

CMC COMMENTS ON DRAFT ADA REGULATIONS

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During summer, 2008, the US Department of Justice opened a comment period for proposed revisions to federal regulations governing the Americans with Disabilities Act. The CMC has a long history of providing services for special needs citizens, including offering hikes for visually and mobility impaired persons. More recently, the Youth Education program of the CMC offers outdoor experiences for children with disabilities. Thus, the CMC Conservation Department decided to carefully review the proposed changes.

The Department found some significant issues in regard to proposed changes in the definition of "approved mobility devices." Generally, the primary approved device is the wheelchair, both manual and powered. Citizens who use approved mobility devices can go anywhere on federal public land as the terrain allows, including designated wilderness. The Wilderness Act of 1964 and the Americans with Disabilities Act have been interpreted to not be in conflict with each other. In other words, the Wilderness Act does not discriminate against citizens who are not able-bodied.

One of the proposed regulatory changes was to amend the definition of mobility device to include "internal combustion, fuel powered" vehicles, with an example of such given as an all-terrain vehicle (ATV). A big concern was that if ATVs are included, and thus given the option to enter wilderness areas, then it is highly possible that dirt bikes and snowmobiles could soon follow. Legally, a land manager can ask a person if they have a disability. If the answer is yes, then the manager can not probe further, due to privacy reasons.

The Club submitted comments opposing addition of ATVs or any other off-road vehicle types to the definition of approved mobility device. The comments opined that federal land management agencies already are providing for the interests and needs of disabled citizens via the usual and normal travel planning process, and travel management plans. Briefly defined, "travel planning & management" is the process by which an agency, such as the US Forest Service, determines where citizens can go on the public lands; by what sort of conveyance, including foot travel; and sometimes with seasonal restrictions, particularly for wildlife reasons.

The Department also pointed out that the ADA, and its companion act, the Rehabilitation Act of 1973, called for reasonable accommodations to be made for special needs citizens. A federal district court in Utah in 2007 ruled against off-road vehicle interests that claimed a violation of rights under the Rehabilitation Act by the Bureau of Land Management in a travel plan. In its opinion, the court said the agency was correct in closing certain areas to vehicle traffic because reasonable alternatives had been provided for disabled citizens within the plan.

The CMC will continue to track this issue, to ensure that high-quality outdoor recreation opportunities continue for all citizens.