

**To:** Michael Draper, Sustainable Resources Legislation Advisor and Negotiator  
**From:** Active Trails Whitehorse Association (ATWA)  
**Re:** Regulating Off-Road Vehicles in Yukon: Feb 2019 YG Proposal and Questions  
**Date:** March 26, 2019

**Introduction:**

“Government policy is not contained within the reports and reviews it commissions; government policy *is* the reports and reviews. By commissioning endless inquiries into the problem and the means by which it might be tackled, the government creates the impression that something is being done, while simultaneously preventing anything from happening until the next review (required to respond to the findings of the last review) has been published. Governments will pursue this course of inaction – irrespective of the human impacts – while it remains politically less costly than the alternative.” (Comments of Mathew Prescott and George Monbiot from the book *Heat: How to Stop the Planet from Burning (Anchor Canada edition 2007)* by George Monbiot P. 213/214)

The above summarizes the history of government ORV (snowmobile and ATV) regulation and legislation in the Yukon Territory.

**Suggestions:**

- A) It is essential that both snowmobiles and ATVs are included as Off-Road Vehicles (ORVs) when proposing regulations that deal with safe, responsible ORV use, and the protection of our environment. Otherwise the current regulating process will be less than adequate. The public wants consistency in legislation and regulation as evidenced by the very documents that have been provided in this ORV regulatory review as *Relevant References*.
- B) While carrying out the current regulatory process concerning ORV Management Areas, the Government of Yukon should take the time to review the first thirteen recommendations of the *Select Committee on the Safe Operation and Use of Off-road Vehicles* to determine if each has been implemented, and if so, how effective each has been to achieve the stated goal of the Select Committee. It should then rectify the problem areas.

**Why A & B?**

Over nine years ago (Nov. 18 2009) the government of the day established the *Select Committee on the Safe Operation and Use of Off-road Vehicles*. “The Committee [was] charged with conducting public consultations [in order to make recommendations] on the safe operation and use of all-terrain vehicles *and snowmobiles* in the territory.” The *Select Committee* came up with fourteen recommendations that were supposed to be applicable to *both* snowmobile and ATV operation. These fourteen recommendations are listed at the end of this document. (See P. 16)

The *Regulating Off-Road Vehicles in Yukon: Proposal and Questions* document implies that the first (rather weak) thirteen recommendations of the *Select Committee Report* have been effectively addressed. This is certainly arguable. They may indeed have been *addressed*, but one could well argue they were not *effectively* addressed.

These recommendations are found on pages 16-18 of this document. A brief review of each follows.

**Recommendation #1:** Although this statement somewhat difficult to interpret, it may simply mean that legislation and regulations concerning ORVs, should pertain to all citizens of Yukon and to all Yukon visitors who are operating their ORVs on public lands. The fact that the Government of Yukon does not include snowmobiles as ORVs, leads one to suspect that regulations and legislation that apply to ATVs may not apply to snowmobiles, even though their operators use public lands, as do the owners of ATVs.

**Recommendation #2:** This recommendation implies that there should be *consistency in any legislation and regulation* pertaining to the various types of ORVs including snowmobiles and ATVs. Yet, the Government of Yukon's proposal to address *Recommendation #14* does *not include* snowmobiles.

**Recommendation #3 and #4:** These recommendations suggest that there was to be an *extensive* educational and advertising campaign about regulations, penalties, environmental stewardship and responsible use of ATVs and snowmobiles. One would think that the public would see these campaigns occurring on a regular basis at the start of both the ATV and snowmobile season. However, ATWA has yet to notice any significant improvement in the dispersal of information "about regulations, penalties, [and] environmental stewardship" applicable to operators of ATVs and snowmobiles.

**Recommendations #5, #6, #7 and #9:** Completed, but in doing so the government *weakened* the then existing regulations pertaining to ORV and snowmobile use in the Yukon. As a result of the November 2014 amendments to the *Motor Vehicles Act*, Whitehorse revised its Snowmobile and ATV Bylaws in February 2015 *to maintain* the requirements of a driver's licence, insurance, registration and licence plate for snowmobiles and ATVs operated anywhere in the City.

**Recommendation #8:** If this was ever done it certainly did not result in any meaningful improvements. All the government of the day did was weaken the existing regulations with regard to ATV and snowmobile use when it amended the MVA in 2014.

**Recommendation #10:** Perhaps the current government could enlighten the public on what was actually done to "encourage and support voluntary driver training on the safe and environmentally responsible operation of ATVs and snowmobiles."

**Recommendation #11:** This has not been effectively addressed.

**Recommendation #12:** At least now, helmets must be worn at all times for anyone under the age of 16 when operating a snowmobile or ATV. However, the only time those 16 and over are required to wear a helmet is when they are crossing or riding on a maintained roadway/highway.

**Recommendation #13:** It seems obvious that this has not been done. As mentioned, changes to the MVA in 2014 forced the City of Whitehorse to revise both its Snowmobile Bylaw and ATV Bylaw. Weak territorial legislation and regulations with regard to ATVs and snowmobiles make it more difficult for municipalities such as Whitehorse to enforce bylaws pertaining to these vehicles.

It is fortunate that municipalities such as Whitehorse can choose to have much stronger legislation/regulations concerning the use of snowmobiles and ATVs than that of the territorial government. However, this fact makes the Government of Yukon's weaker and ineffective approach to ATV and snowmobile legislation and regulation all the more conspicuous.

The *Select Committee Report* contained the following comment: "It was pointed out that had Yukon addressed the ATV/snowmobile issue ten or even twenty years ago, the broad conflicts that exist today (2011) between off-road vehicle (ORV) users and non-users would not be as acrimonious as witnessed in public meetings, surveys and submissions." (P. 9)

Despite the above comment, and even though "The Committee [was] charged with conducting public consultations [and was to make recommendations] on the safe operation and use of all-terrain vehicles *and snowmobiles* in the territory," the concerns continue to exist and are further inflamed when successive governments (both territorial and municipal) fail to deal effectively with the issue.

Logic would suggest that a review of the obvious failures of many of the recommendations of the *Select Committee*, to effectively address the snowmobile/ATV issue would be appropriate before embarking on yet another proposal that may well lead us into more controversy.

Indeed, the January 2016 Government of Yukon report entitled, *A Summary of Comments on Off-Road Vehicle Regulations* indicated that many respondents were upset with the 2014 amendments to the Motor Vehicles Act, "as [the] amendments [were] not in-line with the recommendations of the *Select Committee on the Safe Operation and Use of Off-road Vehicles* (snowmobiles and ATVs)." P. 33

Others, in suggesting that "ORV registration and licensing should be mandatory," wondered why "this requirement [was] watered down in the Motor Vehicles amendments" of 2014. P. 3

As the *A Summary of Comments on Off-Road Vehicle Regulations* stated, “Many individuals wanted to know why government excluded snowmobiles/ snowmachines from ORV regulation development,” since the original intent of the Select Committee was to deal with the “safe operation and use of all-terrain vehicles and snowmobiles in the territory.” P. 32

Brad Cathers and three other MLAs who toured the territory in 2011 “to gauge public opinion on how ATV and snowmobile use should be regulated, [found] that while the issue of regulating access to Yukon's backcountry is an emotional issue for many people, *giving snowmobile and ATV users unrestricted access to the wilderness could lead to immense damage*, particularly as the territory's population grows.” (See <https://www.cbc.ca/news/canada/north/yukon-off-road-vehicle-report-draws-criticism-1.993608>).

The *Off Road Vehicle Regulations Workshop* of Dec. 5 & 6 2017 stated that “Snowmobiles, although not included in Yukon government’s definition of ORVs, also have impacts on wildlife, by disturbing wildlife and creating trails for predators.” P. 7

“Participants also wanted to see that ORV regulations included snowmobiles. Many participants, especially First Nations, noted that snowmobile trails and activities have negative impacts on wildlife in the winter. Many First Nations participants felt snowmobiles should be included in the ORV regulations.” P. 10

We are often told, “snow cover prevents environmental damage.” This is simply incorrect. Snow cover may mitigate (make less severe) environmental damage, but it will never prevent environmental damage. Snow depths are inconsistent and vary from year-to-year and month-to-month in the winter season. Snow depth is also dependent on the type of terrain, exposure to wind and sun, and aspect. (South facing slopes receive far more sunlight than North facing ones.)

The *Select Committee Report* makes the following statement: For the purposes of this report, the term “all-terrain vehicle” (ATV) does not include snowmobiles. The term “off-road vehicle” (ORV) includes *both* all-terrain vehicles and snowmobiles.” So the intent was that all fourteen recommendations were to apply to both ATVs and snowmobiles. Yet our current government seems bent on completely ignoring *Recommendation #2* of the *Select Committee Report* in order to deal with *Recommendation #14*.

The failure to include snowmobiles in regulations dealing with ORV use in the Yukon sadly weakens this regulatory review. It also contravenes the original intent of all fourteen recommendations of the Select Committee, namely that all of those recommendations be applicable to both ATVs and snowmobiles. This failure reflects the continuation of successive governments lack of consistency with regard to ORV (ATV and snowmobile) regulation and legislation.

## **Suggestions concerning the Regulating Off-Road Vehicles in Yukon document:**

- A) Add the following to the list of negative impacts of ORV use listed in the *Regulating Off-Road Vehicles in Yukon: Proposal and Questions* document:
- ORVs are major carriers for non-native invasive plant species
  - ORVs can cause water contamination
  - ORVs can start wildfires
- B) Snowmobiles should be included in this regulatory review as they have much the same impacts on our environment.

### **Why A?**

In Alberta officials are so concerned with the threat of invasive plant species that “off-highway vehicles [operators] are requested to remove any vegetation or clumps of mud or debris from the vehicle and thoroughly clean the underside of vehicles, tires, and parts before moving to another area.” (See [https://www.alberta.ca/motorized-recreation-on-public-land.aspx?utm\\_source=redirector](https://www.alberta.ca/motorized-recreation-on-public-land.aspx?utm_source=redirector).)

In *A Summary of Comments on Off-Road Vehicle Regulations* it is mentioned that “Devegetation and changes in vegetation (including introduction of invasive species)” can occur as a result of ORV use of public lands.

The *ORV Workshop Summary Report* states “ORVs can create problems with pollution, litter and *invasive species*.” P. 7

It is obvious that all types of ORVs including snowmobiles can cause water contamination. There are numerous studies that will support this contention. A U. S. Geological Survey study is one of them. (See <https://pubs.usgs.gov/of/2007/1353/report.pdf> P. 25.)

Given the concern here in Whitehorse and the Yukon with regard to forest fires, new Yukon regulations with regard to ORVs may want to consider the following:

*Victoria: Thursday, March 22, 2018 9:30 AM*  
(<https://news.gov.bc.ca/releases/2018FLNR0044-000479>)

“Effective immediately, the British Columbia government has increased some wildfire-related penalties up to \$100,000, to assist with fire prevention and discourage irresponsible off-road vehicle use, Doug Donaldson, Minister of Forests, Lands, Natural Resource Operations and Rural Development, announced today.

These changes reflect the tougher stand that our government is taking to eliminate unnecessary wildfire risks, encourage compliance, protect communities from harm and help keep British Columbians safe, said Donaldson.

### **Spark arrestors required for off-road vehicles (ORVs):**

- All off-road vehicles are now required to have a spark arrestor installed to reduce wildfire risks when operating on Crown land. A spark arrestor is a small screen or other device that is installed in an exhaust system to stop sparks or other exhaust residue from exiting the tailpipe.
- Many new models of ORVs already have a spark arrestor. Owners of older models that do not have spark arrestors will need to get them installed if they wish to operate the ORV on Crown land.
- A contravention could result in a violation ticket fine of \$460 or an administrative monetary penalty of up to \$10,000 if an ORV without a spark arrestor is operating at a time or place where there is a risk of a wildfire starting.
- If a wildfire starts, the operator could receive a violation ticket fine of \$575, an administrative monetary penalty of up to \$10,000, or a court fine up to \$1,000,000 and/or up to three years in jail. The person responsible could also be ordered to pay all firefighting and associated costs.”

Apparently, there are several other ways that ATVs (with or without arrestors) can start wildfires. Kevin Skrepned, chief fire information officer for the BC Wildlife Service, says “the heat from the exhaust system on an ATV can ignite a wildfire” so he suggests that operators stay out of tall grass and avoid idling their vehicles when in such areas.

He also asks people to “Keep in mind that grass can build up near the muffler and around the engine. When it dries, it may fall to the ground and start a fire . . . so stop often to inspect your ATV for grass and other debris.” (See [http://riderswestmag.com/atvzone/article/wildfire\\_safety\\_reminders\\_for\\_atvers.](http://riderswestmag.com/atvzone/article/wildfire_safety_reminders_for_atvers.))

### **Why B?**

Snowmobiles should be included in this regulatory review as their negative impacts are a mirror image of those of ATVs. Please refer to the following brochure entitled, *Snowmobiles and the Yukon Environment*, which outlines some of those impacts. One of the brochures sponsors is the Klondike Snowmobile Association. (See [http://yukonconservation.org/docs/Snowmobiles\\_and\\_the\\_Yukon\\_Environment.pdf](http://yukonconservation.org/docs/Snowmobiles_and_the_Yukon_Environment.pdf).)

How does the government classify dirt bikes that are converted into motorized snow bikes, or ATVs that by adding tracks are able to go through deep snow? (See <https://www.polaris.com/en-ca/snow/> and <https://www.atvrider.com/atv-snow-track-buyers-guide>). For the purpose of regulating what vehicles may be

permitted in ORV Management Areas, are they to be considered as snowmobiles or ATVs?

### **Government of Yukon (February 2019) Proposals:**

The Government of Yukon is “proposing a three-part approach [in order] to help ensure safe, responsible ORV use and protection for our environment.” (Regulating Off-Road Vehicles in Yukon, Proposal and Questions February 2019 P. 1-2)

One part of this approach would be the development of “an ORV regulation that would apply to ORV use on public land” under the existing Territorial Lands (Yukon) Act. (ibid., 2)

The second part would involve incorporating “ticketing and fines as additional enforcement tools (by amending the Summary Convictions Regulation).” (ibid., 2)

The third would “require the registration of ORVs for use in the backcountry.” (ibid., 2)

**1. YG Proposal:** “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.”

**ATWA Comment:** Why would the government *only* regulate ORVs *within* designated ORV Management Areas? The *Proposed Regulatory Framework for Off-Road Vehicle Use in Yukon* document makes the claim that “regulating ORV use in Yukon will help ensure safe, responsible ORV use and protection for our environment.” Yet, this protection will not extend to all territorial public lands, but only to a few designated ORV Management Areas. Are we to forget about the rest of our public lands?

Yes, there are Environmentally Sensitive Areas that should be identified for increased levels of protection, but we need effective regulatory measures that are applicable to all ORVs (including snowmobiles) operating on public lands. The current regulations are simply inadequate and, as a result, will certainly lead to increased environmental damage and the necessity to create more ORV Management Areas that will further restrict ORV use in the territory.

**2. YG Proposal:** “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.”

**ATWA Comment:** Yes, it will apply to all ORV users as defined by our government. As such, snowmobiles will not be included. As you may recall *Recommendation #2* of the *Select Committee Report* suggested there be “consistency throughout all

legislation and regulations governing the use of off-road vehicles (ATVs and snowmobiles) in the territory.” And yet, documents provided the public with regard to this review suggest that *Recommendation #2* has been addressed. It certainly is not going to be addressed when it comes to Recommendation #14.

How many reports, studies, papers, brochures, and public hearings does it take to make successive Yukon governments realize that snowmobiles can cause serious environmental damage? To not include snowmobiles as ORVs when dealing with Recommendation #14 is an abrogation of our government’s responsibility to “help ensure safe, responsible ORV use and protection for our environment.” (ibid., 1)

**3. YG Proposal:** “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).”

**ATWA Comment:** What form will such a proposal take? There has to be a process for making proposals, and that process must be clearly articulated to the general public. A standard document should be provided by the government and made available in both hard and digital form to groups, individuals, organizations, government departments, First Nations, and for those responsible for “government-approved land or natural resource management plans that wish to make a proposal for the creation of an ORV Management Area.

According to the YG Proposal “because this ORV regulation falls under Yukon’s lands legislation, it will address only the environmental impacts related to land, which includes surface and subsurface materials (including soil), vegetation and habitat, *but not to water, wildlife, or air*. This is a very confusing statement.

According to the dictionary, *habitat* is “the place or environment where a plant or animal naturally or normally lives and grows.” Would that not include the water, air, and wildlife around which a plant or animal “lives and grows?”

As well, is one to assume that the government will establish an ORV Management Area under one department, but another department will be responsible for handling the water, wildlife, and/or air components within that ORV Management Area? This needs additional explanation.

**4. YG Proposal:** “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.”

**ATWA Comment:** The relevant government department should do the initial evaluation of the proposal. It may add its own suggestions/comments as to the proposal. The proposal should then go to the applicable First Nation for its comments, and then to the general public, and interest groups for comment.

The concern is that this process will take much time. There may be occasions when a government needs to take immediate action to protect an area from further environmental damage. In such cases, it may be necessary to do one of the following:

**a)** Establish an ORV Management Area prior to a public review. The public review can follow and appropriate changes (if necessary) can be made to the ORV Management Area after that input.

**OR**

**b)** Create an intermediate step. The government, instead of arbitrarily establishing an ORV Management Area when immediate action is needed to protect an area, could simply shut the area down to all ORV use (including snowmobiles) until the process for its designation as an ORV Management Area is completed.

The Territorial Lands (Yukon) Act of 2013 authorizes the Minister, by order, to temporarily restrict or prohibit ORV use in an area *for a period of up to 90 days* “if necessary for the protection of the ecological balance or physical characteristics of the area.” This could serve as an intermediate step. However, there should be provision to extend the 90-day period if necessary.

**5. YG Proposal:** “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.”

**ATWA Comment:** None needed

**6. YG Proposal:** “The ORV regulation would enable an ORV Management Area to be divided into different geographic sections reflecting different rules for each section, if needed.”

**ATWA Comment:** None needed

**7. YG Proposal:** “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.”

**ATWA Comment:** Surely in the discussions that resulted in the designation of an ORV Management Area (see #4) the subject of restrictions or prohibitions pertaining to ORV use would have been raised, and by the conclusion of that process the government should be able to indicate what those restrictions or prohibitions will be.

Do not create a separate step. Combine #7 and #4 otherwise you are not going to get an ORV Management Area established in any reasonable length of time.

Please note that every time the government commences the process that may establish an ORV Management Area, there is going to be much controversy and animosity. One only needs to have attended the recent open house in Whitehorse to reach that conclusion. Those running the open house had to take down some of the comments posted around the room due to their inappropriate nature.

**8. YG Proposal:** “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 (for example – a local area plan or habitat management plan).”

**ATWA Comment:** Fine, but this should be considered at the same time as #4. So combine #4, #7, and #8.

**9. YG Proposal:** “An area-specific regulation would specify some elements to be included in the permitting process, including:

- A general permit would be required to use an ORV in an ORV Management Area;
- Special permits [would be granted] for users with certain rights/authorizations to use an ORV in a special ORV Management Area with customized terms and conditions;
- Duration of permit (annual, multi-year), permit fees, application requirements, scope of permit terms and conditions and how permits are issued.”

**ATWA Comment:** It is hard to address this statement and all that it entails. Why would our government establish ORV Management Areas in order to protect our public lands in general and sensitive ecosystems in particular from ORV use, and then provide general permits and special permits to allow their continued use by the same machines?

One expects the term *mitigate* would be used to justify the granting of such permits. In other words, the *powers that be* would say some ORV use could continue because we will be able to *mitigate* the environmental concerns. One should always remember that *to mitigate* means to make *less severe*.

There will be no real protection for any of these ORV Management Areas, as all will be open to snowmobile use for much of the year. Unless the government changes its archaic attitude with regard to the regulation of snowmobiles, its attempt to address the list of environmental concerns created by ATVs will ultimately fail, as most of those same concerns are also caused by snowmobiles.

In the City of Whitehorse, Environmentally Sensitive Areas (ESAs) are prohibited to *snowmobiles* and ATVs year-round, whether covered by snow or not, as per Whitehorse bylaws. At least in Whitehorse there is recognition that *both* snowmobiles and ATVs can have serious negative impacts on our environment.

**10. YG Proposal:** “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.”

**ATWA Comment:** This is somewhat confusing. If an area already includes restrictions on ORV use, which is enforceable due to an approved regional land use plan, then why would it be necessary to become an ORV Management Area? It would already be protected. In the unlikely scenario snowmobiles are excluded from the regional land use plan area in question, making it into an ORV Management Area would open it to snowmobile use.

The only reason for doing the above would be to strengthen the existing prohibitions and/or restrictions, not weaken them.

**11. YG Proposal:** “Make ORV registration mandatory for all ORVs owners using ORV Management Areas.”

**ATWA Comment:** The pamphlet *Regulating Off-Road Vehicles in Yukon* says, “it is important to be able to identify specific ORVs. This is usually done through registration and licence plates. Under Yukon’s existing motor vehicle and land legislation, options for requiring ORV registration are limited.” P. 8

Yes, the options are limited. In Yukon, the *Motor Vehicles Act* requires ORV operators to have the following: driver’s licence, insurance, registration & licence plate, and a helmet, for operating ATVs and snowmobiles *on or across a maintained roadway*.

Unfortunately, one would suspect that most ORV operators use their vehicles mainly in the backcountry, and may feel it onerous to go to the trouble and cost of obtaining insurance, registration, a licence plate, and perhaps even a driver's licence just to legalize their occasional use of *maintained roadways*.

Similarly, ORV operators are not going to be happy to register and license their ATVs just for the right to ride in an ORV Management Area, unless *all* their off-road activity is carried out in that particular area.

It is illogical to confine our efforts to simply protecting ORV Management Areas. We need sensible regulation that applies to all our public lands to protect them from irresponsible ORV (ATV and snowmobile) use.

Even if ORVs are entirely prevented from operating in certain ORV Management Areas, their operators will simply move somewhere else and the lack of workable regulations will lead to more irresponsible behavior.

The B.C. government believes registration and number plates on ATVs and snowmobiles is important as it "*will help enforcement officers better identify irresponsible ORV riders that endanger others, damage the environment or harm animals.*" It will also help in the location and identification of stolen vehicles, as well as lessen the ability for people to sell stolen machines, which may in turn reduce theft.

One will find the following remarks in the *Summary of Comments on Off-Road Vehicle Regulations* (from 2015 consultation):

"ORV registration and licensing should be a requirement; without this requirement, Yukon government will not be able to effectively enforce ORV regulations."

"Many respondents are concerned that without ORV registration and licensing YG will not be able to effectively enforce ORV regulations."

"ORV registration and licensing should be mandatory; why was this requirement/recommendation watered down in the Motor Vehicles Act amendments?"

The *Off Road Vehicle Regulations Workshop Summary Report* of the Dec. 5 & 6 2017 meetings heard the following comments: (Comments applicable to ATVs as the workshop did not address snowmobiles.)

"Strong support was expressed for mandatory ORV registration throughout Yukon."

"Almost all participants expressed support for mandatory ORV registration throughout Yukon. No comments were recorded in opposition to this."

"Registration should include getting a licence plate that is attached to the ORV."

“Registration should identify ORV ownership. If ownership changes, the registration also should change.”

“Registration will allow governments to have better information on ORV numbers and use in Yukon.”

“ORVs should be registered. Operators should be certified or licensed. ORV owners should have insurance.”

We should not forget *Select Committee* Recommendation #2 requested there be “consistency throughout all legislation and regulations governing the use of off-road vehicles (ATVs and snowmobiles) in the territory.”

Common sense would suggest that the Government of Yukon do what the City of Whitehorse was forced to do when amendments were made to the *Motor Vehicles Act* in 2014, which severely weakened territorial ORV (snowmobile/ATV) regulations. Whitehorse City Bylaws require operators of ATVs and snowmobiles to have the following: driver's licence, insurance, registration, and a visible licence plate, when operating within the City's boundaries.

In addition, operators using ATVs in Whitehorse must have a *Safe ATV Card* which is “issued by the City or a City-approved agency to a person who has paid a fee and has successfully completed and passed:

1. an ATV safety course with a mark of 80% or higher; or
2. an ATV safety and trail use examination with a mark of 80% or higher.” (See <https://www.whitehorse.ca/home/showdocument?id=110>).

Operators using snowmobiles in Whitehorse must have a *Safe Snowmobiler Card* “issued by the City or a City-approved agency to any person who has paid a fee and has successfully completed and passed: (1) a snowmobile safety course; or 2) a snowmobile safety and trail use examination.” (See <https://www.whitehorse.ca/departments/bylaw-services/snowmobiles>).

As well, in Whitehorse both ATVs and snowmobiles are prohibited from operating in “an area designated as environmentally sensitive.” (See both bylaws.)

There is another reason why the Government of Yukon should mirror the City's requirements for ATV and snowmobile operation. Yukoners who operate their snowmobile or other ORVs on BC crown land (e.g. Atlin area, White Pass, Haines summit areas) must carry a certificate of registration for their machine, and display a licence plate on their snowmobile or ORV. Parks Canada has confirmed that this requirement applies to snowmobile operation in the Chilkoot Trail National Historic Site.

And now, the Government of Yukon wants to make ORV registration mandatory for all ATV owners using ORV Management Areas. It seems that this is an excellent time for our territorial government to require operators of both ATVs and snowmobiles to have a driver's licence, insurance, registration, and a visible licence plate or sticker when driving their machines on public land in the Yukon.

Thirty thousand of Yukon's 38,000 citizens are already subject to the above requirements (in addition to Safe ATV/Snowmobile Cards) when operating their ORVs (ATVs and snowmobiles) within the City of Whitehorse. The *Motor Vehicles Act* is about to be revised/amended. The opportunity now exists for our current government to not only provide "consistency throughout all legislation and regulations governing the use of off-road vehicles (ATVs and snowmobiles) in the territory," but also "help ensure safe, responsible ORV (ATV and snowmobile) use and protection for our environment."

**12. YG Proposal:** "The ORV regulation would include prohibitions and offences, e.g., no one is allowed to operate an ORV within an ORV Management Area without a permit."

**ATWA Comment:** None

**13. YG Proposal:** "The ORV regulation would outline powers of enforcement officers, e.g., the power to stop an ORV, to issue a ticket or seizure."

**ATWA Comment:** Is this going to be a complaint driven enforcement process, or will there actually be enforcement officers stationed in the ORV Management Area at all times of the year to actually enforce the rules/regulations of the Management Area as they apply to ORVs? Complaint driven enforcement is unlikely to work unless all ATVs are registered and licensed to allow the possibility of identification. And, if snowmobiles are not included in the regulations, the ORV Management Area will be potentially exposed to months of winter abuse.

**14. YG Proposal:** "The ORV regulation would clarify that the Minister can appoint classes of enforcement officers within the Yukon government."

**ATWA Comment:** What is meant by the phrase "*classes* of enforcement officers?" This needs clarification.

**15. YG Proposal:** "Penalties in the ORV regulation would include: tickets and fines set between \$100 and \$800, depending on the offence, and permit cancellation."

**ATWA Comment:** The suggestion is to look at what British Columbia has for fines. When you consider that some of these machines (snowmobiles and ATVs) can cost up to \$15,000, and to that amount is added the cost of either a trailer or truck to carry the machines, it seems obvious that their operators can afford to pay

significant amounts for fines. Confiscation of vehicles should also be a possibility for certain offences.

### **ATWA Recommendations:**

**1.** ORV Management Areas regulations should apply to *both* ATVs and snowmobiles. To exclude the latter is to seriously weaken efforts to prevent environmental degradation. Honour the *Select Committee's* Recommendation #2, which says there should be "consistency throughout all legislation and regulations governing the use of off-road vehicles (ATVs and snowmobiles) in the territory." The Select Committee's recommendations were applicable to both ATVs and snowmobiles.

**2.** Review the recommendations of the *Select Committee* (1-13) to determine if each has been implemented, and if so, how effective each has been to achieve the stated goal of the committee. The Government of Yukon should then rectify the problem areas.

**3.** Change the *Motor Vehicles Act* to include snowmobiles and ATVs as motor vehicles. Prior to recent changes (2014) to the *Motor Vehicles Act* all ORVs (including snowmobiles) were considered to be motor vehicles. The City of Whitehorse considers ATVs and snowmobiles to be motor vehicles.

**4.** The government and the media should provide clarity when making reference to ATVs, and snowmobiles. Do not use the term ORV to mean only ATVs, as most people consider the term ORV or OHV to refer to various types of ATVs and snowmobiles. In B.C. and Alberta snowmobiles are considered to be off-road vehicles, as they are in the Northwest Territories.

**5.** All ORVs (snowmobiles and ATVs) should be registered, licenced, and insured when operating on Yukon public lands and on or across highways as defined in the *Motor Vehicles Act*. The present situation, whereby one is *only* required to have all the above requirements when crossing or driving on a highway, but not in the backcountry (public lands), borders on the ridiculous.

If all snowmobile and ATVs were registered it would allow the government to directly contact operators in order to "undertake an educational campaign which, in addition to existing laws and regulations, focuses on the safe, responsible and respectful operation of off-road vehicles as well as environmental stewardship. [In addition, it could] undertake an extensive advertising/educational campaign to raise public awareness of any and all existing restrictions on off-road vehicle use along with penalties and means of enforcement." (*Select Committee* Recommendations #3 and #4.) These recommendations have never been successfully carried out. They might have a better chance of success if owners of these vehicles could be contacted directly.

6. The Government of Yukon should mirror the City's requirements for ATV and snowmobile operation as well as consider adopting many of the B.C. regulations pertaining to snowmobiles and ATVs. The B.C. government also has interesting regulations with regard to children and their use of ATVs and snowmobiles, regulations that our own government might do well to investigate, as this is often a contentious issue in Yukon.

7. Consider establishing a separate *Off-Road Vehicle Act*, which includes both snowmobiles and ATVs, such as that of British Columbia. A number of comments in the *Relevant References* make this suggestion. Two examples follow:

"All relevant Yukon government legislation needs to be coordinated to consistently manage ORVs."

"Many participants supported the idea of a separate off-road vehicles act, which is the approach that has been used in British Columbia."

8. The process to create an ORV Management Area should be a one-step process and should be done within a limited time frame. As mentioned previously, combine #4, #7, and #8.

9. In Whitehorse ATV season is open from April 1 to October 31 every year. The Government of Yukon will need to decide the dates between which ATVs will be allowed to operate in ORV Management Areas that permit such use. As snow levels vary from year to year and from place to place in Yukon, those dates should be flexible. Unfortunately, in Whitehorse they are not, and this can result in damage to the city's trails.

Thank you for allowing us to make this submission. We hope this document will be of some value.

Sincerely,

Keith Lay (Active Trails Whitehorse Association/[www.activetwa.org](http://www.activetwa.org))

**The fourteen recommendations of the *Select Committee on the Safe Operation and Use of Off-road Vehicles***

1. THAT, legislation and regulations governing the use of off-road vehicles (ATVs and snowmobiles) are inclusive of all and do not exclude anyone to the advantage of another.

2. THAT, there is consistency throughout all legislation and regulations governing the use of off-road vehicles (ATVs and snowmobiles) in the territory.



3. THAT, government undertake an extensive advertising/educational campaign to raise public awareness of any and all existing restrictions on off-road vehicle use along with penalties and means of enforcement.
4. THAT, government undertake an educational campaign which, in addition to existing laws and regulations, focuses on the safe, responsible and respectful operation of off-road vehicles as well as environmental stewardship.
5. THAT, legislation governing “on-road” use of off-road vehicles (ORV) be provided for through amendments to Yukon’s *Motor Vehicles Act*.
6. THAT, as it pertains to “on-road” use, provisions in the Yukon government’s existing policy regarding the operation and registration of all-terrain vehicles be given the force of law and enshrined in legislation.
7. THAT, all off-road vehicles that travel on or cross over any Yukon road or highway be subject to registration and liability insurance and require that operators hold a valid Class 5 driver’s licence.
8. THAT, government consider the issues of registration, operator licensing, and insurance for “off-road” use and that government look at how other jurisdictions have approached these issues prior to determining the best approach for Yukon.
9. THAT, the definition of “highway” in the *Motor Vehicles Act* be clarified and THAT, the terms “on-road” and “off-road” be clearly defined in the Act.
10. THAT, government encourage and support voluntary driver training on the safe and environmentally responsible operation of ATVs and snowmobiles.
11. THAT, the issues of age requirements, underage riders, adult supervision, and age vs. size of machine be addressed in legislation and/or regulation and that government consider how other jurisdictions have approached these issues in determining the best approach for Yukon.
12. THAT, helmet use be mandatory when operating an off-road vehicle or snowmobile on-road. The Committee did not reach consensus on helmet requirements for “off-road” use.
13. THAT, legislation address the needs of municipalities in identifying offenders and enforcing their bylaws.
14. 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.