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From: [Mike Murray](#)
To: [Cyndy Holda](#)
Subject: NPS Organic Act
Date: 09/17/2008 04:28 PM
Attachments: [YELL case.DDC 2008 Decision.pdf](#)

Cyndy, Please forward this message to the general ORV mailing list and to the local news media.

All,

The NPS Organic Act is one of the key statutory constraints under which NPS must manage recreational activities and ORV use at Cape Hatteras National Seashore. While we have often discussed this at negotiated rulemaking committee meetings, I do not know to what extent the interested general public understands the role the Organic Act plays in how NPS manages units of the National Park System. See below for information that we recently provided to the negotiated rulemaking committee. While the Yellowstone snowmobiling case is based on a different set of facts, there are some similarities (e.g., the same executive orders that apply to ORV use apply to snowmobile use) and the lessons learned in the Court 's decision that may be relevant to our situation at Cape Hatteras. If you are unfamiliar with the NPS Organic Act, it may be worthwhile for you to read "Section III. Discussion" starting on page 14 with "Statutory Interpretation of Conservation Mandate," to see its legal implications (i.e., how it is interpreted and applied, etc.).

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▼ [Cyndy Holda/CAHA/NPS](#)

**Cyndy
Holda/CAHA/NPS**

To

cc

09/16/2008 03:31 PM

Subject Fw: Recent court ruling

To: Reg Neg Committee Members

From: Superintendent

Subject: Recent Court Ruling

See news article below and the attached file for information on the latest court ruling related to snowmobiling at Yellowstone National Park. The executive orders on ORV use that apply to our situation also apply to snowmobiles. The Yellowstone "winter use plan" (i.e., snowmobile management plan) has been under litigation more or less continuously since 1997. The discussion in the court decision (attached) about the Organic Act, NEPA, and the executive orders may be of interest and have relevance to our issue.

NPS has two general regulations that were promulgated in order to implement the executive orders on ORV use: 36 CFR 4.10(b) (which we have talked about) applies to "ORVs" in our situation at CAHA; while 36 CFR 2.18 applies specifically to snowmobiles. Section 2.18 (c) states: "The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources."

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Judge Refuses to Let Snowmobiles Roam Yellowstone

**Federal judge says no to plan allowing 540 snowmobiles to
roam Yellowstone during winter**

**By BOB MOEN
The Associated Press
CHEYENNE, Wyo.**

A federal judge in Washington, D.C., threw out plans Monday to allow more than 500 snowmobiles a day into Yellowstone National Park, drawing sharp criticism from Wyoming's congressional delegation and snowmobiling advocates but praise from conservationists.

The National Park Service's Winter Use Plan would have allowed 540 snowmobiles to go through in Yellowstone and Grand Teton national parks and the John D. Rockefeller Jr. Memorial Parkway every day, starting this winter.

But U.S. District Judge Emmet Sullivan said in an order that the plan would increase air pollution, disturb wildlife and cause too much noise in the nation's first national park.

"According to NPS's own data, the (plan) will increase air pollution, exceed the use levels recommended by NPS biologists to protect wildlife, and cause major adverse impacts to the natural soundscape in Yellowstone," Sullivan said in the order.

Wyoming Republican Sens. Mike Enzi and John Barrasso denounced the ruling.

"National parks are for the benefit and enjoyment of the people, and judges and lawyers seem to forget or purposely discount that sometimes. That's sad," Enzi said.

"Wyoming experts are the best stewards of our land, not radical federal Washington judges," Barrasso said.

Yellowstone Superintendent Suzanne Lewis declined comment until Sullivan's ruling could be reviewed.

Conservationists sued the National Park Service to stop the winter use plan, saying snowmobiling in the park causes noise and air pollution. They want snowmobiling eliminated or at least reduced in the park.

Park officials said they averaged about 290 snowmobiles a day in 2006, the most recent number available. Conservationists argued that allowing 540 snowmobiles, a cap higher than that average, would not help solve the park's problems.

"This ruling will restore the quiet and the clean air in Yellowstone for everyone to enjoy," said Amy McNamara, director of the Greater Yellowstone Coalition national parks program.

Three pro-snowmobiling groups, including the Haslett, Mich.-based International Snowmobile Manufacturers Association, intervened in the case on the government's side. Association Director Ed Klim said his group would review the ruling before deciding whether to appeal.

Klim said the groups believe the Department of the Interior and Park Service "did an outstanding job" developing the snowmobile plan.

U.S. District Judge Clarence Brimmer said he had not had a chance to review Sullivan's ruling in its entirety. But in light of Sullivan's order, Brimmer asked lawyers in the Wyoming case to present options for his court to give the Park

Service for the coming winter.

"The way it is right now there will be no winter activities in the park, but we feel that Judge Brimmer will come forward with a remedy and we will have winter activity," said Jack Welch, of the BlueRibbon Coalition, a motorized advocacy organization based in Idaho.

The National Park Service must redo the plan, Sullivan said.

The next winter season begins Dec. 15.

In the late 1990s, as many as 1,400 snowmobiles a day visited Yellowstone, contributing noise and air pollution that critics in Congress and elsewhere said was inappropriate for the country's first national park.

Associated Press writers Jesse J. Holland in Washington, D.C., and Mead Gruver in Cheyenne, Wyo., contributed to this report.

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