



## REGULATING OFF-ROAD VEHICLES IN YUKON

### ***RESPONSE BY WILDLIFE CONSERVATION SOCIETY CANADA TO THE YUKON GOVERNMENT PROPOSALS AND QUESTIONS***

*Prepared by Don Reid, WCS Canada, Whitehorse*

*26 March 2019*

#### Introduction.

Wildlife Conservation Society Canada (WCS Canada) would like to thank the Yukon Government for its current initiative to address the question of regulations on off-road vehicles in Yukon. This is an important issue for wildlife conservation in the territory. We welcome the Government's move to give regulatory power to the existing Off-Road Vehicle Management Area provision in the Territorial Lands (Yukon) Act.

The Yukon Government has set up an on-line questionnaire for public input. WCS Canada would like to respond to that questionnaire with this written document. This is because we would like to have our responses recognized as having come from a non-profit organization, rather than an unidentified member of the public. Also, some of our Comments following the questions are fairly detailed.

This document follows the structure of the YTG Proposal and Questionnaire document. The text of that document is repeated here in regular type, and the WCS Canada response and Comments are in italics.

#### **Section 1. What and who would an ORV regulation apply to?**

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

*WCS Canada Answer: NEUTRAL*

*Comments: We choose to answer this question "Neutral" because the word "only" is problematic. We strongly agree that ORV Management Areas need to be established, and that implementing this provision in the Territorial Lands (Yukon) Act is a major step forward.*

However, ORV Management Areas are not, and should not be, the only tool for ORV regulation. For example, this questionnaire from the Government provides an example of another regulatory issue – registration (section 5) – and specifies that other legislation (e.g., Motor Vehicles Act) needs to be amended to provide the necessary tool of individual ORV identification. So, the government’s proposal, laid out in this questionnaire, indicates that ORV Management Areas should not be considered the only tool.

Apart from ORV registration, other broad regulatory and management issues regarding ORVs cannot be solved using ORV Management Areas. Particular issues are: (i) the destruction of sensitive and easily eroded plant communities in wetlands; (ii) the proliferation of trails that would continue outside of ORV Management Areas even if the ORV Management Area regulation is put in place. There are real difficulties with how each of these issues could be dealt with using ORV Management Areas (MAs).

Regarding wetlands, it seems unlikely that an ORV Management Area could be established for each wetland, or even each set of concentrated wetlands, or even for wetlands generally across the territory, mainly because of the huge numbers of wetlands involved, the lack of adequate mapping of their locations, and the difficulty of legally describing their boundaries. Consequently, ORV MAs do not appear to be a useful tool for dealing with the issue of degradation of wetlands by ORV use. Perhaps the Yukon territorial wetland policy, currently under development by a roundtable of stakeholders, can address this issue more thoroughly and propose solutions.

Regarding proliferation of trails, ORV MAs could only deal with this issue within specific MA boundaries, and not on the rest of the public land base. Other tools will be required outside ORV MAs. We suggest a couple of potential approaches here: (a) Using the Territorial Lands (Yukon) Act (Land Use Regulation O.I.C 2003/51, clause 7(h)) to restrict the cutting of new trails, by changing maximum allowable trail width from 1.5 to 1.0 m, and/or making **any** new trail cutting illegal without a land use permit; (b) Defining a specific set of trails as the only set of trails that ORV users could drive on in specific regions (i.e. by using maps of existing backcountry trails already held by regional Conservation Officers or other government employees, or by creating a new inventory of geo-located trails in certain regions).

We strongly encourage Government to explore these other approaches to ORV regulation, in addition to the new proposed regulation regarding ORV MAs.

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.

WCS Canada Answer: AGREE

*Comments: In general, we agree that certain existing rights (notably Aboriginal) and tenures (e.g., outfitter concessions, quartz claims and subsequent exploration licences, access trails to private land dispositions, registered traplines) would deserve and need area-specific provisions.*

## **Section 2. How would ORV Management Areas be established?**

1. A proposal to designate an ORV Management Area can originate from many sources:
  - Through a public (individual or organisation) 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).

*WCS Canada Answer: AGREE*

*Comments: It is necessary that ORV MAs be proposed, and be allowed to come to establishment, from a number of sources. Strategic approaches to land planning may be the most logical origin, but the list of such planning processes should not be limited; the list should include at least regional and subregional land use plans (under the UFA), forest resources management plans (Forest Resources Act), local area plans, and plans drawn up to manage the diversity of protected areas under various pieces of legislation including territorial parks, wilderness preserves, and ecological reserves (Parks and Land Certainty Act), wilderness management areas (Environment Act), and habitat protection areas (Wildlife Act). A variety of agencies and bodies with responsibility and interest in sustained management of the land and its resources, including First Nations governments, the Yukon Fish and Wildlife Management Board, the various Renewable Resources Councils, and public interest groups, need to be able to propose and advocate for specific ORV MAs. Government departments with intimate knowledge of the land base, notably regional biologists in the Department of Environment, should also have the option of bringing ORV MA proposals forward.*

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 decision would be based on evidence, expertise, and input from First Nations, stakeholders and the public.

*WCS Canada Answer: AGREE*

*Comments: It is reasonable that proposals to influence access to, and use of, public lands be under the direction and responsibility of the territorial government. At present in the Territorial Lands (Yukon) Act, the ultimate approval for the establishment of these MAs, and permitting*

*within them, rests with the Commissioner in Executive Council. This would appear to be as transparent and thorough a process as can be expected.*

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

*WCS Canada Answer: AGREE*

*Comments: The particular criteria that could be used to establish an ORV MA would have to logically flow from the two conditions that the wording in the ACT specifies: "... the protection of the ecological balance or physical characteristics of the area." Wording to describe or interpret these rather general and difficult to define conditions as criteria would necessarily be inclusive and lacking in precise detail and specificity. Such wording is probably best captured in a policy document rather than the precise and limiting wording of a regulation.*

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.

*WCS Canada Answer: AGREE*

*Comments: The option to have different management conditions apply to different sections of one ORV MA is already written in the Territorial Lands (Yukon) Act (4.2(2b)), and would seem to be a reasonable provision. This question seems to be asking whether that provision of the Act be brought forward and made explicit in the Regulation.*

### **Section 3. How would rules (restriction or prohibitions) be established within ORV Management Areas?**

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

*WCS Canada Answer: AGREE*

*Comments: We agree in general that the Yukon government should lead (i.e. organize and manage) the process of determining restrictions and prohibitions because this process needs to*

*have public input and because it is wrapped up in the process of ORV MA designation (i.e. Section 2. Question 2) which also is necessarily a public process with government leadership.*

*However, we stress that the fact that government should “lead” (i.e. organize and manage) the process of determining restrictions and prohibitions does not mean that government is the sole or even the main source of ideas and direction as to what those restrictions and prohibitions should be or encompass. The source of ideas and direction must be allowed to come from the particular process (e.g., land use planning) or body (e.g., Renewable Resources Council) that proposes the ORV MA for designation and has a vision for how the MA should be managed. The process led by government should allow other ideas and proposals for restriction and prohibition to come forward as well (e.g., from groups, including government departments, other than the original proponent), if other parties can provide good arguments.*

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).

*WCS Canada Answer: AGREE*

*Comments: We agree that government approved planning processes should be a major source of ideas on restrictions and prohibitions (see answer to question 1. above). We stress that the list of such planning processes that can provide such direction be expansive, as per our answer to Section 2. Question 1.*

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 and ORV MA
- Special permit for users with certain rights/authorizations to use an ORV in a specific Orv MA 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.

*WCS Canada Answer: AGREE*

*Comments: We agree that the Regulation needs to lay out some of the details of the permitting process so that key pieces are not left up to bureaucratic process to fill in or manage on an ad hoc basis.*

#### **Section 4. Establishing Regional ORV Restrictions or Prohibitions.**

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.

*WCS Canada Answer: AGREE*

*We agree that, because the vision for restrictions on ORV use has already been put forward in various land use plans, that such a vision needs to become a reality as soon as possible, and that immediate establishment of ORV MAs as a result of those plans would be an important achievement.*

2. If you have any suggestions for ORV MAs, please note them in the comments section below.

*WCS Canada Answer:*

*Comments: Asi Keyi Territorial Park, Ddhaw Ghro Habitat Protection Area*

#### **Section 5. ORV Registration**

1. In the near term, require the registration of all ORVs that are to be used in a designated ORV Management Area.

*WCS Canada Answer: AGREE*

*Comments: We agree that, if an ORV MA established in the short term includes the provision for certain permitted ORV users to travel in the MA, then those ORV users should have their machines registered under the new Regulation, rather than waiting for changes to the Motor Vehicles Act to provide the means for ORV registration.*

## **Section 6. Compliance and Enforcement**

1. The ORV regulation would include prohibitions and offences, such as including the rule that no one is allowed to operate an ORV within an ORV Management Area unless their ORV is registered.

*WCS Canada Answer: AGREE*

2. The ORV regulation would outline powers of enforcement officers, such as the power to stop an ORV, to issue a ticket.

*WCS Canada Answer: AGREE*

3. The ORV regulation would clarify that the Minister can appoint enforcement officers (within the Yukon government), including from the Department of Energy, Mines and Resources (i.e., Natural Resource Officers) and Department of Environment (i.e., Conservation Officers and Parks Officers).

*WCS Canada Answer: AGREE*

4. Penalties in the ORV regulation would include:

- Tickets and fines to be set between \$100 and \$800, depending on the offence; and
- Permit cancellation.

*WCS Canada Answer: AGREE*