# A SUMMARY OF COMMENTS ON OFF-ROAD VEHICLE REGULATIONS 



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## OFF-ROAD VEHICLE REGULATIONS

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## EXECUTIVE SUMMARY

Energy, Mines and Resources (EMR) is responsible for addressing recommendation 14 from the 2011 report by the Select Committee on the Safe Operation and Use of Off-road Vehicles (ORV). EMR has amended the Territorial Lands (Yukon) Act, released a discussion paper on regulating off-road vehicles, and held a 60-day consultation period to obtain feedback and input on moving forward with the development of ORV regulations.

Following consultation, EMR reviewed feedback from respondents and prepared this report to summarize the 300 -plus written comments received as well as verbal comments from engagement meetings. During the consultation process, EMR heard from many types of land users and how they use public lands in the Yukon.

What we learned during consultation is that many Yukoners support the concept of regulating ORVs but also want to see balance with regards to ORV restrictions. For example, many respondents suggested grandfathering existing roads and trails; while ecologically sensitive areas such as wetlands and alpine should be protected from ORV use.

We also heard the following concerns during consultation and consider them to be the primary concerns raised amongst respondents:

- Without a proactive comprehensive land management plan, ORV damage will continue to occur in areas previously undisturbed.
- ORV restrictions should apply to everyone equally. There should be no preferential treatment for certain user groups as ORV damage is ORV damage.
- The development of ORV regulations may impact Yukoners' way of life and ability to access Yukon's backcountry.
- The majority of respondents felt Yukon government is responsible for reviewing management plans and making recommendations and should not devolve its responsibilities.
- ORV users need to be educated on the ecological damage that ORVs can cause. Education should occur in a way that fosters environmental values and ethics.
- Some respondents felt it is not feasible to regulate ORVs across Yukon and that it would be an impossible task for enforcement officers. Users could potentially take advantage of the lack of enforcement.
- ORV registration and licensing should be a requirement; without this requirement, Yukon government will not be able to effectively enforce ORV regulations.
- The proposed fines are too low and will not act as a deterrent to ORV users.

Information provided during consultation will be taken into consideration while drafting the off-road vehicle regulations.

## INTRODUCTION

In 2011, the Select Committee on the Safe Operation and Use of Off-road Vehicles (ORV) tabled its report in the Legislative Assembly. The report included 14 recommendations related to safe operation of ORVs and protection of the environment from damage caused by ORVs.

As part of implementing these recommendations, the Department of Energy, Mines and Resources (EMR) is responsible for addressing recommendation 14 from the Select Committee's report.

## Recommendation 14 reads as follows:

THAT, off-road vehicle legislation and regulations provide for the ability to mitigate environmental damage and cumulative negative impacts to sensitive wildlife and fish habitats. Ensure that legislation and/or regulations provide for the ability to restrict the growth of trail networks in sensitive areas, to close trails or overused areas as necessary, to exclude off-road vehicles from specific types of land or habitats, and to have certain areas designated as access routes only;

THAT, environmental and access restrictions be implemented in areas where problems exist or are developing and, when not required for wildlife or environmental protection, efforts be made not to reduce access to existing use areas;
THAT, government review penalties for environmental damage caused by any method, motorized or non-motorized means, to ensure penalties are appropriate. The Committee further recommends that government take steps to improve public awareness of these penalties; and

THAT, government consider separate environmental protection legislation that targets and penalizes environmental damage rather than restricting specific users.

In December 2013, Yukon government (YG) amended the Territorial Lands (Yukon) Act to put in place management tools for "protecting the ecological balance or physical characteristics of an offroad vehicle management area" which included the ability to create ORV management areas and to issue 90 -day protection orders. This Act amendment also allowed for the future development of regulations that would provide the necessary implementation tools to review, create, manage and enforce ORV management areas and 90-day protection orders.

An ORV management area is an area of territorial land that has been identified as requiring protection or remediation from damage caused by ORVs. This does not include municipal, federal or First Nations Settlement Lands.

The introduction of protection orders will allow the Minister of Energy, Mines and Resources to issue a protection order for a period of 90 days to give EMR time to assess what needs to be done to manage and protect an area from ORV damage.

Subsequently, EMR is in the process of developing a set of supporting regulations. As part of this process, EMR released a discussion paper to assist in obtaining feedback and input from First Nations, stakeholders, and the public on a number of issues surrounding the development of ORV regulations for Yukon. Feedback obtained through this process will help YG develop a set of ORV regulations that gives consideration to the multitude of users that could be affected by these regulations.

## PUBLIC INPUT

Invitations to comment on the proposed ORV Regulation Discussion Paper were sent to: settled, non-settled and transboundary First Nations, renewable resource councils, non-government organizations and stakeholders.

In addition, the opportunity to comment was advertised to the general public via newspaper advertisements, the Department of Energy, Mines and Resources website, social media and a news release. The public engagement period began on April 24, 2015 and ended on June 22, 2015. At the requests of First Nations, Yukon government extended First Nation consultation as well as consultation with the renewable resource councils and the Yukon Fish and Wildlife Management Board until September 30, 2015.

The following respondents provided written feedback: Alsek Renewable Resource Council, Canadian Parks and Wilderness Society - Yukon Chapter, Dawson District Renewable Resource Council, Ducks Unlimited Canada, Inconnu Lodge, Kluane First Nation, Listers Motor Sports, Mervyn's Yukon Outfitting, North Curl Outfitters, Ta'an Kwäch'än Council, Teslin Renewable Resource

Council, Teslin Tlingit Council, Tr’ondëk Hwëch'in, Trails Only Yukon Association (TOYA), Yukon Conservation Society, Yukon NDP Caucus, Yukon Stone Outfitters. An additional 68 written comments were received from the public.

Additionally, EMR personnel also attended consultation meetings with: Alsek Renewable Resource Council, Laberge Renewable Resource Council, Mayo Renewable Resource Council, Riverdale Community Association, Trails Only Yukon Association (TOYA), and the Yukon Fish and Wildlife Management Board.
Moreover, between April and June 2015, TOYA also conducted two separate surveys regarding ORV use in the Yukon. TOYA sent EMR 127 responses to an ORV questionnaire drafted by TOYA and handed out at the Whitehorse trade show (May 1-3, 2015) and an additional 216 responses submitted to EMR directly from an online survey. While the majority of comments submitted to TOYA were not specific to the discussion paper, some key points were identified as important to note and have been incorporated into this report.

## RESULTS

While the discussion paper presented a series of policy questions to consider in the development of an ORV regulation, many respondents provided comments of a general nature or not specifically related to each and every question.

This document summarizes comments received for each discussion item. Comments received that did not fit into one of the discussion item categories have been summarized later in the document under general comments.

It should be noted that many of the comments that were received during the public consultation period are consistent with comments received by the Select Committee on the Safe Operation and Use of Off-road Vehicles.

## $\odot$ <br> DISCUSSION ITEM <br> $\square \sim \Delta \square \square \square$




## DISCUSSION ITEM 01 WHAT FACTORS SHOULD BE CONSIDERED WHEN MAKING A PROPOSAL FOR ORV MANAGEMENT IN AN AREA?

We believe that certain circumstances should be considered for the designation of an area as an ORV management area and/or a protection order.

The factors should:

- Identify situations where there are actual or potential problems, and allow for adequate assessment when an area requires temporary or longer-term protection; and
- Enable the review and evaluation of proposals.

We need to decide what types of factors would assist with the identification of areas that require protection; for example:

- Physical characteristics which indicate environmental damage due to ORV use:

Increase in trail density, braided trails, trail widening;

Silting in streams and lakes;
Altering hydrologic/drainage patterns;
Mud bogs, gullying; and
Soil erosion.

- Ecological balance concerns which indicate environmental damage due to ORV use:

Wildlife disruption and/or displacement;
Trails in sensitive/critical wildlife and fish habitats, including breeding, nesting and spawning areas;

Devegetation and changes in vegetation (including introduction of invasive species); and

Trails into areas of sensitive vegetation including alpine and subalpine, riparian areas and permafrost features.

- While this management tool is not intended to address user conflicts, or other values such as heritage resources, to the extent that current use of the area affects the environment, the following may be considered:

Third party interests:
, Bona fide commercial operators such as mining, big game outfitters and trappers;
, Existing recreational users such as hunters and backcountry enthusiasts.

First Nations:
, Right of access for traditional harvesting or other uses.

Please tell us if you think these factors are sufficient, or if there are other circumstances that should be considered. Are there factors listed above which should not be considered.

## SUMMARY OF COMMENTS RECEIVED

- The majority of comments received were in support of regulating ORV use and cited the above factors proposed by YG were sufficient. Suggestions for additional factors to be taken into consideration are:

Impacts of noise disturbance resulting from ORV use.

The risk of invasive plant species being introduced to new areas by ORVs.

Potential of shifting ORV damage from one location to another by creating an ORV management area specific to one area and leaving adjacent areas unmanaged.

Need to educate ORV users on impacts to sensitive ecosystems and wildlife.

Different types of ORVs can create different types of environmental impacts. In other words, not all ORVs are designed alike and limitations vary from ORV to ORV (for example, Argos have the ability to cross water bodies where ATVs do not have that ability).

- It should be noted that not all respondents were supportive of the proposed factors. A number of them felt that the proposed factors were not sufficient, too broad or too complicated, and do not align with the Select Committee Recommendations.
- There was significant opposition to the proposed preferential treatment for certain user groups. Respondents felt that management of ORVs should apply equally to all users.
- There were concerns about non-resident ORV users coming here for recreation and the damage they are causing.
- Some respondents felt that user conflict is an important issue that needs to be addressed as well as the effects of ORV use on other land users (e.g. hikers).
- There were concerns that the development of ORV regulations will impact Yukoners' way of life and potentially the ability to hunt and gather food to support families.
- While most respondents were in support of protecting wetlands and alpine areas, there were respondents that were strongly opposed to this concept.
- ORV regulations need to have clear and concise definitions.


## (2) <br> DISCUSSION ITEM




## DISCUSSION ITEM 02 WHO CAN MAKE A PROPOSAL FOR A MANAGEMENT AREA?

We need to decide who can make a proposal for a management area or report an area that they think needs protection. Our view is that anyone should be able to do this. We also think any group, organization or government body should be able to make suggestions.

Please tell us who you think should be able to suggest or report on which areas should become management areas.

Do you support this recommendation? Who can report or make a proposal? Do you have additional thoughts?

## SUMMARY OF COMMENTS RECEIVED

- The majority of respondents agreed that any person, government or organization should be able to make a proposal for a management area or report an area that they believe needs protection. It should be noted that many respondents did not comment on this discussion item.
- Decisions to move forward to a management plan proposal should be science and fact based.
- Some responses suggested that anyone should be able to report a problem; however, an application to move forward on a management plan should be completed by either a professional, nongovernment organization or a government using set criteria.


# (3) <br> <br> DISCUSSION ITEM <br> <br> DISCUSSION ITEM <br> <br> DECISIONS 

 <br> <br> DECISIONS}



## DISCUSSION ITEM 03 HOW WOULD DECISIONS BE MADE ABOUT ORV MANAGEMENT AREAS?

Areas proposed for ORV management may be proposed for:

- Small, site-specific features,
- Large areas,
- Areas used by only a small number of individuals, or
- Areas used by many people or user groups.

Though not required in all cases, areas that have multiple users - hikers, ATV riders, First Nations or traditional use, hunters, fishers, outfitters, miners, tourism operators, etc. - may benefit from an ORV management planning process involving all stakeholders in the management of the area.

While a "management area" designation is not intended to address user conflicts, management planning can help address these issues. This planning process is one of the ways that you will be able to input into the decisions for an ORV management area.

A trail plan outlines certain restrictions and/ or operating conditions that can apply to all or separate portions of the ORV management area. An ORV management plan may recommend that a trail plan be developed for an area. Other management plans, including habitat protection area management plans, territorial park plans, local area plans or regional land use plans, also could provide recommendations with respect to the establishment of an ORV management area.

We are considering the idea that a third party may conduct a review, carry out the public input required for this planning process, and provide recommendations. For example, the Yukon Fish and Wildlife Management Board (YFWMB), local renewable resources councils (RRCs), regional land use planning commissions, local area planning committees and park management committees could play a role.

Who do you think should review and provide recommendations on a management plan? Should this be done by government or a third party? If a third party; which board or organization? Do you have additional thoughts?

## SUMMARY OF COMMENTS RECEIVED

- The bulk of comments received suggested that YG is responsible for this process and should not devolve its responsibilities. Respondents also suggested that input from third parties should be sought as part of the decision-making process.
- The majority of respondents feel that RRCs and other third parties are not suited to carry out this role as they are too close to the issue and may bring bias to the decision-making process.
- Other comments received suggested that no one entity is best suited to manage this issue and suggested that a committee or board be formed with broad representation to cover all user groups.
- A number of comments received stated government is responsible for such decisions but respondents are concerned with how YG will handle this responsibility given its track record with the Peel and the 2014 amendments to the Motor Vehicles Act.
- Several RRCs expressed concerns about the notion that they would be responsible for reviewing management area proposals as it is not their mandate and that RRCs do not have the capacity or financial means to carry out such a role.
- A couple of RRCs were in support of conducting local reviews and making recommendations on ORV management areas providing funding and resources were made available.
- One respondent suggested YG use a similar process used to review spot land applications.
- Several respondents feel that the Department of Environment is better suited to manage this issue than the Department of Energy, Mines and Resources.
- Respondents would like to know how YG plans to manage ORV use across all departments involved (e.g., Highways and Public Works, Environment).
- A couple of respondents suggested that the review process be led locally by a board or committee rather than government, as a local organization will have a better understanding of environmental factors, local interactions and potential impacts.
- Regardless of who is tasked with the decisionmaking process, set criteria need to be developed to ensure consistency across the territory.

DISCUSSION ITEM
RESTRICTIONS



## DISCUSSION ITEM 04 WHAT TYPES OF ORV RESTRICTIONS COULD BE INCLUDED IN A MANAGEMENT PLAN?

We may develop regulations in order to flesh out acceptable reasons for restricting the use of ORVs in an area as well as methods of restrictions and timeframes, for example:

- Seasonal/time sensitive or permanent restrictions or prohibitions on the use of ORVs;
- Operating conditions for trails;
- Permitting system to allow for managed continued use;
- Trail plans that could identify areas of access or restrictions/prohibitions and whether regulations would apply to all or part of a ORV management area; and
- Conditions that could apply to a class of ORVs.

Examples of these types of restrictions include:

- Restrictions during spring thaw and late fall freeze up in order to prevent significant rutting and gouging of trails;
- Restrictions during periods of calving, lambing or spawning in sensitive habitats;
- A requirement for ORV users to stay on existing trails, i.e. no new trail development;
- Establishment of trail heads where ATVs are parked and people continue on foot into the sensitive areas;
- Establishment of designated trail(s) into an area;
- Restrictions on stream/water crossings;
- Restrictions on the type of vehicle, for example heavier vehicles, or vehicles that exert higher pressure on the ground; or
- Prohibition of ORV use in an area.


## SUMMARY OF COMMENTS RECEIVED

- Most respondents were in support of the proposed restrictions and made the following suggestions:

Implement development corridors (e.g., ORV use is not permitted within 8 kilometres of the Dempster Highway except for the Hart Mine Road).

Use game management sub-zones as management area boundaries.

Make registering and licensing of ORVs mandatory.

Education should be mandatory and part of the registration and licensing process (similar to the system used for Pleasure Craft Operators).

ORV restrictions should be by type, weight and capability (Argos and quads vary significantly in capabilities and places they can go).

Temporary restrictions should be put in place for nesting sites as well as calving, lambing and spawning areas.

Existing trails and roads should be grandfathered especially in areas where potential for environmental damage is low.

Allow for temporary trail closures during wet periods.

Create designated access points, roads and trails.

Consider developing site-specific restrictions rather than a blanket withdrawal approach or all out ban.

Create voluntary closure zones or areas of concern (this approach is used by the Department of Environment to manage wildlife during periods of big game harvesting)

- Several responses received were opposed to the proposed restrictions citing the restrictions are not feasible and will be too difficult to enforce.
- We heard from several individuals who were concerned the proposed restrictions will directly impact their way of life.
- Many respondents are concerned that YG will not be able to enforce the proposed restrictions and the regulations will not be taken seriously.


## $\rho$ <br> DISCUSSION ITEM MANAGEMENT AREAS




## DISCUSSION ITEM 05 WHAT WOULD AN ORV MANAGEMENT AREA LOOK LIKE?

An ORV management area could vary in size depending on the damage or potential damage due to use of ORV in the area. An area proposed for ORV management could be a discrete wetland, a river valley, or an alpine area. For this reason we recommend that a combination of methods be used, such as:

- Some type of readily recognized mapping system be used to describe the area such as the Wilalife Act game management units;
- Land use plan "landscape management units";
- Zones described in habitat protection area plans, territorial park plans or local area plans; and
- Site-specific maps or metes-and-bounds descriptions.

Do you support these types of restrictions? Do you know of examples of ORV restrictions in other jurisdictions that may be applicable? Do you have additional thoughts?

## SUMMARY OF COMMENTS RECEIVED

- While the majority of respondents supported the proposed restrictions, many would like to see a proactive approach taken towards managing ORV use and feel that a complaint-driven process will not work. Other individuals felt that a complaintdriven process is the most practical way to addressing ORV issues due to the size of the territory, lack of funding and resources to enforce.
- A large number of respondents would like to see a comprehensive ORV management plan for the entire territory. At the same time, respondents also acknowledged that not all areas in Yukon are the same and some areas may require a sitespecific management plan.
- Many respondents were concerned that without a comprehensive territory-wide ORV management plan, ORV damage will move from an area managed through a plan to an area that is not managed by a plan resulting in further destruction of sensitive habitat. The thinking is that once one area has an ORV management plan, ORV users will move to an adjacent area and continue their activity unchecked.
- Some respondents suggested that ORV management areas need to have geographically distinct boundaries that are easily identifiable and can be mapped at a large scale.
- One respondent suggested using regional landscape management units would be a better choice than game management zones (GMZ) as GMZ were designed for sheep management and that GMZ often border sensitive habitats such as riparian areas.
- A number of respondents said that they would only support ORV restrictions in high pressure areas such as the Whitehorse periphery.
- Not all respondents were in favour of the proposed restrictions and suggested that educating ORV users would be a better way to go.
- Several respondents suggested YG review what other jurisdictions are doing (B.C. and Alberta) and incorporate what they can into a YG plan to speed up the process.


# 06 <br> DISCUSSION ITEM NOTIFICATION 




## DISCUSSION ITEM 06 HOW WILL I KNOW IF AN AREA HAS BEEN DESIGNATED AS AN ORV MANAGEMENT AREA OR WHEN A PROTECTION ORDER IS IN PLACE?

Notification is required for both a protection order (90 days) and an ORV management area. We are considering how this notice should be provided to you, and we are suggesting the following:

- Signage posted on trail(s) as required;
- Ads in local newspapers;
- Information posted on some government websites such as EMR and Department of Environment;
- Information available at government offices such as EMR Land Management Branch and local Compliance Monitoring and Inspections offices, Highways and Public Works Motor Vehicles offices, Department of Environment, Conservation Officer Services branches;
- Information available at Renewable Resources Council offices; and
- Information in government publications commonly used by ORV users.

Do you support the use of these methods of notification? Do you have any other ideas for how we can get the information to you?

## SUMMARY OF COMMENTS RECEIVED

- Many of the comments received supported the proposed methods of notification. Respondents provided the following suggestions as alternative ways of getting information out:

Add ORV restrictions to the Hunting and Fishing Regulations Summary and teach it in training courses like the Hunter Education and Ethics Development (HEED).

Use social media.
Broadcast over the radio.
Have downloadable GPS coordinates.
Create an ORV closures/restriction layer and make available on the map services website.

Create a database for ORV users to receive automatic notifications.

Have maps available at local campgrounds and information kiosks.

Create an app that provides up-to-date information on management areas.

- A number of respondents are concerned that posting signs at the start of trailheads will only lead to vandalism and more debris in the backcountry. Signs/gates may also result in the creation of new access points.
- Some respondents felt that newspapers are a thing of the past as most young people do not read newspapers. In addition, posting regular ads in the newspapers would be costly.


## 07

## DISCUSSION ITEM ENFORCEMENT




## DISCUSSION ITEM 07 HOW WILL ORV MANAGEMENT AREAS BE ENFORCED?

Yukon government can designate individuals or groups of individuals to enforce the provisions of the act pertaining to ORV use. This includes Conservation Officers and Park Officers (Department of Environment) and Natural Resource Officers (Department of EMR).

You can help officials with enforcement, as public reporting has proven successful in supporting enforcement initiatives such as the anti-poaching efforts under the Wildlife Act.

Public education and publication of the location of areas will be required. The public review process undertaken before designating an area will help spread the message about the ORV management objectives in an area and about assisting with enforcement.

- Offences under the Territorial Lands (Yukon) Act will be added to the Summary Convictions Act.
- Regulation so that tickets may be issued for offences under the new provisions.
- What fine amount do you think would be appropriate for using an ORV in contravention of a provision in the regulation? \$25.00, \$100.00, \$125.00, other.


## SUMMARY OF COMMENTS RECEIVED

- The majority of comments received suggested that fines need to be large enough to deter ORV users from committing an offence. Many feel that the proposed fines are too low and will not act as a deterrent.
- A large number of respondents said they would like to see fines increase for multiple offences, give enforcement officers the ability to confiscate ORVs and in extreme cases offenders should face jail time or community service hours.
- Many respondents are concerned that without ORV registration and licensing YG will not be able to effectively enforce ORV regulations.
- Several respondents suggested using a "Tip Line" to report violations.
- Most respondents are concerned YG will not have the capacity or funds for effective enforcement.


## GENERAL COMMENTS

The following is a summary of general comments received during the ORV consultation period that were not specific to one of the discussion items.

- A number of comments received stated that the timing of the public consultation process was poorly planned and the material provided was insufficient.
- A large number of respondents stressed that education on ORV use is extremely important and needs to happen sooner than later.
- Many respondents would like to know how YG is planning to enforce this regulation as very little information has been conveyed.
- Most Yukoners feel that YG is taking too long to develop the ORV regulations.
- Several respondents want to know why ORV use falls under the Territorial Lands (Yukon) Act and not the Wildlife Act.
- Why is YG focusing on habitat and not wildlife? Discussions pertaining to the impacts of ORV use on ecologically sensitive areas should acknowledge the close association between habitat and wildlife.
- Many individuals wanted to know why government excluded snowmobiles/ snowmachines from ORV regulation development.
- ORV management areas shouldn't only be focused on areas around communities. What about flyin trips for commercial wilderness, big game outfitters, mineral exploration? These operators fly into some of the most pristine wilderness Yukon has and are causing significant damage on wildlife populations using ORVs as part of their business.
- It would be great if YG would incorporate all ORV management requirements into one document to make it easier for ORV users to understand the rules rather than tracking them down Act by Act.
- How will the government deal with out-ofterritory users who come here to tear up the terrain?
- Voluntary closure zones are used for wildlife management by Department of Environment; perhaps this is something that might work for ORV use.
- ORV registration and licensing should be mandatory; why was this requirement/ recommendation watered downed in the Motor Vehicles Act amendments?
- The 2014 amendments to the Motor Vehicles Act have upset many respondents as these amendments are not in-line with the recommendations of the Select Committee on the Safe Operation and Use of Off-road Vehicles.
- Regulations and educational material needs to be concise and clearly written in plain language.
- YG needs to provide and support education relating to ORV use in the back country so that it fosters ethics and values as normal practice. Enforcement and regulations are not the only means to promote more responsible ORV use.
- YG should have done more extensive public consultation on ORV regulation development which should have involved public meetings.
- In order for YG to effectively manage ORV use, YG needs to collaborate with other departments in Yukon government such as, Highways and Public Works, and Environment to ensure ORV use is being dealt with on all fronts. This would be reflected in ORV management plans being implemented through the Motor Vehicles Act, Wildlife Act as well as the Territorial Lands (Yukon) Act.
- Yukon government is taking too long to implement recommendation 14.


## NEXT STEPS

With the completion of this document and circulation to First Nations, RRCs, stakeholders and other interest groups, YG representatives will start drafting the ORV regulations taking all feedback received into consideration.

Once YG has drafted the ORV regulations, the draft regulations will be circulated to First Nations for review before they are finalized for approval. When approved, the new regulations will be available on EMR's website and mailed to First Nations, RRCs, stakeholders and interest groups.

Energy, Mines and Resources

