	<p>The NPS offers no data to support claims of snowmobiles' negative effects on the park's wildlife, soils, waters, or air quality.</p> <p><b>Grade: F</b></p>	<p>Instead of offering sound science, the EA suggests snowmobiles "may" be having certain impacts and that if their use is restricted to North Supply Access Trail, certain outcomes "may" occur. The language is not the language of peer-reviewed science.</p>
6. Are distributional effects clearly understood?	<p>This proposal addresses concerns of non-motorized users but not concerns of snowmobilers.</p> <p><b>Grade: F</b></p>	<p>Nordic Skiers and snowshoers will be the beneficiaries of the proposed rule. The EA, however does not consider the value of their gains in contrast to the losses of snowmobilers and snowmobile rental shops.</p>
7. Are individual choices and property impacts understood?	<p>Recreation opportunities currently enjoyed by more than 4000 park visitors each winter will be limited by this proposal.</p> <p><b>Grade: F</b></p>	<p>If the NPS' preferred alternative is adopted, the vistas and winter scenes currently enjoyed by users of the 4000 snowmobiles that use Trail Ridge Road each year would be restricted to the few people who can travel that distance on skis or snowshoes.</p>