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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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GREATER YELLOWSTONE COALITION,))
et al.,))
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Plaintiffs,))
))
v.))
))
KENNETH L. SALAZAR, in his official))
capacity as Secretary of the Interior, et al.,))
))
Defendants,))
))
and))
))
INTERNATIONAL SNOWMOBILE))
MANUFACTURERS ASSOCIATION,))
))
Defendant-Intervenor.))
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Case No. 1:08-cv-02138 (EGS)
[Summary Judgment Hearing
on November 18, 2009]

FEDERAL DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE

Federal Defendants, through undersigned counsel, hereby respond to this Court's October 26, 2009 Order to Show Cause "why this case should not be dismissed as moot pursuant to Federal Rule of Civil Procedure 12(b)(1)." Dkt. #45.^{1/}

This case will be rendered moot by the National Park Service's ("Service") issuance of a new final rule governing winter use of Yellowstone National Park, which the Service anticipates would occur on or about November 15, 2009. That rulemaking process was initiated last November by the Service's issuance of a proposed rule allowing 318 snowmobiles in Yellowstone ("proposed 318 rule"). See 73 Fed. Reg. 65784 (Nov. 5, 2008). The comment period for the proposed 318 rule was re-opened in July of this year and closed in September. See 36 Fed. Reg. 36640 (July 24, 2009). The Service issued a Finding of No Significant Impact ("FONSI") regarding the proposed 318 rule on October 15, 2009. See FONSI, attached as Exhibit 1 hereto. In the FONSI, the Service states: "Through this decision, and its accompanying rulemaking, the NPS is promulgating such a rule and replacing the 2004 regulation reinstated by the Wyoming Court." FONSI at 1. The Service intends for the new rule to be signed on or about November 15, 2009 and, in any event, in advance of the winter season, which begins on December 15, 2009. Upon issuance of the new rule, GYC's claims will be rendered moot. See, e.g., Fund for Animals v. Hogan, 428 F.3d 1059, 1064 (D.C. Cir. 2005) (finding claims to be moot where the challenged Fish and Wildlife Service regulations were no longer in effect).

^{1/} As a threshold matter, Defendants reiterate that the above-captioned case is not properly before the Court because Plaintiffs have failed to challenge an "action," final or otherwise, within the meaning of the Administrative Procedure Act. The case should be dismissed on this basis regardless of whether it is also moot. See Dkt. ## 37, 44.

Even though Plaintiffs' claims will not be rendered moot under Article III standards until the new rule issues, the Court may immediately dismiss GYC's claims as prudentially moot because the Service intends to issue a new rule regardless of the outcome of this case. See Dkt. #37 at 26-27. The doctrine of prudential mootness permits a court, in its discretion, to dismiss a case when "a controversy, [though] not actually moot, is so attenuated that considerations of prudence and comity for coordinate branches of government counsel the court to stay its hand, and to withhold relief it has the power to grant." Chamber of Commerce v. U.S. Dep't of Energy, 627 F.2d 289, 292 (D.C. Cir. 1980). Under this doctrine, "a court may decline to grant declaratory or injunctive relief where it appears that a defendant, usually the government, has already changed or is in the process of changing its policies" Bldg. and Constr. Dep't v. Rockwell Int. Corp., 7 F.3d 1487, 1492 (10th Cir. 1993).

In this case, the Service has taken tangible steps towards completing its rulemaking process before the opening of the next winter season. It re-opened the comment period on the proposed 318 rule, considered those comments, and issued a FONSI selecting the proposed 318 rule as its intended action. See FONSI at 3. All that remains after that are drafting the final rule, intra- and inter-agency reviews of the rule, final signing, and publication in the Federal Register. These processes are underway, and while there can always be some delay in completing the reviews, the Service still expects that the final rule will be signed on or about November 15, 2009, after which the rule would be sent to the Federal Register for publication. Thus, the issuance of a new winter use rule before the next winter season is highly likely and GYC's claims, while technically still live, are "much less lively" than when the case was filed. Chamber of Commerce, 627 F.2d at 290. Immediate dismissal on grounds of prudential

mootness – in addition to the other grounds previously argued by Federal Defendants – is therefore appropriate.

Respectfully submitted this 2nd day of November, 2009.

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**National Park Service
U.S. Department of the Interior**

**Yellowstone National Park
Wyoming / Montana / Idaho**



WINTER USE PLAN FINDING OF NO SIGNIFICANT IMPACT

Background

The purpose of the *2009 Winter Use Plan* is to ensure that visitors to Yellowstone have a range of appropriate winter recreational opportunities for a two-winter interim period. The purpose of this plan is also to ensure that these recreational activities are in an appropriate setting and that they do not impair or cause unacceptable impacts to park resources or values. These purposes are consistent with the NPS Organic Act, the fundamental law guiding national park management, which requires that the NPS conserve park resources and values, prevent their impairment, and promote their enjoyment.

Another purpose of the *2009 Winter Use Plan* is to provide the public with some degree of certainty about how winter use will be managed in Yellowstone for an interim period. This decision is not intended to result in a long-term regulation authorizing continued public recreational snowmobile and snowcoach use in Yellowstone. A long-term regulation on snowmobile and snowcoach use in Yellowstone may be the product of future winter use analysis.

As stated in the *2008 Winter Use Plans Environmental Assessment* (2008 EA), the U.S. District Court for the District of Columbia vacated the 2007 ROD and Final Rule on September 15, 2008. On November 7, 2008, the U.S. District Court for the District of Wyoming reinstated the 2004 rule permitting snowmobile and snowcoach use in Yellowstone, Grand Teton, and the John D. Rockefeller, Jr. Memorial Parkway until such time as the NPS could issue an acceptable rule.

Through this decision, and its accompanying rulemaking, the NPS is promulgating such a rule and replacing the 2004 regulation reinstated by the Wyoming Court. A separate decision and separate regulations will be issued for Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway.

This document records 1) a Finding of No Significant Impact (FONSI) as required by the National Environmental Policy Act of 1969 (NEPA) and 2) a determination of no impairment as required by the *NPS Management Policies*.

Definitions

In this FONSI, the following definitions apply:

Best Available Technology (BAT): NPS technology requirements for air and sound emissions from snowmobiles or snowcoaches.

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Commercial guide: A guide who operates for a fee or compensation and is authorized to operate in the park(s) under a concession contract or commercial use authorization, or is affiliated with a commercial guiding service or commercial tour. A commercial tour is one or more persons travelling on an itinerary that has been packaged, priced, or sold for leisure / recreational purposes by an entity that realizes financial gain through the provision of services.

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

Oversnow vehicles (OSVs): Self-propelled vehicles intended for travel on snow, driven by a track or tracks in contact with the snow, and that may be steered by skis or tracks in contact with the snow. This term includes both snowmobiles and snowcoaches.

Oversnow routes: That groomed 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.

Snowcoaches: Self-propelled, mass transit vehicles intended for travel on snow, with a curb weight of over 1,000 pounds (450 kg), driven by a track or tracks, steered by skis or tracks, and that have a capacity of at least eight passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches wide with tracks); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not to exceed 25,000 pounds.

Snowmobiles: Self-propelled vehicles 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 that may be steered by a ski or skis in contact with the snow.

Selected Alternative: Continue Recent Use Levels

Description of the Selected Alternative

The Selected Alternative (Alternative 2, the Preferred Alternative in the 2008 EA) will allow 318 snowmobiles and 78 snowcoaches in Yellowstone per day through the winter of 2010-2011. These numbers are a reflection of the recent (previous five years') snowmobile use levels. The 318 number and 78 numbers represent an 8.2% increase in snowmobiles and a 123% increase in snowcoaches over the next two years compared to the 2007-2008 average of 294 snowmobiles and 35 snowcoaches per day. Snowmobile numbers have averaged between about 205 and 296 for this time period, with the higher numbers seen in 2006-2007 and 2007-2008. In 2008-2009, use dropped to 205 snowmobiles and 29 snowcoaches per day, which the NPS believes is a reflection of the uncertainty brought by court decisions and the current worldwide economic conditions. The Selected Alternative will approximate the 2008-2009 level of usage while allowing for a small level of potential growth.

This level of use also derives from the number of snowmobile outfitters at Yellowstone's various entrances, and is specifically calculated as shown in the following table:

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Snowmobile limits and allocations

Entrance	Number of Snowmobile Guide Companies Under Permit or Contract to NPS	Snowmobiles Authorized Per Company Under Selected Alternative	Total
West	8	20	160
South*	12 (including Flagg Ranch)	9 (with the additional six to be divided among 12 companies)	114
East	1	20	20
North	1 (Xanterra)	12	12
Old Faithful	1 (Xanterra)	12	12
Total			318

* As indicated in the 2009 winter use decision for the John D. Rockefeller, Jr. Memorial Parkway, snowmobile and snowcoach use between Flagg Ranch and the South Entrance will be governed by rules for use in Yellowstone.

Seventy-eight snowcoaches are currently permitted in Yellowstone. The Selected Alternative will carry forward the same number of snowcoaches as the NPS is midway through 10-year contracts with concessioners.

For Yellowstone National Park, all snowmobiles will be required to meet NPS Best Available Technology (BAT) requirements for air and sound emissions and all snowmobilers will have to travel with a commercial guide. The Selected Alternative will also manage several side roads with temporal and spatial zoning to facilitate a variety of uses (that is, some side roads will be snowcoach-only in the mornings or all day, while others will be open to all OSVs all day).

Sylvan Pass will be open for oversnow travel (both motorized and non-motorized) from December 22 through March 1 each winter, subject to weather-related constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities. In the interim plan, a combination of avalanche mitigation techniques may be used, including forecasting and helicopter- and howitzer-dispersed explosives. In the long-term plan, the results of previous safety evaluations of Sylvan Pass by the Occupational Safety and Health Administration (OSHA) and an Operational Risk Management Assessment (ORMA) will be reviewed and updated, and the NPS will evaluate additional avalanche mitigation techniques and risk assessment tools 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. In addition, from March 2 to March 15, the road segment between Fishing Bridge and Lake Butte Overlook will be maintained for oversnow vehicle travel, subject to weather-related safety constraints.

The Selected Alternative includes an intensive monitoring and adaptive management program, outlined in Appendix B of the 2008 EA. The NPS will continue monitoring of park resources and values, including air quality, natural soundscapes, wildlife, employee health and safety, and visitor experience. This will provide the NPS with the ongoing information necessary to assess the impacts resulting from implementation of this alternative on park resources and values, and visitor access, and to make adjustments, as appropriate, in winter use management. As the 2008 EA makes clear, the monitoring and adaptive management thresholds are one of many tools available to a manager for possibly taking action. Exceeding an adaptive management threshold

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does not mean that a legally significant threshold under the Organic Act or any other relevant legal authority has been exceeded; that is, it does not mean that unacceptable impacts or impairment have occurred. The thresholds within the adaptive management framework are a tool for managers to help them determine if the goals and objectives of the winter use plans are being achieved. Managers will use monitoring results, along with changes in technology and other new information, to help inform future actions. Managers have at their disposal a wide variety of tools. Some of the management tools available include adjustments in snowmobile or snowcoach use levels (up or down), adjustment in BAT requirements, visitor and guide education, timing of entries, and group sizes.

Key Actions***Routes Open to Snowmobile Use***

Pursuant to 36 CFR 2.18(c) the following routes are designated for snowmobile use through the winter of 2010-2011. The superintendent, however, may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, adequate snowpack, public safety, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in 36 CFR 1.7(a).

- Grand Loop Road, from its junction with Upper Terrace Drive to Norris Junction
- Norris Junction to Canyon Junction
- Grand Loop Road, from Norris Junction to Madison Junction
- West Entrance Road, from the park boundary at West Yellowstone to Madison Junction
- Grand Loop Road, from Madison Junction to West Thumb
- South Entrance Road, from the South Entrance to West Thumb. As indicated in the 2009 winter use decision for the John D. Rockefeller, Jr. Memorial Parkway, snowmobile and snowcoach use between Flagg Ranch and the South Entrance will be governed by rules for use in Yellowstone.
- Grand Loop Road, from West Thumb to its junction with the East Entrance Road
- East Entrance Road, from the East Entrance to its junction with the Grand Loop Road
- Grand Loop Road, from its junction with the East Entrance Road to Canyon Junction
- South Canyon Rim Drive
- Lake Butte Road
- Firehole Canyon Drive, from noon to 9 p.m. only
- North Canyon Rim Drive, from noon to 9 p.m. only
- Riverside Drive, from noon to 9 p.m. only
- Cave Falls Road, with no BAT or guiding requirement, and a daily entry limit of 50 snowmobiles (which does not count against the 318 total in Yellowstone)
- Roads in the developed areas of Madison Junction, Old Faithful, Grant Village, West Thumb, Lake, East Entrance, Fishing Bridge, Canyon, Indian Creek, and Norris.

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Routes Open to Snowcoach Use

All routes designated for snowmobile use are also open to snowcoach use through the winter of 2010-2011. In addition, the following routes are open to snowcoaches through the winter of 2010-2011. However, the superintendent may open or close the following oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, adequate snowpack, public safety, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in 36 CFR 1.7(a).

- Firehole Canyon Drive, all day (7 a.m. to 9 p.m.)
- Fountain Flat Road
- North Canyon Rim Drive, all day (7 a.m. to 9 p.m.)
- Riverside Drive, all day (7 a.m. to 9 p.m.)
- Grand Loop Road from its junction with Mammoth Terrace Drive to its junction with North Entrance Road (rubber-tracked snowcoaches only)
- Roads in the developed area of Mammoth Hot Springs (rubber-tracked snowcoaches only)
- Grand Loop Road, from Canyon Junction to the Washburn Hot Springs overlook

Guiding Requirements

All snowmobilers in Yellowstone, except those on the Cave Falls Road, will be required to travel with a commercial guide who is affiliated with a commercial guiding service that is authorized by contract or commercial use authorization to operate in the park.

No more than eleven snowmobiles will be permitted in a group, including at least one commercial guide. That is, group numbers include the commercial guide snowmobile(s).

All snowcoaches operating in the park will have to operate in accordance with a concessions contract. Private snowcoaches will not be allowed. All businesses providing commercial guiding services and other commercial services in the park are required to have contracts authorizing their operation.

Snowmobile and Snowcoach Limits

Daily Snowmobile and Snowcoach Entry Limits

Entrance	Commercially Guided Snowmobiles	Commercially Guided Snowcoaches
West Entrance	160	34
South Entrance*	114	13
East Entrance	20	2
North Entrance	12	13
Old Faithful	12	16
Total	318	78

* As indicated in the 2009 winter use decision for the John D. Rockefeller, Jr. Memorial Parkway, snowmobile and snowcoach use between Flagg Ranch and the South Entrance will be governed by rules for use in Yellowstone.

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Plowed Roads

The following roads in Yellowstone will continue to be plowed through the winter season:

- From the North Entrance to Mammoth Hot Springs
- From Mammoth Hot Springs to the Upper Terrace Drive
- From Mammoth Hot Springs to Tower Junction and the Northeast Entrance
- Roads within the developed areas at Mammoth Hot Springs, Tower Ranger Station, Lamar Ranger Station, Northeast Entrance, and Gardiner.
- In cooperation with the State of Montana, the road from the Northeast Entrance to Cooke City and the stretch of U.S. 191 within Yellowstone National Park.

Sand, or an equally environmentally neutral substance, may be used for traction on all plowed winter roads. No salts will be used, and sand will be generally spread only in the shaded, icy, or hilly areas of plowed roads. Before spring opening, sand removal operations will be conducted on all plowed park roads.

Non-Motorized Access

Backcountry non-motorized use will continue to be allowed throughout the park (see the “sensitive areas” exception below), subject to Yellowstone’s Winter Severity Index program. The program restricts backcountry use of the park when winter snowpack and weather conditions become severe and appear to be adversely affecting wildlife.

Snow road edges may continue to have track set for skiing, where feasible.

About 35 miles of roads may continue to be groomed for cross-country skiing in Yellowstone. These are mainly roads used by summer vehicles, but which are closed to OSV travel. Existing and new routes could be evaluated in the future, and changes announced through one or more of the methods listed in 36 CFR 1.7(a). The Virginia Cascades Road in Yellowstone is one of these roads that may be groomed for skiing.

Ski and snowshoe use of the South Entrance Road and East Entrance Road, as noted above, will be allowed to continue after the balance of roads close to winter operations (during spring plowing). When spring plowing operations approach the entrances, the roads will then be closed to skiing and snowshoeing for safety concerns. Bear management closures of the park’s backcountry, which is an element of the parks bear management planning, will continue as in previous years.

Sensitive areas within the inner gorge of the Grand Canyon of the Yellowstone and the McMinn Bench bighorn sheep area will continue to be closed to all recreational winter use.

Speed Limits

The speed limit from the West Entrance to Madison to Old Faithful will remain 35 mph. The remaining snow-roads have a 45 mph limit, except where posted at lower speeds in designated segments to protect wildlife and natural soundscapes and to enhance visitor safety.

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Winter Oversnow Vehicle Season

In general, Yellowstone's winter season will begin December 15 and close March 15 each year. Actual opening or closing dates for oversnow travel will be determined by the superintendent, based upon adequate snowpack or snow water equivalency. Early closures of the Grand Loop Road, from its junction with Upper Terrace Drive to Madison Junction and from Norris Junction to Canyon and Fishing Bridge Junction, will occur to facilitate spring plowing. To protect road surfaces, the NPS will continue to implement temporary vehicle type restrictions (for example, rubber-tracked vehicles only), as necessary. As discussed above, Sylvan Pass will be open for a limited core season, from December 22 to March 1 each year, subject to weather-related safety constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities.

Facilities

Warming huts may be available for visitor use at West Thumb, Old Faithful, Madison, Norris, Canyon, Fishing Bridge, Indian Creek, Mammoth Terraces, and other appropriate sites.

Emergency Action

None of the actions in the Selected Alternative preclude closures for safety, resource protection, or other reasons as identified in 36 CFR 1.5 or 2.18. The superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

Administrative Use

Non-recreational, administrative use of snowmobiles will be allowed by park personnel or parties duly permitted under the provisions of 36 CFR 1.5 and 1.6. Permitted parties must meet BAT requirements unless specifically authorized otherwise by the park superintendent. Such use will not count against daily recreational entry limits and will not be subject to guiding requirements.

Administrative use of snowmobiles may be supplemented with administrative snowcoaches. When administrative snowmobiles are necessary, the NPS will generally use BAT snowmobiles. Some non-BAT snowmobiles will be permitted for law enforcement, search and rescue, and other administrative purposes on a limited basis.

Contractors, researchers, and other partners working in the park will be required to use BAT snowmobiles unless non-BAT machines are necessary for a particular project and are approved in advance of use by the NPS. Examples of necessary exceptions may include accessing power or telephone lines for repair. In Yellowstone, some of these utility lines are not adjacent to roads. The need for non-BAT machines outside the park does not constitute a reason to use the non-BAT snowmobile in the park when a BAT snowmobile or snowcoach will suffice.

NPS employees and their families living in the interior of Yellowstone (and their visitors) may continue to use non-BAT snowmobiles. Subject to available funding, the NPS will provide BAT snowcoaches and snowmobiles for employee use. In order to complete the conversion of all employee-owned snowmobiles to BAT by 2011-2012 (after this temporary plan has ended), the NPS will encourage employees to replace their non-BAT machines during the life of this plan. It is expected that beginning in the 2011-2012 season, all employee-owned snowmobiles operated in the park must meet BAT requirements, and visitors to these employees must also use BAT snowmobiles or snowcoaches.

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Concessioners and their employees and families living in the interior of Yellowstone (and their visitors) may continue to use non-BAT snowmobiles. To the extent practicable (through permits and contracts), concessioners, their employees, and families will be required to use BAT snowmobiles. In order to complete the conversion of all concession employee-owned snowmobiles to BAT by 2011-2012 (after this temporary plan has ended), the NPS will encourage concession employees to replace their non-BAT machines during the life of this plan. It is expected that beginning in the 2011-2012 season, all concession employee-owned snowmobiles operated in the park must meet BAT requirements, and visitors to these concessioner employees must also use BAT snowmobiles or snowcoaches.

Administrative oversnow vehicle travel by NPS employees, their families, and their guests and by concession employees, their families, and their guests will occur only on groomed roads that meet safety criteria and are open for travel. Between December 22 and March 1, Sylvan Pass will only be open for administrative travel when the pass is open to the public.

Hours of Operation

Motorized travel from 9 p.m. to 7 a.m. will be prohibited except for emergency purposes or when approved by the superintendent for administrative use or by special permit for necessary travel. Yellowstone's East Entrance will open to recreational snowmobile and snowcoach travel no earlier than 8 a.m.

Accessibility

This alternative continues implementation of transition and action plans for accessibility and supports the philosophy of universal access in the park. The NPS will make reasonable efforts to ensure accessibility to buildings, facilities, programs, and services.

The NPS will develop strategies to ensure that new and renovated facilities, programs, and services (including those provided by concessioners) are designed, constructed, or offered in conformance with applicable policies, rules, regulations, and standards, including but not limited to the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, the Uniform Federal Accessibility Standards of 1984, and the Guidelines for Outdoor Developed Areas of 1999. The NPS will evaluate existing buildings and existing and new programs, activities, and services, including telecommunications and media, to determine current accessibility and usability by disabled winter visitors. Action plans to remove barriers will be developed.

Personal Protective Equipment

Personal protective equipment is recommended for commercially guided snowmobilers, including helmet, snowmobile suit and gloves, proper footwear, and hearing protection. Persons traveling by snowcoach should also wear or have access to appropriate personal protective equipment including winter clothing, footwear, and hearing protection. Non-motorized users are also recommended to wear and carry personal protective equipment as appropriate for their winter travel. For all user groups, personal protective equipment should include avalanche rescue gear (shovel, probe, and transceiver), as appropriate. NPS employees using snowmobiles are required to wear helmets and all appropriate personal protective equipment.

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Measures to Minimize Environmental Harm

Best Available Technology (BAT)

If the Environmental Protection Agency (EPA) adopts standards for any class of oversnow vehicle that are more stringent than the requirements resulting from this NEPA process and decision, the EPA standards will replace the NPS standard.

The NPS recommends the use of environmentally preferred fuels and lubricants for all motorized winter vehicle use for all alternatives. For example, this could include lubricants meeting the EPA “highly biodegradable” classification, and fuels like biodiesel and ethanol blends. Additionally, the NPS encourages the use of fuel-efficient winter vehicles in the park.

Revisions to testing procedures may be described and implemented per NPS procedures used to certify a snowmobile or snowcoach as BAT.

Individual snowcoaches or snowmobiles may be subject to periodic inspections to determine compliance with the emission and sound requirements.

Snowmobile BAT

All recreational snowmobiles operating in the park must meet BAT requirements, except those used originating on the Cave Falls Road in Yellowstone, which will not be required to be BAT snowmobiles.

The superintendent will maintain a list of approved snowmobile makes, models, and years of manufacture that meet the BAT requirements and a procedure to certify a snowmobile as BAT. The list will be posted on the park website, and notice will be provided by one or more of the methods listed in 36 CFR 1.7(a).

The NPS anticipates that snowmobile manufacturers will conduct research to continually improve sound and emissions in available machines. Information on the full spectrum of pollutant criteria is critical to prevent an inadvertent increase in some pollutants.

Once approved, a snowmobile will be certified as BAT for a period of six years. In the absence of new emissions and sound information, after six years a snowmobile make and model will no longer be BAT-certified and its use will not be allowed in the park. BAT certification will continue to expire during the 2-year duration of this plan. The winter of 2009-2010 will be the last winter model year that 2004 snowmobiles will be authorized in Yellowstone. The winter of 2010-2011 will be the last winter model year 2005 snowmobiles will be authorized in Yellowstone.

Snowmobiles that have been modified in a manner that may affect their air or sound emissions may be prohibited by the superintendent.

In addition, all critical snowmobile emission, sound and odometer-related components originally installed by the manufacturer must be in place and functioning properly. Such components may only be replaced with the original equipment manufacturer (OEM) component or its equivalent. If OEM parts are not available, aftermarket parts may be used if they do not worsen sound or emission characteristics.

Snowmobile Air Emissions Requirements

All BAT snowmobiles must achieve a 90% reduction in hydrocarbons (HC) and a 70% reduction in carbon monoxide (CO) emissions, relative to EPA's baseline emissions assumptions

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for conventional two-stroke snowmobiles. Specifically, beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR 1051 and 1065 to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide. If the existing procedures or requirements of 40 CFR 1051 and 1065 and the Family Emission Limit are superseded, all snowmobiles must be certified by their manufacturer to meet the above emission requirements (unless the EPA issues stricter requirements, in which case those requirements must be followed).

For 2004 model year snowmobiles, measured emissions levels (official emission results with no deterioration factors applied) must comply with the emission limits specified above.

Snowmobiles must be tested on a five-mode engine dynamometer, consistent with the existing test procedures specified by EPA (40 CFR 1051 and 1065).

Snowmobile Sound Requirements

Snowmobiles must operate at or below 73dBA, as measured at full throttle and according to Society of Automotive Engineers (SAE) J192 test procedures (revised 1985).

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).

The NPS recognizes that the SAE procedures changed in 2003 and are continuing to change; thus the 2003 procedures may be supplanted by new SAE procedures. The NPS intends to continue to work with industry to update the BAT sound measurement procedures. NPS will consider such new protocols or procedures as they are modified by SAE.

Snowcoach Air Emission and Sound Requirements

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 snowcoaches' 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.

However, for the duration of this plan, the NPS encourages snowcoach operators to replace or retrofit their snowcoaches with models that meet higher emission standards. In the 2008 EA, the NPS anticipated that snowcoach air and sound emission requirements would go into effect in 2011-2012, after the duration of this temporary plan. Implementation of snowcoach BAT requirement will be determined in the long-term plan. These recommendations will assist snowcoach operators in anticipating future possible requirements. During these intervening years, the NPS recommends diesel vehicles with a Gross Vehicle Weight Rating (GVWR) of 8,500 pounds or more meet, at a minimum, the EPA 2004 "engine configuration certified" diesel air emission standards. The NPS further recommends that diesel vehicles meet the 2007 "engine configuration certified" air emission standard. If a new vehicle is being purchased, the NPS recommends that operators confirm that the vehicle has, at a minimum, an engine that meets the 2004 standard. If it is the operator's intention to purchase or retrofit a vehicle with the newest diesel emission technology, the NPS recommends that new diesel vehicles or retrofits have a

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"2007 standard" engine. If the diesel vehicle has a GVWR between 8,500 and 10,000 pounds, there may be a configuration that meets the EPA Light Duty Tier II standards, which would achieve the best results from an emissions perspective.

For air emissions from gasoline vehicles, the NPS recommends the vehicles' engines meet EPA Tier 1 emission requirements. The NPS further recommends that gasoline vehicles meeting EPA Tier II requirements be used. If a new vehicle is being purchased, the NPS recommends the vehicle has, at a minimum, an engine that meets the Tier I requirements, or more ideally, the vehicle meet Tier II requirements. If an existing gasoline engine and exhaust system is being retrofitted, the NPS recommends the vehicle have, at a minimum, a computer controlled, port-fuel injected engine and a catalytic converter in the exhaust system (Bishop 2007).

Regarding the sound emission recommendations, the NPS recommends that new and retrofitted snowcoaches not exceed 73 dBA, when measured by operating the snowcoach at or near full throttle for the test cycle. Thus, a snowcoach might be travelling at a speed of 25-30 miles per hour for the pass-by test to determine if the vehicle produces no more than 73 dBA.

Monitoring of Winter Visitor Use and Park Resources

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. Selected areas of the park, including sections of roads, may be closed to visitor use if studies indicate that human presence or activities have unacceptable effects on wildlife or other park resources that could not otherwise be mitigated. The appropriate level of environmental analysis under NEPA will be completed for all actions as required by the Council on Environmental Quality regulations (40 CFR 1500-1508). A one-year notice will be provided before any such closure is implemented, unless immediate closure is deemed necessary to avoid impairment of park resources.

A Monitoring and Adaptive Management Program is a key element of this decision (see Appendix B of the 2008 EA). Generally, non-emergency adjustments to park operations under the adaptive management program will be implemented only after at least one or two years of monitoring, followed by a 6- to 12-month notification and waiting period. The superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

Wildlife

Bison and Roads

The NPS will implement the research proposal by Robert A. Garrott and P.J. White entitled "Evaluating Key Uncertainties Regarding Road Grooming and Bison Movements" (at <http://www.nps.gov/yell/parkmgmt/winterusetechndocuments.htm>). This proposal specifically addresses the uncertainty as to whether grooming of the Madison to Norris road segment (Gibbon Canyon) has led to alterations of bison movements and distribution in Yellowstone, a question identified in the report by Cormack Gates et al., "The Ecology of Bison Movements and Distribution In and Beyond Yellowstone National Park" (2005, posted at above site).

The NPS will analyze existing data on GPS-collared bison, track additional GPS-collared bison for 5 years, and deploy cameras along travel routes to gain information on the relationship between road grooming and bison travel. The Gibbon Canyon Road will not be closed to public motorized OSV travel during this five-year period.

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During the five year period, other roads or routes may be investigated to gain additional knowledge regarding the relationship between snow depth, grooming, and bison movement. For example, the Firehole Canyon Drive could be closed to oversnow travel. This would allow, bison either to travel cross country or along the ungroomed, Firehole Canyon Drive. Similarly, the Madison to Norris Road could be fenced or gated in the vicinity of the new bridge over the Gibbon River (under construction in 2009) to direct bison movement off the groomed roadway to travel cross country. Such experiments could generate better understanding of the role of snow depth and winter use on bison movements without closing a main road.

After five years of such data gathering and analysis (which is beyond the term of this temporary plan), the NPS will consider closing the main road between Madison and Norris in its entirety to observe bison response. It is uncertain until the five-year period of data gathering and analysis has finished whether such closure will yield informative data or conclusions. Such a closure, if determined to be appropriate, would likely be a multi-year closure.

Other recommendations of the Gates report will be evaluated as part of Yellowstone's bison management program.

Monitoring of Human Interaction with Wildlife

From 1999 through 2009, the park monitored the behavioral responses of bison, elk, swans, bald eagles, and coyotes to snowmachine transits on nearby roads. One summary of these results is reported in 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 from Ecological Applications 16(5) 2006, pages 1911-1925. The study found that 81% of bison had no apparent response, 10% displayed a vigilant response, and 9% had a movement response. For elk, the authors indicate 48% had no apparent response, 44% displayed a vigilance response, and 8% had a movement response. These behavioral responses took place in the context of higher oversnow vehicle use than is observed today: average daily oversnow vehicle use ranged as high as 593 during the study, with maximum daily numbers extended up to 1168 oversnow vehicles during the study.

Based on 10 years of monitoring, consistent results over a wide range of oversnow vehicle numbers, NPS and university wildlife biologists do not believe relatively low levels of individual animal behavioral responses to oversnow vehicle use have affected the overall population ecology of bald eagles, bison, elk or trumpeter swans. The NPS believes that more valuable information can be developed pursuing new studies. Therefore, as the Road Grooming and Bison Movement study design is implemented, NPS wildlife biologists have recommended that monitoring of wildlife behavioral responses be discontinued. During the interim plan period, the wildlife monitoring program will be evaluated and adjustments may be recommended.

Other Wildlife, Including Federally Protected Species and Species of Special Concern

At periodic intervals, and when snow depth warrants, routine plowing operations will include creating openings in roadside snow banks that could be a barrier to wildlife exiting the road corridor.

NPS personnel will patrol sensitive resource areas to ensure compliance with area closures.

The park will continue to support the objectives of the Greater Yellowstone Bald Eagle Management Plan, and the NPS will continue to monitor the eagle population to identify and protect nests.

Monitoring of gray wolves will continue.

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Monitoring of grizzly bear populations will continue in accordance with the Interagency Grizzly Bear Management Guidelines and the park's bear management plans.

Wildlife-proof garbage holding facilities for interior locations (including Old Faithful Snowlodge) will be provided as part of regularly-occurring park operations.

Monitoring and protection of trumpeter swan habitats and nests will continue, including the closure of nest sites to public access, when warranted.

Monitoring potential or known winter use conflicts will result in area closures by the superintendent, if necessary, to protect wildlife and their habitat.

If monitoring indicates that undesirable impacts are occurring, further measures, including avoiding, minimizing, rectifying, reducing, or compensating for undesirable impacts, will be identified and taken.

Air Quality and Soundscapes

Air Quality monitoring will continue at the West Entrance and Old Faithful. Monitoring of pollution deposition in the snowpack will also continue.

Soundscapes monitoring will also continue at sites along the West Entrance Road near Madison Junction and in the Old Faithful developed area. In addition, short-term soundscapes monitoring will continue at a variety of locations around the park to continue to gather information from a variety of sites.

Cultural Resources

If human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered, applicable provisions of the Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001) will be followed.

Water Resources

Best management practices will be used during the construction, reconstruction, or winter plowing of roads to prevent unnecessary vegetation removal, erosion, and sedimentation.

Water resource monitoring, which has not indicated concerns with water resources in recent years, will continue on an as-needed basis. If necessary, best management practices will be implemented.

OTHER ALTERNATIVES CONSIDERED

The other alternative considered in the 2008 EA was the No Action Alternative. At the time the 2008 EA was issued, the 2007 winter use regulations had been vacated, and the authorizations for OSV access in the 2004 winter use regulation had expired, pursuant to their sunset date provisions. Thus, without regulatory action by the NPS, no OSV 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.

As discussed above, in November 2008 the Wyoming Court ordered the reinstatement of the 2004 regulation without the sunset date provisions, until such time as the NPS promulgates an acceptable rule to take its place. Thus, the result of "no action" by NPS now would be the continued authorization of up to 720 snowmobiles per day and other aspects of OSV use as set out under the 2004 regulation. The current implementation of the 2004 regulation is the result of

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the Wyoming Court's order. There has been no current NEPA analysis or other determination that use at the levels authorized under that regulation is consistent with NPS statutes and other mandates.

Accordingly, the No Action Alternative analyzed in the 2008 EA represents a more logical and useful set of conditions against which impacts can be compared, and therefore continues to better satisfy the purposes of the no action alternative under NEPA.

Many commenters suggested that snowmobiles should be banned in favor of snowcoach access. In previous NEPA analysis from 2000 through 2004, the NPS had determined that snowcoaches were the "least impacting" means of access to the park in the winter. However, recent research has demonstrated that guided snowmobile groups and snowcoaches are roughly equivalent, in terms of environmental impacts per visitor.

In terms of maximum noise levels, snowcoaches have greater impact than guided snowmobile groups. In winter 2008, 94% of the overly loud noise events were generated by snowcoaches, and a January 2009 study by the Volpe Transportation Center (Scarpone 2009) found that some modern snowcoaches exceed maximum noise levels.

Snowcoaches contribute about the same as snowmobiles to the percent of time oversnow vehicles are heard adjacent to travel corridors and developed areas. In five winters of monitoring, comprising 189 hours of observational studies, 830 commercially guided snowmobile groups (totaling 5699 individual snowmobiles) were heard for about 32 hours, while 745 commercial guided snowcoaches were heard for about 26 hours. That is, on average, each commercial snowmobile group was heard for 2 minutes and 20 seconds while each commercial snowcoach was heard for 2 minutes and 5 seconds. These comparative values are different in the backcountry (1 to 5 miles away from the roads and developed areas) where the loudest OSVs (snowcoaches) are disproportionately more audible than snowmobiles.

For wildlife, the likelihood of eliciting a disturbance response from snowcoaches is higher than from snowmobiles.

For air quality, tailpipe emissions data shows that snowcoaches and snowmobiles are now very similar in their per-person air emissions. Recent monitoring shows that both contribute to personal exposure to air pollutants, including air toxics. In Yellowstone, on average, snowcoaches use more fuel than snowmobiles to transport the same number of people the same distance.

This is not a comprehensive comparison between snowmobiles and snowcoaches; however, it is intended to demonstrate some of the application of current thinking and new science that has changed the prior NPS conclusion regarding snowcoaches.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

The Selected Alternative (Alternative 2) in the 2008 EA is also the environmentally preferred alternative. The environmentally preferred alternative is the alternative that promotes the national environmental policy as expressed by §101 of the National Environmental Policy Act. That section states that it is the responsibility of the federal government to improve and coordinate federal plans, functions, programs, and resources "to the end that the Nation may:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

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- Ensure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
- Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and
- Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.”

In this analysis, the Selected Alternative will fulfill the responsibilities of our generation as trustee of the environment because all park resources will be preserved. Yellowstone impacts will only be seen for the life of this plan—2 years—and all resource impacts are moderate or less (moderate for only soundscapes and public and employee health and safety). The Selected Alternative will also ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings more effectively than the No Action Alternative, under which few people would have the opportunity to experience Yellowstone in winter. The Selected Alternative's provisions for commercial guiding and BAT technology will assure safe and healthful surroundings, as well.

The Selected Alternative will provide for a much wider range of uses of the environment than the No Action Alternative, which would only allow visitors to access much of the park on foot, ski, or snowshoe. The visitation limits of the Selected Alternative, along with the BAT and mandatory guiding requirements, will preserve Yellowstone's cultural, historic, and natural heritage. While the No Action Alternative would also provide for this, it would not provide as well for the enjoyment of the park and its attractions, because much of the park would be effectively closed to all but a few people on skis or snowshoes who are capable of travelling many miles. Neither alternative would consume park resources.

In sum, the Selected Alternative balances the preservation of nature with human visitation better than does Alternative 1, so the Selected Alternative is the environmentally preferred alternative according to the criteria stated above. While the No Action Alternative would certainly preserve nature, it would severely limit the number of people able to experience much of Yellowstone in person. The Selected Alternative, in short, achieves the NPS's goal of "enjoyment" much more effectively, without hindering the goal of preservation.

WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

As set out in 40 CFR §1508.27, significance is determined by examining the following criteria:

Impacts that may be both beneficial and adverse. A significant effect may exist even if the agency believes that on balance the effect will be beneficial.

The impact analysis in the 2008 EA is primarily based on monitoring results from the past five winters. The monitoring results from the past five winters include the wide range of use levels that have been experienced recently (including 32 days with snowmobile numbers greater than 400 per day and 28 days with snowcoach numbers greater than 50 per day).

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The average and peak days for the past three winters were:

2008-2009: Commercially guided snowmobile use averaged 205 snowmobiles per day with a peak day of 426 snowmobiles. There was an average of 31 groups per day, 6.6 snowmobiles per group, and 8.9 people per group. Snowcoaches averaged 29 per day with a peak day of 54 snowcoaches. Each snowcoach carried an average of 8.5 people.

2007-2008: Commercially guided snowmobile use averaged 294 snowmobiles per day with a peak day of 557 snowmobiles. There was an average of 36 groups per day, 6.9 snowmobiles per group, and 9.3 people per group. Snowcoaches averaged 35 per day, with a peak day of 60 snowcoaches, and 8.8 people per snowcoach.

2006-2007: Commercially guided snowmobile use averaged 299 snowmobiles per day with a peak day of 542 snowmobiles. There was an average of 42 groups per day, 6.9 snowmobiles per group, and 9.1 people per group. Snowcoaches averaged 34 per day with a peak of 58, and 8.7 people per snowcoach.

The selected level of snowmobile use (318 per day) is well within the range of use observed in recent years. The selected level of snowcoach use (78) continues to implement 10-year contracts awarded for that use in 2003 and represents a moderate potential for increase in that use over the next two years. Thus the monitoring results from the past five winters are a very good indicator of the expected impacts of implementing the Selected Alternative over the next two winters.

Wildlife

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 Selected Alternative 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).

An issue raised by commenters is that oversnow vehicle numbers will exceed those recommended by wildlife biologists. That is not the case. Though there have been some ambiguous and somewhat inconsistent statements in past papers, NPS has determined that the Selected Alternative is consistent with the biologists' actual recommendations. Park wildlife biologists have recommended that oversnow use be limited to the numbers observed during the "past three years of their study" (referring to the 2001 – 2004 period) (for example, a memo by P.J. White of November 9, 2008). This 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 (for example, 2001-2004 period). Subsequent additional reports by the same authors discuss a wider cumulative time

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frame (1999-2006) that included higher levels of winter use than were observed in 2001-2004. The current definitive report on this topic is the peer reviewed scientific article entitled “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, 2006, *Ecological Applications* 16(5) (see P.J. White memo of Oct 14, 2009). On pages 1911-1925 of this journal article, the authors make it clear that the cumulative monitoring period they are referring to is from 1999 -2004 that included average daily oversnow vehicle use up to 593 per day (2002), maximum daily numbers extended up to 1168 oversnow vehicles (1998), and cumulative oversnow vehicle entries for the winter season at the West Entrance alone up to 46,885 (2002). 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.

Soundscapes

Monitoring data from the last five winters was used to analyze the effects of implementing the Selected Alternative. Moderate impacts are expected, due to the percent of time oversnow vehicles are heard and the loudness of oversnow vehicles. Winter silence will predominate away from developed areas and road corridors. Winter silence will exist during some portions of the day in most travel corridors. For example, midday on the West Entrance Road will be relatively quiet because most guided groups are at Old Faithful or other park attractions. The episodic availability of winter quiet in road corridors has been documented by “Winter Experiences of Old Faithful Visitors in Yellowstone National Park” by Wayne Freimund, Mike Patterson, Keith Bosak, and Shelly Walker Saxen, University of Montana. Seventy-one percent of visitors surveyed found the level of natural sound they desired for half or more of the time that they desired it.

Soundscape objectives for travel corridors are different from other management zones, and noise from winter transportation is consistent with these objectives. Travel corridors are essential to provide access to Yellowstone’s widely spaced features. Noise from the travel

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corridor does extend outside of the travel corridors. Monitoring results show that snowcoaches contribute to 94% of the loud sounds in the park, and a recent study documents excessive noise from some modern and historic snowcoaches. NPS will continue to monitor acoustical conditions in the park, and work with owners and drivers to manage noise from the loudest vehicles.

Air Quality

Based on air quality monitoring from the past five winters, implementation of the Selected Alternative is expected to result in very good to excellent air quality in the park. Impacts to air quality are expected to be negligible. With the conservative use limits and Best Available Technology restrictions for snowmobiles and the move toward cleaner snowcoaches, the NPS expects implementation of the Selected Alternative to preserve excellent air quality in the park. Implementation of this alternative is not expected to significantly affect air quality, visibility, or air quality related values in the park.

A recent, peer-reviewed paper, "Portable Emission Measurements of Yellowstone Park Snowcoaches and Snowmobiles" by Gary A. Bishop, Ryan Stadtmuller, and Donald H. Stedman and John D. Ray, Journal of the Air and Waste Management Association, 59:936–942 found that,

"...the two primary winter vehicles in Yellowstone National Park are now very similar in their per passenger emissions." (Page 936)

"Despite the use of a standardized route and passenger loading, road and snow conditions can contribute to large increases in CO and HC emissions when comparing similarly equipped snowcoaches. Only the Bombardiers' that have been upgraded with a modern fuel-injected engine have proven to have the power-to-weight ratio needed to avoid extensive power enrichment excursions during poor road conditions. This means that even an upgraded snowcoach fleet operating in Yellowstone National Park will have days for which emission levels might exceed desired limits." (Page 941)

"The complex issue of how winter visitors should travel in the park during their visits cannot be answered by simply comparing vehicle emission levels. However, snowmobile emission levels were one of the issues publicly highlighted when the first lawsuits were filed against the NPS seeking to change the winter access rules. This and previous works have sought to provide a more complete picture of vehicle emissions and activity data that were not previously available to the NPS. The good news is that technological improvements in both snowmobiles and snowcoaches have contributed to lower the emissions from both types of vehicles to the point that per-passenger emissions are now similar." (Page 942)

Socioeconomics

The direct and indirect impacts of implementing the Selected Alternative will generally range from negligible, beneficial impacts to minor, adverse impacts and will be regional. As described earlier, the adverse impacts will be most directly felt by communities and businesses near the park, especially in areas that have a higher proportion of businesses tied directly to park visitation. As individual businesses are adversely affected, they will reduce purchases of other goods and services from suppliers.

In terms of cumulative impacts, some of the communities and areas near the park have already identified adverse impacts, including reduced income and employment, which has occurred over the past five years; implementing this alternative may exacerbate these effects.

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All current routes would be open to OSV travel, including the East Entrance Road/Sylvan Pass. Overall, the number of snowmobiles allowed in the park would be similar to current conditions. The number of snowcoaches will remain at 78, the same number authorized in current contracts. However, on busy days, due to the daily limit of 318 snowmobiles, some visitors desiring to snowmobile would not be able to access the park. In the past three seasons, 25% of days exceeded 318 snowmobiles. At the West Entrance, 62% of the days in the 2006-2007 winter season exceeded 160 snowmobiles (the allocation in this decision). On holidays and some weekend days, the capacities of both types of OSVs may be reached. Visitors may have to plan further ahead or alter their schedule to access the park via OSVs during busy periods. The effects of the Selected Alternative on visitor access and circulation would be minor and direct. The effects would be adverse for those visitors wishing to snowmobile, and beneficial for those who prefer fewer snowmobiles in the park.

Visitor Experience

Under the Selected Alternative, visitors will continue to be able to view and experience the park in a natural setting, enjoying good access to park features through guided, motorized travel or non-motorized travel. The current high level of satisfaction (as indicated by the report, "Winter Experiences of Old Faithful Visitors in Yellowstone National Park" by Wayne Freimund, Mike Patterson, Keith Bosak, and Shelly Walker Saxen, University of Montana, discussed in the *Affected Environment* in the 2008 EA) would continue. Opportunities to view wildlife and scenery will abound and access to quiet, solitude, and clean air will be abundant. However, OSV roads could continue to be rough at times under this alternative due to snowcoach use. As noted above, some visitors may not be able to access the park during holidays and other peak periods, creating some dissatisfaction. Overall, there would be minor, adverse effects to the visitor experience at Yellowstone.

No effects to cultural resources were identified for the Selected Alternative. Impacts of the No Action Alternative varied and are described in the 2008 EA.

Degree of effect on public health or safety

The continued use of snowmobiles, and especially some models of snowcoaches under the Selected Alternative, will expose employees and/or visitors to potentially high noise levels, although the wearing of earplugs is an effective mitigation for this problem. Earplugs are commonly worn by drivers of historic snowcoaches and drivers commonly offer them to their passengers. Snowmobile operators wear helmets, which provide a limited reduction of personal exposure to sound.

Snowcoach use could affect road quality through increased rutting, but continued road grooming should mitigate this issue.

Without strict adherence to a safety-based risk reduction program, the provision to keep Sylvan Pass open would result in major impacts. However, a strict safety program is in place and will be continued. When conditions are unsafe, the pass will be closed to all travel.

Personal exposure to low amounts of benzene and formaldehyde may continue under this alternative. However, recent monitoring did not indicate any exceedances of federal standards. In past monitoring, exposure to benzene has not exceeded any federal standards, and exposure to formaldehyde has exceeded only the most conservative such standard. The source of these air toxics could be snowmobiles or snowcoaches, as the winter 2008-2009 monitoring indicated.

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For both of these air toxics, monitoring will continue and adaptive management will be utilized, should concerns be present. For these reasons, effects on visitor and employee health and safety are expected to be moderate, adverse, and direct.

Degree to which effects on the quality of the human environment are likely to be highly controversial

The issue of winter visitor use in Yellowstone, particularly snowmobile use, has been disputed for more than a decade. Under NEPA, however, "controversial" refers to circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed (43 CFR 46.30).

The winter use debate is a contest of values, with those who dislike snowmobiles believing that their impacts are unacceptable and that the vehicles should be banned, and those who prefer snowmobile access arguing that the adverse affects are minor and that NPS has been too restrictive in managing that access. This interim plan does not attempt to resolve that dispute or to determine the impacts that a long-term authorization of snowmobile and snowcoach access would have on park resources and values.

In this decision, the NPS is implementing a two-year interim plan. The monitoring results clearly indicate that over the past five years, impacts from the managed program have been minimal and the sources of those impacts are well understood. The controversies related to the long-term impacts of winter use will be addressed in a new long-term plan for winter use.

Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks

The Selected Alternative will not exceed levels of use observed during the past five years, levels that were substantially below the peak winter traffic levels realized in the 1990s. Five years of monitoring and research have focused on potential effects of winter use that merited immediate attention. These studies did not reveal any concerns that justify dramatic changes in winter management. Questions remain regarding the long-term effects of winter use, which will be addressed in a long-term planning process, but there is no evidence suggesting that the interim plan will result in substantial changes to the condition of park resources or the quality of visitor experience. Therefore, the effects do not appear to be highly uncertain or to involve unique or unknown risks.

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.

Yellowstone is a unit of the National Park System. The Selected Alternative will result in impacts within the park, but as disclosed in the 2008 EA and elsewhere in the FONSI, those impacts are negligible to moderate and will not create significant effects to park resources and values. The Selected Alternative fulfills the mission of the NPS, which is to conserve park resources while allowing visitor use and enjoyment in such manner as will not impair those resources.

More than 24 sites, landmarks and districts within Yellowstone are on the National Register of Historic Places. The park contains more than 900 historic buildings and approximately 1,600 archeological sites have been identified. None of these resources would be affected by winter use. Oversnow motorized use is confined to a subset of the roads that visitors travel on in the

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summer. Cross country skiing and snowshoeing are oversnow activities. If ground disturbing activities occur for winter related functions (for example, construction of new warming huts), the project would be subject to compliance with Sections 110 and 106 of the National Historic Preservation Act.

Just over 10 percent of the park is delineated as wetlands. With the restriction of motorized oversnow use to roads, no direct impact would occur to park wetlands. An indirect effect may be the deposition of pollution in the snowpack adjacent to roads and the subsequent snowmelt and runoff into wetlands. Previous monitoring of snowmelt runoff showed little pollution above background levels (and those studies occurred generally prior to the advent of Best Available Technology standards and at far higher oversnow vehicle numbers).

The park contains approximately half of the world's hydrothermal features (more than 10,000) and the world's largest concentration of geysers (more than 300). The hydrothermal features are habitats for microbes that are providing links to primal life, origins of life, and astrobiology; plus, they are proving useful in solving some of our most perplexing medical and environmental problems. With the restoration of the gray wolf in 1995, the park now contains all the large mammal species known to be present when European Americans first arrived. Yellowstone is home to one of the largest concentrations of elk in the world (Rocky Mountain National Park also has a large concentration of elk). It is the only place in the U.S. where bison have existed in the wild since primitive times. 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.

The upper Snake and its tributary, the Lewis River, have been recently designated under the Wild and Scenic River system by Congress. Most of the Snake River in Yellowstone is in backcountry, well removed from roads. Approximately one mile of the river is near the road at Yellowstone's South Entrance, and oversnow vehicle use may be audible along the river, but the 2008 EA shows those impacts are moderate. Yellowstone's South Entrance Road follows the Lewis River for several miles, and the sound of vehicles may be audible along the river. Impacts are expected to be moderate. The park contains no prime farmlands.

Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

The decision is a two-year plan for winter use in Yellowstone. One of the purposes of implementing the short-term plan is to allow some form of motorized oversnow winter use to continue; without this plan and associated rule, no motorized oversnow winter use would be possible and, therefore, most park attractions would be inaccessible to most visitors during the winter season. The plan will provide for motorized oversnow winter use in the park under highly regulated conditions. During the life of this plan, the NPS will pursue options for a long-term plan. This plan, however, will not set a precedent for the alternatives considered in the long-term planning effort, nor will it represent a decision in principle about a future consideration. A full range of alternatives for various levels of OSV use, various restrictions, and other options will be considered in the long-term analysis. The decision allows motorized oversnow uses to continue (for an interim period), but imposes strict limitations on these uses to protect park resources.

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Whether the action is related to other actions with individually insignificant but cumulatively significant impacts

The decision has adverse impacts that range in intensity from negligible to moderate. These effects, in conjunction with the adverse effects of any other past, present, or reasonably foreseeable future actions, will not have significant impacts on any park resources or values. Further, the cumulative effects analysis indicates there will be no significant adverse impacts to park resources or values.

Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The decision will not affect historical or cultural resources. As the 2008 EA indicates, impacts on cultural resources were dismissed because the visitor activities occur on snow covered roads and deep snowpack over frozen ground. As described in the 2008 EA, if ground disturbing activities or construction of buildings occur, cultural resource inventories, evaluations, and consultations would occur.

Degree to which the action may adversely affect an endangered or threatened species or its critical habitat

The 2008 EA did not identify any significant effect to endangered, threatened, or species of special concern. The NPS informally consulted with the U.S. Fish and Wildlife Service on the 2008 EA, and the Fish and Wildlife Service concluded in a memorandum dated November 26, 2008 that “the Service concurs with your ‘may effect, but will not likely adversely affect’ determinations for the federally threatened gray wolf and Canada Lynx.”

Whether the action threatens a violation of Federal, state, or local environmental protection law

This action violates no federal, state, or local environmental protection laws.

Appropriate Use, Unacceptable Impacts, and Impairment

Sections 1.5 and 8.12 of NPS *Management Policies* underscore the fact that not all uses are allowable or appropriate in units of the National Park System. The proposed use was screened to determine consistency with applicable laws, executive orders, regulations, and policies; consistency with existing plans for public use and resource management; actual and potential effects to park resources; total costs to the National Park Service; and whether the public interest will be served.

The 1974 Master Plan for Yellowstone, which still serves as the basic foundational planning document, states: “Yellowstone will be managed on a year-round use basis. There are two defined periods of heavy use, and the management and operation must be geared to the maximum enjoyment of the resources by the visitor – May 1 through October 31 and December 1 through March 15.” As described in the 2008 EA, the Master Plan and its accompanying final environmental statement acknowledge that oversnow vehicle travel and cross-country skiing and snowshoeing are appropriate uses in Yellowstone in the winter.

The NEPA analysis provided in the 2008 EA and this FONSI discloses that the impacts of the Selected Alternative range from negligible to moderate, and are therefore not considered to be a significant impact under NEPA or its implementing regulations. Separate from the agency’s

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requirement to analyze its proposed actions under NEPA is a requirement that the NPS manage the parks consistent with its statutory obligations under the NPS Organic Act. The Organic Act requires that the NPS to manage these resources in a manner that will leave them *unimpaired* for the enjoyment of future generations. The prohibited impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values. An impact to any park resource or value may, but does not necessarily, constitute an impairment, but an impact would be more likely to constitute an impairment when there is a major or severe adverse effect upon a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- Key to the natural or cultural integrity of the park; or
- Identified as a goal in the park's general management plan or other relevant NPS planning documents.

In addition to mandating the prevention of impairment, the Organic Act requires that the NPS prioritize conservation over 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.

As described in the 2008 EA, unacceptable impacts are those that fall short of impairment, but are still not acceptable within a particular park's environment. As defined in §8.2 of 2006 *Management Policies*, unacceptable impacts are those that would:

- Be inconsistent with a park's purposes or values, or
- Impede the attainment of a park's desired future conditions for natural and cultural resources as identified through the park's planning process, or
- Create an unsafe or unhealthful environment for visitors or employees, or
- Diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or
- Unreasonably interfere with
 - Park programs or activities, or
 - An appropriate use, or
 - The atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.
 - NPS concessioner or contractor operations or services.

An impact sufficient to be considered as constituting impairment under the NPS Organic Act would also be sufficient in its context, intensity, and duration to be considered a significant or major impact under NEPA and its implementing regulations. However, the converse of that statement is not necessarily true. Taking this into consideration, NPS guidance documents note that "Not all major or significant impacts under a NEPA analysis are impairments. However, all impairments to NPS resources and values would constitute a major or significant impact under NEPA. If an impact results in impairment, the action should be modified to lessen the impact level. If the impairment cannot be avoided by modifying the proposed action, that action cannot be selected for implementation." *Interim Technical Guidance on Assessing Impacts and Impairment to Natural Resources*; National Park Service, Natural Resource Program Center, July

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2003. The NPS finds that the negligible to moderate impacts described in the 2008 EA and this FONSI do not meet the criteria described above for either unacceptable impacts or impairment, and are therefore consistent with the NPS's statutory requirements under the Organic Act. The supporting rationale for each impact topic is described below:

For soundscapes, the 2008 EA identified impacts to natural soundscapes that will occur if this alternative is implemented. According to the monitoring data and the analysis in the 2008 EA, implementation of this alternative will result in negligible to moderate adverse impacts, due to audibility and maximum sound levels. As noted previously, winter silence will be predominant away from developed areas and road corridors and present at certain times of day and in certain places even in developed areas and road corridors. Further, some non-natural sounds are expected in developed areas and road corridors, and the levels of such sound under this alternative are at only moderate levels. Oversnow vehicles will be audible up to 51% of the 8 am to 4 pm day at Old Faithful, which is the most heavily used developed area. Put a different way, for approximately half of the day at the busiest location in Yellowstone, oversnow vehicles will not be audible. Along travel corridors, audibility will range from 17% to 43% of the day. That is, along the busiest road corridors and for more than half the day, oversnow vehicles will not be audible. Along less used routes, natural sounds will predominate more than 80% of the time. The issue of exceedences of maximum sound levels, which are primarily due to snowcoaches, will be addressed operationally during this interim plan by slowing down loud snowcoaches. A visitor survey, conducted at Old Faithful, indicates visitors are highly satisfied with the soundscapes conditions of the park (Freimund 2009). For all these reasons, the effects on soundscapes estimated under this alternative will not result in impairment or unacceptable impacts.

Winter use will have some effects on wildlife, just like every other form of visitor access to the park. Extensive studies of the behavioral responses of five species to over snow traffic showed that these animals rarely showed high-intensity responses (movement, defense postures, or flight) to approaching vehicles. The responses that do occur do not rise to the level of the "taking" or disturbance that is prohibited by NPS regulations. 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. There is no reason to suspect that winter use at the proposed levels poses 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. A recent visitor survey indicated a high level of satisfaction with the opportunity to view park wildlife and the managed winter use program. The Selected Alternative will not unreasonably interfere with wildlife ecology or visitor opportunities to see animals.

Under this alternative, air quality in the park is expected to remain very good to excellent. Visibility would also remain very good. The air quality impacts are at the negligible level. With the conservative use limits and Best Available Technology restrictions for snowmobiles and the move towards cleaner snowcoaches, the NPS expects implementation of the Selected Alternative to preserve excellent air quality in Yellowstone. The impacts will not unreasonably interfere with park air quality, and air quality is far from being unacceptable or being impaired.

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Guided by this analysis and the Superintendent's professional judgment, there will be no impairment of park resources and values from implementation of this alternative.

The Selected Alternative is consistent with purposes and values for which Yellowstone was established, which include the conservation of park resources and their enjoyment by current and future generations. Implementation of the Selected Alternative will ensure that those purposes are achieved. The decision will not impede the attainment of the parks' desired future conditions, and visitors will continue to have opportunities to enjoy, learn about, or be inspired by park resources and values. Additionally, based on the analysis in the 2008 EA, the National Park Service finds that the Selected Alternative is an appropriate use. Because the application of mitigating measures is expected to be successful in ensuring that no major adverse impacts will occur and that satisfactory visitor experiences will prevail, implementation of the Selected Alternative will not result in any unacceptable impacts.

PUBLIC INVOLVEMENT

The 2008 EA was made available for public review and comment during a 15-day period ending November 17, 2008. A total of 27,427 responses were received. In addition, 39,767 comments were received during a total of 60 days of public comment on a proposed rule, which called for implementing Alternative 2 in the 2008 EA. All comments received during the public comment periods on the 2008 EA and 2009 proposed rule were considered in making this decision. In addition, those public comments on winter planning received between November 2008 and this decision were considered in the decision-making process.

A summary of the comments and responses is included with this FONSI.

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CONCLUSION

As described above, the Selected Alternative does not constitute an action meeting the criteria that normally requires preparation of an environmental impact statement (EIS). The Selected Alternative will not have a significant effect on the human environment. Environmental impacts that could occur are limited in context and intensity, with generally adverse impacts that range from negligible to moderate. There are no unmitigated adverse effects on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the action will not violate any federal, state, or local environmental protection law.

Based on the foregoing, it has been determined that an EIS is not required for this interim winter use plan and thus will not be prepared.

Recommended: *Suparna Lewis* 10-15-09
Superintendent Date

Approved: *Murkel Dwyer* 10/15/09
Regional Director, Intermountain Region Date

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Errata

The duration of the plan is two winters (2009-2010 and 2010-2011), not three as the 2008 EA originally stated.

New references

Bishop, G. A., R. Stadtmuller, D.H. Stedman, and J.D. Ray. 2009. Portable Emission Measurements of Yellowstone Park Snowcoaches and Snowmobiles. *Journal of the Air and Waste Management Association*. 59:936-942.

Burson, Shan. 2009. Natural Soundscape Monitoring in Yellowstone National Park December 2008-March 2009. Unpublished draft report available at: http://www.nps.gov/yell/parkmgmt/upload/draft_soundscapjune09.pdf accessed on October 14, 2009.

Wayne Freimund, Mike Patterson, Keith Bosak, and Shelly Walker Saxen. 2009. Winter Experiences of Old Faithful Visitors in Yellowstone National Park. University of Montana. Unpublished report available at: http://www.nps.gov/yell/parkmgmt/upload/8_2009final_winter_experiences.pdf accessed on October 14, 2009.

Radtke, T. 2009. Personal Exposure Monitoring of Entrance Station Employees at West Yellowstone Entrance – President’s Weekend 2009. Unpublished Draft Memorandum available at: http://www.nps.gov/yell/parkmgmt/upload/draft_pemr_2009.pdf accessed on October 14, 2009.

Scarpone, Christopher J., A.L. Hastings, G.G. Fleming, C.S.Y. Lee, and C. J. Roof. 2009. Exterior Sound Level Measurements of Snowcoaches at Yellowstone National Park. John A. Volpe National Transportation Systems Center. U.S. Department of Transportation. Draft report available at http://www.nps.gov/yell/parkmgmt/upload/draft_volpe_soundtesting_08192009.pdf accessed on October 14, 2009.

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Comments and Responses

AL4000 - ALTERNATIVES: NEW ALTERNATIVES OR ELEMENTS

Alternatives to Guided Trips (Comment/Response Series 1)

Comment
1.1 I propose that the National Park Service offer to train (in workshops/classes) and license private individuals, such as myself, to snowmobile into the park, without a guide during the winter. I would be more than willing to pay for a workshop/training and pay for a certificate/license that would allow me to snowmobile on my own in the park. This is, as I understand it, the system that is in place for certifying the private guides who take tourists into the park. This system helps police the behavior of private guides and I believe it could also effectively police the behavior of individuals.

Response
1.1 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 winter plan.

Comment
1.2 Requiring that 100 percent of snowmobile visitors in Yellowstone be led by a commercial guide is undesirable and has proven to be detrimental to providing an adequate level of winter visitor use in the park. Please consider allowing up to 20 percent of daily entries to be led by non-commercial Certified Group Leaders who have taken a short certification course and would be responsible for managing their groups. Reducing group size and overall daily snowmobile limits in Yellowstone to 500 to 600 per day is acceptable, and better than having 720 entries per day allocated exclusively to commercial use. Certified Groups would still be heavily regulated and be very different than historic unguided access. Yellowstone is a public park and access should not be relegated to being only through commercial businesses.

Response
1.2 See Response 1.1. Additionally, the NPS will consider the Certified Group Leader concept in its future long-term winter use planning.

Comment
1.3 Neither of the alternatives proposed in the 2008 EA provide for a percentage of daily snowmobile entries into YNP to be accompanied by a non-commercial guide. In dismissing non-commercial guiding from consideration in an alternative in the 2008 EA, the National Park Service cited two reasons to explain why unguided entries were not considered, but cited no specific reason why the non-commercial guide concept was excluded. Allowing snowmobiles to enter YNP with a non-commercial guide is fundamentally different than allowing snowmobiles to enter YNP unguided. The alleged problems associated with unguided entries do not apply to non-commercial guiding, while the positive attributes associated with commercial guiding apply with equal stead to non-commercial guiding. Although the 2003 final winter use rule allowed for non-commercial guiding, the National Park Service has never implemented a non-commercial guide program and studied the actual environmental impacts of such a program. The National Park Service thus has no factual basis for determining the impacts of non-commercial guiding in YNP. The interim three year period proposed in the 2008 EA provides an opportunity for the National Park Service to implement a pilot non-commercial

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guide program and to study the actual environmental impacts of the program. The pilot non-commercial guide program should allow 25% of the daily snowmobile entries into YNP to be accompanied by a non-commercial guide.

Response 1.3 See Responses 1.1 and 1.2. As with Response 1.2, the NPS will consider non-commercial guides in future long-term winter use planning exercises, as those planning efforts would better evaluate such an alternative. 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.

Comment 1.4 There are no guides that will take us into the park and allow us to spend several nights. Even if there were, it would be too expensive. I beg you to consider allowing unguided trips. I would be happy to take a course in safety, rules, or whatever you deem necessary.

Response 1.4 This is incorrect. Several companies offer multi-day tours of Yellowstone. Additionally, utilizing snowcoaches for a multi-day stay is entirely possible and done by park visitors. The NPS is concerned about the costs of guided trips within the park, see Response 21.1. Regarding unguided trips, see Response 1.1.

Comment 1.5 Secondly, since the highest use for the past four years was 577 snowmobiles, please allow private use, after training as previously discussed in past years, with the trained private guide able to take family and/or friends in groups of five or six machines into the park four or five times a year. Of course using BAT! I would place a limit of maybe 100 snowmobiles allowed a day in this category, split 1/3 south gate and 2/3 west gate.

Response 1.5 See Response 1.1, 1.2, and 1.3.

Comment 1.6 The park should work with the surrounding communities to educate the public regarding responsible and appropriate behavior within Yellowstone National Park.

Response 1.6 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.

Alternatives to Snow Machines (Comment/Response Series 2)

Comment 2.1 If people want to view these beautiful places, then there should be organized trips utilizing sled dogs or horses. Because tourists like to see the park year-around how about horse drawn sleds. They are successfully used in Sun Valley & at Whistler, B.C. Canada. They are quiet, charming, romantic, & historical. I'm positive they would not disrupt the wildlife & give the guests more time to enjoy the scenery + the tourists would not have to "drive" & could do more leisurely sightseeing.

Response 2.1 Yellowstone's large distances and harsh winter weather conditions make such ideas infeasible. For example, it is 30 miles from the closest winter entrance to Old Faithful, a distance that would be difficult for most horses pulling a sleigh to travel in a day.

Comment 2.2 How would quiet electric snowmobiles affect policy? If they would have a positive effect, how quickly could they be brought to market (if they are not already

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available)? I have seen a prototype in action on TV.

Response Electric snowmobiles could be used in Yellowstone under this winter use plan if
2.2 they meet all other requirements. We are not aware of their commercial availability.

Alternatives with Different Numbers (Comment/Response Series 3)

Comment The addition of 20 more snowmobiles a day should not be allowed. If you want to
3.1 lower the number of snowmobiles, then you should go with the past 3 years' daily average, not just 1 year's average, and then lower from that. The new technology in regards to snowmobiles does not guarantee a noise and air pollution reduction. They are still loud and without catalytic converters on the sleds, the exhaust is raw and still is damaging the park's air quality. There are plenty of areas outside the park for snowmobiles to go. Why are we spending so much time and money on this subject, when the overwhelming consensus is for Yellowstone to be snowmobile-free? In regards to snowmobile use in Yellowstone, the numbers of sleds should be less than the average, not more. If you are adding more to the average, then you are not reducing the numbers, you are adding to it.

Response A limit of 318 per day will produce an average considerably lower than those seen
3.1 in recent years. With a limit of 720 per day over the last 5 years, snowmobile use did not average more than 300 per day. On most days, use was much lower than 300 (for example, in January/February 2007, the average, 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. It is not expected that 318 will be reached during the next two winters. It will be difficult for all guides and outfitters to fill their allocations: different sizes of groups will create one or two unused snowmobiles per allocation, and last minute cancellations will 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 the use patterns illustrated on 3-70 of the 2008 EA shift greatly, the limit will not be reached every day or even often enough to produce an average more than 300.

Regarding technology, BAT snowmobiles have considerably cleaner emissions and are quieter than non-BAT snowmobiles. Most current loud noise events originate with snowcoaches, not BAT snowmobiles.

Whether areas outside the park are also available for snowmobiling is not within the scope of this decision-making process. Affording opportunities for enjoyment of snowmobile use is not the purpose of this rule. Rather, the rule is intended to provide a variety of opportunities to travel over the snow to enjoy the widely-spaced features of the park. Motorized access is necessary for a considerable number of visitors to enjoy the park. In the park, snowmobiles and snowcoaches are a means of transportation, not a recreational activity unto themselves. Monitoring and current science indicate that snowmobiles and snowcoaches produce similar levels of impacts on park resources.

Comment The plan should include a schedule to phase out snowmobile use. The proposed
3.2 318 snowmobiles per day for the park is too high; it should be less than the 294

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average for last winter, and this number should be reduced significantly in following years, eventually to zero. The allowed numbers should be about 200 per day or less (200 is near the average use over the last few years).

Response
3.2 NPS will consider this view in future long-term winter use planning. The average for the last several years has varied from 205 to 299 snowmobiles per day over the past 5 years.

Comment
3.3 Allow more snowmobiles into Yellowstone—from 500 to 2500 per day.

Response
3.3 As explained in the 2008 EA, page 2-7, NPS cannot allow higher numbers of snowmobiles, along with snowcoaches, to enter the park until it analyzes their effects in an EIS because higher numbers of snowmobiles, in addition to snowcoaches, have the potential to create major adverse impacts. Also, 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.

Comment
3.4 The 2004 rule should be retained and the NPS should reaffirm its commitment to keeping Sylvan Pass open.

Response
3.4 Due to a pending appeal and other litigation related to reinstatement of the 2004 rule, there is uncertainty regarding winter access to the parks. In addition, there has been no current NEPA analysis or other determination supporting that use at the levels authorized under that regulation is consistent with the NPS's statutory and other mandates.

In order to help assure winter access to Yellowstone, the NPS is completing a planning and rulemaking process to replace the 2004 regulation reinstated by the Wyoming Court. A separate decision and separate regulations will be issued for Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway.

The National Park Service will do its best to uphold its end 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.

Alternatives with Different Ways of Counting/Distribution (Comment/Response Series 4)

Comment
4.1 I want to see the number of riders limited, just like rafters are limited on scenic rivers through National Parks, by permits that manage use to minimize damage. I am one person that does not want to share trails with machines and I really don't want to be there if I can hear them at all, to be honest.

Response
4.1 By virtue of limiting the number of snowmobiles and snowcoaches, the Selected Alternative would limit the number of visitors and limit impacts to park resources (including soundscapes).

Comment
4.2 Whatever number is used I believe it should be made a weekly cap for each operator. We can then manage the peaks and valleys to where we will come much closer to the number allowed in the park for the season. In other words if our quota is 20 sleds per day let us have 140 sleds per week so we can manage for the fluctuations in visitation. The total cap could still be the number Judge Brimmer

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ruled. Winter visitation should be based on an annual maximum amount rather than daily limits so adverse weather on a certain day does not adversely affect the local businesses as greatly. Annual usage amounts should reflect an increase of future numbers to allow businesses to expand over time and give predictability of future income to them. Annual amounts should be based on historic winter visitation numbers gathered prior to the confusion of the park being open during the winter.

Response
4.2 As explained in the 2008 EA, p. 2-11, 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. While such impacts are not necessarily prohibited by the Organic Act, they must first be analyzed in an EIS. Also as explained on that same page, weekends are not necessarily the busiest days; allowing higher visitation on weekends could deprive visitors the ability to enter on weekdays.

Comment
4.3 Here is my recommendation. Set the numbers back to 500+ per day during the season. I realize that the average was around 260 but you must account for peak days. If you take into consideration that the days with less usage act as leisure days for the animals, keeping some high use days is a good thing. I would even encourage another possible solution. Let the snowmobiling organizations come up with 5-10 peak use days where the visitor numbers on snowmobiles could increase to 750. This would allow guide services, the National Park Service, concessioners and law enforcement to plan ahead for specific days and give the resource a greater chance to recover with the reduced usage on other days.

Response
4.3 See Response 4.2. Additionally, there is no information to suggest that low-use days compensate in some way for high-use days.

Comment
4.4 Possible options include limited access January-March, weekend access only, every other week or some other combination to accommodate winter visitors.

Response
4.4 As explained in the 2008 EA p. 2-10, 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 an interim or short-term plan or EA. In a long-term plan, the alternatives will consider a variety of spatial or temporal zoning as the comment suggests.

Comment
4.5 If the cap must remain at 318, my suggestion is to adjust it as follows:
West: 8 companies, 20 sleds/day = 160 (leave as proposed)
South: 12 companies including Flagg Ranch: increase 11 companies to 10 sleds each and Flagg Ranch to 18. New total = 128
East: 1 company; decrease to 10 sleds/day. New total = 10
North: 1 (Xanterra); decrease to 10 sleds/day. New total = 10
Old Faithful: 1 (Xanterra); decrease to 10 sleds/day. New total = 10
Total Remains: 318

Response
4.5 There are many ways to allocate the 318 snowmobile limit. The NPS allocation in the Selected Alternative provides a balance of access from all four winter entrances. The above comment proposes to shift some snowmobiles from Xanterra and the

East Entrance to operators at the South Entrance. The NPS believes the Selected Alternative provides reasonable and balanced access from all entrances.

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Comment 4.6 There is an easy solution however. Keep all human traffic on the NORTH slopes as wild life gravitates to the south slopes obviously. Unfortunately people like the sun as well. Let them in on skis or snowshoes only.

Response 4.6 There is no evidence that wildlife exclusively use south-facing slopes. Alternative 1 considered restricting park travel to non-motorized access. Commenter incorrectly assumes that snowshoers and cross-country skiers impact wildlife less than motorized access. 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.

Comment 4.7 Since it is difficult to control where snowmobiles go, enforcement will need to be increased, thus an increased expenditure. The fee for a snowmobile to enter a park on a daily basis should be three to four times that of the family car.

Response 4.7 The Selected Alternative requires visitors to use commercial guides, who in past have been shown to be effective at ensuring park rules are followed, including speed limits and staying on park roads. NPS will consider the fee suggestion in future long-term winter use planning.

Comment 4.8 Snowmobiles should be restricted to just one trail through the park, with limited (or timed) entry slots as well as speed and noise limits.

Response 4.8 Snowmobiles have always been restricted to park roads. The sheer size of Yellowstone means that more than one road is necessary to provide adequate visitor access. The restriction to use commercial guides effectively has meant that most visitors enter each entrance within a two hour period in the morning, which protects park soundscapes by offering longer noise-free intervals. Speed limits have always been in place and the Selected Alternative implements a BAT requirement for snowmobile noise.

Comment 4.9 While I realize that emergency use of snowmobiles and use of snowmobiles for scientific endeavors and for maintenance of park facilities may be necessary, I would hope that their use even in these instances would be limited, so as to allow wildlife to survive the winters.

Response 4.9 As explained in the 2008 EA, p. 2-26 to 2-27, administrative use of snowmobiles is also regulated by winter use planning, and most NPS snowmobiles are BAT. Similarly, researchers must also use BAT snowmobiles. The use of non-BAT snowmobiles for administrative use is allowed only where such vehicles are necessary for the performance of park duties (for example, in deeper snow associated with boundary patrol).

Comment 4.10 Whatever you decide, the time and location of noisy disturbance should be severely limited; like between 11:00AM and 1:00PM and on main through trails. This way, hikers could count on peace and quiet at other times. In other words bunch the objectionable noise all into one two hour period.

Perhaps a quiet time could be established. Those who may be offended by sound frequency could come during times such as January 5-17, 22-29 and Feb. 22-March 15, (designated quiet times, which are normally quiet times anyway). This could be encouraged as times when the sounds may be less audible. Perhaps this would also help to fill in the valleys.

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Response 4.10 As noted in Response 4.8, 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 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 such times to seek natural quiet, the NPS feels they should be able to find it at any time of the winter. The NPS believes that adoption of either alternative in the 2008 EA would offer ample opportunities for quiet. Also, Yellowstone is a large park, with great distances between features. Except for a handful of exceptionally strong skiers, all visitors access locations via snowmobile or snowcoach.

Comment 4.11 I suggest that since there is such a great demand for places to play with these things, special snowmobile and ATV track areas should be established out of sight and sound of the natural areas.

Response 4.11 Off-road use of snowmobiles and ATVs is not allowed in national parks, as discussed in the 2008 EA, p. 2-10. Whether areas outside the park are also available for snowmobiling is not within the scope of this decision-making process. Affording opportunities for enjoyment of snowmobile use is not the purpose of this rule. Rather, the rule is intended to provide a variety of opportunities to enjoy the amenities of the park.

Comment 4.12 If they are allowed there should be strict limitations:
1) A limit on the number per day
2) Only all-electric snowmobiles
3) Snowmobiles limited to a maximum of 10 mph (the max speed possible with the machine, not just a speed limit)
4) Confined to a park-approved route

Response 4.12 The Selected Alternative would restrict snowmobile use to 318 per day. For electric snowmobiles, see Response 2.2. A 10 mph speed limit would not allow access to Yellowstone's widely-spaced attractions. Snowmobiles will continue to be restricted to snow-covered roadways.

Comment 4.13 Why not have people make a reservation and send them a sticker to put on their snowmobile and have a machine at the entrance to check it. No one even has to stop and check in that way.

Response 4.13 All visitors must purchase entry permits in advance, and the guide checks the group in at the gate, minimizing idling. By having the guide check in at the entrance station, park personnel have the opportunity to pass along current information about the park. Automated systems can be considered in the long-term winter planning.

Comment 4.14 I would like to see the park stay open in the winter. There are many modifications that can be made to rules like: days of the week available, two riders per snowmobile only, high permit fees (there will always be those willing to make large donations to get into the park, and the park needs money). I do agree that the snowmobiles may attract the wrong type of behavior in the park...so make them less exciting.

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- Response 4.14** The Selected Alternative would provide for motorized touring of the parks, with many restrictions. See, for example, responses 4.2, 4.7, and 4.9.
- Comment 4.15** I further would like to advocate for limited snow machine or snowcoach access with overnight backcountry camping options. As an avid backcountry skier, I would be delighted to have the ability to machine in, PARK the machine or get dropped off, and spend 3-5 nights camping and skiing in a non-motorized manner. I would happily go through an approved guide/outfitter service to accomplish these goals.
- Response 4.15** As explained in the 2008 EA, p. 2-22, non-motorized use is allowed subject to permit. Visitors may utilize snowcoaches and/or snowmobile outfitters and guides for backcountry use and related shuttles.
- Comment 4.16** Monitoring obligations should be expanded to include destination visits for Old Faithful, Norris, Canyon, Lake/Fishing Bridge and Grant/West Thumb. This information should be simple to gather from guide reports. Service costs based on expenditures per visitor over the 90 day duration (70 day for the East Entrance) of the winter season would form the basis of analysis for policy compliance.
- Response 4.16** Soundscapes monitoring has already included many such areas, and regularly includes areas representative of all park visitor zones. Air quality monitoring is done at Old Faithful and the West Entrance, the two areas with highest vehicle use. When developing a winter use plan, the NPS takes into consideration a variety of information, including park resources and visitor experiences as well as operational challenges and costs. The cost of operating the park and providing services to visitors is one of the many factors the park evaluates as it considers a course of action.
- Comment 4.17** I suggest that visitor winter access via oversnow vehicle continue solely to the Old Faithful destination from the West and South Entrances, with the remaining c. 120 miles of groomed corridor limited to administrative use as it is for the approximate 90 day fall-spring "shoulder seasons". Grooming requirements would be much less rigorous resulting in greatly reduced costs and personnel commitment. This monitoring and management review process of a more limited winter use program would begin to address the "whether public interest will be served".
- Response 4.17** NPS believes that providing visitor access to areas such as the Grand Canyon of the Yellowstone, Norris Geyser Basin, Gibbon Falls, Roaring Mountain, Mud Volcano, and other attractions are important for visitor enjoyment of Yellowstone in winter.
- Comment 4.18** 20 permits per day does not allow us to utilize our ability to take groups of 10 into the park, we would only be able to take 18 guests per day, or 9 maximum per guide. An allotment of 22, 33, 44, 55 etc. per concessioner would be more conducive to taking the maximum number of guests at the best possible rate.
- Response 4.18** NPS recognizes the issue posed by a limit of 20 snowmobiles per operator. The overall limit of 318 snowmobiles and the number of current guides and outfitters authorized to provide service does mean a relatively low number of snowmobiles per company per day can be allowed. NPS believes, however, that the overall limit is appropriate and provides for a reasonable balance between OSV use and other park stakeholders that prefer minimal sound intrusions on their Yellowstone

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winter experience.

Comment
4.19 Under the proposed act of only allowing 318 in the park that cuts each of us concessioners down to 9 sleds per day. We have been taking bookings based upon what we had been told previously to expect, which was 14 sleds per day. We will have a lot of unhappy clients and will also have to turn away paying customers that want to experience the park in the winter, especially during the busier tourist times. I feel that we should be allowed the same amount as last year: 18 sleds per day, or at the very least 14 sleds per day, or we should be given a permit similar to the Forest Service where the permit is for a certain number of use days so that we can utilize more days on the busier tourist times as we need them. For example if the park is open for 90 days and each concessioner is awarded 14 days that is a total of 1,260 use days. Each concessioner could use up to 18 permits a day but could not exceed their 1,260 days for the season. Another thought is that a "pool" of the remaining 4 use days from last year's usage of 18 sleds per day per concessioner could be created to draw from if a concessioner ran out of days prior to the closing day of Yellowstone for the winter.

Response
4.19 See Response 4.18. 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. As discussed in the 2008 EA, p. 4-48, some visitors may, unfortunately, be displaced from their planned visit. Regarding the variable limits, this alternative was considered but rejected because it could incur major adverse impacts as explained in the 2008 EA, p. 2-11. While such impacts are not necessarily prohibited by the Organic Act, they must first be analyzed in an EIS.

Comment
4.20 The plan only allows for the next three winters till 2010-11 which is good but I also feel that it should be allowed longer term, possibly on a 10 year plan.

Response
4.20 As explained in the 2008 EA, p. 1-5, this EA is not intended to serve as a long-term visitation plan. Such a plan may be the product of future NPS planning endeavors.

Comment
4.21 Best Available Technology should apply to each individual snowmobile, not to categories only; and ALL machines, including converted vans and snow coaches should use BAT to reduce pollution.

Response
4.21 The manufacturers certify individual models of snowmobile as BAT. Thus all recreational snowmobiles that enter the park do meet the BAT requirements. As explained in the 2008 EA, p. 2-30, NPS anticipates implementing a snowcoach BAT in the future.

Comment
4.22 In your EA page 3-79 you indicate that 21-26% of all audibility is from administrative vehicles. When you set the number of machines to be allowed into the park, the general public is being penalized because these 50-75 non BAT administrative machines are operating in the park and are included in the average audibility. As a result, audibility is louder and the public suffers by having to have lower entrance numbers. I believe the percent of administrative audibility ought not to be included in sound statistics when setting entrance numbers.

Response
4.22 The 2008 EA on p. 4-21 does separate administrative from public use. NPS administrative snowmobiles are almost entirely BAT machines, and the few that are not BAT are primarily used for boundary patrol where their sound does not influence average audibility. Nonetheless, NPS machines, whether BAT or not, still

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contribute to average audibility.

Comment
4.23 I propose that the final rule include a provision whereby adaptive management could be used to adjust daily entrance limits, with due notice at the discretion of the National Park Service. This is very important to take into consideration for certain peak periods of the season. For example, unused allocated entries at one entrance portal could be reallocated to other portals experiencing excess demand.

Response
4.23 The 2008 EA includes an adaptive management program; see Appendix B. As indicated p. B-1, the adaptive management plan could be used for this purpose.

Comment
4.24 1. Yellowstone has encouraged the development of 4 stroke engines in snowmobiles. Every year for the past 3 years, concessioners purchased from snowmobile manufacturers 4 strokes that were considered Best Available Technology. The purchase of over 600 snowmobiles per year encouraged manufacturers to invest research and development money in developing better machines in the areas of performance, reliability, and emissions. To decrease the use from 720 to 318, I believe will decrease the amount of money that will be invested in research and development for Better Available Technology. This will actually slow the industry in developing snowmobiles for use outside of Yellowstone with better emissions. Also, the decrease to 318 will also discourage multiple manufacturers in making snowmobiles available for use in Yellowstone. The economies of scale just do not justify more than one manufacturer in Yellowstone. This will cause major increases in investments by concessioners which will need to be passed on to the customers. With the introduction of Yamaha into the manufacturer pool this has changed the dynamics of the research and development. I believe that the Best Available Technology is yet to be developed to its full potential.

Response
4.24 The NPS continues to require snowmobiles (and encourage snowcoaches) to employ improved technologies. Snowmobile use is a popular recreational activity throughout the United States. Snowmobile manufacturers are required to meet EPA emission standards regardless of where the snowmobile is to be used. Reducing the limit of daily snowmobile use in Yellowstone is not likely to have any considerable impact to snowmobile manufacturing research related to Best Available Technology.

The Selected Alternative identifies that the Superintendent will maintain a list of all approved BAT models on the park's website. Once approved, a snowmobile will be certified as BAT for a period of six years. This 6-year time frame allows for the continued incorporation of new technology without creating undo financial hardship of needing to replace snowmobiles with every 2-3 years as new BAT snowmobiles are developed. This comment will be considered in the course of the long-term planning process.

Comment
4.25 When considering the numbers of use, there are a number of factors that need to be considered. The first is the effects of latent demand. Latent demand is demand that is not able to be met due the amount of supply. There are a number of high season days that we as concessioners/operators cannot meet the demand of those wishing to visit the park on snowmobile. It is due to a number of factors: size of group, days available for the group to visit, snowmobiles available due to breakdowns. The

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second factor is seasonality. The reality is that the number of people willing to spend any money for any activity after Christmas holiday week is very small. This is due to both money and time, and affects both activities, lodging, and dining. This is just a fact that greatly affects the numbers visiting the park in winter. Thirdly is the factor related to cancellations due to illness or injury unrelated to snowmobiling. At 18 snowmobiles per concessioner at the South Entrance, a 10% cancellation factor is only 1.8 snowmobiles. During the holiday seasons, we see an average of 1 snowmobile per day. Lastly and probably the most important factor is consumer acceptances of the changes in winter use that have taken place in the last 5 years. I am sure that there are plenty of studies that consider the impacts related to consumer confidence and acceptance to change.

Response
4.25 We concur that there are a variety of factors to consider in reviewing past use patterns and projecting those patterns into the future. The NPS has attempted to consider these factors in the socioeconomics sections of the 2008 EA. Any increase above the 318 number, as well as a variety of spatial or temporal zoning, will be considered in the course of the long-term planning process to account for seasonality. See Response 4.4.

Comment
4.26 Provide that commercial guides not be counted in the daily snowmobile limits.

Response
4.26 As with the responses 4.2 and 4.3 above, excluding commercial guides from the daily limits would have the effect of including more snowmobiles in the daily park traffic loads, which could increase the soundscape impacts of Alternative B.

Comment
4.27 If pollution and noise are problems, you should regulate the impacts not ban the activities. This is the approach taken with most issues. Congress regulated auto and factory emission rather than banning autos and factories.

Response
4.27 This is the reason for the BAT and guiding requirements in the Selected Alternative.

Comment
4.28 The National Park System should also evaluate summer impacts in comparison to the impact of guided snowmobile tours.

Response
4.28 As stated in purpose and need (2008 EA, pp. 1-4 to 1-5), this is a winter use plan, not a summer use plan, so this comment is beyond the scope of analysis.

Comment
4.29 In raising or cutting snowmobile allocations, the NPS should consider a company's use over the last three seasons. Companies that utilize their use should not be cut in numbers as much as a company that doesn't utilize their permit.

Response
4.29 This is a different type of allocation proposal that would be appropriate to consider in a long-term plan and a long-term contract for guided snowmobile services. Currently the commercial snowmobile guiding is authorized under commercial use authorizations. Those authorizations provide for an equal number of snowmobiles per company per entrance.

Comment
4.30 The Park System needs to take into consideration that the organizations that are opposed to snowmobiles in Yellowstone are also opposed to access to many other public lands.

Response
4.30 NPS does not have management authority over other federal public lands beyond the National Park System, and the broader motivations of the various commenters

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are not generally relevant to NPS management decisions.

Comment
4.31 In lieu of a quantity limit for snowmobile access, I would rather see the park access by snowmobile restricted to club members only. This would increase club membership around the entire country, increasing environmental funding through club dues, vehicle stickers, etc.

Response
4.31 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 in such manner as will leave them unimpaired for this and future generations.

Comment
4.32 For those who violate these rules, there should be some form of punishment, such as restricting further entrance to the park, or other measures. This will require more money and personnel, and I hope this will be included in any future plan for use.

Response
4.32 Violations of NPS regulations, including these, are punishable by fines or imprisonment as provided by 36 C.F.R. §1.3.

Comment
4.33 Because one guide may lead up to 10 snowmobiles, allocate snowmobiles to companies, including Xanterra, in multiples of 11 (ten guest snowmobiles plus the guide's).

Response
4.33 We understand this suggestion. At the South Entrance in particular, with an allocation of 114 snowmobiles and 11 companies, it is not possible to give each company 11 snowmobiles.

Comment
4.34 With regards to Xanterra, increase the Old Faithful allotment to 20 guest sleds and 2-3 guide sleds, and treat in-park concessioner snowmobile allotments as one amount, with the ability to move the daily allocations between Mammoth and Old Faithful, but within the total maximum allocation.

Response
4.34 NPS has allocated parkwide snowmobile numbers in what it believes to be a fair manner. Xanterra is already permitted to shift its allocations from Mammoth to Old Faithful as needed.

Comment
4.35 The East Entrance allotment of 20 per day does not represent the daily average use. If the East Entrance's average daily use is 2-4, there are as many as 16 sleds daily that are not going to be used. Also, the limited operational season, (December 20-March 1) results in several weeks of winter season where none of the 20 allocated snowmobiles can be used at all.

SUGGESTED REMEDIES:

-Reduce the East Entrance allotment to no more than 10 guest sleds and one guide. This would free up at least 9 machines for reallocation to entrances and operators with historically higher usage.

-Reduce the East Entrance allotment to more closely reflect their recent traditional use. If their daily average is less than 5, allot them no more than 5 and redistribute the surplus allotment to other operators/entrances.

Response
4.35 We recognize that this is a possible alternate allocation of snowmobile numbers; however, the NPS is attempting to provide reasonable access from all four winter entrances, based upon past use patterns and to attempt to ensure reasonable business opportunities.

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Comment
4.36 Require a one-season delay on the implementation of any new rule. For example, any new winter use rule approved before winter 2008/09 would not be implemented until the winter season of 2009/10. This would eliminate many of the issues and damages realized by visitors and service providers.

In particular, this would allow visitors to make arrangements with no fear of loss or change of plans. Businesses could make reasonable decisions with regards to their investments and purchases, hiring and marketing. Also, ample time could be devoted to the public comments, evaluation and feedback related to the decision.

Response
4.36 The NPS does recognize the challenges to businesses and visitors in promulgating a regulation only a few months before the winter season begins. The current implementation of the 2004 regulation is the result of the Wyoming Court's order, and 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. NPS believes it is necessary to complete this planning and rulemaking to address that issue, while assuring the park is open for motorized oversnow winter travel. NPS will consider implementation timing in future long-term winter use planning.

Comment
4.37 Treat snowmobiles as a separate issue in the plan, and bundle snowcoaches with the other uncontested components of the winter plan so that challenges over snowmobiles does not interrupt the other regular winter services and operations

Response
4.37 Snowcoach use is an integral part of the winter use plan, particularly since their impacts upon park soundscapes, wildlife, and air quality are at times greater than those of snowmobiles.

Comment
4.38 Those roads open to snowmobile and snowcoach travel should be simultaneously open to both from 7am to 9pm. Simultaneous use by both types of users is not a conflict.

Response
4.38 With the exception of certain relatively minor side roads, all park roads are open to both kinds of vehicles from 7 a.m. to 9 p.m. Restricting certain side roads to snowcoaches only offers a different kind of visitor experience in those areas.

Comment
4.39 For reasons stated below, as well as for others offered by our environmental partners, we advocate modifying Alternative 2 of this plan to cap the snow machines at 260 per day, for this coming season, in Yellowstone. The practical effect of a 260-snowmachine daily cap will be to return the soundscape more closely to or within the "acceptable" cumulative noise threshold, for reasons explained below. The NPS should recognize the inspirational qualities associated particularly with Christmas and New Year's, by especially ensuring that motorized noise intrusions become appropriately constrained during that time frame, which seems to have lately become the most noise-threatened time frame. There is nothing wrong with spreading/shifting that extra "peak" noise pervasiveness or intensity (using a more stringent peak "cap") onto other, far less-used days or weekends later in the season.

Response
4.39 As discussed in Response 3.1, the reduction of the daily limit to 318 will address the exact issue raised by this comment. On most days, snowmobile numbers are already well below 300 and usage may not change very much. But on peak days like

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Christmas and New Year's Day, the numbers will be much lower from those seen in the past, which should reduce soundscape impacts. As examined in the 2008 EA, the 318 limit would overall incur only moderate sound impacts, not major impacts (2008 EA p. 4-22). Finally, it bears mention that a large portion of the sound issues are due to snowcoaches and administrative travel, which have nothing to do with snowmobile numbers.

- Comment 4.40** NPS should reduce the snowmobile limit to 260 or 265 daily, to compensate for noise from aircraft and administrative snowmobiles. In so doing, NPS would comply with its own 2006 *Management Policies* mandating that noise at unacceptable levels be mitigated to "acceptable." If the only motorized source immediately amenable to such mitigation is the commercial tour snowmobile contribution, so be it. The reduction to 260 snow machines at peak would be required to achieve consistency with "Desired Conditions" as stated by NPS.
- Response 4.40** Even with sound from cumulative effects, 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*.
- Comment 4.41** Defining BAT for snowcoaches should be stated more precisely so that regulation consequences can be understood by all parties and uniformly administered.
- Response 4.41** Snowcoach BAT was clearly stated in the 2008 EA, pp. 2-30 to 2-31.
- Comment 4.42** Please come up with a preferred alternative THIS time that does not include keeping Sylvan Pass open.
- Response 4.42** As agreed upon by the Sylvan Pass Study Group, Sylvan Pass will be open from Dec. 22 through March 1, with avalanche control techniques specified in the EA, p. 2-22. Management of the Pass will continue to be evaluated in a long-term plan.
- Comment 4.43** There is no acceptable reason for adopting a plan that allows continued snowmobile use instead of phasing-out snowmobile use and increasing the role of snowcoaches within Yellowstone. Snowcoaches provide major benefits to the park: snowcoaches reduce noise, pollution and stress on winter wildlife. At the same time they supply transportation that meets the needs of everyone, including children, the elderly and the disabled, and do so at a lower cost and higher comfort and safety level than snowmobiles. Snowcoaches also help the NPS meet its education goals: while touring in snowcoaches visitors have a guide for interpretation of the geologic features, wildlife and other aspects of the park for which it is famous and for which people from around the globe visit. There is absolutely no need for snowmobiles in the park in order to provide public access. Those who want to explore beyond the reach of the snowcoaches (and this would also be beyond the reach of snowmobiles) can do so on skis, snowshoes or hiking, and do so without the noise and odors of snowmobiles. Snowcoaches can be used to drop-off and pick-up muscle-powered recreationists near the park's sights thereby improving total accessibility. The end result is better protection of the delicate winter ecosystems of Yellowstone and improved accessibility.
- Response 4.43** As discussed in the 2008 EA, pp. 2-6 to 2-7, current information 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

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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. Snowmobiles provide a different level of interaction with the park's attractions than do snowcoaches, where passengers are limited to viewing the park through a pane of glass, and are prevented from experiencing the park's natural air temperature and natural odors. See the 2008 EA at 2-7. Guided snowmobile tours help the NPS meet its education goals. Thus, providing some level of access via both snowmobiles and snowcoaches best promotes the enjoyment of the park's scenery and natural and historic objects and wildlife.

Comment 4.44 Last winter, we noticed that the snowcoaches did not have catalytic converters and seemed to cause high levels of pollution. This should be updated with more efficient green technology.

Response 4.44 As discussed in the 2008 EA, pp. 2-30 and 2-31, the NPS will continue to move towards BAT requirements for snowcoaches, and snowcoaches will be required to adhere to noise and air emissions requirements, similar to those of snowmobiles.

Comment 4.45 The National Park Service's interim plan and final winter use plan should emphasize and promote non-motorized recreation opportunities in the parks. In particular, Yellowstone should continue to lay tracks on snow road edges throughout the park, Grand Teton should continue grooming the fifteen miles of Teton Park Road for cross-country skiing, and North Canyon Rim Road should be managed for snowcoach use only all day. See 2008 EA at 2-20, 2-22, 2-25.

Response 4.45 As indicated on those 2008 EA pages, NPS will continue to facilitate non-motorized recreation and set ski tracks on the edges of snow roads. The Selected Alternative calls for snowcoaches in the morning hours and snowmobiles and snowcoaches in the afternoon on some Yellowstone side roads.

Comment 4.46 Create a lottery to determine use and/or a permit system or a reservation system. This system could include a safety test or other educational component that would assist the park in enforcement.

Response 4.46 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 process.

Comment 4.47 National parks are for the entire public, not just for environmentalists or special interest groups.

Response 4.47 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 in such manner as will leave them unimpaired for this and future generations.

Other means of Transport (Comment/Response Series 6)

Comment 6.1 Commenters suggest plowing some or all of Yellowstone's roads. They note that such would be more affordable for the average visitor, would stimulate tourist spending in nearby towns, would provide more flexibility for the visitor (especially

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- photographers), and would be more affordable for the NPS.
- Response**
6.1 As explained in the 2008 EA, pp. 2-8 to 2-9, plowing was dismissed as an alternative in this EA because doing so would add more uncertainty to an issue already clouded by such, and because many winter operators had already invested in oversnow equipment, assuming the 2007 FEIS and Final Rule would indeed be implemented. The plowing option remains a possibility to consider in future long-term winter use planning endeavors.
- Comment**
6.2 NPS should implement a winter shuttle service that makes regular stops at various locations. A similar service would be to institute a service that hauls non-BAT snowmobiles through Grand Teton and Yellowstone parks to allow persons traveling the CDST to reach West Yellowstone without the long side trip through Island Park.
- Response**
6.2 NPS would consider any proposal from a willing provider for such a service. However, it would have to work within the snowcoach limits established in the Selected Alternative.

AL500 - ALTERNATIVES ANALYSIS (Comment/Response Series 7)

- Comment**
7.1 Alternative 1 in the 2008 EA effectively bans snowmobile from YNP. Any attempt to ban snowmobiles from YNP will violate the Yellowstone National Act and the National Park Service Organic Act (Organic Act).
- Response**
7.1 Most national parks do not allow any motorized oversnow access; some close entirely in winter. The Organic Act reserves ample discretion to the National Park Service to determine how best to promote the enjoyment of the park while protecting park resources.
- Comment**
7.2 For the past four winter seasons, the National Park Service has allowed up to 720 snowmobiles to enter Yellowstone each day. In Alternative 2 in the 2008 EA, the National Park Service proposes to limit the maximum number of daily snowmobile entries into YNP at no more than 318 snowmobiles per day. When a federal agency changes a long standing policy, the agency must provide a reasoned analysis to explain why the change was made. In the 2008 EA, the National Park Service has not provided a reasoned analysis to explain the change from 720 snowmobiles per day to 318 snowmobiles per day. The failure to provide such an analysis makes the 2008 EA arbitrary and capricious and, as a result, the 2008 EA is subject to being vacated and set aside in accordance with the federal Administrative Procedure Act (APA).
- Response**
7.2 NPS disagrees. 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 reasoned analysis that should justify any agency decision. NPS has indicated the reasoning for the reduced numbers of snowmobiles in the 2008 EA at pp. 1-4 to 1-5 and 2-17 to 2-19.
- Comment**
7.3 Having read through all 255 pages of the 2008 Winter Use Plan document, it would seem that evidence clearly points to snowmobiles having less of an impact on wildlife than snowcoaches. "Remarkably, modern snowmobile HC emissions are

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down by a factor of >12/vehicle and CO emissions by a factor of >2. The measured snowcoaches emit significantly more per mile than the snowmobiles. Measured snowcoach emissions of CO, even when calculated per passenger mile, now exceed modern snowmobile emissions." Now that your research has proven what snowmobilers have known for the last few years, is it safe to say the park will be opened back up to increased numbers?

Response
7.3 As explained in the 2008 EA, to increase oversnow vehicle numbers over what is established in the Selected Alternative may result in major soundscape impacts and possibly major air quality and wildlife effects (2008 EA pp. 2-17 to 2-19, 4-21 to 4-22). While such impacts are not necessarily prohibited by the Organic Act, they must first be analyzed in an EIS.

Comment
7.4 Page 2-17: Alternative 2 would allow 318 snowmobiles and 78 snowcoaches (add the word DAILY) in Yellowstone and 50 snowmobiles (add the word DAILY) in Grand Teton.

Response
7.4 NPS agrees; the Finding of No Significant Impact and Final Rule clarify this point.

Comment
7.5 The National Park Service has used an improper baseline in gauging the impacts of snowmobiling and snowcoach use on soundscapes. Through its 2006 *Management Policies*, the National Park Service has created for itself an unattainable goal as it relates to soundscapes in the national parks. Management Policy 4.9 states: The Service will restore to the natural condition wherever possible those park soundscapes that have become degraded by unnatural sounds (noise) . . . Management Policy 8.2.3 states: The natural ambient sound level--that is, the environment of sound that exists in the absence of human-caused noise--is the baseline condition, and the standard against which current conditions in a soundscape will be measured and evaluated. Together, these policies create an obligation for the National Park Service to, at a minimum, attempt to restore soundscapes in national parks to their natural conditions.

Response
7.5 As explained in the 2008 EA, p. 3-17, NPS used existing ambient conditions because the monitoring information upon which the analysis was based included all ambient sounds; however, in backcountry areas and travel corridors the natural ambient sound level was essentially the soundscape baseline condition upon which the sound levels and audibility of OSVs were measured. The soundscapes analysis for the Selected Alternative indicated no unacceptable conditions would result from that alternative's implementation.

Comment
7.6 The EA states that snowcoaches damage the snow roads. But if only snowcoaches were traveling those roads, there would be no adverse impact of the feared effect on the snow roads. Moreover, this conclusion is based upon 120 snowcoaches, which would not be needed to accommodate expected levels of usage. The conclusions regarding road damage by coaches are erroneous.

Response
7.6 If travel was restricted to snowcoaches only, a consequent increase in such traffic would likely result. This increase could compound the problems already seen in the park with snowcoach ruts. As snowcoach numbers have increased, park staff have become increasingly concerned with the rutting and damage to snow roads from coaches. That is why the NPS is implementing size and weight restrictions on coaches.

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Comment 7.7 The NPS has conflicting statements about the environmentally preferred alternative between different NEPA efforts.

Response 7.7 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.

AL6000 - RANGE OF ALTERNATIVES (Comment/Response Series 8)

Comment 8.1 In the 2008 EA, the National Park Service analyzed only two alternatives. Alternative 1, the "no action" alternative, proposes to eliminate motorized recreational oversnow travel in the National parks. Alternative 2, the "preferred" alternative, proposes to allow motorized recreational oversnow travel in the National parks at recent use levels. In selecting these two alternatives, the National Park Service inappropriately rejected a number of appropriate and reasonable alternatives that should have been analyzed in the 2008 EA. Specifically, the National Park Service did not consider an alternative that allows for non-commercial guiding or for the allocation of snowmobile entries on a seasonal basis. The National Park Service's failure to consider a reasonable range of alternatives in the 2008 EA violates NEPA.

Response 8.1 NPS disagrees. As discussed in the purpose and need, the 2008 EA considered only those options that would have allowed the NPS to open the parks for an interim period without causing major impacts. As discussed in Responses 1.1 to 1.5 and on p. 2-8 of the 2008 EA, current information suggests that a switch to non-commercial guiding and unguided visitation would contribute disproportionately to wildlife impacts, so those options were discarded. There is insufficient time in this interim period to design and implement a program, analyze its impacts, and determine whether it would avoid unacceptable impacts and be an appropriate use. The NPS will consider non-commercial guides in future long-term winter use planning.

Comment 8.2 In the 2008 EA, the National Park Service selected no motorized recreational oversnow travel as the "no action" alternative. On page 2-12 of the 2008 EA, the National Park Service refers to no motorized recreational oversnow travel as "the continuation of current management direction and regulation[.]" This "no action" alternative is incorrect as a matter of law. The "no action" alternative should represent "the current level of activity." See *Custer County Action Ass'n v. Garvey*, 256 F.3d 1024, 1040 (10th Cir. 2001), citing 46 Fed. Reg. 18026, 18027 (March 1, 1981). For the past four winter seasons, the National Park Service has allowed up to 720 snowmobiles to enter YNP each day. Given this continuity, the "no action" alternative should have allowed for at least 720 snowmobile entries per day into YNP.

Response 8.2 NPS disagrees. When the 2008 EA was prepared, (as explained on pp. 2-11 to 2-12), the 2007 rule had been vacated. No snowmobile or snowcoach use would have

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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. 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. 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.

- Comment**
8.3 Either-Or-Choices" or "Forced Choices" as they are often called are both capricious and arbitrary by their very nature. These two so called choices fall into that category. The rush to judgment, or in this case, a decision, is done without anything approaching scientific data to support the huge reduction or outright elimination in winter park usage of snowmobiles and snowcoaches.
- Response**
8.3 NPS disagrees. Under 36 C.F.R. § 2.18, snowmobiles are prohibited unless NPS can determine, among other things, that their use is consistent with park values and management objectives and will not damage park resources. Thus, if there actually were an absence of scientific data, NPS would be legally obligated to prohibit snowmobiles, not allow higher numbers. Nor is NPS required to offer a more detailed justification for its new limits than it has for the old ones, as was noted in Response 7.2. As noted in the 2008 EA, the snowmobile and snowcoach numbers established in the Selected Alternative is the amount that can be accommodated without major impacts. While such impacts are not necessarily prohibited by the Organic Act, they must first be analyzed in an EIS.
- Comment**
8.4 I understand and agree with the need to restrict vehicles in the park. I disagree with the method for restriction. The methods used should be more closely aligned with your goals. If the goal is to limit noise then the vehicle noise should be regulated. If the goal is to limit emissions then the vehicle emissions should be regulated. This would encourage the manufacturers to build vehicles that are cleaner and quieter. Any vehicle that meets the regulations should be allowed (in reasonable numbers).
- Response**
8.4 This is the reason for the BAT requirements for snowmobiles in the Selected Alternative, as well as the reason for supporting future BAT requirements for snowcoaches in that same alternative. It is also a reason to place limits on numbers, because BAT requirements for either snowmobiles or snowcoaches will not be effective unless there are limits on numbers of oversnow vehicles.
- Comment**
8.5 The National Park Service has repeatedly acknowledged that snowcoaches afford the "least impacting" form of motorized access to Yellowstone. Nonetheless, the Service's new environmental assessment suggests that a transition to snowcoach-only access would not be appropriate in the park. See 2008 EA at 2-6 to 2-7. This suggestion is at odds with law, science, and the agency's previous analyses.
- Response**
8.5 Monitoring information and scientific studies in the past five winters clearly show that snowcoaches create impacts, sometime of greater magnitude than snowmobiles. Modern data, rather than 10-year-old information, indicates they cannot be considered "least impacting." For example, a 2009 study indicates that

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many snowcoaches, both historic and modern, exceed the proposed snowcoach sound requirements under BAT. This new knowledge helps explain better explain the exceedances of the sound levels that have been reported over the past five years. These results, and other sound monitoring information, clearly demonstrate snowcoaches' large contribution to the percent of time oversnow vehicles are heard. The increasing amount of information on snowcoaches and their impacts clearly demonstrates that snowcoaches also have impacts on wildlife, air quality (vis-à-vis fuel utilization), personal exposure, and snow road conditions.

Comment
8.6 The EA Does Not Include a Sufficient Range of Alternatives. The EA indicates that no alternatives allowing more snowmobile/snowcoach access than the Preferred Alternative are to be considered, because they "were modeled to incur major sound impacts" and the D.C. District Court "expressed concerns" with "the levels of impacts on wildlife, air quality, and soundscapes associated with the 540-snowmobile limit&." EA at 2-7. This reflects a disheartening abdication of the agency's discretionary authority to even analyze in detail decision components that survived, and were refined by, over three years' analysis by the Service. The range of alternatives is not the place in the NEPA or rulemaking process to make these unsupported findings that arbitrarily limit the range of decision options.

Response
8.6 NPS did not examine options that it knew, based on previous analyses, modeling data, or monitoring data, would cause major impacts. While such impacts are not necessarily prohibited by the Organic Act, they must first be analyzed in an EIS. As explained in the 2008 EA pp. 1-4 to 1-5 and 2-17 to 2-19, in order to ensure that some motorized access could occur for the upcoming winter, NPS sought to reach a decision that could be supported by a Finding of No Significant Impact, which required that no major impacts from the decision could be experienced.

Comment
8.7 Visitation has declined both because of the commercial guiding requirement and due to uncertainty about the status of winter use planning.

Response
8.7 NPS agrees; see the 2008 EA, pp. 3-68.

Comment
8.8 The NPS now proposes to adopt a temporary rule, lasting as long as three years that would permit 318 snowmobiles per day at Yellowstone. The monitoring and other studies conducted in recent years were based upon a daily average usage of approximately 260 snowmobiles. Even at that level, significant adverse impacts were demonstrated, as Judge Sullivan found. The only explanation the NPS now gives for increasing the usage by more than 20% is that such an increase reflects the trend of the growth in usage. The EA states that this number reflects the use trends, which are claimed to have shown a 3.6% average annual increase since 2003-2004. But an increasing trend in usage cannot provide a rational basis for an increase in the number of snowmobiles permitted. If there were adverse impacts at 260 per day, the NPS must demonstrate why it is necessary and appropriate to permit 318 snowmobiles per day. No such demonstration is offered in the EA.

Response
8.8 In contrast to analyses in past winter use documents, the soundscapes, air quality, and wildlife analyses in the 2008 EA were based not upon modeling but upon actual on-the-ground monitoring data from recent winters with similar use levels. In fact, the soundscape monitoring looked explicitly at days with 318 or fewer snowmobiles entering the park. In each of these resource areas, the monitoring

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data indicated that impacts would be moderate or less, not major. Monitoring includes both snowmobile and snowcoach use.

318 snowmobiles per day cannot plausibly be expected to cause a 20% increase compared to the winters of 2006-07 and 2007-08. If the 318 limit were filled each and every day of the winter season, it would constitute about a 7.5% increase over the visitor use seen in those two winters (294 and 299 snowmobiles per day, respectively). Moreover, as discussed in Response 3.1, it is extremely unlikely that the 318 snowmobile limit would in fact be filled each and every day, since there is no reason to expect such a major shift from past use patterns. Over the past four winters, when there was a much higher limit of 720, use was well below 300 on most winter days.

The NPS believes that visitor access to Yellowstone in the winter is necessary, and that due to the size of the park, some kind of motorized oversnow access is necessary and appropriate. A mix of snowcoaches and snowmobiles is an appropriate way to satisfy that need and minimize its impacts. When properly managed, as has been demonstrated by recent monitoring and visitor surveys, neither creates unacceptable impacts on park resources and values. The NPS recognizes that both do create some adverse effects, as documented in the 2008 EA. Under a managed program, however, those effects are understood and will not be significant if Alternative B is implemented. As noted in Response 8.5, snowcoach use creates impacts to soundscapes, air quality, wildlife, and safety and is not necessarily the least impacting means of oversnow access.

Comment 8.9 Page 2-19 of the EA states the following "Some of the management techniques available include adjustments in snowmobile or snowcoach use levels (up or down), adjustment in BAT requirements, visitor and guide education, timing of entries, and group sizes. Through adaptive management, if monitoring of use levels of snowmobiles and snowcoaches allowed under this alternative indicates acceptable conditions, the NPS would increase use levels to the extent acceptable conditions can be maintained." This clause would permit, even seems to mandate, the NPS to increase the number of OSVs allowed in the park as long as conditions are still "acceptable". As mentioned before, Judge Sullivan ruled that "acceptable" is not the proper standard for the impacts of OSV use on the park. Furthermore, a clause allowing the NPS to unilaterally increase the number of OSVs permitted in the park undercuts the entire purpose of this EA, which was to evaluate the impact of OSV use at particular levels and determine which level of use was proper.

Response 8.9 The very next sentence of the section cited by the comment reads: "Conversely, if monitoring of use levels of snowmobiles and snowcoaches allowed under this alternative indicates unacceptable conditions, the NPS would reduce use to the levels at which acceptable conditions can be maintained"(2008 EA p. 2-19). Being able to adjust management is precisely the purpose of the adaptive management program. There is clearly as much of a mandate to reduce use levels as to increase such levels. Further, as explained in the 2008 EA pp. 1-4 to 1-5 and 2-17 to 2-19, no impacts from implementation of the Selected Alternative are likely to be major, as based on monitoring data from the last several winters. The 2008 EA and corresponding rule are consistent with the court's opinion. The 2008 EA and rule conclude that all impacts will be acceptable and provide the necessary explanation.

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In this manner, the 2008 EA and rule also ensure that no conflict between enjoyment and conservation will occur, because a 'conflict' between conservation and enjoyment only occurs within the meaning of section 1.4.3 of *Management Policies* when the impacts resulting from enjoyment of park resources become 'unacceptable. As described in section 1.4.7.1, NPS managers have the discretion to provide opportunities for appropriate use up to the point at which unacceptable impacts occur.

- Comment 8.10** In addition, the decision to permanently allow snowmobile access into Grand Teton at this time will impact the future long-term decision regarding winter access into Yellowstone. Allowing up to 50 snowmobiles per day permanently will, in effect, be sending those snowmachines up to the boundary of Rockefeller Parkway and Yellowstone with the full expectation of permanently accessing Yellowstone on those machines as well. That could prematurely have an influence on, and possibly preclude consideration of a range of alternatives in the development of Yellowstone's long term plan, and will certainly constitute an as of yet un-analyzed cumulative impact on Yellowstone and the Rockefeller Parkway. There is a good reason why these three NPS units have worked together for the past ten years to develop one plan. The decision to peel off one of those players at this time makes no sense and will prematurely influence the final outcome of the Yellowstone plan.
- Response 8.10** NPS disagrees. The 25 snowmobiles permitted on Jackson Lake would not be able to access Yellowstone geographically. The 25 permitted on the Grassy Lake Road would not have access to Yellowstone either (the road provides access to the Caribou-Targhee National Forest, not to Yellowstone). Snowmobiles proceeding north from Flag Ranch to Yellowstone are being addressed as part of the Yellowstone plan and regulation, and must be commercially guided and BAT.

AQ4000 - AIR QUALITY: IMPACT OF PROPOSAL AND ALTERNATIVES
(Comment/Response Series 9)

- Comment 9.1** Then I think of how many diesel pickups that are tuned up so much that they pollute way more than acceptable out of the factory. They aren't clean anymore, you can tell by the trail of black smoke they leave.
- Response 9.1** The comment is outside the scope of the 2008 EA.
- Comment 9.2** Our sleds also put out less emissions than most vehicles allowed thru the park.
- Response 9.2** It is not clear what the intent of this suggestion is; all snowmobiles allowed into the parks must meet BAT standards, and snowcoaches are expected to soon have a BAT standard as well.
- Comment 9.3** I find it inconsistent that Yellowstone uses hybrid and propane-powered vehicles in an effort to reduce air pollution and carbon emissions and yet is considering a winter use plan that increases snowmobile use in the park.
- Response 9.3** As stated on the 2008 EA, pp. 2-29 and 2-30, all snowmobiles allowed into the parks (with certain minor exceptions) must meet BAT standards. These are the cleanest snowmobiles on the market.

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Comment
9.4 Noise and emissions standards should be set (equivalent to partial zero emission standards for cars and noise levels no higher than quiet cars) and met within a 2-3 year phase in period. Current BAT is much too noisy and polluting. Allowed number of machines per day should increase as the lower noise and pollution standards are met. The guide requirement for snowmobile groups is absurd and should be eliminated. Rules for speed, staying on the roads, wildlife protection, etc. should be set (much as they already are) then reasonable ranger enforcement should be used (much as with car traffic in summer). Requiring guides is just annoying and a scam to allow vendors to profit for no purpose. Snowcoaches should also be required to meet the emission and noise standards. In the past the only snowcoaches that could be taken to stay overnight in the park were the horribly noisy, smelly, and completely lousy for visibility old Bombardier coaches. If this is still the practice it should be stopped. Any snowcoaches that meet the noise and emission standards should be allowed to transport people for overnight lodging, whether park sponsored or private vendor. Snowcoaches should not be limited in number at this time and only in the future if demand so greatly increases as to pose wildlife impacts. Diesel pickups, motorcycles, and any other vehicles should also have to meet the above emission and noise standards to be allowed entry in summer.

Response
9.4 See Response 9.3. As explained in Appendix B, the adaptive management program can be used to raise or lower vehicle numbers, depending on monitoring results. As explained in Response 1.1, guides are necessary for a variety of reasons. As explained in the 2008 EA, pp. 2-30 and 2-31, BAT standards for snowcoaches will be implemented in the near future, and snowcoach operators will be encouraged to meet such standards sooner. A variety of snowcoaches are now available for touring. Snowcoach limits are necessary, among other things, to prevent degradation of the road surface, and possible major adverse impacts on soundscapes and wildlife; see the 2008 EA, pp. 2-6 to 2-7. Regarding summer emission requirements, this is not a summer use plan, but rather a winter use plan, so such decision-making is beyond the scope of analysis.

Comment
9.5 As far as pollution goes up there, sulfur and carbon dioxide from the geysers I feel are harsher on the air than the new snowmobiles.

Response
9.5 Sulfur from thermal activity is naturally occurring. As stated in the 2008 EA pp. 2-29 and 2-30, all snowmobiles allowed into the parks (with certain minor exceptions) must meet BAT standards. These are the cleanest snowmobiles on the market.

Comment
9.6 Snowcoaches are too loud and their BAT requirements will take too long to implement.

Response
9.6 The NPS recognizes that a number of the current snowcoaches, both historic and modern, exceed the proposed BAT requirement. Because snowcoach operation requires large capital investments, owner/operators need time to plan for any major modifications necessary to meet forthcoming BAT requirements. A BAT requirement is expected to go into effect in implementing a new long-term plan.

Comment
9.7 First, in assessing its final, long-term winter use plan, the National Park Service must utilize air quality metrics that are consistent with National Park Service mandates. Use of a "park-wide" major impact standard is not appropriate. See 2008 EA at 4-35. Moreover, the National Park Service has failed to explain its determination that an action will have "major" air quality impacts only if carbon monoxide or particulate

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matter levels exceed 80 percent of the relevant nationwide air quality standard; prior conditions that were deemed "impairment" by the National Park Service did not exceed these standards. See *id.*; see also *id.* at 4-39 (arbitrarily defining "impairment" and "unacceptable impacts" relative to national air quality standards); GYC Op. at 60-61. Finally, the National Park Service's assessment must take into account its obligation to "seek to perpetuate the best possible air quality" in the parks. NPS Policies § 4.7.1. Second, the National Park Service's repeated assertion that Yellowstone's air remains "pristine" ignores the significant documented problems with benzene and formaldehyde that have resulted from recent levels of snowmobile use within the park. See, e.g., 2008 EA at 3-47. The National Park Service's final, long-term winter use plan must address the benzene and formaldehyde pollution that has resulted from snowmobile use within Yellowstone. Health thresholds for both pollutants have been exceeded; the National Park Service's efforts to disregard these exceedances are both alarming and at odds with National Park Service mandates. See, e.g., 2008 EA at 4-39-4-42; GYC Op. at 57-60. Indeed, the National Park Service has again incorporated the same health standards as adaptive management thresholds under its interim plan. See 2008 EA at B-3. In assessing its final winter use plan, the National Park Service must utilize "health and safety" metrics that have a reasoned basis in relevant health standards and National Park Service mandates. There is no basis for defining a "major" health and safety impact as requiring that "minimal risk levels" (or other health standards) be "exceeded more than once per day." See 2008 EA at 4-39.

Response
9.7 As provided in the 2008 EA, p. 4-34, this EA used new impact threshold definitions in order to address exactly the sorts of issues raised by this comment. As noted there, the definitions for the 2008 EA were intentionally adjusted downward to be more conservative—that is, more protective—of park resources. The definitions are not based on park-wide 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 (explained in the 2008 EA, p. 4-34).

It is not "arbitrary" to refer to the relevant National Ambient Air Quality Standard (NAAQS) in assessing air quality impacts. As discussed on p. 4-34 of the 2008 EA, NPS did so because they provide an objective standard established by the EPA in order to protect air quality and protect public health. Moreover, the NAAQS are useful to the Service and may be relied upon in support of a no-impairment determination because they are designed to protect the very same resources that are afforded protection by the Organic Act. The primary NAAQS are designed to "protect public health, and represent levels at which there are no known major effects on human health." The secondary NAAQS "are intended to protect the Nation's welfare, and account for air pollutant effects on soil, water, visibility, materials, vegetation, and other aspects of the environment." Nevertheless, these secondary NAAQS are national in scope, and NAAQS do not exist for all pollutants (or forms of pollutants) that might affect park resources. Therefore, localized air pollution effects are still possible in areas meeting the NAAQS (for example, impacts on visibility and aquatic resources from nitrogen and sulfur compounds).

As further discussed on p. 4-34 of the 2008 EA, NPS referred to the NAAQS in assessing air quality impacts, and then followed its own established Service-wide air quality guidance to formulate impact thresholds which are much more conservative

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and resource-protective than the NAAQS themselves. NPS does not believe that it should have ignored the expertise of the EPA and its own air quality experts and formulated an ad hoc standard for this particular decision, as the comment suggests. Such an approach would have been inconsistent with NPS guidance and would indeed probably have been arbitrary. As is clear from pp. 4-34 through 4-35, the 2008 EA found that the NAAQS are an appropriate air quality baseline, and then applied the more protective NPS criteria.

Benzene and formaldehyde are discussed in the 2008 EA on pp. 3-52 to 3-58 and 4-39 to 4-42. As explained on those pages, levels of benzene are below applicable federal levels. Two formaldehyde samples exceeded the REL of 0.016 ppm. The source of the formaldehyde, as well as benzene, could be snowmobiles or snowcoaches or both, since both types of equipment were in operation during the testing. In reviewing the most recent monitoring results from winter 2008-2009, personal exposure monitoring shows no exceedances. However, when snowcoaches were separated from snowmobiles in the 2008-2009 monitoring for one day, the benzene was lower and formaldehyde was higher for the 221 snowmobiles versus the 19 snowcoaches that entered the park during the monitoring period. Peak CO was higher in the snowcoach lane, but average CO was higher in the snowmobile lane. Also, as explained in the 2008 EA, p. 3-55, NPS remains concerned about such readings, has constructed a new entrance station with strong positive air pressure to protect employees from such contaminants, and will continue monitoring. No scientist or safety personnel have determined whether such contaminants derive from snowmobiles, snowcoaches, both, or neither.

Comment 9.8 "Remarkably, modern snowmobile HC emissions are down by a factor of >12/vehicle and CO emissions by a factor of >2. The measured snowcoaches emit significantly more per mile than the snowmobiles. Measured snowcoach emissions of CO, even when calculated per passenger mile, now exceed modern snowmobile emissions. If lower emissions are deemed necessary, both fleets' emissions could be further reduced by forcing snowcoach retirement or upgrades and by requiring snowmobiles to comply with current on-road vehicle-emissions standards." http://pubs.acs.org/subscribe/journals/esthag/40/i08/html/041506feature_bishop.html

Response 9.8 The NPS is well aware of this problem. As explained in the 2008 EA, pp. 2-30 and 2-31, BAT standards for snowcoaches will likely be implemented in the near future, and snowcoach operators will be encouraged to meet such standards sooner.

Comment 9.9 Inordinate amounts of fuel consumed by snowcoaches produce more (potentially climate altering) carbon dioxide than equivalent snowmobile traffic. I strongly suspect that extra snow grooming is required to maintain snow roads that are impacted by COMBINED snowmobile and coach traffic. By eliminating snowmobile traffic, which tends to produce moguls, the grooming effort can be simplified - it will only need to deal with snowcoach ruts instead of combined impacts. The reduced time spent by (i.e. the less fuel burned by) heavy grooming equipment is likely to offset any anticipated spike in carbon dioxide emissions from a snowcoaches-only travel system.

Response 9.9 There is no information to suggest that less grooming would be needed for a snowcoach-only system.

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Comment 9.10 The 15-day comment period on the 255-page EA is unreasonably short and does not give the public sufficient opportunity to address all the claims in the document -- in particular the false claims related to effects of snowcoaches versus snowmobiles. That said, we provide some basic information on vehicle specifications that show that the use of a 15-passenger snowcoach that is van-based will be more fuel efficient and therefore less polluting than 15 snowmobiles. Additionally, a smaller snowcoach fleet is readily managed and maintained to the highest standards of safety and pollution control.

Response 9.10 Vans are lighter per passenger, have less horsepower per passenger and get immensely better effective fuel economy. Even if a snowcoach were operated at 50 percent capacity and the snowmobile carried two passengers, the effective fuel economy would be 45 mpg versus 16 mpg. The claim by the NPS that a snowcoach is more polluting than a snowmobile is completely false and not based on fact. See Response 15.2 regarding the comment period. The computations in the 2008 EA (pp. 79-80) 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 known real-world fuel economies of these vehicles, snowcoaches consume more fuel per passenger than snowmobiles.

Comment 9.11 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 9.11 Current snowmobile emission information was based on modern snowmobiles that meet NPS air and sound requirements. Two-stroke snowmobile air emission information used standard EPA emission factors.

Comment 9.12 Studies have shown that black carbon emissions have adverse effects on the snowpack, which would need to be analyzed before a rule should be enacted.

Response 9.12 Monitoring of pollution deposition in the snowpack has been underway for more than 10 years (see Ingersoll 2005), and this concern has not been identified in Yellowstone. As indicated in the 2008 EA, this monitoring will continue.

EA - EA PROCESS QUESTIONS, COMMENTS (Comment/Response Series 10)

Comment 10.1 In a press release issued to announce the availability of the 2008 EA for public comment, the National Park Service stated that it "expects" to have a final decision on winter use in the National Parks by December 15, 2008. Two days after the 2008 EA was made available for public comment, the National Park Service issued a proposed rule which adopts Alternative 2 from the 2008 EA. The fact that the National Park Service issued the proposed rule for public comment contemporaneously with 2008 EA and announced that a decision is expected to be made by December 15 seems to indicate that National Park Service had already decided the 2008 EA will result in a finding of no significant impact before the 2008 EA was completed and made available for public comment. The National Park Service thus has improperly prejudged the outcome of the 2008 EA.

Response A final decision was not made in December 2008. NPS did not finalize this decision

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10.1 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 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 has prejudged the outcome of the process. A proposed rule is not a final rule; it may be altered at any time prior to final publication in the *Federal Register*. This would allow NPS to address any potential significant impacts identified during the process.

Comment 10.2 The NPS needs to act in a professional manner for all future rule changes, summer or winter. Changes to rules which require a year of planning to implement happening just a few weeks before the park will open for visitors is ridiculous, inexcusable, unnecessarily financially burdensome, and adversely affects the visitor, employees and service support businesses. The practice of using these "Temporary Rules" needs to be in place as long as there are any pending lawsuits (litigation) that would affect visitor services in Yellowstone.

Response 10.2 NPS understands the frustration evident in this comment and seeks to provide as much stability as possible on this issue, given the ongoing litigation and other factors affecting winter use at Yellowstone.

Comment 10.3 It has been troubling during this period to see NPS offer rationales for each of its new plans that have shifted how it has portrayed to the American people the legal mandates that govern the national parks and the "desired conditions" that NPS seeks to maintain within the parks. In this sequence of studies, NPS has even weakened its "definitions of impacts" so that a proposed level of snowmobile use appears, under the new definition, to be less harmful to park resources than would have been reflected under the prior definition.

Response 10.3 Throughout the several recent winter use processes, NPS's desired conditions have remained the same (2008 EA pp. 1-5 to 1-6). 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 monitoring.

Comment 10.4 The interim rule should be finalized by November 15, 2009, so people can plan for the coming season. I do not agree with the opening date caveat that assumes accumulation of sufficient snow.

Response 10.4 The NPS announced the proposed rulemaking in July in order to help people plan for the upcoming winter season. The December 15 opening date 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.

MI1000 - MISCELLANEOUS ISSUES (Comment/Response Series 11)

Comment 11.1 On page 3-44 and 3-45 of the 2008 EA, the National Park Service contends that it has independent "authority and jurisdiction to administer some provisions of the Clean Air Act[,]" even though the state of Wyoming has primacy under the Clean Air Act. To the extent that the National Park Service relies on air quality standards

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more stringent than those standards adopted by the state of Wyoming (or otherwise imposed by the Clean Air Act) as a reason to limit snowmobile access to YNP, the National Park Service will be in violation of the public access mandates in the Yellowstone Act and in the Organic Act.

Response 11.1 NPS agrees that the States of Wyoming and Montana have primacy regarding enforcement of the Clean Air Act within national parks. However, as the Federal Land Manager, the NPS has responsibilities to protect air quality and air quality related values in the park. As indicated in the air quality analysis (2008 EA, pp. 3-44 to 3-50 and 4-33 to 4-38), air quality is expected to remain very good to excellent under either alternative. The Organic Act reserves ample discretion to the National Park Service to determine how best to promote the enjoyment of the Park. Thus, NPS has exclusive responsibility in determining the appropriate level and type of public access into national parks; indeed, many other national parks close entirely in the winter.

Comment 11.2 The National Park Service's new and unsupported assertion that snowcoaches "contribute unnecessarily to global warming" ignores the agency's repeated acknowledgment that a snowcoach-only alternative would reduce oversnow vehicle emissions in Yellowstone. See, e.g., 2007 ROD at 21.

Response 11.2 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 their per-passenger emissions. Snowcoaches also use more fuel than snowmobiles, even accounting for the different passenger loads.

Comment 11.3 Page 2-18: Table 2-1 shows South Entrance calculation ... total being 114 ... however, the math of $12 \times 9 = 108$ with 15 snowmobiles to Flagg Ranch... that equals 123...

Response 11.3 The commenter is correct. The daily number of snowmobiles that would be allowed for the 12 operators, including Flagg Ranch, is 9 per operator, with a remainder of 6 that will be allocated among the operators.

Comment 11.4 While we do not oppose adoption of this rule for the coming season, as a transition measure and on the assumption that other stakeholders will similarly not oppose it on that basis, we urge you to change the proposed rule prior to its adoption to eliminate reference to increasing the upper limit on snowmobiles if conditions permit.

Response 11.4 The concept of adaptive management is to implement, monitor, and make adjustments if necessary or appropriate to meet the desired outcomes. Those adjustments may be increasing restrictions or limiting numbers or reducing restrictions and increasing numbers, depending on the outcome. During the two-winter period for this interim plan, the NPS would expect to make only limited adjustments due to the short time frame to make adjustments and monitor results.

Comment 11.5 We can understand and appreciate, and would not object to, a short transition rule that truly maintained the status quo while the NPS determined its next step within a reasonable period of time. Three years is not a reasonable period of time,

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however. Particularly in light of the fact that the 2008 Preferred Alternative and the Proposed Rule are not consistent with Judge Sullivan's decision, we urge the NPS to limit the term of the 2008 Winter Use Plan, for all parks, to a period of no more than one to two years.

Response
11.5 As result of the Wyoming district court's order, the reinstated 2004 rule was in effect for the first of the three planned winters. The Selected Alternative would now be in effect for two winter seasons. NPS believes the 2-year duration of the plan is necessary to provide adequate time to develop a new long-term winter use plan. NPS disagrees with the part of the comment asserting that the Selected Alternative is in any way inconsistent with the D.C. court's decision.

Comment
11.6 There are other reasons to suspect some manipulation of the record here. The 50,000 number is contained in a parenthetical which begins "i.e.," meaning that the clause which follows has the same meaning as the clause which precedes. The clause that precedes explains exactly what the scientists meant. It refers to "traffic levels at or below those observed during the last 3 years of study." Those years were the winters of 2003-2004, 2004-2005 and 2005-2006. The scientists' meaning can therefore be easily discerned by examining whether the number of visitors in the 3 years referred to was at or below 50,000. The total number of visitors using oversnow vehicles during those winters was 45,033; 41,267; and 48,689, respectively. 2007 FEIS at 85. These facts support only one conclusion-that the 50,000 referred to the number of visitors, not to the number of vehicles. The number of vehicles would have been far fewer than 50,000 based upon this level of oversnow vehicle visitation.

Response
11.6 As discussed in the 2009 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.
Following the sentence quoted in the comment, the very next sentence in 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 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 x 12 passengers per coach x 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,

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“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.

Comment
11.7 These conclusions are supported by the 2006 study itself. The White 2008 memorandum states that the same mistake was made in some "figure axes" in the 2006 report. The only figures using such references are Figures 14-17. Those figures chart total oversnow visitors against the number of baby animals of various species. The study's description of those figures permits no misunderstanding. It refers to one of the axes in each figure as "numbers of visitors on over-snow vehicles." See White 2006 at 50, 51, 52 and 53 (emphasis added). There is no way in which authors could have made the mistake of using in the figures the number of visitors when they supposedly intended to use the number of vehicles in light of the description of these numbers as being a count of visitors "on" vehicles. Moreover, the numbers used in the figures once again reflect numbers consistent with the total number of visitors in the years in question, not the total number of vehicles.

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Compare White 2006 at 50, 51, 52 and 53 with 2007 FEIS at 85. The 2008 EA argues that "not even the snowcoach-only alternative from the 2007 FEIS would have accommodated fewer than 50,000 visitors." (2008 EA at 4-10) But that is not what the scientists were addressing. They were making a recommendation based upon their observations of impacts on wildlife. The NPS should abandon its transparent effort to manipulate the record so as to support any particular proposal. The scientific record should be sacrosanct, and scientists should not be pressured into rewriting their recommendations to suit any particular proposal.

Response 11.7 See Response 11.6. The consistency with which White et al. perpetuated this mistake suggests their misinterpretation of visitation data (mistaking vehicle counts for visitor counts up front and repeating the mistake throughout their paper). When asked whether the recommendation for 50,000 "visitors" was correct, White et al. realized they had made a mistake and the recommendation should be 50,000 "vehicles" (White 2008). It is a commonly accepted practice to publish errata, as Dr. White did. The record was not manipulated, nor were scientists pressured into rewriting their recommendations. When Dr. White was presented with this comment, he directed the reader to the 2006 paper quoted in Response 11.6.

Comment 11.8 Not only is this "correction" significant, but it is highly questionable. The EA cites to "White 2008" to support the statement that the 2006 study was in error and has been corrected. We obtained a copy of "White 2008" from the NPS; it is a memorandum dated October 6, 2008 signed by only one of the six scientists who authored the 2006 study, P.J. White. Mr. White is an employee of the NPS. That memorandum bears no signature, not even that of Mr. White. It is a 3-sentence memorandum, which merely quotes the phrase in question, states that it was incorrect and states that "the same mistake is repeated in some figure axes for the 2006 report and, also, a book chapter (White et al. 2008) based on the report." It strains credibility to suggest that a scientific report authorized by 6 scientists and then published in a peer-reviewed compilation could have erred in such a fundamental respect

Response 11.8 As noted above, when asked to review this comment, Dr. White directed the reader to the scientific journal article noted in Response 11.6.

Comment 11.9 Including a winter use monitoring plan in the scope of the EA was unnecessary since oversnow motorized vehicle use should not be permitted. As included, the plan was inaccurate because there is a lack of any measurable criteria.

Response 11.9 The NPS believes that motorized winter use is necessary and appropriate for visitors to enjoy the park in the winter and believes that use can be accommodated in a manner that protects park resources and values. The adaptive management plan contains both quantitative and qualitative thresholds. The winter-specific monitoring complements other monitoring programs. For example, with regard to air quality, the park monitors atmospheric deposition (including mercury), visibility (including ozone), and fine particulates at other stations.

Comment 11.10 The NPS should provide the public a transparent and candid interpretation of the findings related to snowmobile impacts on park resources, and the information used to decide the final rule.

Response 11.10 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

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the similar contribution of both snowmobiles and snowcoaches to impacts to park resources. The NPS has provided this information to the public throughout this process.

Comment 11.11 Compaction of snow is a benefit of snowmobile use, slows runoff and prevents erosion.

Response 11.11 Snowmobile and snowcoach use 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.

***NS100 - IMPACTS OF SNOWMOBILES ON NATURAL SOUNDSCAPE, NOISE EFFECTS
(Comment/Response Series 12)***

Comment 12.1 Some people claim that the snowmobiles were far too noisy for their liking. According to the International Snowmobile Manufacturers Association website, snowmobiles create a volume of 68-74 decibels at 50 feet. This is about the equivalent of city traffic, or your morning alarm clock. Considering it's the winter though, doors and windows are usually shut. This implies the sound is even quieter yet, about 41-47 decibels, or just a bit louder than your refrigerator running. Now if you factor in that most snowmobiles ride much further than 50 feet from residences, the amount of sound people would hear is hardly worth mentioning.

For those with louder snowmobiles via aftermarket exhaust, couldn't more law enforcement be just as effective?

Response 12.1 Preservation and restoration of park soundscapes remains an important part of the NPS mission (2008 EA, p. 3-17). NPS will continue enforcement of its regulations under any scenario (2008, EA p. 2-32).

Comment 12.2 Our snowmobiles make less noise than a diesel pick up and way less noise than Motorcycles--I cannot believe the noise of some motorcycles that are allowed in the park yet we get complaints on snowmobiles.

Response 12.2 This comment is outside the scope of the 2008 EA; this is a winter use plan, not a summer use plan.

Comment 12.3 Snowmobiles destroy the natural habitat, frighten animals and disturb the peace and quiet of the park. It is the peace, quiet and natural beauty which winter visitors come to see. Please help to maintain that by not allowing snowmobiles within the park limits.

Response 12.3 NPS agrees that winter serenity is important (2008 EA, p. 1-6). Under the Selected Alternative, the NPS believes that the level of BAT snowmobile use, combined with snowcoach use, will result in large portions of the day without the sound of oversnow vehicles. Visitors will be able to experience the peace, quiet, and natural beauty of Yellowstone.

Comment 12.4 Conversely, snowcoaches are permitted for up to 78 entries per day while averaging only 35 entries per day. Given the high amount of 'sound' and damage to snow roads which is attributed to snowcoaches (as stated in the 2008 EA), we are concerned that there could be significant new adverse effects if actual coach use

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- ever approaches the 78 units per day which are proposed to be authorized.
- Response 12.4** NPS shares this concern. The adaptive management program (Appendix B) may be used to adjust oversnow vehicle numbers upward or downward, depending on the results of monitoring.
- Comment 12.5** What's particularly interesting to me about the Sound Level Analysis beginning on page 3-30 is that the vast majority of the 70 dBA exceedances at both the Madison Junction 2.3 and Grant Village/Lewis Lake monitoring sites were from snowcoaches and NOT snowmobiles. It's clear from the data collected that the BAT technology and the reduction in snowmobiles are helping to reduce noise levels.
- Response 12.5** NPS agrees and plans to implement a BAT sound requirement for snowcoaches (2008 EA pp. 2-30 to 2-31).
- Comment 12.6** First, the National Park Service's assertion that "soundscapes monitoring [has] indicate[d] that sound from recreational oversnow vehicles are well within acceptable ranges" is arbitrary. See Proposed Rule, 73 Fed. Reg. at 65,789. In recent winters, the National Park Service's own "adaptive management" audibility thresholds have been exceeded numerous times in numerous locations. See, e.g., 2007 ROD at 20-21. Second, the National Park Service has yet to offer a reasoned explanation for its adaptive management thresholds (both for soundscapes and other park resources) and their consistency with National Park Service mandates. Rather, the National Park Service has responded to exceedances of its noise thresholds by increasing the thresholds and refusing to take management actions that would better protect Yellowstone's natural soundscape. See 2007 ROD at 33-34. In preparing a final, long-term winter use plan for the parks, the National Park Service must reassess its adaptive management standards in light of National Park Service mandates. Third, the National Park Service's assessment of the final winter use plan's soundscape impacts must utilize the parks' natural quiet as a baseline. NPS Policies §§ 4.9, 8.2.3; see 2008 EA at 3-17 (noting that comparisons were "made against existing ambient conditions"). A reasoned explanation is also required with respect to the National Park Service's soundscape impact thresholds and their consistency with National Park Service mandates. See 2008 EA at 4-19 to 4-20. Fourth, the noise impacts of administrative oversnow vehicle use are not appropriately minimized as "cumulative" impacts. See, e.g., 2008 EA at 4-21 to 4-25.
- Response 12.6** See Response 7.5. NPS acknowledges that audibility and maximum sound levels have been exceeded. Both snowmobile groups and snowcoaches contribute similarly to audibility. Because most exceedances of maximum sound levels are from snowcoaches (2008 EA p. 3-31), the NPS plans to institute a sound limit for snowcoaches (2008 EA pp. 2-30 to 2-31).

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 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 observations that "sound from recreational

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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).

This is a visitor use plan, not an administrative use plan. Nonetheless, NPS intends to take a variety of actions that will reduce the contribution of administrative travel to oversnow vehicle audibility (2008 EA, p. 4-24).

Comment 12.7 The National Park Service's assertion that a snowcoach-only alternative would result in "major soundscape impacts" is erroneous. See 2008 EA at 2-6. As the agency acknowledged in its 2007 decision, monitoring has demonstrated that oversnow vehicle audibility within the park is primarily attributable to snowmobile use. Winter Use Plans Record of Decision (Nov. 20, 2007) ("2007 ROD"), at 20; see also, e.g., Winter Use Plans Final Environmental Impact Statement (2007) ("2007 FEIS"), at 355. While historic snowcoaches have been associated with high noise levels, they continue to be converted into "best available technology" machines, eliminating such issues.

Response 12.7 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 is pointing out the sound impacts of snowcoaches. In observational studies of oversnow vehicles from 2005-2009, 830 commercially guided snowmobile groups (totaling 5,699 individual snowmobiles) were audible for approximately 32 hours while 745 commercially guided snowcoaches were audible for approximately 26 hours. That is, on average a commercially guided snowmobile group was heard for 2 minutes and 20 seconds while each commercial snowcoach was heard for 2 minutes and 5 seconds (Burson 2009). 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 (Scarpone 2009).

Comment 12.8 Soundscape impacts of expanded snowcoach use are anticipated to be significant. Although the EA anticipates substantial soundscape impacts from rising snowcoach travel, the claim fails to consider sonic impacts arising from increased traffic comprised of coaches PLUS snowmobiles. By taking some coaches off the circuit and replacing them with small groups of snowmobiles (spread farther apart and creating a cacophony of engine, clutch and track noises from many separate vehicles), the NPS is likely only to exacerbate impacts to the parks' soundscape.

Response 12.8 As based on the monitoring, NPS expects soundscape impacts of the Selected Alternative to remain within the moderate range. BAT for snowmobiles, BAT for snowcoaches, and guides will help to minimize vehicular noise. NPS disagrees with commenter that the Selected Alternative will take some coaches off the circuit and replace them with snowmobiles. Instead, the Selected Alternative is predicted to result in snowmobile and snowcoach use levels that are consistent with those observed during the previous five years.

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Comment 12.9 The NPS needs to definitively establish a clear "bright line" standard for human noise in Yellowstone backcountry, that delineates quantitatively what is "unacceptable" vs. "acceptable." The EA unfortunately did not properly, succinctly delineate the "unacceptable" threshold in a quantitative way, though NPS' qualitative statements do identify "major" adverse impacts as being somehow connected. Thus, the EA claims that the "unacceptable" threshold is not reached, because no "major" noise impact threshold was crossed as per the Threshold Definitions chart on the EA, page 4-20. Our view is that cumulative impacts, from such as administrative snowmobile operations, and aircraft overflights, should be systematically, quantitatively factored into Table 4-1, Column 2 (Page 4-21), in column labeled "2) Percent Time OSV's were audible."

An illustrative example: A good backcountry management zone/site to illustrate this needed re-evaluation, and additional noise-factoring, would thus be the last one in the table, "Shoshone Geyser Basin", which the EA displays as at the "Moderate" impact level. In our opinion, the table should be corrected to include-- not discount-- the aircraft and administrative snowmobile noise, which would be factored into the Motorized "%Time Audible" column below, with corresponding overall changes for Shoshone Geyser Basin to read:

Motorized %Time Audible ~25% or more

Visitor Use Contribution <79%

Est. Audibility (Alt. 2) ~25% or more

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This would conform with already established and adjudicated NEPA requirements, to properly factor in other, incremental motorized noise, which in fact has the potential to "break the back of the environmental camel." It is improper to segment out (thus discount) the additional noise from administrative snowmobiles and/or overhead aircraft. These noise sources significantly degrade the natural sound resource and visitor experience just as do touring snowmobiles.

This cumulative assessment would present both need and leverage to NPS to appropriately determine that it may be necessary, to avoid unacceptable impacts, to further reduce motorized noise, whether from visitor snowmobiles exclusively, or from snow coaches exclusively, or some combination thereof, to levels below the proposed 318/78.

Response 12.9 Pages 1-10, 4-51, and 4-52 of the 2008 EA contain 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, as explained in the 2008 EA pp. 1-11, 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,

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they must rely on qualitative standards which are based on the NPS manager's best professional judgment. Page 4-52 provides several reasons why the Selected Alternative would not interfere with the park's soundscapes.

The soundscape impact threshold definitions, 2008 EA pp. 4-19 to 4-20, make clear that oversnow vehicle noise is the subject of this EA. However, overflights and administrative vehicles are clearly identified as contributing to the cumulative soundscapes impacts (pp. 4-23 to 4-24), with appropriate mitigations also identified.

Comment 12.10 The EA states that modeling done for Alternative 2 in the 2007 FEIS supposedly showed that snowcoaches would be audible 70% of the time in travel corridors and 78% of the time at the West Thumb developed area. But that Alternative called for 120 snowcoaches per day. There were only 25-35 snowcoaches per day during the last 5 winter seasons. EA at 3-1. During the same time, there were 240-300 snowmobiles per day. Assuming two people per snowmobile and 12 people per snowcoach (see Table 2-4) (the highest reasonable estimate) there would only need to be 85 snowcoaches per day to accommodate the same level of visitation. The 2008 Proposed Rule would permit 78 snowcoaches per day. Seven more snowcoaches per day, in other words, would accommodate the same number of visitors using oversnow vehicles as the maximum average level experienced in the last five winter seasons. There is no rational basis for concluding that 85 snowcoaches would be audible a higher percentage of the time than 78 snowcoaches and 318 snowmobiles.

Response 12.10 As explained in the 2008 EA, pp. 2-6 and 2-7, NPS had several other reasons to dismiss from further consideration a snowcoach-only transportation system. Further, as explained in the 2008 EA, pp. 3-31, most of the sound exceedances were from snowcoaches, so a snowcoach-only system could easily incur higher sound levels than a mixture of snowcoaches and snowmobiles. See Response 12.7.

OIEA COSTS - OTHER ISSUES, DISCLOSE COST OF PREPARING WINTER USE DOCUMENTS (Comment/Response Series 13)

Comment 13.1 Please disclose the amount of Federal funding that has been expended on politically charged environmental analyses to determine winter vehicle management. The money that the National Park Service has spent studying this issue at the behest of both the Clinton and Bush administrations could likely have purchased or subsidized many rides on snowcoaches for winter park visitors or have been better spent fixing crumbling park infrastructure. While planning money is generally a fixed cost and not considered, I ask that your final EIS or Decision for winter use display the costs of planning the various analyses and defending the multitude of lawsuits resulting from politically charged attempts at achieving the "productive harmony" that the NEPA encourages.

Response 13.1 Since 1997, the NPS has spent over \$11 million on planning for winter use in Yellowstone and Grand Teton National parks.

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OI SYLVAN - OTHER ISSUES, SYLVAN PASS AND EAST ENTRANCE (Comment/Response Series 14)

Comment
14.1 The East Entrance opening is a no brainer. It costs hundreds of thousands of dollars to keep open, while only a couple hundred people use it. In today's economy, this entrance should be shut down, since it is costing tax payers over \$1000 per person to enter the park, while they pay \$12 to get in. It doesn't also make sense endangering people's lives in keeping this open. In the real world, if you lose money and it is dangerous to lose money, you wouldn't operate. What does it take? An accident that will cost people's lives, all for a few hundred people who have 3 other available entrances. When is Cody going to pay for this? If they pay to keep it open, then that is fine with me, but I don't see Cody or the state of Wyoming paying hundreds of thousands of dollars for a few hundred people. Why does the National Park Service not stand up to these entities and do the right thing. May no National Park Service employee be killed or injured trying to keep the East Entrance road open for a handful of spoiled visitors.

Response
14.1 The National Park Service reached an agreement with the Sylvan Pass Study Group that is explained on p. 2-22 and 2-23. The agency will do its best to uphold its end of the agreement (subject to 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. See also Response 4.42.

Comment
14.2 On a side issue, the idea of blasting away snow in the region between Cody and Yellowstone is off-target. Aside from the breaking of park "theory" about appropriate and relevant treatment of conditions in a park, the economic costs far exceed the economic benefits according to several Cody authorities. Surely, the funds could be more constructively used to maintain the park during the summer.

Response
14.2 See Responses 14.1 and 4.42.

Comment
14.3 On pages 3-62 and 3-63 of the 2008 EA, the National Park Service makes several comments regarding Sylvan Pass that reasonably could be interpreted as the National Park Service making a case to justify the closing of Sylvan Pass. In June 2008, the State of Wyoming, Park County, and the National Park Service reached an agreement regarding the management of Sylvan Pass. These questionable comments in the 2008 EA notwithstanding, the state of Wyoming expects the National Park Service to abide by the agreement reached between the parties regarding Sylvan Pass.

Response
14.3 See Responses 4.42 and 14.1.

Comment
14.4 The EA is extremely vague as to what efforts it will go to and which avalanche mitigation methods will be used to keep Sylvan Pass open for visitor travel: "A combination of avalanche mitigation techniques may be used, including forecasting and helicopter and howitzer dispensed explosives." (EA p. 2-22). This vagueness as to which techniques will be used neither helps visitors plan for travel through the pass nor allows NPS to properly assess the health and safety risks to their

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employees who will be responsible for employing the mitigation techniques.

Response
14.4 The avalanche mitigation techniques to be used and the evaluations of pass conditions are on-the-ground operational decisions by local park staff. They determine the best techniques to use. As explained in the 2008 EA, pp. 4-40 to 4-41, NPS assumed that avalanche control operations incur substantial risks, but that the agency and its staff would be extremely conservative in conducting avalanche control.

Comment
14.5 Further, NPS had previously committed to closing Sylvan Pass during the winter season based on its own safety review (the Operational Risk Management Assessment or ORMA) and that of OSHA as well as excessive costs in maintaining the pass for a small number of visitors. While it is clear that YNP was forced into reversing its decision, there is nothing in this draft EA that is put in place to address either of these issues, other than a vague reference to a review and update of the ORMA and OSHA reports and to 'evaluate' other avalanche mitigation techniques. There is no commitment to actions this season that will address the concerns raised in those reports, nor is there a commitment to addressing the significant costs involved in keeping Sylvan Pass open for the small number of daily visits. It appears that NPS will continue to allow its employees to operate in unsafe conditions. For example, the EA allows for the use of a howitzer to dispense explosives. However, the OSHA report recommended that in order to protect employee safety, a new gun mount and concrete safety bunker would have to be built on the site. Clearly, there will be no such construction prior to the start of this winter season. Therefore, NPS is choosing to ignore recommendations that were made to protect its own employees and instead cave in to local political pressures for this winter season. This dramatic turnaround does not, however, relieve NPS of the duty to protect its employees. It is critical, then, that the final EA and rule provide specific actions that will be put in place this winter season which will address the safety issues raised in the ORMA and OSHA reports.

Response
14.5 See Responses 4.42, 14.1, and 14.4.

Comment
14.6 The EA mentions that Sylvan Pass is a "good habitat" for wolverines. It then goes on to speculate that Sylvan Pass "may only be rarely frequented by wolverines", shortly after admitting that very little is known about their habits. (EA p. 4-15) The EA also posits that the wolverines will not be disturbed "because travel over Sylvan Pass will be minimal" but does not account for the effects of the aggressive avalanche mitigation techniques (e.g., howitzer, helicopter charges) permitted in the EA. Furthermore, this statement conflicts with another statements in the EA that Sylvan Pass is "the closest OSV route to recent, confirmed wolverine presence in the parks", and that one of the two wolverines trapped by the NPS in 2005-2006 was trapped near Sylvan Pass. (EA p. 3-14). Given the wolverine use of the area, combined with the sensitivity of wolverines to human activities and the commitment to bomb 'good' wolverine habitat, it appears that NPS has failed to justify its actions in light of wolverine use of this area.

Response
14.6 As explained in the 2008 EA (pp. 3-13 to 3-14), wolverines are believed to be widely distributed but at very low population densities. Given that avalanche control occurs relatively infrequently, and that wolverines are extremely unlikely to be on

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the slopes at the same time, the chances of an explosive harming a wolverine are extremely small. Further, avalanche personnel are trained not to release explosives if an animal of any kind is visible on the slopes. On-going studies of wolverines will be used to inform a new long-term plan.

Comment 14.7 I support use of Sylvan Pass and East Entrance. The NPS has not justified the reduction in daily numbers in the interim rule for this area and the higher number should be used to satisfy demand and justify keeping the East Entrance open.

Response 14.7 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.

OI COMMENT - OTHER ISSUES, COMMENT PERIOD (Comment/Response Series 15)

Comment 15.1 Changes to the current rules for snowmobiling in our national parks, specifically Yellowstone and Grant Teton, is too important an issue to rush through at the last minute of the current president's term, and with very little time for the public to react. I respectfully request that you NOT make any change from last year, and let the new administration have a chance to weigh in.

Response 15.1 As result of the Wyoming district court's order, the reinstated 2004 rule was in effect for the winter of 2008-09. The Selected Alternative will go into effect beginning in 2009.

Comment 15.2 First off, the comment period is much too short. Second, the first time I tried to enter a comment your website failed.

Response 15.2 As explained in the 2008 EA, pp. 1-4, 1-5, and 1-11, there was very little time to complete this EA, so public comment period 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 are also accepted. The NPS also provided an additional 45-day comment period on the proposed rule, which calls for implementing Alternative 2 of the 2008 EA. Thus an extended comment period was provided on the proposed action.

Comment 15.3 Before commenting on the Environmental Assessment I wish to comment on this particular commenting process. After hearing of Judge Brimmer's ruling it appeared to me and many others, the EA had been set aside and there was nothing more to comment on. The headlines, news articles, and individual conversations spread like pebbles in a pool, which cannot be retracted, that Judge Brimmer had reinstated the 2004 rule. That being the case, there would be no need to comment on the 2008 EA. Mistakenly or not, many have assumed the EA was now not an option. If there is a lack of comments on the EA, I would attribute it to the above. This being the case it seems to me that the normal methodical commenting process has been confused, hindered and even skewed. Therefore, I believe if the comments are considered or lack thereof at all, the whole process becomes invalid.

Response 15.3 As result of the Wyoming district court's order, the reinstated 2004 rule was in effect for the winter of 2008-09. The order did not affect the comment period for the 2008 EA, but NPS recognizes there may have been some confusion. As a result, the NPS has also provided an additional 45-day comment period on the proposed

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rule, which calls for implementing Alternative 2 of the 2008 EA. Thus an extended comment period was provided on the proposed action.

Comment There was no evidence that our comments on previous efforts had been reviewed.
15.4 The NPS should ensure that comments submitted on the EA and draft rule were reviewed and considered.

Response The commenter provided a 212 page comment letter on the 2007 FEIS dated
15.4 November 16, 2007, four days before the Record of Decision was signed. The letter was amended on December 19 and December 22, 2007. These letters were considered and are part of the administrative record for the 2007 winter use plan.

Comment Our review of this proposed rule has identified potential inconsistencies with the
15.5 National Park Service's (NPS's) previously published winter use National Environmental Policy Act (NEPA) documents. Additionally, we note that the 2008 proposed rule, and the 2008 Environmental Assessment (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. With this letter we identify concerns EPA has with the proposed rule and include discussion on mitigation and monitoring recommendations, as well as potential next steps in the NEPA process. We will wait the forthcoming EIS scoping period to revisit and clarify our concerns with previous winter use analyses.

Response The past five years of monitoring and studies have provided the NPS with
15.5 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.

OI SUMMER - OTHER ISSUES, SUMMER USE VS. WINTER USE IMPACTS
(Comment/Response Series 16)

Comment I would venture to bet that 4-stroke and clean 2-stroke snowmobiles currently in
16.1 use produce way less pollution than a big diesel motor home or an older automobile engine. With even double or triple the amount of snowmobiles allowed

under this plan there is no way on earth that emissions are greater than any given day during the summer season.

Response As explained in the 2008 EA, page 3-47, carbon monoxide concentrations are
16.1 highest in winter, not summer. Although particulate levels may occasionally be higher in summer, they are attributable to wildfire smoke, not pollution from summer traffic.

Comment And in all fairness to your oversnow-vehicle users who are winter visitors, please
16.2 consider a summer use planning and pollution study. The sheer volume of other season visitors to the park (over 3 million non-winter visitors) demands it. Such a summer analysis should focus in particular upon public transportation (buses), which could reduce the need to continue widening & improving park roads.

Response This comment is outside the scope of the 2008 EA; this is a winter use plan, not a
16.2 summer use plan.

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Comment
16.3 Do you require paid guides for all entering the park year round? Is the speed limit the same all year round? Do you provide the same degree of park access and use year round? What provisions and emergency readiness are provided in the winter if a volcanic eruption occurs? Or a toxic gas release?

Response
16.3 Guides are not required in the summer, mainly because wildlife do not tend to occur as close to roadways at that time of year as in the winter. Speed limits are the same in summer, with the exception of the 30 miles from West Yellowstone to Old Faithful, which is 10 mph lower in winter than in summer. This is a measure intended to improve safety on this stretch of road, which is heavily traveled by snowmobiling novices. NPS provides adequate emergency response preparations year-round.

OP100 - EFFECTS ON OPERATIONS/MAINTENANCE (Comment/Response Series 17)

Comment
17.1 Snowcoaches are permitted for up to 78 entries per day while averaging only 35 entries per day. Given the high amount of 'sound' and damage to snow roads which is attributed to snowcoaches (as stated in the EA), we are concerned that there could be significant new adverse effects if actual snowcoach use ever approaches the 78 units per day.

Response
17.1 NPS shares this concern and would use the adaptive management program to make adjustments in road grooming or oversnow vehicle numbers as necessary.

Comment
17.2 At this time when we are in economic crisis we do not need to spend extra National park funds to chase down poachers, incompetent snowmobilers with emergencies or mechanical failure and extend resources grooming paths for thrill riders.

Response
17.2 Requiring commercial guides for all snowmobilers reduces or eliminates most of these issues, as discussed in the 2008 EA, p. 3-62. Groomed roads are necessary for oversnow vehicle operation; NPS only grooms as necessary to maintain smooth roads. Snowmobiles are used as transportation within the park to access features.

Comment
17.3 Page 1-9. *Management Policies* Section 1.5 pertains to "Appropriate Use of Parks". I question the appropriateness of providing oversnow mechanized access for approximately 180 miles of the Yellowstone road system. The principle factors in need of evaluation (apart from resource values) are "total costs to the Service" and "whether the public interest will be served". The final EA should include "total costs to the Service" in terms of capital outlay and amortized costs for grooming equipment (which is probably in the neighborhood of \$200,000 each, including implements, for a total of \$2 million), and daily operational costs based on per mile outlay, and total road grooming maintenance support costs. I suspect that the costs incurred through the road grooming program and the c. \$300,000 dollar avalanche program on Sylvan Pass could not pass a GAO or Congressional review on public interest policy. Unlike the free market, NPS policy cannot be based on demand for service but must consider mission and public interest. Thus the prudence of providing supply (in the form of grooming and avalanche safety services) for a constrained demand must be examined during this EA enabled planning cycle.

Response
17.3 The 2007 FEIS provided such figures in Appendix F. *NPS Management Policies* 2006 allow for snowmobile use in the parks (see section 8.2.3), as does Yellowstone's Master Plan (see p. 1-1).

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Comment
17.4 It is unclear what commitment NPS to grooming the East Entrance Road is for next season. As it currently reads, NPS is only committing to 'maintain' the road surface from March 2 through March 15. It makes no such commitment from December 22 through March 1. We note this commitment, and given the significant financial and staff commitment to maintaining a season-long grooming operation, understand that any changes to what is proposed in the draft EA regarding grooming for this season would be a significant change and would therefore require additional NEPA analysis and public involvement.

Response
17.4 As with all of its oversnow roads, NPS will maintain the East Entrance Road to a satisfactory level for oversnow visitation.

PN4000 - PURPOSE AND NEED: PARK LEGISLATION/AUTHORITY (Comment/Response Series 18)

Comment
18.1 The act establishing Yellowstone National Park, 16 U.S.C.S. §§ 21-22, had the intent of encouraging public use and enjoyment while protecting Yellowstone's natural resources and wonders from settlement and exploitation. But the use of the language "public park or pleasuring ground" clearly indicates that Congress recognized public use as a fundamental value in establishing Yellowstone. As author Richard West Sellars states in "Preserving Nature in the Parks," "[t]he history of the early national park era suggests that a practical interest in recreational tourism in America's grand scenic areas triggered the park movement and perpetuated it." Public use was the driving force of the national park idea and continues to be a necessary and fundamental value in Yellowstone today undiminished in stature by any other value associated with the park. (While the Federal District Court for the District of Columbia in its September 2008 decision found that public use is conditioned by the conservation value, the Court improperly failed to find as well that the conservation value is conditioned by the public use value.) The misinterpretation of the Organic Act infects the process of review in this case and undermines all decisions regarding snowmobiles and snowcoaches including the numbers of daily entries and the requirement that all entries be accompanied by a commercial guide. The National Park Service has previously determined that a number of daily entries higher than the 318 specified in the EA will not cause unacceptable impacts. That number is 720 in Yellowstone and Park County continues to believe that 720 daily entries in Yellowstone is an appropriate number particularly when analyzed with a proper understanding of the Organic Act.

Response
18.1 As noted in Response 7.1, most national parks do not allow any motorized oversnow access and some close entirely in winter. While NPS agrees that public use and 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. The comment acknowledges that its argument is inconsistent with the D.C. district court's decision. Moreover, when similar arguments were presented to the Wyoming district court, it also rejected them, instead finding in its 2008 decision that it "would have upheld" the NPS decision at issue.

There has been no current NEPA analysis or other determination that use at the levels authorized under the 2004 regulation is consistent with the NPS's statutory

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and other mandates.

Comment 18.2 B. The National Park Service's interpretation of the Organic Act has led to a "closed unless designated open" management scheme. The National Park Service's Management Policy at Section 1.4.3 states the obvious requirement that National Park Service managers must seek ways to avoid adverse impacts to park resources. The policy goes on to state: "However, the laws do give the Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment" By using the language "necessary and appropriate" in defining how impacts from uses are allowed, the National Park Service has created an unauthorized burden on park managers and created a management scheme that essentially holds national parks to be closed to public use until the National Park Service makes a determination that impacts from a use are "necessary" and "appropriate." This scheme conflicts with the specific requirement in the Organic Act that the National Park Service "promote" the use of the parks to the extent no impairment arises. In other words, the proper management scheme under the Organic Act (and the Yellowstone Park Act) is that the parks are open until closed as a result of impairment, or a reasonable probability of impairment, to park resources.

Response 18.2 See Response 18.1. The comment is partly correct in that national parks are "closed unless designated open" to snowmobile use, but that is not a result of the provisions cited in the comment. Under 36 C.F.R. § 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. The comment is also partly correct in that the Organic Act charges NPS with promoting use and 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 portion of the Organic Act which charges NPS with conserving the scenery, natural and historic objects, and wildlife within the parks may also justify imposing limitations on use.

Comment 18.3 On page 2-7 of the 2008 EA, the National Park Service explains that it did not consider setting the daily snowmobile entry limit at 540 snowmobiles per day or 720 snowmobiles per day because "these limits were modeled to incur major sound impacts[.]" The National Park Service legally cannot deny access to YNP based upon concerns about sound impacts or soundscapes. The Yellowstone Act and the Organic Act each provide an exclusive list of park resources to be protected. In the Yellowstone Act, Congress directed the Secretary of the Interior to "make regulations providing for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders, within [YNP.]" 16 U.S.C. § 22 (emphasis added). In the Organic Act, Congress directed the National Park Service to promote and regulate the use of national parks in a manner which "conserve[s] the scenery and the natural and historic objects and the wild life" within the parks. 16 U.S.C. § 1. Neither statute identifies "soundscapes" as a park resource that should be conserved or should be protected from injury, spoliation, or impairment.

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- Any attempt to limit public access based solely upon the purported need to better protect soundscapes directly conflicts with the explicit preservation and conservation mandates in the Yellowstone Act and the Organic Act, respectively.
- Response 18.3** 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. See *NPS Management Policies* 2006, section 1.4.6. This is discussed in the 2008 EA on pp. 1-9 and 3-17 to 3-18. The NPS also has considered other resource issues in the development of alternatives.
- Comment 18.4** The National Park Service has improperly relied on 36 C.F.R. § 2.18. Snowmobiling in the Parks is, according to the National Park Service, authorized under the Code of Federal Regulations at 36 C.F.R. § 2.18. The regulation, along with those at 36 C.F.R. Section 7, were adopted in response to Executive Order 11644 issued by President Nixon in 1972. The Executive Order was intended to address resource damage and conflict with other uses arising from off-road use of recreational vehicles on public lands. The executive order allows for public land agencies to develop regulations designating trails and other such areas where off-road vehicles may travel. The executive order is titled "Use of Off-Road Vehicles on the Public Lands" and is directed toward travel off developed highways. The executive order defines "off-road vehicle" as follows: (3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract." Because snowmobiles in Yellowstone are used on roads groomed for their use, the Executive Order does not apply to snowmobile use in the park.
- Response 18.4** NPS is required to follow its own regulation as promulgated.
- Comment 18.5** The preferred alternative derives from a fundamental misinterpretation of National Park Service laws governing national parks.
- The 2008 EA preferred alternative appears tailored to comport with the recent decision by the Federal District Court for the District of Columbia vacating the National Park Service's 2007 Winter Use Rule allowing 540 daily snowmobile entries into Yellowstone National Park and 65 daily entries into Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway. EA at 2-7, 2-8. The NPS response to that court through the EA has resulted in a document that continues to reflect a fundamental misinterpretation of the National Park Service's Organic Act of 1916 and its amendments and the Yellowstone Park Act of 1872.
- A. Conservation does not predominate over public use
- Congress's Act of August 25, 1916 establishing the National Park Service, known as the "National Park Service Organic Act," sets forth as one of the Service's fundamental management requirements that the National Park Service shall "promote" the public use of the national parks. 16 U.S.C. § 1. While promotion of public use is a fundamental value under the Organic Act, the Act also requires that the National Park Service "regulate" public use. *Id.* The Organic Act requires that

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promotion and regulation of national parks shall be carried out by "such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and 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."

The Organic Act therefore requires that promotion and regulation be advanced to conform to the Act's single fundamental purpose: to conserve resources while providing for their enjoyment by current and future generations. (Currently existing generations of park users are part of the "future generations" envisioned by the Organic Act.)

In 1978, Congress added language to the Organic Act reaffirming this fundamental purpose of use combined with conservation declaring that when authorizing uses of the national parks the National Park Service's decisions shall not be "in derogation" of this fundamental purpose. 16 U.S.C. § 1-1.1. Therefore, when examining uses of the national parks, National Park Service decisions cannot be issued "in derogation" of either use or conservation. A plain reading of the Organic Act makes it clear that public use and conservation are values of equal stature.

It is of course obvious that the "use" of resources and the "conservation" of resources can conflict. However, other than requiring that decisions cannot be in derogation of use or conservation, the language of the Organic Act does not dictate how such conflicts are resolved. In other words, "use" does not predominate over "conservation" or vice versa.

Response 18.5 NPS *Management Policies* 2006 section 1.4.3, which is a portion of the official NPS interpretation of the NPS Organic Act, provides that "when there is conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant." As noted in that section, this is not just NPS's interpretation; it is also the interpretation that has been applied by the courts. See also Response 18.1.

Comment 18.6 The National Park Service must reexamine its *Management Policies*. The policies must be redrafted in such a way as to reflect a proper interpretation of the Organic Act and to be consistent with its own regulations. Until that is done, National Park Service decisions regarding snowmobiling in Yellowstone, including the EA subject to review, are fundamentally flawed and contrary to law.

Response 18.6 The comment is beyond the scope of the 2008 EA. Revision of the NPS *Management Policies* is not within the scope of the 2008 EA or proposed regulation. NPS believes its 2006 *Management Policies* are consistent with the NPS Organic Act and other pertinent legal authorities.

Comment 18.7 Second, under the National Park Service's conservation mandate, the final winter use plan "must avoid, or minimize to the greatest extent practicable, adverse impacts on park resources and values." NPS Policies § 1.4.3; GYC Op. at 18-21; see also, e.g., NPS Policies §§ 4.4.1, 4.9, 8.2.3. The plan's impacts, therefore, must be both "necessary and appropriate to fulfill the purposes" of Yellowstone. Id. § 1.4.3; GYC Op. at 18-21. Contrary to the National Park Service's recent suggestions, Yellowstone was not set aside to afford a venue for recreational snowmobiling. See, e.g., 2008 EA at 1-1, 1-9, 2-9 (citing 1974 Yellowstone Master Plan). Rather,

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Yellowstone was set aside "for the preservation, from injury or spoliation, of all natural curiosities, or wonders, within the park, and their retention in their natural condition." 16 U.S.C. § 22. Because these "natural curiosities" and "wonders" can be fully accessed and enjoyed by snowcoach – which the National Park Service has repeatedly recognized as the "least impacting" form of motorized winter access, see NPS Policies § 8.2.3 – snowmobiles are neither "necessary" nor "appropriate" within the Parks. As a result, the National Park Service's conservation mandate requires a transition to snowcoach-only access within Yellowstone.

Response
18.7 The comment misquotes the NPS *Management Policies*. Properly quoted, the 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.” MP 2006 § 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 promote the enjoyment or conservation of the park.

The comment also misquotes the Yellowstone Enabling Act. Pursuant to that Act, Yellowstone was “dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people.” 16 U.S.C. § 21. The provision that the comment refers to (16 U.S.C. § 22) does not describe the purposes for which Yellowstone was set aside, but instead provides a grant of authority for rulemaking.

The 2008 EA explains that snowmobiles provide a means of access that is in some ways more connected to nature than snowcoaches do. 2008 EA at 2-7. Snowmobiles provide a different level of interaction with the park’s attractions than do snowcoaches, where passengers are limited to viewing the park through a pane of glass, and are prevented from experiencing the park’s natural air temperature and natural odors. See the 2008 EA at 2-7. Thus, providing some level of access via both snowmobiles and snowcoaches best promotes the enjoyment of the park’s scenery and natural and historic objects and wildlife. The 2008 EA also explains on pp. 2-6 to 2-7, that a snowcoach-only transportation system would incur several impacts, and may not be the least impacting form of transportation. While NPS agrees that preservation of resources 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 snowcoach use is incorrect. These acts merely direct the agency to protect park resources and allow visitation 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.

Comment
18.8 Fourth, the National Park Service's assertion that it "could legally permit significantly higher levels of snowmobiles within the park" than are allowed under the interim regulation is unfounded. See, e.g., Proposed Rule, 73 Fed. Reg. at 65,786. In recent winter seasons, lesser numbers of snowmobiles have violated the National Park Service's own noise and air quality thresholds and prompted agency biologists to recommend that oversnow vehicle numbers be maintained, if not reduced, in order to protect Yellowstone's wildlife. See, e.g., GYC Op. at 17-18, 44-

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46. Again, the National Park Service's conservation mandate requires a transition to snowcoach-only access within Yellowstone.

Response
18.8

The comment refers to a statement in the preamble of the Proposed Rule. Whether or not that statement is accurate is immaterial to the interim winter use decision. The 2008 EA did not analyze higher levels of snowmobiles.

NPS disagrees, however, that the exceedence of an adaptive management threshold signals a violation of a legally significant threshold under the Organic Act of any other relevant legal authority. The 2008 EA explains that the thresholds are a management tool only; they do not represent the unacceptable impacts or impairment thresholds described in MP 2006 § 1.4. 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 exceedence of a conservative adaptive management threshold, NPS can ensure that no unacceptable impacts or impairment occurs.

Comment
18.9

Relying on a 1974 era master plan that determined that snowmobile use is appropriate in Yellowstone makes little sense.

Response
18.9

The 1974 Master Plan is the document providing for overall management guidance of Yellowstone.

Comment
18.10

The EA, however, continues to state that compliance with the conservation mandate is met merely by finding that the use will not result in "unacceptable impacts," a position rejected by Judge Sullivan. See EA at 1-10. The EA does not even acknowledge Judge Sullivan's conclusion that the NPS must seek to minimize adverse impacts on park resources and values. Furthermore, the NPS finds the recreation opportunity presented by recreational snowmobiles to be among the resources and values to be preserved. See EA at 1-5 (desired condition). Yet Judge Sullivan rejected that interpretation of the Organic Act. "The 'enjoyment' referenced in the Organic Act is not enjoyment for its own sake, or even enjoyment of the parks generally, but rather the enjoyment of 'the scenery and natural and historic objects and the wild life' in the parks in a manner that will allow future generations to enjoy them as well." See Slip Op. at 19. Moreover, conclusory declarations that certain adverse impacts are acceptable are insufficient without an explanation of why those impacts are necessary and appropriate to fulfill the purposes of the park. *Id.* Yet the NPS has again failed to justify why it is necessary to permit recreational snowmobiles in these parks. Once again, the NPS merely makes conclusory findings that the impacts likely to result are "acceptable."

Response
18.10

The NPS Organic Act will govern the ultimate decision made by the NPS, which will comply with the authorities cited in the comment. The 2008 EA, however, was prepared primarily in order to comply with NEPA. Though the 2008 EA does contain some discussion of the NPS Organic Act, nothing in NEPA requires the document to contain findings of the sort referred to in the comment. The 2008 EA does provide substantial explanations that would support an NPS decision to select the Preferred Alternative, indicating that it both avoids unacceptable impacts and is otherwise consistent with the NPS conservation mandate. See, e.g., 2008 EA pp. 4-5 to 4-6, 4-18, 4-25, 4-38 to 4-39, and 4-51 to 4-52. Implementation of the Selected Alternative would incur no more than moderate impacts and would minimize adverse impacts on park resources and values; see the conclusions for each impact topic in the 2008 EA, chapter 4. The 2009 FONSI also addresses these on pages 15-

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22.

The reference to the D.C. court's conclusion that the NPS "must seek to minimize adverse impacts" is drawn from the *NPS Management Policies* § 1.4.3. That section of the Policies states that NPS "shall seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values." 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 promote the enjoyment or conservation of the park. The 2008 EA includes appropriate discussion of the reasonable affirmative steps NPS has proposed, which include monitoring, mitigation measures, and an adaptive management program.

SE4000 - SOCIOECONOMICS: IMPACT OF PROPOSAL AND ALTERNATIVES
(Comment/Response Series 19)

Comment Shrinking of the numbers permitted into the South Gate & the rest of the park will create a pricing structure that far exceeds the general public's affordability as operators have no other option but to raise prices in order to maintain or continue their business operations. Also, we feel that with the reduction in numbers outfitters will monopolize outfitters permits as operating with one permit alone is not financially viable. This would again create an impact on the general public as the prices for public access into the park would increase due to the fact that there may be 2 or 3 operators out of the South Gate.

Response The 2008 EA discusses socioeconomic impacts between pages 4-25 and 4-33.
19.1 IMPLAN modeling was used to analyze socioeconomic impacts of the two alternatives. 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 snowmachine 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 higher compared to the 2008-2009 average of 205 snowmobiles and 29 snowcoaches per day. While these levels of actual use likely reflect 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.

Comment Continued reductions year after year will only ruin the communities depending on this area for economic support. In these tough economic times, these communities need every tourism dollar they can generate. Businesses and families cannot survive the winter months operating without tourism and ultimately will force them to close their doors. Too many years of winter closure will put them out of business for the summer months as well.

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Response 19.2 See Response 19.1. A closure of Yellowstone to snowmachines is most similar to the No Action Alternative that was analyzed in the 2008 EA. Effects to Cody, WY, Jackson, WY, West Yellowstone, MT, and Wapiti WY were analyzed in the 2008 EA.

Comment 19.3 Closure to Yellowstone also means tourists will assume a town like West Yellowstone is closed so they will not even come to enjoy the thousands of acres that are not shut down and are well maintained.

Response 19.3 See Response 19.1. Socioeconomic effects to surrounding communities as a result of the No Action Alternative are analyzed in the 2008 EA and consider the complementary (rather than substitute) relationship between recreation within Yellowstone and surrounding public lands.

Comment 19.4 As an educator in West Yellowstone, Yellowstone National Park is an important facet of our economy. As of right now, our school contains approximately 200 students, many of whose parents work for these businesses. If the businesses suffer losses of money from lack of tourists, many of those parents will lose their jobs. Hence, they may have to move, taking their children with them. School funds would drop due to low enrollment and educators will feel the pinch and have to move to be able to survive financially. Already we are stretched to the breaking point having lost close to 100 students in 12 years. Enrollment is down considerably. The signs of a struggling winter economy are already here. Year-round businesses have reduced staffs, eliminated hiring, and are no longer investing in new employee housing (a critical issue in our community). A new timeshare property struggles to find enough year-round workers. More and more businesses are resorting to temporary foreign workers or international students displacing residents and newcomers wanting to make West Yellowstone their permanent residence. Long-time residents are also leaving.

Response 19.4 See Response 19.1. Cumulative socioeconomic effects to communities are evaluated on pages 4-32 and 4-33 of the 2008 EA. This analysis discusses impacts to income and employment in surrounding communities.

Comment 19.5 It is to the National Park Service's advantage to allow year round concessioners who have made a substantial investment to get a reasonable return on that investment. The preferred alternative would allocate snowmobile quotas to each concessioner using calculations based not on previous daily rentals but on an arbitrary system that significantly and disproportionately increases the potential income of small concessioners who have made comparatively small investments compared with those made by Flagg Ranch. The change to 318 snowmobiles per day is friendlier to big business than small businesses due to the fact that it will force consolidation so that economies of scales can be reached.

Response 19.5 The overall number of snowmobiles allowed and the allocation by entrance was determined through the winter use planning process. For the interim plan, each company at a particular entrance was given the same allocation of snowmobiles. Once a long-term winter plan is in place, the NPS will evaluate the business opportunities, determine how many contracts should be awarded, and issue a prospectus. See Response 19.1. NPS recognizes that some consolidation has occurred in recent years, but cannot fully address all of these concessions contracting issues until a long-term plan is in place.

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Comment
19.6 Due in part to the ongoing uncertainties regarding winter use, West Yellowstone increasingly relies on "seasonal" employees and more businesses are in the hands of non-resident owners. Neither of such persons tend to make long-term commitments to a community.

Response
19.6 See Response 19.1.

Comment
19.7 Snowmobiling outside the park has decreased more than inside the park. Yellowstone is the reason people come from all over the world. If they can't have this unique experience, they can and will go elsewhere to snowmobile in the National Forests.

Response
19.7 See Response 19.1. It is very difficult to establish a connection between visitation in Yellowstone and that outside of the park (see, for example, 2008 EA p. 3-34). Nonetheless, NPS is aware of this concern and will consider it in the long-term planning process.

Comment
19.8 The economic impact Yellowstone has on West Yellowstone is unique. We exist almost solely to accommodate the public so they can stay on the outside of the park. That protects the park by diversifying use patterns and allows more people to enjoy the park on day trips. The Gateway Communities are partners with the park in many respects and partners in providing transportation services inside the park, even to a greater degree. Please include such a concept in the documents that will be forthcoming. West Yellowstone often takes unjustified criticism for profiteering off the park. We are in existence to provide services for the visitors and of course need to make a profit in order to stay in business. We cannot be put into bankruptcy in the winter and be expected to be financially viable partners in the summer. This implementation of a cap of 160 snowmobiles thru the West Gate and 18 paying snowmobiles per operator is not acceptable. It is these snowmobiles and snowcoaches that are expected to help fill rooms, restaurants, gift shops etc. There are roughly 1800 rooms in West Yellowstone. One hundred sixty snowmobiles and roughly 360 snowcoach seats cannot supply that demand. That is why 10 lodging properties have already closed their doors in the winter months. The town cannot sustain this kind of hit again, be a good partner and provide the services adequately that the general public expects.

Response
19.8 See Response 19.1. NPS recognizes and appreciates the partnership between the park and gateway communities, but also believes that the permitted entries under the Selected Alternative will provide access while protecting park resources.

Comment
19.9 Reducing the maximum number of daily snowmobile entries into YNP to 318 snowmobiles per day will result in a significant loss of revenues to the Wyoming snowmobile outfitters, the Gateway communities in Wyoming, and the State of Wyoming. In 2004, the Wyoming District Court found that the confusion and uncertainty resulting from a change in the winter use rules for YNP on the eve of the winter season caused significant and irreparable to the Wyoming Gateway communities and to the state of Wyoming.

Response
19.9 See Response 19.1.

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Comment
19.10 Yellowstone National Park is a major piece of the experience when visitors visit Jackson Hole, Wyoming. To decrease the number of snowmobiles and snowcoaches allowed in the park to the levels being proposed would cripple the Jackson Hole experience. In the current economy in which we find ourselves operating, Jackson Hole advanced bookings by potential visitors are down approximately 25% for the coming winter season. It is extremely critical that Yellowstone continue to be a part of the Jackson Hole offerings, specifically as we begin to climb out of the current recession. This proposed number of snowmobiles will definitely have an impact on local, state and national economies.

Response
19.10 See Response 19.1.

Comment
19.11 These snowmobile tour companies have to buy special snowmobiles which can only be used in Yellowstone for the most part. They are four stroke snowmobiles which are not much of an option outside of the parks, and off trail. The four stroke machines are too heavy, and don't have the high end torque band necessary to ride in fresh snow, which one invariably encounters while riding off trail in those areas outside the park. They would be like "ducks out of water", once they become bogged down in the powder snow we normally have here in this region of the west. So, the nine snowmobiles that these companies must buy to be allowed entry into Yellowstone, for all intents and purposes, can only be used in Yellowstone. You can't run a tour company with only nine snowmobiles, so these companies find themselves in a tough position. They don't want to buy extra four stroke machines that they have no other use for, but if one of the four stroke machines is damaged, breaks down, or is destroyed; then they have no replacement machines to use. You'd be better off just telling those companies that "we all have a cross to bear". Basically that is the position you have put them in.

Response
19.11 NPS understands the concern regarding specialized four-stroke snowmobiles. However, four-stroke snowmobiles have been in operation by concessioners within the park for the past six years. Due to that experience, NPS believes that these snowmobiles are a viable business opportunity for concessioners.

Comment
19.12 The plan doesn't make allowances for more snowcoaches to provide service to those unable to find a tour on snowmobiles due to the cut back. There should be some ability to add more snowcoaches in order to serve the public.

Response
19.12 NPS is concerned about the impacts of snowcoaches on park resources and the visitor experience (see 2008 EA pp. 2-6 to 2-7). Average snowcoach use has been approximately 30 snowcoaches per day in past years. This allows for more than a 120% increase during the next two years. Additionally, the adaptive management plan allows the NPS to evaluate this use and adjust numbers accordingly. In a new long-term plan, alternatives will analyze different numbers of snowcoaches.

Comment
19.13 The calculation of the "average" use per day in the last years was done, I believe, in an unfair way. There was no accounting for holiday seasons and times when there were not many people around to go to YNP. So in busy times the park has more visitors but many times during winter it is not very busy.

Response
19.13 NPS computed the averages using daily statistics from the entire winter, including busy time periods. The NPS also provided daily snowmobile use numbers on page 3-70 of the 2008 EA.

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Comment
19.14 Completely filling snowmobile allocations or snowcoach seats is nearly impossible, and would rarely occur. For example, if an operator has 10 snowmobiles for rent, has rented 9 of them, and then a party of three comes to him/her for a snowmobile tour, they have to be turned away.

Response
19.14 The NPS understands this concern and encourages to work together to maximize the use of allocations.

Comment
19.15 Snowcoaches are operated as a convenience to the public at a tremendous expense to the operators. Very little if any profits are derived from snowcoach operations. Fuel consumptions (2 mpg) are astronomical and maintenance costs are frequently uncontrollable. Vehicles frequently breakdown due to the stress on engines and transmissions and the track systems remain experimental at best. The primary purpose of the snowcoach tours is to provide tours of the park for individuals who may not have the ability, nor the desire, to ride a snowmobile. In recent years the price of a snowcoach seat has sky rocketed due to maintenance costs. With the cost of the vehicle (retrofitted), the cost and maintenance of the track systems, the high cost of fuel and driver/ guides and mechanical and storage infrastructure and a revenue flow of only approximately ninety days, you can see operating a snowcoach becomes economically problematic. The additional revenue derived from snowmobile tours and rentals is necessary to make our businesses viable and offer public access to our national park.

Response
19.15 The NPS understands the maintenance challenges related to oversnow vehicle operations.

Comment
19.16 The proposed rule is not consistent with the 2004 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. The NPS should not take final agency action on the interim rule.

Response
19.16 The Wyoming Court order did not specify the type of rule to be promulgated to take the place of the reinstated 2004 regulation. The NPS believes the interim rule is consistent with the court order.

***UIA1000 - UNACCEPTABLE IMPACTS ANALYSIS AND VS6000 - IMPAIRMENT ANALYSES
(Comment/Response Series 20)***

Comment
20.1 Both the Yellowstone Act and the Organic Act dictate that the National Park Service must allow access to YNP unless allowing such access will result in unacceptable impacts to park resources. Alternative 2 in the 2008 EA requires that all recreational snowmobiles entering YNP be accompanied by a commercial guide. The 100% commercial guide requirement makes it prohibitively expensive for many individuals to engage in recreational snowmobiling in YNP and therefore prohibits access to YNP for reasons unrelated to the issue of whether snowmobile access will cause unacceptable impacts to park resources. The 100% commercial guide requirement thus violates the Yellowstone Act and the Organic Act because it denies access to YNP even though such access will not cause unacceptable impacts to park resources.

Response
20.1 See Responses 18.1 and 18.5. Commercial guiding has been an important contributor to addressing past issues with oversnow vehicle travel and preventing

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unacceptable impacts. However, the NPS recognizes that mandatory guiding makes the cost of a snowmobile rental prohibitive for some. Some visitors may find a snowcoach to be affordable. Others may visit the northern tier of the park in the winter via private wheeled vehicles.

Comment 20.2 First, the National Park Service's overriding conservation mandate imposes requirements independent of the *Management Policies*' "impairment" and "unacceptable impact" standards. The National Park Service's assertion that its conservation mandate is satisfied so long as "unacceptable impacts" are avoided is therefore erroneous. See, e.g., Winter Use Plans Environmental Assessment (Nov. 2008) ("2008 EA"), at 1-10; Special Regulations, Areas of the National Park Service, 73 Fed. Reg. 65,784, 65,785 (Nov. 5, 2008) ("Proposed Rule"). The Policies' "unacceptable impacts" standard simply ensures that park resources and values are not impaired, NPS Policies § 1.4.7.1; the National Park Service's conservation mandate "is independent of the separate prohibition on impairment and applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired[,]" *id.* § 1.4.3. Accordingly, the National Park Service's long-term winter use plan for the parks must do more than avoid impacts the agency deems "unacceptable."

Response 20.2 See Response 18.10. The comment misinterprets the Organic Act and the NPS *Management Policies*. The scope of the NPS conservation mandate is fully described in § 1.4.3 of the *Management Policies*. The conservation mandate does not impose requirements beyond what is described in § 1.4.3. The comment also misinterprets the "unacceptable impacts" standard, which is described in § 1.4.7.1 and 1.5. In addition to serving as a tool for anticipating impacts that may result in impairment, the unacceptable impacts standard is used to determine when a conflict arises between conserving a park's resources and values and providing for their enjoyment.

In any event, Alternative 2 within the 2008 EA 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. Long-term winter use planning will evaluate impacts with the potential to be deemed "unacceptable."

Comment 20.3 The Department of the Interior (Interior) has promulgated 36 C.F.R. § 2.18(c) to address snowmobiling in national parks throughout the county. In 36 C.F.R. § 2.18(c), Interior dictates that "[s]nowmobiles 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." To the extent that the National Park Service would rely on 36 C.F.R. § 2.18(c) to prohibit snowmobiles in YNP simply because snowmobiles have not been authorized, 36 C.F.R. § 2.18(c) violates the Yellowstone Act and the Organic Act. In addition, to the extent that the National Park Service would prohibit snowmobiles in YNP because snowmobiles "disturb" wildlife, 36 C.F.R. § 2.18(c) violates the Yellowstone Act and the Organic

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Act.

Response 20.3 The comment is beyond the scope of the 2008 EA. NPS must comply with its own general snowmobile regulations, and revision of those regulations is not within the scope of the 2008 EA or 2009 proposed regulation. NPS believes that 36 C.F.R. § 2.18 is consistent with the NPS Organic Act, the Executive Orders, and other pertinent legal authorities. See also Responses 18.1, 18.2, and 18.5.

Comment 20.4 Third, the National Park Service's obligation to conserve park resources and leave them unimpaired cannot be disregarded in certain portions of the parks or at certain times of day. See, e.g., 2008 EA at 4-25 ("The effects on soundscapes will not be unacceptable because winter silence will be predominant away from developed areas and road corridors and present at certain times of day and certain places even in those areas[.]").

Response 20.4 NPS agrees. However, no impairment to park soundscapes was found for the Selected Alternative (see 2008 EA pp. 4-25 and 4-51 to 4-52 and the FONSI, pages 15-22). Further, NPS Management Policy 8.2.2 clearly states that "park visitors also expect sounds . . . associated with people visiting their parks (such as children laughing, park interpretive talks, motors in cars and motorboats."

Comment 20.5 Recreational uses can only be prohibited by park managers if such use causes impairment. Previously, the NPS use of the standard of "unacceptable impacts" is a misstatement of the law.

Response 20.5 See Responses 18.1, 18.2, and 18.5. Recreational uses may be prohibited if they are not an appropriate use, which does not necessarily mean that they cause impairment. The NPS *Management Policies* explain when recreational and other uses may be prohibited (see the discussion in the 2008 EA, p. 1-9).

Comment 20.6 We further oppose the Judge's imposition on the agency of new requirements, including an inflexible mandate that where adverse impact occurs, that use must be eliminated unless the use passes a new test of being "necessary and appropriate," and his unwarranted extension of court review of the NPS decision well beyond compliance with required procedures to imposition of its own analysis of the facts upon which NPS based its decision.

Response 20.6 The comment appears to be directed at a court order rather than the 2008 EA, and is thus beyond the scope of this EA. NPS is required to comply with court orders.

Comment 20.7 The EA argues that snowmobiles offer an experience "more connected to nature" than snowcoaches. This statement is unsupported and circular. In effect, the NPS is saying that it will permit recreational snowmobiles because the NPS believes that snowmobiles are an appropriate form of use. But the entire analysis is supposedly intended to assess that very proposition. Further, NPS suggests it has a responsibility to provide snowmobile use in order to provide a different type of use in the park. It is clear to NPS that it does not have a responsibility to provide a

variety of motorized access types to park visitors, but the responsibility lies in protecting and not impairing park resources while maintaining visitor access.

Response 20.7 The cited statement is from the 2008 EA, p. 2-7: "Snowmobiles offer a different experience to park visitors—an experience that, in some ways, is more directly connected to nature—than snowcoaches do. The regulated use of snowmobiles

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(i.e., with BAT and guide restrictions) promotes the enjoyment of park resources and values in a different, and appropriate, way than do snowcoaches. Converting to snowcoaches-only would diminish the ways in which NPS can promote the appropriate enjoyment of park resources.”

The 2008 EA is a NEPA document. While snowmobiles must be an appropriate use if NPS is to permit them, it is not the purpose of the 2008 EA to render some sort of formal finding on that question, nor did it purport to do so. See the purpose and need discussions, 2008 EA pp. 1-4 to 1-5.

Nor is it NPS's intent to issue any sort of decision on whether snowmobiles or snowcoaches are "more appropriate." NPS agrees that its responsibility lies in protecting and not impairing park resources while maintaining visitor access, though as long as that responsibility is met, the agency has discretion to decide whether such access is provided by snowcoach, snowmobile, ski, snowshoe, or other form.

VE4000 - VISITOR EXPERIENCE: IMPACT OF PROPOSAL AND ALTERNATIVES
(Comment/Response Series 21)

Comment 21.1 Continuing to lessen the number of vehicles into Yellowstone just continues to push the price further and further out of our reach. It has become impossible to afford to take a family into Yellowstone to enjoy the beauty of winter. My husband's health does not allow for skiing or snowshoeing into Yellowstone and with the diminishing numbers of snowmobiles and snowcoaches it becomes nearly impossible to get reservations on snowmobiles or snowcoaches. The prices of these "seats" into Yellowstone in the winter are so expensive, that those of us who are next door neighbors to the park cannot afford to see it.

Response 21.1 Although it has always been expensive to visit Yellowstone in winter (2008 EA p. 4-44), the NPS remains concerned about this and will seek ways to reduce the cost of visiting at this time. Visitors are able to drive their own vehicles between Gardiner and Cooke City, and Xanterra has offered less expensive snowcoach tours, such as an afternoon snowcoach tour to Norris Geysir Basin.

Comment 21.2 I still find it ridiculous that as physically challenged (para) person, few options are considered when it comes to us. I have been to trailheads in summer months that say "no wheeled vehicles". Excuse me? Let me say that it is embarrassing with my wife holding my ankles up off the ground as I "wheelbarrow" as far as I can to just go to an area in PUBLIC land, so that I may enjoy it with my family. I don't really give a hoot that there aren't "that" many of us to even consider. When it comes to snowmobiling, this is my only means of getting to areas that are actually inaccessible during the other seasons.

Response 21.2 Snowmobiling does not provide a means of getting to any areas that are inaccessible during other seasons. The Selected Alternative, like previous winter use plans, proposes designation of snowmobile routes only over roads that are used during other seasons by wheeled vehicles. Snowmobile guide companies are capable of accommodating people with physical challenges. In addition, several of the snowcoach operators provide snowcoaches that are accessible, including the park's primary concessioner, Xanterra. Additionally, Old Faithful Snowlodge is fully accessible. It would be physically impossible for NPS to maintain all of its trails to be fully accessible in winter. NPS does, however, maintain boardwalks and walking trails at both Mammoth and Old Faithful to be accessible in winter.

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Comment 21.3 It can only lead to disaster when an individual is hurt because they thought it funny to chase a buffalo or other animal.

Response 21.3 NPS agrees. The commercial guiding restriction is intended to prevent this situation from occurring.

Comment 21.4 We would rather hike through the snow following tracks and finding burrows or watching animals from behind a bush without the interruption of some yahoo on a snowmobile screaming past and spoiling our search...photo safari is what we prefer...can't get a picture if the poor little bunny/fox/moose/bison is heading for the hills due to the above mentioned yahoo and his/her machine.

Response 21.4 The experience of observing wildlife in a quiet undisturbed setting is widely available in the park. Yellowstone has some roads that are plowed year-round, and many hundreds of miles of non-motorized trails. The commercial guiding restriction minimizes such disturbances for visitors to those areas of the park accessible by oversnow vehicle, both because guides enforce proper touring behavior and because guided visitation is confined to predictable periods on each road segment.

Comment 21.5 The machines are loud, can damage critical habitat, and most importantly, are often used in remote places that are avalanche areas or areas difficult to perform rescues in.

Response 21.5 All snowmobiles used in Yellowstone would have to be BAT under the Selected Alternative, and would be required to stay on groomed roads, as they always have been. Snowmobiles are not allowed to travel cross-country in the park. Regardless, the parks will continue to provide effective emergency services.

Comment 21.6 The freedom to explore the major areas (Old Faithful, the Canyon, etc.) with my friends and family at our leisure while on a snowmobile was unparalleled. We wanted to experience the sights, smells, and sounds of the park on a snowmobile and felt we would be "trapped" in a snowcoach or similar vehicle.

Response 21.6 The Selected Alternative preserves the opportunity to tour the park via commercially-guided BAT snowmobiles in addition to commercially-guided snowcoaches. The 2008 EA recognizes that snowcoaches and snowmobiles offer different levels of access to and enjoyment of Yellowstone's attractions. See Response 18.7 and the 2008 EA at 2-7.

Comment 21.7 Visitors on snowmobiles don't have to carry what they bring, and so are more likely to bring alcohol and firearms illegally into the park and can easily haul poached game out of the park.

Response 21.7 Again, requiring commercial guides for all visitors minimizes such problems, which (with the exception of transporting alcohol into the park) are illegal, with appropriate fines long in place. Patrol of park boundaries will continue as well.

Comment 21.8 I also have toured the park via guided tours. I found the guided tours were detrimental to my health as I was freezing all the time due to the "stop & go" routine of a tour. I chose then never do another guided tour.

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Response 21.8 While guides do improve the safety of a park visit, visitors are ultimately responsible for proper winter attire. Additionally, visitors who do not prefer to be outside and stationary as much may opt to take a heated snowcoach into the park.

Comment 21.9 As a citizen who has a respiratory disability, running any kind of vehicles in areas where there should be pristine air is unconscionable. It is also a matter of "equal access" defined by the Americans with Disabilities Act. When vehicles spewing fumes are given permission to operate in these areas, we as disabled citizens no longer have accessibility. Please consider this when making policy for this type of rule.

Response 21.9 Alternative 1 would close the park and therefore fully protect air quality. However, Alternative 1 would deny access to the park for those not capable of skiing or snowshoeing. The Selected Alternative would allow only BAT snowmobiles into the park, as explained in the 2008 EA, pp. 3-44 to 3-50. Use levels would be similar to or even above the levels that would be seen under the Selected Alternative, and air quality has been and will remain very good to excellent in the park.

Comment 21.10 We note what the former NPS directors brought to the attention of Secretary Kempthorne: "... during the protracted discussion over winter use in Yellowstone, visitors adventuring to Old Faithful and other destinations in the park have increasingly been choosing modern snowcoaches as their means of access. These 'least impacting' vehicles, which minimize 'adverse impacts on park resources and values,' are also considerably more affordable for visitors than snowmobiles. Snowcoaches are more accommodating of older visitors and children than snowmobiles. And because they facilitate conversation between guides and visitors and among family members, they have given rise to a boom in visitor education. In all these respects, the growing popularity of snowcoaches has been enormously positive for Yellowstone and its visitors."

Response 21.10 Snowcoach use has slowly and steadily increased. More visitors still prefer to visit Yellowstone via snowmobile (2008 EA p. 3-69). Snowcoaches do facilitate conversations between guides and visitors, but the guiding requirement for snowmobiles also has a similar effect. If visitors double up on snowmobiles, the cost is similar to snowcoach tickets for multiple individuals. Snowmobiles and snowcoaches both cause soundscape impacts. Snowcoaches consume more fuel per capita than do the BAT snowmobiles in use in Yellowstone. As described in Responses 8.5 and 18.7, it is no longer clear that snowcoaches are the "least impacting" oversnow vehicles. See also the 2008 EA p. 2-6.

Comment 21.11 I appreciate that this beautiful land is being protected and managed but I think it is also important to allow people to experience and see with their own eyes the land that we are protecting. For some people (anyone with physical limitations) motorized transportation on a snow machine is one of the few ways of being able to see this land during the winter season.

Response 21.11 The Selected Alternative would provide a choice of transportation modes for all people, including those with physical limitations. See also Response 21.2.

Comment 21.12 Snow coach tours are not the answer. Sitting in some old van with tracks underneath it, fogged up windows and some sick person next to you is pretty

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Response
21.12 miserable compared to seeing everything on a snowmobile and being outside.
The Selected Alternative would provide a choice of transportation modes for all people, including a limited number of snowmobiles.

Comment
21.13 On pages 3-61 and 3-62 of the 2008 EA, the Service contends that the 100% commercial guide requirement for Yellowstone has resulted in a decrease in law enforcement actions related to snowmobiles. This statement seems to misstate the facts. Using the statistics supplied by the National Park Service, the incident rate of the number of total oversnow vehicle violations to oversnow vehicle visitors (snowmobiles and snowcoaches) in 2002-2003 was 0.5%, or around 5 incidents per 1,000 oversnow vehicle visitors. In 2003-2004, the incident rate was 4 incidents per 1,000 oversnow vehicle visitors. In 2004-2005, the incident rate was back up to 5 incidents per 1,000 oversnow vehicle visitors, and in 2005-2006, the incident rate was actually 6 incidents per 1,000 oversnow vehicle visitors. In other words, the incident rate did not change when the commercial guiding requirement was implemented in 2003-2004. Even though the number of total oversnow vehicle cases after the 2002-2003 winter season (when the commercial guiding requirement was in place) were below the number of cases in 2002-2003, the actual percentage has remained constant from 2002-2007.

Response
21.13 The rate in 2002-03 was indeed 0.5%, but the rate in 2007-08 was 0.4%--and 2007-08 saw the highest number of total cases in recent years. Further, as noted on the same pages cited by the comment (2008 EA p. 3-62), the increase that winter over those immediately previous was mostly attributable to more medical call-outs and better reporting by park staff (for example all forecasting activity at Sylvan Pass was recorded as case incidents).

Comment
21.14 The National Park Service's contention that snowmobiles offer a "different experience to park visitors" ignores the substantial limitations that have been placed on the use of snowmobiles within Yellowstone in an effort to diminish their adverse impacts. See 2008 EA at 2-7. As a result of the park's guided group requirement and other restrictions, snowmobile users within Yellowstone do not have the autonomy and independence typically associated with snowmobile travel. See Special Regulations, Areas of the National Park System, 72 Fed. Reg. 70,781, 70,788 (Dec. 13, 2007). Moreover, National Park Service mandates provide for the enjoyment of park resources and values -- not motorized recreation. See, e.g., 16 U.S.C. § 1; GYC Op. at 19.

Response
21.14 The 2008 EA makes note of this on p. 4-43. The Selected Alternative preserves the opportunity to tour the park via commercially-guided BAT snowmobiles in addition to commercially-guided snowcoaches. The NPS understands that some visitors regret the loss of freedom they had at one time (2008 EA p. 4-43), but believes commercial guiding is necessary to protect park wildlife and soundscapes, and to provide a safer visitor experience than that of the 1990s and early 2000s.

NPS agrees that National Park Service mandates provide for enjoyment of park resources and values. Snowmobiles provide access to elements of those resources and values that is not available by other means. See Response 18.7 and 2008 EA at 2-7.

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Comment 21.15 Snowmobiles have a small impact when looking at the bigger picture.

Response 21.15 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.

Comment 21.16 Snowmobile operators use caution and are polite to other users; I did not see any blue haze.

Response 21.16 NPS monitoring has shown dramatic improvements in winter conditions relative to historic conditions.

Comment 21.17 The visitor use survey raises legitimacy concerns as the survey may be biased.

Response 21.17 The comment is beyond the scope of this NEPA process. The methods and draft instruments were made available for public review, as required by the Paperwork Reduction Act, and the commenter provided no comments during that process. In any event, the survey used appropriate methodologies to help begin to understand the human dimensions of wildlife and soundscapes.

Comment 21.18 Snowmobiles provided us the opportunity to enjoy the scenic nature of the parks.

Response 21.18 NPS agrees that snowmobiles and snowcoaches both provide opportunities for visitors to enjoy the park, and both provide different experiences for visitors.

VR4000 - VEGETATION AND RIPARIAN AREAS: IMPACT OF PROPOSAL AND ALTERNATIVES (Comment/Response Series 22)

Comment 22.1 Yet another argument that is trying to be made is that snowmobiles cause land erosion and plant damage. Truth be told, snowmobiles create less land erosion and plant damage than the animals that actually live there. Due to the track and skis on the snowmobile, its weight is distributed generously amongst the terrain. Add in the blanket of snow, and you have very little pressure on the land, thus creating little-to-no land erosion.

Response 22.1 In Yellowstone, all snowmobiles are required to remain on snow-covered roadways, which are all previously disturbed and lack vegetation. This was an issue dismissed from consideration (see 2008 EA, p. 1-14).

Comment 22.2 And of course, snowmobiles are terrible for pristine nature areas anyway – they leave ruts (and likely leak oil) in the ground, etc.

Response 22.2 BAT snowmobiles, as called for in the Selected Alternative, are the cleanest machines commercially available. NPS would continue to groom oversnow roads as needed.

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WH4000 – WILDLIFE AND WILDLIFE HABITAT: IMPACT OF PROPOSAL AND ALTERNATIVES (Comment/Response Series 23)

Comment 23.1 If there were a way to provide quiet, non-gas operated machines...such as electric engines or solar powered equipment, maybe then this proposal would fly with all those concerned, but, even then, the numbers of machines would need to be strictly limited. Any disturbance to the animals that live in the park should be and must be prevented. Winter in Yellowstone is the coldest, most severe in the lower 48 states. Stresses on the animals there are formidable, even without the added burden of so many invasive machines and their passengers day after day after day throughout the winter season. Why can't we allow these animals peace from our intrusion into their already difficult winter experience?

Response 23.1 The NPS is not aware if electric or solar-powered snowmobiles or snowcoaches are commercially available. The Selected Alternative would restrict all snowmobiling visitors to using commercial guides, who minimize human impacts upon park wildlife. Finally, as noted in the 2008 EA pp. 3-1 to 3-17, wildlife populations that have been studied in the park do not appear to have been affected by winter use, even at levels much higher than those contemplated in either of the 2008 EA's alternatives.

Comment 23.2 Snowmobile disturbance of park wildlife is not a major issue. This is not nearly as big of an issue as environmentalists make it out to be. In a 3-year study conducted by wildlife scientists for the Maine Wildlife Research Unit, they found that deer and other wildlife consistently bedded and fed along snowmobile trails, even though the trails were used readily for snowmobiling. This indicated that wildlife were not even driven away, none the less provoked by the snowmobiles. While this study was done in Maine, the outcome of it is the same for wildlife across the country.

Response 23.2 Snowmobiles do cause a minor amount of wildlife disturbance, as discussed in the 2008 EA, pp. 3-1 to 3-17 (see especially p. 3-3). This is why the Selected Alternative restricts snowmobilers to commercially guided groups. Results in Maine are not necessarily applicable to Yellowstone and Grand Teton—see again p. 3-3, which demonstrates that different species respond to oversnow vehicles in different ways.

Comment 23.3 The point was made that when people are in the park it impacts the animals. Yes it does, in a favorable way. When the roads are groomed, the animals can also use them and it's easier for them to get around in the winter snow. It creates less stress on the animals.

Response 23.3 The 2008 EA discusses wildlife use of groomed roads on pp. 3-6 to 3-7. Groomed road use by wildlife is very complex subject, but an increasing consensus among biologists is presented on p. 3-7.

Comment 23.4 Snowmobiles are a recreational vehicle and wildlife may wind up injured as a result of recklessness on behalf of the users.

Response 23.4 The Selected Alternative would minimize this possibility through the use of commercial guides.

Comment 23.5 The issue of wildlife disturbance by snowmobiles has been one of the main reasons for groups like the GYC to oppose snowmobiles in the park. The fact is that heart

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monitors were placed on elk in the park and flight distances and heart rates were recorded when elk were approached by snowmobiles and cross-country skiers. The results of the survey clearly revealed that cross-country skiers were much more disturbing to elk than snowmobiles. Flight distances and heart rates were much lower when elk were approached by snowmobiles versus cross-country skiers. This study is valid yet your agency makes no attempt to limit cross-country skiers from areas that have elk present. Other studies suggest the same thing (Recreation Effects on Wildlife [2002] - Bill Gaines, Forest Service Wildlife Biologist, Wenatchee National Forest). (Effects of recreation on Rocky Mountain Wildlife [1999] - Ungulates). (NPS <http://www.nps.gov/yell/parkmgmt/upload/preserving.pdf>).

Response 23.5 The NPS is aware of such studies; see, for example, Hardy 2001, cited in the 2008 EA. Non-motorized use would be restricted when winter snowpack and weather conditions become severe and appear to be adversely affecting wildlife (see 2008 EA p. 2-22). As discussed in the 2008 EA, pp. 3-1 to 3-17, motorized oversnow vehicle use certainly can affect wildlife, which is why the Selected Alternative would restrict all visitation to commercially guided snowmobiles or snowcoaches.

Comment 23.6 When I lived in Northern Maine, the snowmobilers created compacted paths into the woods which allowed dogs to have access to deer that couldn't run away in the deep snow. The slaughter of the deer was very bad. I imagine the same process is taking place in Yellowstone.

Response 23.6 Visitors are required to keep all dogs on leashes at all times, and are not allowed to take them on park trails or into the backcountry. No dogs are allowed on the oversnow vehicles used in the parks, with the exception of guide dogs for visually impaired people.

Comment 23.7 The expansion of snowmobile use in Yellowstone National Park may well disturb hibernating bears at a time when they can least afford to expend energy seeking a quieter place to pass the winter. The considerable noise and air pollution generated by hundreds of snow machines within the park constitutes harassment of wildlife and is antithetical to the concept of a national park designed to provide refuge for both humans and animals alike.

Response 23.7 Snowmobiles and snowcoaches always have been limited to roads that are used by visitors in the summer. Off-road travel is prohibited. Disturbance to bears was addressed in the 2008 EA, p. 3-13. The Selected Alternative would restrict human use to commercially guided snowmobiles or snowcoaches. Using monitoring data from recent periods with similar use levels, winter air quality was excellent and noise was at moderate levels (2008 EA pp. 4-36 to 4-39 and 4-20 to 4-25).

Comment 23.8 These machines frighten wildlife and flatten the snowcover, making the search for winter food even more difficult.

Response 23.8 See Response 23.5

Comment 23.9 The presence of these machines in and around the park is problematic to the natural migration patterns of the Yellowstone Bison, who make use of the trails established by the riders - then leaving the park and facing slaughter. If there were not these trails-fewer bison would move out of the park.

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Response 23.9 The issue of bison use of groomed roadways is addressed in detail in the 2008 EA, pp. 3-5 to 3-7.

Comment 23.10 On numerous occasions we heard people talking about racing their snowmobiles on park roads, "getting up to 60" on their snowmobiles in the park and "getting as close as they could" to a pack of wolves they sighted. All of these people were of course accompanied by the requisite "guides" supposed to enforce speed limits and behavior around the animals.

Response 23.10 The NPS is quite concerned about such comments and would appreciate any and all such observations to be reported so that the agency can take appropriate investigative action and remedies as necessary.

Comment 23.11 The National Park Service may not disregard its obligation to minimize the impacts of winter use on individual animals. As the agency has previously acknowledged, "park policies, regulations, and EOs clearly state that disturbance to wildlife, regardless of population-level effects, is unacceptable in the national parks." Winter Use Plans Final Supplemental Environmental Impact Statement (Feb. 2003), at 206. The National Park Service's recent assertion that 36 C.F.R. § 2.18(c), related Executive Orders, and National Park Service policies no more than require a population-level assessment is accordingly erroneous. See 2008 EA at 3-2. Moreover, the National Park Service has offered no explanation for its determination that "major" wildlife impacts are avoided so long as an action does not have a "substantial and possibly permanent consequence to the population." *Id.* at 4-9 (emphasis added).

Response 23.11 See Response 23.13. The NPS does not, however, disregard its obligation to protect individual animals; see the 2008 EA, pp. 3-1 to 3-2 and 4-9. 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 trumpeter swans), and that wildlife monitoring will continue (2008 EA, p. 2-31). Harassment of wildlife would remain illegal under the Selected Alternative.

Comment 23.12 The National Park Service's suggestion that a snowcoach-only alternative would be detrimental to Yellowstone's wildlife is at odds with the National Park Service's own science. See 2008 EA at 2-6. Snowcoach-only access to Yellowstone would significantly reduce both the number of oversnow vehicles in the park and associated vehicle-related stresses, consistent with the recommendations of National Park Service biologists. See P.J. White et al., Behavioral Responses of Wildlife to Snowmobiles and Coaches in Yellowstone (Oct. 17, 2006) ("White Study"), at 20.

Response 23.12 The 2008 EA does not state that a snowcoach-only plan would be "detrimental" to wildlife; it did note the potential for impacts. As noted by the references cited in the 2008 EA, p. 2-6, snowcoaches, due to their larger profile, elicit a greater response from wildlife than snowmobiles. While a snowcoach-only plan would reduce the overall number of oversnow vehicles, it is impossible to compare or predict how wildlife would react to the increased number of the larger snowcoaches, as compared to the current mix of large snowcoaches and small snowmobiles.

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Comment
23.13 Section 2.18, and particularly the language stating that snowmobiles are allowed in the parks only if they "will not disturb wildlife" has been used by the National Park Service and one court in justifying, among other things, completely banning snowmobiles from Yellowstone. The 2001 Final Rule banning snowmobiles stated: "Our general regulation on snowmobile use, 36 C.F.R. 2.18, prohibits any snowmobile use that disturbs wildlife." 66 Fed. Reg. 7260, 7261 (January 22, 2001). The Federal District of Columbia court in its recent decision vacating the 2007 Winter Use Plan relied extensively on the "disturb wildlife" language in finding that the National Park Service had failed to properly analyze the level of disturbance from snowmobiles on wildlife.

Response
23.13 Disturbing wildlife is generally prohibited by 36 C.F.R. § 2.1. Section 2.18, which uses similar language, does not establish a different standard. NPS generally regards a *small* amount of disturbance to individual animals as an unavoidable consequence of allowing visitors in national parks, which is therefore necessary and acceptable. To interpret these provisions otherwise would preclude any visitation in national parks, which is plainly not their purpose. The wildlife population as a whole must *not* be disturbed, unacceptable conditions must not be created, and impairment must be avoided. This is further explained in the 2008 EA, pp. 3-1 to 3-2 and 3-7 to 3-8. As discussed in the 2008 EA, pp. 3-1 to 3-8, Yellowstone's wildlife populations have not been disturbed by human winter use within the meaning of 36 C.F.R. 2.18. As discussed in the 2008 EA, the NPS adheres to the North American Wildlife Conservation Model, which strives to maintain healthy wildlife populations. NPS also seeks to minimize disturbance to wildlife individuals. Winter use will have some effects on wildlife, just like every other form of visitor access to the park. Extensive studies of the behavioral responses of five species to over snow traffic showed that these animals rarely showed high-intensity responses (movement, defense postures, or flight) to approaching vehicles. The responses that do occur do not rise to the level of the "taking" or disturbance that is prohibited by NPS regulations. 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. There is no reason to suspect that winter use at the Selected Alternative levels poses 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. A recent visitor survey indicated a high level of satisfaction with the opportunity to view park wildlife and the managed winter use program. The Selected Alternative will not unreasonably interfere with wildlife ecology or visitor opportunities to see animals.

Comment
23.14 In my own experiences, I have witnessed and seen evidence of winter wildlife migrations disrupted by the noise and pollution of snowmobiles. These migrations are necessary for the survival of the species in that the migration is taking place to fertile grounds that provide food sources during the harsh winter months. The

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inability to migrate to such grounds can cause starvation and malnutrition resulting in a weakness to endure the harsh winter conditions and a physiological disadvantage at reproduction.

Response 23.14 See Response 23.13. There is no evidence of any overall disruption to winter migration patterns.

Comment 23.15 The NPS needs to further analyze resources such as subnivalian fauna and climate change.

Response 23.15 A review of long-term climate trends was presented in the 2007 EIS (see Farnes and Hansen 2005) and will be considered in the new long-term winter use plan. Subnivalian 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 subnivalian fauna that may occur in other places that permit cross-country motorized use do not occur in Yellowstone.

Comment 23.16 NPS should require winter users to maintain 100 meter distance from animals when stopping.

Response 23.16 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.