

# Center for Regulatory Effectiveness

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March 1, 2004

Hon. Harold Craig Manson  
Assistant Secretary for Fish,  
Wildlife, and Parks  
U.S. Department of the Interior  
1849 C St., NW – Rm. 3156  
Washington, DC 20240

Dear Assistant Secretary Manson:

The recent divergent decisions from two federal district courts on recreational snowmobile use in Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway has led the Park Service to invent a stopgap measure that allows for increased snowmobile use over one regulation and slightly less under the other regulation. That approach fails to abide by the overarching National Park Service snowmobile regulations.

The Park Service's new measure fails to recognize that there are undisputed regulations in place which continue to govern snowmobile use in the three Park units. Those regulations are the system-wide (or "general") snowmobile regulations codified in 36 CFR § 2.18. Promulgated in 1983 after notice and comment, 36 CFR § 2.18 prohibits snowmobile use in the National Parks unless the Service affirmatively determines that certain criteria for allowing such use are met. The regulations specifically provide:

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.

36 CFR § 2.18(c) (emphasis added).

When these system-wide regulations were adopted, the Park Service opened a number of routes to snowmobile use in Yellowstone and Grand Teton National Parks and the Rockefeller Memorial

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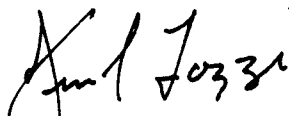
Parkway. See 36 CFR §§ 7.21 and 7.22. However, as the Service acknowledged in 2001, those designations were defective because the Service had never made the determinations required by the criteria in 36 CFR § 2.18. 66 FR at 7260 (Jan. 22, 2001) (“Having now studied the impacts of snowmobile use in these parks, we acknowledge that we have not complied with the applicable legal requirements.”) The Service’s current legal obligation to come into compliance with 36 CFR § 2.18 is not in dispute in either of the ongoing court cases.

Therefore, it is our understanding that, in the absence of the 2001 and 2003 snowmobile rules currently in dispute in the courts, the Service must prohibit all snowmobile use pending compliance with 36 CFR § 2.18.

The Department has not explained to the public that the general prohibition on snowmobile use in 36 CFR § 2.18 would apply next winter season if the 2001 and 2003 rules are both invalidated, and that the presumption against snowmobile use is the baseline from which the Service must consider any allowance of use. We believe that the Department has an obligation to explain this to the public in order to avoid confusion regarding prospects for the next winter season. Otherwise, the public, including local businesses, may have expectations that the current level of snowmobile use, allowed on a temporary basis this season, or something similar, will be allowed next winter.

We would appreciate your views on the general regulations and their potential application next winter season. We would also like to know whether you plan to explain to the public that this prohibition will govern snowmobile use in Yellowstone and the adjacent Parks if both the 2001 and 2003 rules are finally invalidated.

Sincerely,



Jim J. Tozzi

Member, CRE Advisory Board

cc: Hon. Fran P. Mainella, Director, National Park Service