



**TESTIMONY OF THE AMERICAN ACADEMY OF PEDIATRICS.**

**OVERSIGHT HEARING ON OFF-HIGHWAY VEHICLE  
MANAGEMENT ON PUBLIC LANDS**

**COMMITTEE ON ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE**

**JUNE 5, 2008**

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Department of Federal Affairs  
The Homer Building  
601 Thirteenth Street, N.W.  
Suite 400 North  
Washington, D.C. 20005  
202-347-8600 / 800-336-5475 / Fax 202-393-6137

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The American Academy of Pediatrics (AAP) appreciates this opportunity to submit testimony for the record of this oversight hearing by the Senate Committee on Energy and Natural Resources regarding the management of off-highway vehicles on public lands. The American Academy of Pediatrics is a non-profit professional organization of 63,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and wellbeing of infants, children, adolescents, and young adults.

As the Resources Committee examines the enforcement of laws and rules on the use of off-highway vehicles on public lands, the American Academy of Pediatrics urges you to consider not only recreational and environmental issues, but also health and safety issues for our children. All-terrain vehicles (ATVs), minibikes, personal watercraft (PWC), snowmobiles, and other off-road vehicles pose unique dangers to children who ride or operate them.<sup>1</sup> In fact, from the perspective of injury prevention, this situation creates the perfect recipe for tragedy due to the confluence of multiple high risk factors:

- Person Factors: Children lack the physical and developmental maturity to operate an off-road vehicle safely, especially in terms of judgement.
- Environment Factors: Public lands are often difficult to access for rescue crews due to distance and challenging terrain.
- “Agent” Factors: ATVs, snowmobiles and other off-road vehicles allow high rates of speed, weigh a great deal and completely expose the driver. Some, like ATVs, have a tendency to roll if not used properly. PWC operation is different from other motorized vehicles and can confuse operators, especially in crisis circumstances.

## ALL-TERRAIN VEHICLES

The statistics regarding children and ATVs are grim:

- Between 1982 and 2006, over 2,300 children were killed in ATV crashes. This is the equivalent of five 747 jets full of children, or 35 fully loaded schoolbuses.
- In 2006 alone, at least 111 children perished due to injuries sustained when riding an ATV.<sup>2</sup>
- An estimated 39,300 children were treated in emergency departments for ATV-related injuries in 2006. Serious injuries among children have ranged from over 32,000 to over 44,000 every year since 2000.<sup>3</sup> Since 1990, over 485,000 children have been treated in hospitals for ATV-related injuries – equivalent to the entire population of Atlanta, Georgia.
- Injuries sustained by children riding an adult-sized ATV are often very serious, including severe brain, spinal, abdominal, and complicated orthopedic injuries. ATV riding involves almost twice the risk of injury serious enough to require hospitalization than any other activity studied. This is true even for activities generally considered to be high risk, including football (62% higher risk for ATV riding), snowboarding (110% higher risk for ATV riding) and paintball (320% higher risk for ATV riding).<sup>4</sup>
- Children lack the strength, coordination, and judgement to operate ATVs safely. In a Consumer Product Safety Commission (CPSC) study, the primary causes of children's deaths on an ATV were overturning, collision with a stationary object, and other collisions.<sup>5</sup> Each of these implies the inability to control the vehicle properly.

Despite the alarming increases in ATV deaths and injuries, government regulation continues to be all but absent. No ongoing review has ever been undertaken regarding possible additional or revised regulations, in spite of changes in the patterns of ATV design and use. In 2000, the Academy's Committee on Injury and Poison Prevention reviewed the evidence regarding children and ATVs and reaffirmed its long-standing recommendation that no child under the age of 16 should operate or ride an ATV.<sup>6</sup>

<sup>2</sup> Consumer Product Safety Commission, *2006 Annual Report of ATV Deaths and Injuries*, February 2008, Table 3.

<sup>3</sup> Consumer Product Safety Commission, *2006 Annual Report of ATV Deaths and Injuries*, February 2008, Table 5.

The Committee on Energy and Natural Resources has the power to reduce ATV-related deaths and injuries among our nation's children. If the federal government adopted limitations on ATV use by children on public lands, this would serve as both a powerful message and a model for states and localities. The attention and publicity generated would educate parents, who are often unaware of the safety risks of these vehicles. Moreover, this committee could have a significant impact on a key issue regarding ATV injuries. When an ATV crash occurs on public land in a remote, unpaved, or inaccessible area, precious hours can be wasted in locating, reaching, and transporting the victim to medical care. Trauma surgeons refer to the "golden hour" after injury as the critical window for initiating medical treatment. By placing meaningful restrictions on the use of ATVs by children on public lands, this committee could reduce the likelihood that children would die of preventable and treatable injuries.

Today, the operation of ATVs on federal lands is governed largely by the laws of the state in which the land is located. If a park or parcel covers portions of more than one state, the laws may differ depending upon one's location in the park. For example, Yellowstone National Park is set mostly in Wyoming, but also overlaps into Montana and Idaho. Idaho requires all ATV riders under the age of 18 to wear a helmet; Wyoming requires helmets for those under age 18 on an "enrolled road;" and Montana has no helmet law at all.

### **POLICY RECOMMENDATIONS**

The American Academy of Pediatrics calls upon the Committee on Energy and Natural Resources to direct the Department of the Interior and the Department of Agriculture to adopt a uniform set of laws and guidelines for the operation of ATVs on all federal lands. Rules for riding ATVs should not vary depending upon whether one is riding in a national park, a national forest, or land controlled by any other federal agency. Uniform laws and guidelines would assist rangers in their

***Children under 16 should not operate ATVs.*** An ATV can weigh in excess of 500 pounds and travel at speeds of over 60 miles per hour. Children do not possess the physical strength, coordination, or judgment necessary to pilot these vehicles safely.<sup>7</sup> When a child crashes on one of these large machines, it often rolls over them or traps them beneath it. The result is devastating injuries, including crushed internal organs and multiple broken bones.

***A driver's license should be required to operate an ATV on public lands.*** The federal government does not allow children to drive cars in national forests or parks. Yet an unlicensed child is permitted to drive an ATV at high speeds, without a helmet, on unpaved surfaces in those same areas; This situation defies all logic. The safe use of ATVs requires the same or greater skill, judgment, and experience as needed to operate an automobile. A driver's license should be required to operate any motorized vehicle on public lands.

***Alcohol use by operators of ATVs should be prohibited, with zero tolerance among 16- to 20-year-old operators.*** Just as alcohol- or drug-impaired operation of automobiles threatens the lives of drivers, passengers, and bystanders and is prohibited, operation of any motorized vehicle under the influence of alcohol or drugs should be forbidden. Young drivers under the influence of alcohol or drugs are particularly dangerous because of their relative inexperience and poorer judgment. Alcohol use by those under the age of 21 is already banned by federal and state laws, and zero tolerance policies for underage ATV operators on public lands would strengthen the prohibition and send a strong message to parents and adolescents.

***ATV use should be banned on paved roads in public lands.*** All-terrain vehicles lack the features necessary to operate safely on roads and highways. Most have few or no lights, mirrors, signals or safety features. A significant number of crashes occur on paved roads where cars or trucks cannot see the ATV, or where ATV operators make unexpected maneuvers. In the CPSC survey on ATV

crashes mentioned earlier, the highest number of fatalities occurred on paved surfaces.<sup>8</sup> Use of ATVs should be allowed only on designated, well-maintained trails.

*Appropriate protective gear should be required to operate an ATV on public lands.* Research regarding motorcycles and bicycles tells us that helmets save lives and that helmet laws result in greater helmet use.<sup>9,10,11</sup> The federal government should take a leadership role and require ATV riders on public lands to wear a helmet.

*Carrying passengers on an ATV should be prohibited.* The vast majority of ATVs are not designed to carry passengers. An ATV's large seat is meant to allow a rider to shift his or her weight and maneuver adequately. Children can easily be thrown from these vehicles at high speeds. The Academy is even aware of cases where parents drive ATVs with children strapped onto the rear in a car seat, in the tragically mistaken perception that this is somehow safe. In a recent CPSC analysis of 184 child deaths involving ATVs, the agency concluded that, "CPSC has long recommended against the carrying of passengers on ATVs, and yet 24 percent of the deceased children were riding as passengers, and 45 percent of the fatalities occurred in multiple rider situations. Certainly, if CPSC's recommendations had been followed, the deaths of at least 45 child passengers would not have occurred."<sup>12</sup>

*ATVs should not be operated before sunrise or after sunset.* ATVs are challenging to operate safely even under ideal conditions. Darkness adds an unacceptable degree of additional risk, due to both unseen hazards and the difficulty of being seen by other vehicles. The use of ATVs in low light or darkness should be prohibited.

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<sup>8</sup> Consumer Product Safety Commission, Briefing Package on Petition No. CP-02-4/HP-02-1, "Request to Ban All-Terrain Vehicles Sold for Use by Children under 16 Years Old," February 2005, p.108.

<sup>9</sup> Kraus JF, Peek C, McArthur DL, Williams A. The effect of the 1992 California motorcycle helmet use law on

The popularity of all forms of motorized recreational vehicles raises serious questions about safety, particularly on public lands. The vast majority of concerns elucidated about ATVs also apply to other off-road vehicles. It is difficult to overemphasize the risk involved in allowing immature children to operate these dangerous machines in remote, unsupervised, and potentially hazardous circumstances.

### CONCLUSION

In conclusion, the American Academy of Pediatrics urges the Committee to support meaningful restrictions on children riding or operating ATVs and other off-road vehicles on public lands. Clearly, ATVs pose a significant hazard to children who ride them. This fact is indisputable. The cost to society is also high, not only in regard to loss of life and health but in actual dollars. In 2005, the journal *Pediatrics* published a study which estimated that total hospital charges for children's ATV injuries over a two-year period exceeded \$74 million.<sup>13</sup> If no further action occurs this year, we can expect over 100 children to die and over 35,000 to be treated in the emergency room again next year due to ATV-related incidents.

Our current regulatory systems and educational programs are not protecting children from tragic ATV deaths and injuries. The Committee on Energy and Natural Resources should take a leadership role on this issue and ensure the safety of children on public lands by supporting the common-sense measures recommended by the American Academy of Pediatrics. We appreciate this opportunity to submit testimony for the hearing record.

Επισημαίνεται ότι ο υποψήφιος κ. Παναγιώτης Παναγιωτόπουλος, ο οποίος είναι κάτοικος της οδού Κωνσταντίνου Παύλου 15, στην περιοχή της Νέας Σμύρνης, Αθήνα, έχει υποβάλει αίτηση για την απόκτηση του τίτλου του δημοτικού συμβούλου στην κοινότητα της Νέας Σμύρνης, Αθήνα, για την περίοδο 2011-2014. Ο υποψήφιος κ. Παναγιώτης Παναγιωτόπουλος είναι κάτοικος της οδού Κωνσταντίνου Παύλου 15, στην περιοχή της Νέας Σμύρνης, Αθήνα, και έχει υποβάλει αίτηση για την απόκτηση του τίτλου του δημοτικού συμβούλου στην κοινότητα της Νέας Σμύρνης, Αθήνα, για την περίοδο 2011-2014.

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**Massachusetts Department of Conservation and Recreation (DCR) &  
Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA)**

**Off-Highway Vehicle (OHV) Enforcement and Education Working Group  
Final Recommendations**

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**Executive Summary**

During the summer and fall of 2007 the Executive Office of Energy and Environmental Affairs and the Department of Conservation and Recreation assembled an Off Highway Vehicle (OHV) Enforcement Working Group to advise the Commonwealth on a variety of issues related to OHV use on public and private lands in Massachusetts. The Working Group identified more than forty actions that it believes will enhance public safety; protect property and resources; support increased, effective and consistent enforcement; and improve conditions for responsible OHV users across the Commonwealth.

Key recommendations include:

- Expand law enforcement capacity to provide consistent and effective enforcement of OHV laws and regulations.
- Strengthen fines and penalties for OHV offenses including trespass.
- Require safety and responsibility training for all OHV operators eighteen (18) years of age and younger.
- Simplify the registration process and require registration for all OHV's with revenues directed to increasing enforcement capabilities and the development, maintenance and restoration of OHV trails.
- Reduce allowable OHV noise levels to the national standard 96dbA at 20 inches.
- Reinforce efforts to protect children by strengthening requirements for adult supervision of young operators, restricting the sales of adult sized ATV's and integrating Consumer Product Safety Commission rules for OHV use into state regulations.
- Strengthen communication among enthusiasts, land managers, enforcement agencies and other stakeholders by establishing an OHV Advisory Group similar to those in other states.

**Background**

In Massachusetts and across the nation the use of off-highway vehicles (OHV's) has grown dramatically in the last fifteen years. Sales of popular, four-wheeled all terrain vehicles (ATV's) grew by more than 300% in the late 1990's and early this decade. The Department of Conservation and Recreation (DCR) estimates that approximately 90,000 Massachusetts households own ATV's and off-highway motorcycles, two types of

OHV's. About 29,000 of these are registered in the state. US Forest Service research shows that nationally the use of these recreation vehicles is popular across a broad spectrum of users. More than one-third of riders are women, and nearly 60% are over the age of 30. Clubs and associations have formed to host events, provide educational programs, support land managers and promote the responsible use of these recreational vehicles.

In Massachusetts, legal OHV recreation occurs in a variety of settings. Private landowners have developed trail systems for their personal use; OHV clubs have negotiated access agreements with landowners and a few communities allow limited opportunities on public lands. Currently, legal riding opportunities on state land in Massachusetts occur on eight DCR properties offering about 155 miles of OHV trails. In 2007, DCR introduced new policy for siting OHV's on agency lands; however, the only DCR properties designated for use by ATV's are in Berkshire County, a long way from the state's population centers. Though riding clubs have partnered with DCR to help maintain these trails; poor trail siting, design and construction, along with limited maintenance have led to trail deterioration, environmental degradation and safety concerns.

With few designated riding areas and the growing popularity of the vehicles, state agencies, private property owners, and conservation land managers confront an expanding network of unwanted and illegal trails across the Commonwealth. The Division of Fisheries and Wildlife estimates that 280 miles of trails or roads have been created by or impacted by illegal OHV activity on its properties. A 2004 survey of 123 DCR park managers found that 85% reported some level of illegal ATV, OHM or 4X4 ("jeeps" and pickup trucks) activity. Private landowners, utility companies, local governments and non-profit landowners report similar illegal access on their properties. Unauthorized OHV use has caused damage to sensitive habitats, historic resources, wetlands and vegetation; and compaction and erosion of soils that can impact streams and other water bodies. In addition, noise from the vehicles has been disturbing to property owners, neighbors and other users. Finally, use of the vehicles in inappropriate locations or in irresponsible ways poses significant safety concerns both for the operator and other property users.

With the growing demand, limited legal riding opportunities, inadequate enforcement resources, and an insufficient statutory and regulatory framework, it is not surprising that OHV conflicts have become headaches and headlines. In the interest of moving toward sustainable management of OHV's in Massachusetts, the Executive Office of Energy and Environmental Affairs and the Department of Conservation and Recreation invited a broad group of stakeholders to examine the specific challenges of OHV enforcement. The Off Highway Vehicle Enforcement Working Group met for several months in late 2007. This document summarizes the recommendations of the Off-Highway Vehicle Enforcement Working Group.

### Working Group Charge

The OHV Working Group was assembled by DCR Commissioner Rick Sullivan to accomplish four goals:

1. Assess existing laws and regulations pertaining to the use and operation of recreation vehicles and identify opportunities and strategies to enhance their effectiveness for the protection of public safety, the environment, and public and private property;
2. Review the current capacity of agencies charged with enforcing OHV laws and regulations and identify opportunities and financing strategies to increase the capacity of the enforcement system;
3. Identify short-term opportunities and strategies to reduce unsafe and inappropriate use of OHV's that are currently available under existing laws, regulations, enforcement capacity and funding mechanisms; and
4. Identify opportunities to improve communication among stakeholders in order to increase safe, responsible and legal OHV use.

The OHV Working Group was comprised of representative stakeholders from a cross-section of state and municipal agencies and rider and environmental organizations and associations. (List attached.) The group held five meetings between August 10, 2007 and December 19, 2007. At the meetings the participants described their underlying interests, identified the issues of concern, and explored potential options for addressing the issues.

Through that process, the group was able to arrive at a set of recommendations concerning changes to statutes and regulations and on the ground interim and long-term strategies to enhance communication, and to promote and enforce safe, responsible and legal OHV use. These recommendations are the result of difficult and deliberate dialogue among the participants where all sought to meet the interests of each stakeholder community. As such, the recommendations should be *viewed in their entirety* not as separable components.

Throughout the discussions the group tried to integrate the need for environmental protection and preservation with opportunities for safe and responsible OHV recreation. The legal rider community is concerned about the problems created by illegal OHV activity and the negative impact it has on the environment, public safety and the potential for curtailing OHV opportunities for law-abiding users. Riders, land managers, and enforcement agencies recognize that an important element in OHV management and effective enforcement is the availability of convenient, designated trails designed and managed for OHV use. The environmental community is concerned with the degree of damage from illegal use and wants to ensure that such use is curtailed and that areas designated for OHV use are monitored to ensure that environmental protection measures are adequate. Many members of the group expressed concerns for the safety of other trail users and their animals as well as damage to the trails. All agree that without stepped up enforcement and education, the existing conflicts will only increase.

What follows is a list of the Working Group's recommendations for strengthening the options available to law enforcement and to the courts to address infractions on public and private lands and for encouraging responsible OHV riding across the Commonwealth. It is important to note that this document does not presume to encompass all of the OHV-related policies, positions or passions of the organizations and entities that participated in the working group. Neither does it presume to reflect the views of other agencies, organizations or other stakeholders who did not participate in the process. The recommendations that follow are confined to the specific areas in which the working group participants found broad agreement. It is noteworthy that such a diverse group found broad agreement in more than forty key recommendations. Where consensus could not be reached on a particular recommendation, this document outlines the principal concerns expressed by members of the group. The recommendations are organized in the following categories:

- Law Enforcement Capacity
- Education and Training
- Penalties
- Registration, Licensing, Permitting and Insurance
- Noise/Sound
- Funding
- Operator Age/Size or Use Limitations
- Public Ways
- Trespass
- Ongoing Communications/Oversight and Short-term steps while awaiting implementation

### **Definitions**

There are a variety of terms commonly used in reference to Off Highway Vehicles (OHV's) and in various contexts may include snowmobiles, four wheel drive pick up trucks, all terrain vehicles, off highway motorcycles and various other types of vehicles intended for off road use. For the purposes of the Working Group's deliberations the group concentrated on two specific types of OHV's, All Terrain Vehicles (ATV's) and Off Highway Motorcycles (OHM's). Under Massachusetts law (G.L. c90B, s 20) these two vehicles are defined as Recreation Vehicles.

- b) *Recreation vehicle - any motor vehicle designed or modified for use over unimproved terrain if used for recreation or pleasure off a public way as defined in chapter ninety, and all legally registered motor vehicles when used off a way as defined under chapter ninety.*

Incidentally within the group's deliberations, snowmobiles or snow vehicles were also discussed since various sections of Chapter 90B also apply to them. The statute defines snow vehicles as follows:

*Snow vehicle - a motor vehicle designed to travel over ice or snow having a curb weight of not more than ...1000 pounds, driven by track or tracks in contact with the snow or ice and steered by a ski or skis in contact with the snow or ice.*

The group frequently sought to differentiate between Off Highway Motorcycles and All Terrain Vehicles (ATV). The American National Standards Institute, Inc. and the Specialty Vehicle Industry of America (vehicle manufacturers association) has established the following definition of an All Terrain Vehicle.

*All Terrain Vehicle (ATV) - a motorized off-highway vehicle designed to travel on four low pressure tires having a seat designed to be straddled by the operator and handlebars for steering control.*

Massachusetts law (Chapter 90 Section 1) defines a motorcycle as follows:

*Motorcycle - any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including any bicycle with a motor or driving wheel attached, except a tractor or a motor vehicle designed for the carrying of golf clubs and not more than four persons, an industrial three-wheel truck, a motor vehicle on which the operator and passenger ride within an enclosed cab, or a motorized bicycle."*

When a motorcycle is used for pleasure off a public way, it is included in the recreation vehicle definition above.

## **OHV Working Group Recommendations**

### **Law Enforcement Capacity**

In its very first meeting, OHV Working Group members were asked to identify the one most important issue to be addressed regarding OHV enforcement and education. The insufficient capacity of law enforcement agencies to address OHV offenses and complaints was among the most frequently cited concerns. The Office of Environmental Law Enforcement, which has statutory responsibility for enforcing recreation vehicle (or OHV) laws was frequently referenced as being understaffed to handle today's challenges from the expanding sport. However, local law enforcement and DCR Rangers were also identified as having limited capabilities to manage illegal use within their jurisdictions.

Primary responsibility for OHV enforcement in the Commonwealth is placed with the Office of Law Enforcement (OLE) within the Executive Office of Energy and Environmental Affairs. But with only 100 officers in the State and a broad range of

responsibilities on both public and private land, allocating adequate resources to OHV activities is difficult. A 2005 report by a special Environmental Law Enforcement Review Panel described the core mission of the Office of Law Enforcement to include the following:

- A. Enforce laws and regulations related to natural resource protection including commercial marine fishing, recreational hunting, fishing and trapping.
- B. Regulate boats and recreational vehicles and ensuring safety in their use.
- C. Protect parks and other public lands.
- D. Investigate issues related to, and ensure the enforcement of hazardous waste and other environmental laws.

With such a broad and important mandate and so few officers to carry it out, frustration is inevitable. The Panel specifically examined the importance of ATV enforcement in its deliberations and included the following in its findings:

*“The enforcement of ATV laws, rules and regulations is a core mission of OLE but this enforcement is extremely difficult given the huge increase in ATV usage on state conservation land and on private property, the mobility of the machines, and their use in rural or remote locations. Even when enforcement is successful, fines for the violation of most ATV regulations are not sufficiently high to act as a deterrent.”*

*Report by the Environmental Law Enforcement Review Panel, March 2005, page 20*

The report frequently references the limitations of OLE resources and the importance of establishing clear priorities for its service to various state agencies and other public and private stakeholders. The Enforcement Working Group believes that one of the specific recommendations from the 2005 report would significantly benefit the challenge of OHV enforcement in Massachusetts and repeats it below.

The Working Group recommends the following

- “OLE should identify core positions and allocate sufficient resources and staff to accomplish agency goals.” The OHV Enforcement Working Group believes that OLE’s capacity to provide OHV enforcement is inadequate and expresses its hope that this growing issue will be reiterated among the core needs of the agency and that additional resources can be made available for this purpose. The Working Group introduces in the Registration section of this document a mechanism for applying OHV registration revenues to offset the expenses for this additional need.

### **Education and Training**

The Working Group felt that an essential step to safe and responsible riding is to ensure that riders receive appropriate education and training in the operation of OHV's and in how and where to ride in an environmentally responsible manner. Toward that goal the Working Group agreed that a mandatory education program should be instituted. At least 20 other states have some level of required education and training (primarily for minors)

and three have voluntary programs. Only 5 states require OHV training for adults with a driver's license. One member of the group is strongly opposed to required training for adults and in favor of alternative, less costly means to achieve greater rider safety and responsibility.

The Working Group recommends the following:

- Revise Chapter 90B of the Massachusetts General Laws to require that OHV operators aged eighteen (18) and younger must complete an operator safety and responsibility course. The statute should establish a fixed date as of the year it goes into effect so that persons born after January 1st eighteen (18) years prior to the legislative effective date must complete the required training. The intent is that in the first year of the legislation riders eighteen (18) and younger will be required to complete the rider safety and responsibility program and over time all riders born after that date, regardless of age, will be required to take the program.

The education initiative should also require:

- A certificate of completion must be carried with the operator.
- Operator education programs must be funded through manufacturers or other non-public sources. Manufacturer funding for education should be expanded to provide training opportunities for riders who acquire machines through private sale.
- The Commonwealth should determine certification requirements.
- Certificates issued from other states whose requirements satisfy Massachusetts standards should be valid in Massachusetts.
- For operators under the age of sixteen (16), a parent or guardian should participate in an orientation session on safe, responsible riding.

The Working Group recommends these additional education efforts:

- OHV manufacturers and dealers should be required to promote safe and environmentally responsible use of OHV's by providing each purchaser with all safety manuals and written documentation on the full extent of state restrictions on the use and operation of OHV's.
- A state OHV Advisory Committee should be created to advise the Commonwealth on a variety of OHV issues including the training curriculum described above but also OHV related policy, distribution of program funding and other relevant issues. OHV Advisory Committees with comparable responsibilities exist in many states including California, Illinois, Pennsylvania and others. Such Advisory Groups commonly include a variety of stakeholders to facilitate strong communication among interested parties and diverse perspective to guide public officials.

- OHV clubs, dealers, and other stakeholders should promote safe, environmentally sustainable and recreationally responsible use of OHV's through a variety of actions including advertising, educational programs and materials, trail patrols, and other means.
- The Office of Law Enforcement (OLE) should develop a comprehensive handbook or guide as well as Internet resources describing legal riding opportunities, prohibited activities and safe and responsible use. The OHV Advisory Group recommended above could provide valuable input into these information tools.
- Public land management and enforcement agencies should work together to ensure clear and consistent communication and enforcement of OHV regulations on public lands. OHV use is only allowed on designated trails.
- Designated OHV trails on DCR or other properties should be clearly delineated on maps and through signage to guide OHV users, inform other trail users and protect resources.

## Penalties

As recognized in the 2005 Report by the Environmental Law Enforcement Review Panel, "fines for the violation of most ATV regulations are not sufficiently high to act as a deterrent." The Working Group concurs and recommends that penalties and fines be increased. The goal of penalties should be to deter inappropriate initial offenses and adequately address severe or repeated misconduct and to promote safe, responsible and sustainable riding practices.

The Working Group recommends the following:

- Establish a hierarchy of penalties for OHV offenses to include increased fines, jail, and vehicle impoundment. Examples are listed below. Specific definitions of infractions and penalties should be established.
  - Serious operating violations with OHV's should carry the same penalty as existing motor vehicles statutes, per G.L. c.90 s.24.
    - ◆ Offenses include:
      - ◇ Operating Under the Influence
      - ◇ Leaving the scene of an accident
      - ◇ Vehicular homicide
      - ◇
    - ◆ Penalties include:
      - ◇ Loss of drivers' license
      - ◇ Fines up to \$5000
      - ◇ Imprisonment up to 15 years
      - ◇ Confiscation and forfeiture of vehicle



- Mid-level violations with OHV's.
  - ◆ Offenses include:
    - ◇ Property destruction
    - ◇ Dangerous operation
    - ◇ Harassing wildlife, livestock or domestic animals
    - ◇ Trespass
    - ◇ Failure to stop
  - ◆ Penalties include:
    - ◇ Non-criminal citations from \$250 - \$500
    - ◇ Criminal citations from \$250 to \$1000
    - ◇ Imprisonment up to 1 year
    - ◇ Restitution to the property owner (in addition to any fines)
  
- Low-level/administrative violations with OHV's.
  - ◆ Offenses include:
    - ◇ Unregistered vehicle
    - ◇ Missing safety equipment (e.g., helmet, lights, spark arrestor)
    - ◇ Noise violations
  - ◆ Penalties include:
    - ◇ Non-criminal tickets of \$100<sup>1</sup>
    - ◇ Criminal citations of \$100 to \$500
  
- Fines recovered from OHV violations should be directed to a fund to support OHV enforcement.
- Amend G.L. c.90B and c.90C to allow both non-criminal and criminal citations for OHV offenses. Many OHV offenses are serious threats to property and public safety and require appropriate criminal penalties and legal process. The Working Group also recognizes that non-criminal citations are often the most effective and efficient means to punish dangerous and/or destructive behavior.
- Amend G.L. c. 266 s.121A to allow for higher penalties for vehicular trespass. The amount of these penalties should parallel the penalties in Chapter 90B.
- Impose the upper range of penalties for operating an OHV within sensitive ecological, historic or public health resources such as priority habitat, wetland resources, archaeological sites or water supply lands.\*
- Strongly enforce penalties for riding OHV's on public property other than on designated trails.

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<sup>1</sup> With passage of recommended revisions to Massachusetts General Law 90B, Chapter 21A Section 10H will need to be amended to delineate the specific Chapter 90B sections and the applicable minimum fine

<sup>2</sup> Destruction of sensitive resources may also be punishable under other state or federal laws.

- Reinforce parental and/or OHV owner responsibility for violations committed by authorized users. The Working Group offers the following specific provisions:
  - Any owner of an off highway vehicle or any person who gives or furnishes an off highway vehicle to a minor (under eighteen (18) years of age) in their care shall be liable with the operator for any penalties and/or damages caused in the operation of the vehicle. In the case of unauthorized use (by theft), the operator, but not the owner shall be responsible for the operation of the vehicle.
  - Any owner of an off highway vehicle who gives or furnishes an OHV to an adult (eighteen (18) years of age or older) who commits an offense may be found liable, jointly and severally with the violator, to pay all fines assessed and any restitution ordered if it can be proven that the owner authorized the violator to use the vehicle and the owner knew or had reason to believe that the violator would commit an offense with the vehicle.
- Law enforcement officers should continue to exercise reasonable judgment in issuing warnings and citations to most effectively achieve shared goals for public safety and the protection of public and private property and resources.

### **Registration, Licensing, Permitting and Insurance**

The Working Group recognized that existing staffing and enforcement capabilities and trail development and maintenance is severely hampered by current funding levels. The group feels that mandatory annual or biennial registration of vehicles can be an effective means to generate revenues which can support OHV enforcement and trail development. Most states direct OHV registration revenues to investments and activities which support OHV use and the Working Group strongly believes that this is the most appropriate method for supplementing current enforcement funding.

The Working group recommends the following:

- OHV registration should be required at the time of purchase and renewed on an annual or biennial basis for all Massachusetts OHV's under the condition that:
  - Registration fees should be increased to reasonable levels and committed to a public fund dedicated and restricted to enhancing enforcement and the development, maintenance and restoration of OHV trails. "Development" of OHV trails may include costs associated with the purchase of lands particularly suited to this recreational use.
  - The registration process should be made more convenient for vehicle owners. The registration agency should expand the network of registration sites and should consider authorizing dealers to register OHV's.
  - Identifying riders through their vehicle registration should be facilitated by:
    - ◆ Ensuring that the license plate affixed to the vehicle is of adequate size and legibility.

- ◆ Ensuring that the registration database is readily available to state and local law enforcement officials.
- OHV's used strictly for agricultural or forestry use would be exempt from required registration through an owner "Declaration of Exemption" completed at the time of purchase.
- A State OHV Advisory Committee should be created to advise the Commonwealth on a variety of OHV issues including distribution of registration revenues for enforcement and trail development, maintenance and restoration purposes as described above.
- The Commonwealth should seek to establish reciprocal agreements with other states offering riding opportunities to allow MA riders to register in only their home state.
- Expand and support opportunities to acquire reasonably priced insurance including liability insurance for OHV's in Massachusetts. The proposed OHV Advisory Committee should evaluate future availability of such insurance and develop recommendations for insurance requirements in Massachusetts.

#### Noise/Sound

The Working Group recommends that Massachusetts align its noise/sound requirements with national standards. Currently, MGL Chapter 90 Sect. 7U sets sound limits only for off highway motorcycles at 103db (A), the highest sound level allowed among the nineteen states that have established limits. ATV's have no established sound limits under Massachusetts law.<sup>2</sup>

The Working Group recommends the following:

- Recreation vehicles registered under the provisions of c. 90B s.22 shall at all times be equipped with a silencer, or other device, which limits noise emissions. Noise emissions of recreation vehicles shall be limited to the following levels when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J1287 JUL98:
  - (a) If manufactured on or after January 1, 1998.....96 dbA
  - (b) If manufactured prior to January 1, 1998.....101 dbA

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<sup>2</sup> Nothing in these recommendations is meant to replace or supersede other state legislation or regulation concerning noise. An example would be Chapter 90 Section 7U and 7T, Chapter 111 Section 142A and noise regulations established by the Department of Environmental Protection.

## **Funding**

As noted throughout these recommendations, sustainable management of OHV use is contingent on adequate funding for both enforcement and sustainable riding opportunities.

The Working Group recommends the following:

- OHV registration fees should be increased and the revenues committed to a fund dedicated and restricted to enhancing enforcement and the development, maintenance and restoration of OHV trails. Registration revenue investments should reflect the type of OHV registered. For example, snowmobile registration revenues should support snowmobile enforcement and trail development.
- To further support motorized trail opportunities, the rider community and the Commonwealth should consider developing a trail pass system. Such systems are in effect in Vermont and New York and versions of the approach have been proposed by both the Snowmobile Association of Massachusetts and the New England Trail Riders Association.
- The rider community and the Commonwealth should consider establishing a Land Stamp program to acquire land suitable for OHV use.

## **Operator Age/Size or Use Limitations**

The Working Group discussed the issue of operator age/size limitations on the use of OHV's. Under existing regulations children under the age of fourteen (14) must be directly supervised by a person eighteen (18) years of age or older; children under the age of twelve (12) may not operate an OHV except on land where the operator is domiciled; and no one under the age of ten (10) may operate a recreational vehicle anywhere in the Commonwealth.

The Working Group discussions included consideration of actions or pending actions by others including the US Consumer Product Safety Commission, the Specialty Vehicle Institute of America (a manufacturers association), the Massachusetts Department of Public Health and the Massachusetts Legislature which is currently considering legislation pertaining to ATV safety. The discussion among the diverse group revealed the complexity of the issue. Manufacturers produce ATV's, motorcycles and snowmobiles intended for operators as young as six years old. Enthusiasts note the value of motorized trails recreation as a family activity and the importance of including children under the age of ten in the sport. They also point to the education requirements recommended by this group and the adult supervision requirements as important protections for younger children. Child safety advocates point to the immature judgment of children as old as sixteen (16) and the inherent danger motorized recreation poses for young operators. Parent advocates stress the importance of parental responsibility in making decisions about their child's safety. Others, such as equestrians, express concern

that government efforts to restrict vehicle size could lead to future efforts to restrict other recreation activities. Property rights advocates challenge the authority, the ability, and the logic of police officers enforcing such restrictions on private property.

This complex mix of values and perspectives prevents the Working Group from reaching consensus on a single recommendation for minimum operator age. The group has also not reached consensus on the subject of a minimum operating age on public lands. DCR's current regulations prohibit recreational vehicle operators under the age of twelve (12). The agency points to the challenging conditions found on many DCR OHV trails and the presence of other riders in limiting young operators. Other states with the same age restrictions on public lands are Connecticut, Ohio, Maryland, and Rhode Island. Enthusiasts point out the limited riding opportunities available in the state and therefore the importance of these public lands to allow young riders to participate in this family sport. Here again, they point to the new education requirements, appropriately sized machines and direct adult supervision providing significant safety assurances for young riders.

Despite diverse viewpoints, all Working Group members agreed that operator safety and knowledge is central to accident avoidance and the proper use of ATV's, as is appropriate supervision of younger riders. The group also recognized that the condition and difficulty of the trail or riding area relative to the skill, knowledge and size of both the vehicle and the rider is also a key ingredient in operator safety. Finally, the Working Group agrees that the most appropriate process for future decisions regarding ATV user age or size is the Commonwealth's regulatory process.

The Working Group recommends the following:

- As recommended under the education section, the Commonwealth should require all OHV operators eighteen (18) and younger to complete a state-certified OHV Safety and Responsibility Program.
- Riders age fourteen (14) and younger must be directly supervised by an adult. Direct supervision requires audible or visual control of the operator at all times. Failure to provide such supervision should constitute dangerous operation and be subject to penalties as recommended above. This recommendation is consistent with current Massachusetts law and regulation; however enforcement of this requirement is inconsistent.
- **Vehicle size / capabilities:** the size, power or speed of the vehicle is an important consideration in rider safety and especially child safety. The US Consumer Product Safety Commission (CPSC) and the American National Standards Institute (ANSI) both agree that children under the age of sixteen (16) should only ride ATV's which are suited to their size, skill level and judgment. Various approaches to such limitations have been explored including engine size. Currently, ANSI and CPSC are recommending rules which would require

manufacturers to limit the speed capabilities of ATV's sold for young riders. The following are the limits proposed by the CPSC and defined by ANSI:

- Category Y-6+ ATV's for children over the age of 6 would be capable of limiting speed to 10 mph.
- Category Y-10+ ATV's for children over the age of 10 would be capable of limiting speed to 15 mph
- Category T ATV's for children under the age of 16 would be capable of limiting speed to 20 mph.
- All ATV's in these categories must be delivered from the manufacturer adjusted to these speed limits.

The Working Group believes that such speed limits would provide an additional element of safety for young children and an important safety decision for supervising adults. Although all members do not agree that children as young as 6 should operate OHV's, the Working Group endorses such speed limiting devices on vehicles intended for riders under the age of sixteen (16).

- Adult sized ATV's should not be sold for use by a child under the age of sixteen (16). Consistent with the CPSC proposed rules (Federal Register, August 10, 2006, CPSC Notice of Proposed Rulemaking), ATV retailers must provide the purchaser with an age acknowledgement form telling the purchaser that the vehicle is for adults and that children have immature judgment and should never drive an adult ATV. Riders under the age of sixteen (16) may ride only on ATV's that meet the most current CPSC rules for engine size, speed limit, or other limitations and must carry a current safety training certificate.
- Penalties for dangerous operation of an ATV should specifically include operation of an ATV by a child of an inappropriate age/size. Statutory or regulatory language should provide the courts with the latitude to impose a significant penalty for such use as described in the penalties section above.
- Penalties for dangerous operation of an OHV should specifically include operation of the vehicle with more than one rider unless the vehicle is designed and equipped by the manufacturer to carry more than one person.
- Given the inherent differences in starting and operating an ATV or snowmobile and an off highway motorcycle, future regulations or statutes should recognize the mechanical and operating differences between the various types of vehicles.
- Any future changes to age limits should be promulgated through the Code of Massachusetts Regulations (CMR) with appropriate public input. Future regulations should consider recommendations from the CPSC, public health and safety concerns, adult supervision, vehicle capabilities, rider size and skill disparities and rider protections incorporated into sanctioned and organized youth training events.

## **Public Ways**

It is inevitable that ATV and off-highway motorcycle (OHM) trails will cross public ways used by other motor vehicles. Understandably, crossing such traveled ways poses a danger to the operators of both the OHV and the motor vehicle and potentially to pedestrians. While G.L. c. 90B s. 25 establishes certain limitations on such crossings, the Working Group agrees that additional protections and clarifications are necessary.

The Working Group recommends the following:

- Amend c.90B, s.25 and promulgate regulations to prohibit operation of ATV's and OHM's across public ways and on unpaved public ways except at such crossings and on such roads that have been marked and approved for ATV or OHM use as part of an authorized ATV or OHM trail system. Such regulations should include:
  - Criteria for approval, including but not limited to public safety and environmental impacts associated with the crossing, governmental liability and the interests of ATV, OHM and public way users, abutters, and law enforcement.
  - A process for public entities and the public to provide input to the approval process.
  - Such regulations should recognize a presumption in favor of approval for a public way crossing where ATV and OHM use is authorized by landowners on both sides of the public way and only where such crossing can be done with reasonable safety.
  - Such regulations should recognize a presumption in favor of approval of ATV and OHM operation on an unpaved public way but only where part of a state-authorized ATV and OHM trail system and where such crossing can be done with reasonable safety.
  - Such regulations should exempt ATV's or other OHV's used in the conduct of agricultural or forestry work.
- A minor person under the age of sixteen and one-half (16 ½) years old should not operate an ATV or OHM across or on a public way under this section, unless the operator has a motor vehicle driver's license or permit or is accompanied by an adult aged eighteen (18) years or older.
- DCR and other land managers offering designated OHV trails should strive to minimize the number and length of public way crossings. Wherever possible crossings should be designed to be perpendicular to the public way.
- Designated ATV and OHM crossings and routes should be signed to warn motor vehicle operators of the crossing.

## Trespass

A common concern regarding OHV activity is trespass with the vehicle on the land of another - both private or public land. Two statutes provide protections for recreation vehicle trespass, G.L.c. 90B and c.266, s. 121A. Some believe that recommended actions of this Working Group, specifically the ability to impose criminal penalties and the increased fines recommended above, would significantly strengthen OHV trespass law. However, private land owners have found that protections provided under Chapter 90B have had limited value in protecting their property from OHV trespass. Chapter 266 however, has been more effective for them.

The Working Group recommends the following:

- Create consistency and parity between vehicle trespass laws and penalties in G.L. c. 90B and G.L. c.266 s.121A
- The Working Group offers the following specific guidance for changes to G.L. c. 266:
  - If the trespass is by means of a motorized vehicle, the penalty for each offense shall be a fine of not less than \$250 nor more than \$1000 or imprisonment for not more than one year, or both said fine and imprisonment. In addition, the following minimum fines shall apply:
    - ◆ For a first offense, a fine of not less than \$250 nor more than \$500.
    - ◆ For a second offense, a fine of not less than \$500 nor more than \$1000.
    - ◆ For a third or subsequent offense, a fine of not less than \$1000.
  - A law enforcement officer who makes an arrest or brings a complaint under this section may seize and impound the vehicle involved in the trespass.
  - Before final disposition of a complaint filed under this statute, the Court shall hold a hearing to assess damages resulting from the trespass and it shall order the defendant to pay restitution for all damages incident to the trespass, including but not limited to environmental damages such as erosion and compaction of soils, damage to wetland areas, disturbance of habitat, harassment or destruction of wildlife, and damage to crops, planted areas, forests and fields.
- Reinforce parental and/or OHV owner responsibility for violations committed by authorized users. The Working Group offers the following specific provisions:
  - Any owner of an off highway vehicle or any person who gives or furnishes an off highway vehicle to a minor (under eighteen (18) years of age) in their care who commits trespass, shall be liable with the operator for any damages caused in the operation of the vehicle. In the case of unauthorized use (by theft), the operator, but not the owner shall be responsible for the operation of the vehicle.



- Any owner of an off highway vehicle who gives or furnishes an OHV to an adult (age eighteen (18) and older) who commits trespass may be found liable, jointly and severally with the violator, to pay all fines assessed and any restitution ordered if it can be proved that the owner authorized the violator to use the vehicle and the owner knew or had reason to believe that the violator would trespass on the land of another with the vehicle.
- Law enforcement officers should continue to exercise reasonable judgment in issuing warnings and citations to most effectively achieve shared goals for public safety and the protection of public and private property and resources.

### **Short-term Strategies and Ongoing Communications**

The Working Group explored ideas to enhance enforcement and improve communications among stakeholders while awaiting any statutory or regulatory changes.

The Working Group recommends the following:

- Establish a Massachusetts OHV Advisory Committee to develop, review and implement safety/educational programs and advise the Commonwealth on issues of OHV enforcement, management and use. This committee should provide a mechanism for continued interactions and ongoing communication among the stakeholder community that has begun through the efforts of the Working Group.
- Invest in trail signage and mapping to reduce impacts and offenses caused by operator confusion or error.
- Encourage and support state and local dialogue among stakeholders. Every member of the OHV Working Group benefited from the exchange of ideas and perspectives during its relatively brief process. Similar lasting benefits can be achieved through greater communication among interested stakeholders at the facility or community level.
- Expand co-operative multi-agency efforts to enforce existing regulations. The Office of Law Enforcement, DCR rangers and Towns of Granby and South Hadley have achieved significant successes against OHV activities on DCR and local water supply properties through their coordinated efforts.
- Identify opportunities for high profile enforcement efforts in areas experiencing repeated illegal riding. Maximize public awareness of the problems and penalties associated with illegal OHV use in these and other areas.
- Continue and expand the dialogue between DCR, EOEEA, the manufacturers and dealers representatives and others regarding recommendations offered in this report. Manufacturers and dealers can play a particularly important role in

report. Manufacturers and dealers can play a particularly important role in recommendations for mandatory education programs, simplifying vehicle registration, and operator safety.

- The members of the Working Group should continue to communicate with each other to encourage the implementation these recommendations in their entirety.

**Conclusion**

The participants to this Working Group appreciate the hard work and honest efforts offered by each other in achieving these recommendations. We believe these recommendations meet the interests of all stakeholders and offer a realistic and implementable approach for safe, responsible and sustainable riding while protecting the environment and safety of all. These recommendations, while not binding on anyone, are evidence of our joint desire and goal to see these recommendations implemented. We will work to explain and support these recommendations within our own stakeholder communities. We will also work together to support and explain these recommendations to other stakeholders, regulators, the legislature and the Executive Branch in order achieve their implementation.

Submitted by the Off Highway Vehicle Enforcement Working Group, March 31, 2008

Signature	Organization
<i>James F. Sherman</i>	NETRA
<i>Frank A. Frey</i>	NETRA
<i>John Deland</i>	NORADASTATVERS
<i>Shari J. Jaffer</i>	Friends Network
<i>Donald W. Adams</i>	Mass ATV Assoc.
<i>David A. Shook</i>	Berkshire Trails Council for Mass DEP
<i>John G. Gagne</i>	The Trustees of Reclamation
<i>Alfred Williams</i>	Mass. Land Trust Coalition
<i>Jared Morrison</i>	Dept. of Fish and Game
<i>Mary Guffin</i>	Exec Office of Energy and Environmental Affairs
<i>Robert O'Connor</i>	Exec Office of Energy and Environmental Affairs
<i>Janet H. Hynes</i>	Exec Office of Energy and Environmental Affairs
<i>Leif H. Hodge</i>	Dept. Cons. and Recreation
<i>E. Heidi Rues</i>	Mass Audubon
<i>E. Heidi Rues</i>	MACC VP of Advocacy
<i>Tom Bunn</i>	D.C.
<i>Donald J. O'Rourke</i>	SAM
<i>Michael S. Barnes</i>	D.C.R.
<i>Bruce A. Bennett</i>	ENV. POLICE.

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