

STATE OF ALASKA

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Comment Manager
Bureau of Land Management
1849 C Street, NW
LSB 406-C
Washington, D.C. 20240

Attention: Bill Overbaugh
Bill_Overbaugh@ak.blm.gov

Dear Mr. Overbaugh:

The State of Alaska has reviewed the Bureau of Land Management (BLM) National off-highway vehicle (OHV) strategy information soliciting comments for improving OHV management nationwide. The BLM manages OHV use in Alaska through federal regulations (43 CFR 8340) and Presidential Executive Order 11644 as amended by Executive Order 11989. This letter represents the consolidated comments of state agencies.

The BLM administers eight specific areas established by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). These are the White Mountains National Recreation Area (Sec. 401), Steese National Conservation Area (Sec. 403), and six National Wild and Scenic Rivers (Sec 603). Careful review of the 43 CFR 8340 regulations, promulgated in 1979 and amended in 1988, has revealed some inconsistency with the ANILCA Section 1110 special access provisions and the implementing ANILCA Title XI regulations found in 43 CFR 36, particularly in regard to use of snowmachines.

Areas established by ANILCA are opened to the use of snowmachines for traditional activities and for travel to and from villages and homesites, until closed through regulation (see 43 CFR 36.11(h) *Closure Procedures*). This appears to conflict with 43 CFR 8340 regulations which purpose is to establish criteria for designating public lands as open, limited, or closed to off-road vehicles (i.e., OHVs). It is unclear at this time how the BLM will address this issue, but it is clear that 43 CFR 36 regulations do apply to those areas discussed above. Application of the Alaska specific regulations is further evidenced by 43 CFR 36.11(g) *Off-road vehicles*, which

allows for designating routes and areas in accordance with Executive Order 11644 as amended, the basis of the 43 CFR 8340 regulations.

Further complicating this issue is the regulatory definition of off-road vehicle in 43 CFR 8340.0-5, which includes snowmachines. Consistent with ANILCA, the 43 CFR 36 regulations address snowmachines separately from off-road vehicles (e.g., 4 wheelers, or other types of summer use vehicles). In adopting the 43 CFR 36 regulations, Interior clarifies this distinction (Final Rule 51 FR 31619):

Another commenter suggested that snowmachines should be treated, except for subsistence purposes, similar to other ORVs, in that they should be restricted to designated areas and trails. Interior views this suggested revision as contrary to the specific statutory provisions for snowmachine use in areas which are limited only to use for traditional activities and for travel to and from villages and homesites. The statutory authorization is not limited by E.O. 11644.

A recent example of this regulatory inconsistency is the August 1999 Off-Highway Vehicle Areas for White Mountains National Recreation Area and Steese National Conservation Area, which followed the 43 CFR 8340 process, but failed to address 43 CFR 36 closure procedures.

Subsistence must also be given consideration in the OHV strategy. In order to address this issue, BLM must have a comprehensive understanding on what types of and how much OHV use currently occurs on and adjacent to BLM lands in Alaska. This understanding should be a prerequisite before any measures are imposed that would be more restrictive than current policy or regulation.

The BLM's use of the term off-highway vehicle (OHV), rather than off-road vehicle (ORV) as defined in the 43 CFR 8340 regulations is also confusing. We urge the BLM to strive for consistency in terminology as used in regulation.

The strategy information conveys the importance of public participation in developing the national OHV strategy and provides three avenues for public comment:

- An OHV mailer will be sent to people who contact the Comment Manager at the Bureau of Land Management Washington office;
- Comments may be submitted electronically through the national website at <http://www.blm.gov>;
- Comments will also be gathered at local or State "listening meetings" which will be held by BLM or BLM Resource Advisory Councils (RACs).

This process appears to put the burden on the public, as opposed to more rigorous circulation efforts to specific areas informing affected individuals and agencies of the strategy, meetings, and comment deadline. We note that only one listening meeting was scheduled for Alaska, which was held in Anchorage, a significant distance from large areas of BLM administered lands located in the interior, western, and northern reaches of the state. Based on this we are concerned about the level of public participation and representation in and around these areas.

In summary, we understand that the implementation of the BLM OHV strategy may not constitute a regulatory change, however, addressing the appearance if not the fact of conflicting existing federal regulations applicable to Alaska should be an integral part of that strategy. Wherever possible, a simple clarification that Alaska-specific regulations stemming from ANILCA are not superceded by more recent nationwide regulations would go a long way on this issue. In addition, collaboration with user groups as well as state and local agencies is essential to develop a viable OHV strategy. Based on this, we consider the November deadline for implementation of the BLM strategy to be somewhat impractical.

We look forward to assisting BLM in quantifying OHV use for recreation, subsistence and other public access purposes related to uses on land administered by BLM in Alaska.

Thank you for the opportunity to provide these comments. If you have any questions, please do not hesitate to call this office.

Sincerely,

/ss/

Sally Gibert
State CSU Coordinator

cc: John Katz, Governor's Office, Washington, D.C.
Pat Pourchot, Commissioner, Department of Natural Resources
Frank Rue, Commissioner, Department of Fish and Game