



April 3, 2019

Mike Draper
Sustainable Resources Legislation Advisor and Negotiator
Energy Mines and Resources
Yukon Government

Re: YCS ORV Engagement Response

Dear Mr. Draper,

The Yukon Conservation Society has prepared the following comments in response to the Off Road Vehicle Regulations consultation. These comments have been crafted to complement the questions in the Engage Yukon survey.

The Yukon Conservation Society (YCS) is a grassroots environmental non-profit organization, established in 1968. Our mission is to pursue ecosystem well-being throughout the Yukon and beyond, recognizing that human well-being is ultimately dependent upon fully functioning healthy ecosystems. We pursue this mission through a broad program of conservation education and analysis, including input into public policy and regulatory processes.

1 What and who would an ORV regulation apply to?

Proposed Approach

1. ORV use would be regulated only within designated ORV Management Areas. These areas would have management tools in place, such as restrictions or prohibitions on the use of ORVs. ☑

Disagree **Neutral** Agree Don't Know

2. A new ORV regulation would apply to all ORV users (subject to treaty and Aboriginal rights). Persons with pre-existing legal rights within specific ORV Management Areas (e.g. owner of cabin) would have their access needs and interests addressed through area-specific provisions.

Disagree Neutral **Agree** Don't Know



Comments

YCS agrees that the ORV Management Area approach is an excellent partial tool for managing the impacts of ORVs on the Yukon's environment.

However, we have answered “**neutral**” rather than “agree” to Question 1 because we do not think that ORVs should “only” be regulated within designated ORV Management Areas. ORV Management Areas are an essential part of ORV management, but unless they are accompanied by further measures, ORV Management Areas will fail to protect the Yukon environment from the well-documented impacts of ORVs. YCS' suggested approach is to provide for ecological parameters as well as geographic borders when establishing ORV Management Areas.

ORV Management Areas are well suited to places already designated for a level of protection and that are subject to management plans. These areas could be relatively small, e.g. Tombstone and Kusawa Natural Environment Parks, or relatively large, encompassing many different uses and activities, e.g. the Peel Watershed Land Use Planning area.

However, ORV Management Areas as currently proposed may not work well for widely distributed sensitive environments such as the alpine and wetlands. **YCS urges Yukon government to expand the concept of ORV Management Areas to ensure that wetland and alpine areas in general are protected as soon as possible.**

Alpine and wetlands environments are fragile and vulnerable to long-term damage from ORV impacts. **YCS suggests that General ORV Management Areas also be developed.** One General ORV Management Area would be defined so as to provide protection to all alpine areas and a second General ORV Management Area would be defined so as to provide protection to all wetland areas. Each General ORV Management Area may provide for limited exceptions as deemed appropriate.

The boundaries of the General Alpine ORV Management Area could be defined visually (above the tree line), or by altitude (above “X” metres, which would vary with latitude). The General Alpine ORV Management Area would encompass all alpine areas across the territory, except areas that are included in specific ORV Management Areas.

The other sensitive environment desperately in need of protection from ORV impacts is wetlands. Wetlands are vital to ecosystem health and biodiversity. Like alpine areas, they are vulnerable to damage by ORVs. An ecological definition of a wetland is: “Wetlands are submerged or permeated by water – either permanently or temporarily – and are characterized by plants adapted to saturated soil



conditions.”¹ Wetlands may be more difficult than the alpine to include in a General ORV Management Area because they are sometimes seasonal. A General Wetland ORV Management Area may also provide for limited exceptions as needed.

The two General ORV Management Areas as well as the specific ORV Management Areas (e.g. Peel, Tombstone and Kusawa ORV Management Areas) would be established immediately upon the regulation enactment.

To summarize, YCS sees value in the ORV Management Area approach, but also sees that additional provisions are needed to protect the sensitive ecosystems of Yukon alpine and wetland areas. We believe the best option is to create General Alpine and Wetlands ORV Management Areas, but we are open to alternative suggestions from the Government of Yukon or other stakeholders.

Trails

Previous consultations have recognized trail proliferation and associated habitat damage as serious problems in the Yukon. It is the position of YCS that ORV use should be confined to existing trails, with new trails requiring a permit to construct. We recognize that trail-related prohibitions are difficult to enforce but urge Yukon government to take action on this problem. YCS defines a trail as:

A trail is readily identifiable by previous use and would otherwise require a land use permit to construct (i.e. more than 1,5m wide).

Snow machines

YCS is aware that the enabling legislation underlying the proposed regulation specifically excludes snow machines from the definition of ORVs. However YCS wishes to make the following points regarding snow machines and make a case for amending the *Territorial Lands (Yukon) Act* so that snow machine constraints can be implemented as ORV regulations.

- Snow machines were included as ORVs in the motion that established the Select Committee on the Safe Operation of Off Road Vehicles (Motion 834 Nov 18th 2009)
- Snow machines have a well-documented effect on predator-prey relations, particularly regarding the interrelationship between wolves and caribou.

¹ Environment and Climate Change Canada <https://www.canada.ca/en/environment-climate-change/services/water-overview/sources/wetlands.html>



2 How would ORV Management Areas be established?

Proposed Approach

1. A proposal to designate an ORV Management Area can originate from many sources:
 - through a public (individual or organization) or First Nation request;
 - from within government; or
 - from a government-approved land or natural resource management plan (e.g., regional land use plan, Special Management Area plan).

Disagree Neutral **Agree** Don't Know

2. The process for designating an ORV Management Area would be led by the Yukon government. The process would be subject to public review and decisions would be based on evidence, expertise, and input from First Nations, stakeholders and the public.

Disagree Neutral **Agree** Don't Know

3. Criteria to help determine which areas should be designated as ORV Management Areas would be set by policy, rather than being included in the regulation.

Disagree Neutral Agree Don't Know

4. The ORV regulation would enable an ORV Management Area to be divided into different geographic sections reflecting different rules for each section, if needed.

Disagree Neutral Agree Don't Know

Comments

1. Designating ORV Management Areas should be as accessible as possible. Anyone should be able to propose ORV Management Areas. YCS values and appreciates the ability to propose ORV Management Areas wherever needed. The ability to propose an ORV Management Area should be available to First Nations, RRCs, and also via petition to the Yukon Legislature.
2. YCS agrees that YG should manage the designation process.
3. The criteria need to be in regulation. Policy is not enforceable and is subject to easy change by government and interpretation. A regulation may be changed, but not as easily, and requires public notification.



4. Question four illustrates a problem with the concept of ORV Management Areas. The question implies that ORV Management Areas would be large enough to require confusing sub-sets of Management Areas with different rules. Where ORV Management Areas are adopted, they should be designed to reduce or eliminate the need for sub-divisions. **YCS recommends that the regulations, assuming different regulation for each area, provide as consistent a management regime within (and between) ORV Management Areas as practicable.**

3 How would rules (restrictions or prohibitions) be established within ORV Management Areas?

Proposed Approach

1. The process of determining restrictions or prohibitions within ORV Management Areas would be led by the Yukon government. The process would be subject to public review and decisions would be based on evidence, expertise, input from First Nations, stakeholders and the public and subject to treaty and Aboriginal rights.

Disagree Neutral **Agree** Don't Know

2. Restrictions and prohibitions for ORV Management Areas could also originate from a government-approved land or natural resource management plan that includes ORV-related recommendations (e.g., local area plan, habitat management plan).

Disagree Neutral **Agree** Don't Know

3. An area-specific regulation would specify some elements to be included in the permitting process, including:
 - General permit required to use an ORV in an ORV Management Area;
 - Special permit for users with certain rights/authorizations to use an ORV in a specific ORV Management Area with customized terms and conditions;
 - Duration of permit (e.g., annual, multi-year);
 - Permit fees;
 - Application requirements;
 - Scope of permit terms and conditions; and
 - How permits are issued.

Disagree **Neutral** Agree Don't Know



Comments

1. YG should be the lead agency in both establishing Management Areas and determining the rules within them. YCS is in favour of evidence-based decision-making that includes input from First Nations, RRCs, other established public entities and stakeholders
2. Notwithstanding the above, proposals for the precise restrictions, rules and prohibitions within an ORV area should be accepted from any person or organization or government or other body via a public consultation process.
3. YCS indicated a neutral position on this question because we agree with some of the options included and disagree with others. We here address them individually:
 - a. YCS is of the opinion that all ORVs should require registration, similarly to British Columbia.
 - b. It has already been established that First Nation rights will not be affected by these regulations. YCS does not know of any other rights that would supersede the regulations. If such rights exist, YCS would appreciate being informed of this.
 - c. Agreed.
 - d. YCS believes that in the interest of enhanced compliance, permit fees should be consistent across the Yukon.
 - e. What does “Application Requirements” mean? If this means that only some people could get an ORV permit (e.g. type of ORV such as wheeled or tracked, person’s age or restrictions related to local residents, First Nation citizens, etc.) then YCS believes these requirements should be in the regulations or per an Area management plan if adopted. If different Management Areas have site-specific requirements for ORV users, then YCS agrees that specific “application requirements” could be part of the permitting process.
 - f. Agreed.
 - g. It is not clear what “How permits are issued” means.

4 Establishing Regional ORV Restrictions or Prohibitions

Proposed Approach

1. Include (in the ORV regulation) the immediate designation of one or more ORV Management Areas where certain management tools such as prohibitions and/or restrictions would apply. For example, an approved regional land use plan may include an area where ORV use is restricted and this could become an ORV Management Area that we designate at the same time as the new ORV regulation comes into force.



Disagree Neutral **Agree** Don't Know

2. If you have any suggestions for OVR Management Areas, please note them in the comments section below.

Comments

1. As noted previously, YCS's position is that ORV Management Areas should be established upon enactment of the regulation(s) for previously noted areas, including general alpine and wetland areas.
2. As noted above, YCS sees value in the establishment of ORV Management Areas where management plans already exist, or are in the process of being established. This would include Natural Environment Parks, HMAs, SMAs and places noted for protection in Regional and Sub-regional plans and general protection for wetlands and alpine areas.

Thank you for the opportunity to participate in this survey. YCS looks forward to seeing immediate action on this important issue.

Yours Truly,

A handwritten signature in black ink that reads "M. Walton". The signature is written in a cursive style with a large, looping "M" and "W".

Mike Walton, PhD
YCS Executive Director