

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE LAW LIBRARY  
AUGUSTA, MAINE

A REPORT AND RECOMMENDATIONS ON  
MAINE'S ALL-TERRAIN VEHICLE STATUTES

Submitted to the 114th Maine Legislature  
First Regular Session

by

The Maine Department of Conservation

and

The Maine Department of Inland Fisheries & Wildlife

January, 1989

AUG 30 1990



## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| Executive Summary  | 1           |
| Introduction   | 5           |
| ATVs in the U.S.   | 6           |
| ATVs in Maine  | 7           |
| State Programs: Department of Inland Fisheries<br>and Wildlife     | 7           |
| Department of Conservation   | 8           |
| Major Issues: Safety   | 9           |
| Environmental  | 10          |
| Law Enforcement  | 11          |
| Landowner Relations  | 12          |
| Responsibility of Users  | 13          |
| Legislative Recommendations  | 14          |
| Program Recommendations  | 17          |
| Ideas & Issues Discussed But Not Recommended by<br>the Departments | 20          |
| References Cited   | 25          |
| Appendix A - P.L. 1985, C. 762, Section 28                         | 26          |
| B - Proposed Legislation   | 28          |



## EXECUTIVE SUMMARY

This report was prepared by the Bureau of Parks and Recreation, which was designated the lead agency for the study and recommendations required from the Department of Conservation and the Department of Inland Fisheries and Wildlife, by Public Law 1985, Chapter 762, Section 28. The Departments were asked to monitor the statutes enacted in 1985 pertaining to All-Terrain Vehicles and report their findings to the Legislature, with recommendations for additional legislation if it was deemed necessary.

The Departments established an Advisory Committee with individuals and representatives from groups or agencies affected by or interested in ATV use in Maine.

Four public meetings were held to gather information on issues or receive public comment and concerns regarding ATVs.

The review and research of the Bureau, statements provided at the public meetings, and discussion with the Advisory Committee lead to these general findings.

1. All-terrain vehicle registration levels have been relatively constant at about 20,000 since 1985;
2. The number of reported accidents involving ATVs has decreased from 239 in 1985 to 120 in 1987;
3. The Consumer Product Safety Commission has reached agreement with the industry, stopping the sale of three-wheeled ATVs due to safety concerns. New all-terrain vehicles now sold in Maine are of the four-wheeled variety, which are considered significantly safer;
4. Trespass and environmental damage are still reported by landowners; however, the consensus is that problems of this nature are diminishing rather than increasing;
5. The number of ATV clubs has increased from 4 in 1986 to 25 in 1988.
6. Maine has one of the most comprehensive body of laws in the nation pertaining to the use of ATVs.
7. Existing statutes seem generally adequate to address issues related to safety, environmental damage, and enforcement;
8. The greatest inadequacy of the existing situation is law enforcement and education. Efforts should be made to encourage greater law enforcement activity regarding ATVs

and to make the public, law enforcement officers, and all-terrain vehicle users more aware of the existing laws.

#### Summary of Legislative Recommendations

1. All ATVs manufactured after January 1, 1991, for sale in Maine, should be equipped with working brake lights; .
2. The law prohibiting ATV use on the intertidal zone and sand dunes should be clarified to include all portions of marine beaches;
3. By January, 1991, all new ATVs should have a 3 1/2" by 6" space provided by the manufacturer, on the front and rear of the ATV, for vertical mounting of plates and/or decals, as high as possible above the tires;
4. A person should be at least 10 years old to operate an ATV;
5. The age limit for the requirement of completion of a Department of Inland Fisheries and Wildlife approved ATV training course should be reduced from 18 to 16;
6. The recommendation of the Maine Special Commission on Boating to increase the Department of Inland Fisheries and Wildlife Warden Service staff should be approved.

#### Summary of Departmental Program Recommendations

1. Instruction in the enforcement of the ATV laws should be included as part of the general curriculum at the Maine Criminal Justice Academy;
2. Registration plates or decals should have bold characters of a color which contrasts with the plate color, and should be mounted vertically on the front and rear of the vehicle, as high as possible above the tires;
3. The Department of Inland Fisheries and Wildlife's ATV training course should include, when relevant, instruction in proper and safe handling of two-wheel off-road vehicles;
4. Education efforts should be increased in order to make ATV users aware of their responsibilities when using private property, and to make both users and landowners more knowledgeable of ATV laws and programs;

5. The Bureau of Public Lands should review its current policy on the use of ATVs on Public Reserved Lands in order to clarify when and where trails might be acceptable;
6. The role of Bureau of Forestry forest rangers in the enforcement of ATV laws should be expanded.



ATV ADVISORY COMMITTEE MEMBERS

William Campbell  
Central Maine Power Company

Former Rep. Maynard Connors  
Franklin

Rep. Frank Farren  
Cherryfield

Joe Gorman  
Maine All-Terrain Vehicle Association

Rep. Paul Jacques  
Waterville

Kensell Krah  
ATV user

Abbott Ladd  
Small Woodland Association of Maine

Lorin LeCleire  
Sportsmans Alliance of Maine

Chief Dan Lowe  
Orono Police Department

Anthony Lyons  
Boise Cascade Paper Group

Kathy Mazzuchelli  
Caribou Recreation Department

Robert Miller  
Penobscot County Superior Court

John Schott  
Schott Motorcycle Supply

Lt. Col. Alfred Skolfield  
Maine State Police

Lewis Newell  
Maine Snowmobile Association

Sue VanHook  
Maine Coast Heritage Trust

## I. INTRODUCTION

The use of All Terrain Vehicles (ATVs) in Maine, as in many other states, is not without controversy. Some states have done virtually nothing; others, Maine included, have enacted legislation to manage those ATVs defined by the Specialty Vehicle Institute of America as: "...three- or four-wheeled off-road vehicles with large, soft, low pressure tires and a seat straddled by the rider (and) powered by 50-500cc gasoline engines..."(1), as well as other vehicles such as dirt bikes and dunebuggies.

Maine has one of the most comprehensive bodies of ATV law in the country. Legislation acknowledges and provides for this popular form of recreation, and attempts to protect the safety of operators, the environment, and the rights of property owners.

Originally enacted in 1983 (P.L.1983, Chapt.297), laws relating to ATVs were changed slightly in 1985 (P.L.1985, Chapt.301), and strengthened considerably in 1986 (P.L.1986, Chapt.762), following a study mandated by the Legislature.

A provision of the 1986 legislation required that the Departments of Conservation and Inland Fisheries and Wildlife monitor the effects of the statutes and submit a report to the 114th Legislature on their findings (Appendix A).

In the preparation of this report, staff of the Bureau of Parks and Recreation, which was the lead agency for the study, worked closely with the Department of Inland Fisheries and Wildlife and sought the assistance of the Bureaus of Public Lands and Forestry. An ad-hoc, ATV advisory Committee met four times in 1988 to examine issues, make recommendations, provide relevant data, and represent various perspectives.

The Bureau's staff conducted a literature review; researched the programs of other states; reviewed Maine ATV registration and accident statistics; reviewed the ATV programs of the Departments of Conservation and Inland Fisheries and Wildlife; and evaluated recommendations of the Specialty Vehicle Institute of America (SVIA), the United States Consumer Products Safety Commission (CPSC), and the American Academy of Pediatrics.

The general public was given an opportunity to comment and present information at meetings held in Portland, Bangor, Machias, and Presque Isle.

Members of the Advisory Committee and staff of the Departments of Conservation and Inland Fisheries and Wildlife agreed after several joint meetings, and in consideration of the presentations received at public meetings and their personal experience, that the most important issues concerning the

existing ATV statutes are a general lack of knowledge of their provisions, both by the public and law enforcement officials, and the inadequacy of present law enforcement. However, the Departments recommend a few points of additional legislation which will make identification of ATVs easier, increase safety, add to law enforcement powers, and clarify the prohibition of ATVs on coastal beaches.

A minority of the Advisory Committee members advocated universal registration of ATVs in Maine and affirmative permission from landowners, as well as several other new legal provisions which were not deemed desirable by the majority of the Committee or the State agencies. These proposals are discussed in the last section of the report.

Draft legislation reflecting the recommendations of the Departments can be found in Appendix B.

## II. ALL-TERRAIN VEHICLES IN THE UNITED STATES

ATVs have been sold or manufactured in the United States since 1971. In 1982, approximately 750,000 were in use; the number tripled to more than 2.5 million four years later. ATVs are sometimes operated for their utility value, especially on farms or woodlots; however, the greatest use by far is recreational.

Concern for safety has grown with increased use. In 1984, the United States Consumer Products Safety Commission (CPSC), an independent watchdog agency of the federal government, issued its first ATV safety alert citing the inherent problems of three-wheeled ATVs.

The number of safety issues, along with the numbers of injuries and fatalities attributed to three-wheeled ATVs, continued to rise. Injuries treated in hospital emergency rooms soared from 8,500 in 1982 to 86,400 in 1986. In the same period, there were 696 deaths, 20% of which were children under the age of 12. An alarmed Consumer Product Safety Commission stated that the cause of accidents and deaths was "...directly related to the design and unstable handling characteristics of the vehicles... requiring maneuvering unlike any...familiar to most of us who have ridden bicycles, trail bikes, minibikes, or motorcycles..."(2).

In 1987, a consent decree was signed between the CPSC, ATV manufacturers, and the United States Department of Justice, providing for a nationwide ban on the sale of new three-wheeled models and the repurchasing, by the manufacturers, of any new (as of 1987) three-wheeled ATVs from dealers' inventories.

### III. ALL-TERRAIN VEHICLES IN MAINE

Maine began controlling the use of ATVs in 1983. Unlike many other states, the Maine Legislature chose to broaden the definition of ATV to include any

"... motor driven, off-road recreational vehicle capable of cross-country travel on land, snow, ice, mud, swamp-land or other natural terrain. It included, but is not limited to, a multi-track, multi-wheel or low pressure tire vehicle; a motorcycle or related 2-wheel, 3-wheel, or belt-driven vehicle; an amphibious machine; or other means of transportation deriving motive power from a source other than muscle or wind. For purposes of this subchapter, all-terrain vehicle does not include a snowmobile; an airmobile; a construction or logging vehicle used in performance of its common functions; a farm vehicle used for farming purposes; a vehicle used exclusively for emergency, military, law enforcement or fire control purposes..." (12 MRSA Sec. 7851 Subsec. 2)

Laws were enacted which require vehicle and dealer registrations (12 MRSA Sec. 7854 and 7855); release landowners from liability, except in cases of malicious intent or when a consideration is paid (14 MRSA Sec. 159-A); and prohibit certain acts, such as reckless operation, and operating under the influence of intoxicating liquor or drugs (12 MRSA Sec. 7857).

By 1985, the extent of user problems associated with ATVs prompted the Legislature to call for a study by the Department of Conservation on the need for further controls. A consulting firm, Maine Tomorrow, carried out the study under the guidance of the Bureau of Parks and Recreation. The study examined "...the recreational needs of ATV users, conflicts with other recreational activities and with landowners, including damage and trespass, noise, safety, and law enforcement issues and special problems posed by the fact that many ATV users are minors..."(3).

A report and recommendations were submitted to the Legislature in 1986. Subsequent legislation enacted the study's recommendations, with the exception of the recommendation which would have required ATV operators to obtain written, affirmative permission from the landowner upon whose property they wished to operate.

### IV. STATE PROGRAMS

#### **A. THE DEPARTMENT OF INLAND FISHERIES & WILDLIFE PROGRAMS**

Since 1983, the Department of Inland Fisheries and Wildlife has registered ATVs. At present, the registration fee is \$12.00,

of which \$5.65 is retained by the Department of Inland Fisheries and Wildlife for enforcement and registration costs; \$2.50 is designated for safety activity and training by the Department; and \$3.85 is transferred to the Department of Conservation's ATV program. An additional \$1.00 can be charged by a local municipality, if it registers ATVs for the Department of Inland Fisheries and Wildlife.

Since July, 1986, more than 3700 ATV operators have completed safety training courses conducted and/or approved by the Department of Inland Fisheries and Wildlife (required for operators under age eighteen). The courses include an introduction to the machine and its controls; demonstrations of safe riding equipment, first aid and survival; and discussion of landowner relations, impact on the environment, and Maine ATV laws. Currently, there are 170 largely volunteer, certified instructors in the state. Training opportunities will increase in the future, as the provision in the consent decree requiring manufacturers to provide "hands-on" training to purchasers, both past and present, is implemented. This training will be available through the ATV Safety Institute, a newly formed division of the Specialty Institute of America. Financial incentives in the form of \$50 in cash, an equivalent amount in ATV merchandise, or a \$100 savings bond for the purchaser or a family member who completes the training course, will be offered.

## **B. THE DEPARTMENT OF CONSERVATION ATV PROGRAM**

For two years, the Department of Conservation, Bureau of Parks and Recreation has been developing an ATV program as part of its Off-Road Vehicle Division. An ATV Coordinator directs this statewide effort. Modeled after the state's snowmobile program, the ATV program encourages and assists formation of local ATV clubs; designs and develops trails; provides information on proper ATV use; awards grants to ATV clubs to develop and maintain trails; conducts research on ATV management; and provides assistance and guidance to landowners on ATV management issues.

To date, the program has instituted landowner liability protection; worked with landowners to reduce use problems; developed trail signs and a sign maintenance program for authorized trails; developed an ATV club information manual; and approved 250 miles of trails. A 25-mile, experimental trail system in Mt. Blue State Park, intended to provide information on ATV impact on trail surfaces, wildlife, sound levels, and user preferences, is under construction.

## V. MAJOR ISSUES

### A. SAFETY

Issues pertaining to ATV safety have been addressed by past Legislatures. Legislatively mandated safety requirements are as follows. (All references are to 12 MRSA Sec. 7857)

An ATV cannot be operated:

- o On a controlled access highway, except to cross the highway by use of bridges over, or roads under, the controlled access highway (Subsec. 2);
- o On a public way, except in circumstances as specified in Subsec. 24, par.D (Subsec. 5);
- o On a bridge, culvert, overpass, or underpass closed by the Commissioner of Transportation (Subsec. 8);
- o Recklessly so as to create a substantial risk of serious bodily injury to another person (Subsec. 9);
- o While the operator is under the influence of intoxicating liquor or drugs (Subsec. 10);
- o In such a manner as to endanger any person or property (Subsec. 11);
- o At greater than reasonable and prudent speed for the existing conditions (Subsec. 12);
- o Without a muffler (Subsec. 15);
- o Without a working spark arrestor (Subsec. 15, Par. B);
- o Without sufficient lights:
  - a. Front: at least one headlight capable of casting a white beam for a distance of at least 100 feet directly ahead of the ATV (Subsec. 16, Par. A);
  - b. Rear: at least one lamp capable of displaying a red light visible at a distance of at least 100 feet behind the ATV (Subsec. 16, Par. B);

An ATV operator must:

- o Come to a complete stop before entering a public way (Subsec. 6);
- o Yield right of way to all other types of vehicular traffic while on a public way (Subsec. 7);

- o Use ATV lights as follows:

1. one-half hour after sunset to one-half hour before sunrise (Subsec. 17, Par. A);
2. When conditions due to fog, etc. are such that other persons, vehicles, and objects are not clearly discernible for a distance of five hundred feet ahead (Subsec. 17, Par. B).

- o Report "any accident resulting in injuries requiring the services of a physician, in death of any person or in property damage to the estimated amount of \$200 or more ... and give notice of the accident by the quickest means of communication, to a law enforcement officer available nearest to the place where the accident occurred. (Subsec. 22).

The number of reported ATV injuries in Maine has declined from 239 in 1985 to 120 in 1987. The total number of ATVs registered during this time period has remained relatively constant around 20,000.

## **B. ENVIRONMENTAL DAMAGE**

In addition to the environmental laws addressing water pollution, statutory provisions specified for ATVs (12 MRSA Sec. 7857) seek to protect the environment and private property. An operator of an ATV is prohibited from operating:

- o On salt marshes;
- o In the intertidal zone; o On sand dunes;
- o In cemeteries, burial places, and burial grounds;
- o In alpine tundra or freshwater marshes and bogs, other than on a trail designated for ATV use by the Department of Conservation, when the ground is not frozen and sufficiently covered with snow to prevent damage to the vegetation;
- o On a snowmobile trail, financed by the State's Snowmobile Trail Fund, unless the use has been authorized by the property owner or agent, or unless in an emergency (Subsec. 3);
- o On a private road, after having been forbidden to do so by the property owner, agent, or a municipal official (Subsec. 4);

- o On railroad tracks or rights-of-way, without written permission from the railroad, unless the portion of railroad line has been officially abandoned under the authority of the Interstate Commerce Commission (Subsec. 24, Par. E-2 and Subsec. 18)
- o Within 200 feet of a dwelling, hospital, nursing home, convalescent home or church (Subsec. 20);
- o On cropland or pastureland, without the landowner's permission (Subsec. 23).

At public meetings, some participants reported specific damage to cropland, tree farms, and intertidal areas.

In view of the damage reported, it would appear that inadequate knowledge and/or enforcement of existing laws are the major causes of environmental damage, and not any inadequacy of the law itself.

### C. LAW ENFORCEMENT

Although Maine statutes give the duty and power of enforcement to local, county, and state police, Department of Inland Fisheries and Wildlife wardens, and Department of Conservation forest rangers, enforcement of ATV laws is a low priority for all enforcement agencies. With limited staffs and financial resources, law enforcement agencies focus on violations which are considered more important. Additionally, other recreational activities such as power boating and jet-skiing have grown to the point that they require more attention from the wardens of the Department of Inland Fisheries and Wildlife, which competes with time available for ATV related enforcement activities.

Because of their design and use, ATVs are difficult to pursue and apprehend. Enforcement agencies have policies which discourage pursuit of ATVs in a chase because of the danger to both the law enforcement official and the ATV operator.

The 1986 ATV study also recognized the difficulties of law enforcement.

"...Enforcement of ATV laws is made more difficult by the maneuverability of ATVs, the difficulty in identifying the operator, and the fact that trespass and damage often occur long before they are discovered. The nature of ATVs and law enforcement generally is such that these problems cannot be solved completely..."(4).



As was found to be the case in 1986, certain issues today are specific to young ATV operators. Legislation enacted following the 1986 study requires that:

- o All ATV operators under age eighteen must wear protective headgear (Sec. 7857 Subsec. 13-B);
- o A parent or guardian is held responsible if an ATV operator under age eighteen violates any law related to ATVs. (Sec. 7857 Subsec. 21). If the operator causes damage while operating an ATV, the owner, parent, or guardian is responsible (Sec. 7858).

Except in cases of operating an ATV on one's own land:

- o All ATV operators under the age of fifteen must be accompanied by an adult, when operating an ATV (Sec. 7857 Subsec. 13);
- o All ATV operators under the age of eighteen must complete an ATV training course, approved by the Department of Inland Fisheries and Wildlife (Sec. 7857 Subsec. 13-A).

In spite of these laws, some problems continue. At public meetings, participants stated that many cases of trespass, environmental damage, and unsafe riding can be attributed to young operators. Although the law requires an operator below the age of fifteen to be under the supervision of an adult, this requirement is frequently ignored. And law enforcement agencies, with an overburdened court system, focus on informing and educating, rather than prosecuting young people for relatively minor violations.

Finally, as the public meetings revealed, landowners themselves sometimes make enforcement difficult when they expect action but fail to follow through with testimony in court or even decline to bring the matter to court. Collectively, all the factors mentioned above mean that few violators are actually apprehended and prosecuted.

#### **D. LANDOWNER RELATIONS**

Although it appears there are fewer problems today than there were in 1986, at the public meetings landowners presented reports of specific damage and incidents relating to the use of ATVs. Most of the cases mentioned were due to disregard or ignorance of the law and the inadequacy of enforcement.

While many landowners do not want ATVs on their property, others have expressed an interest in allowing responsible use of ATVs on their land. Many individuals and companies are waiting

to judge the use of the experimental trail under construction by the Bureau of Parks and Recreation at Mt. Blue State Park. This trail will provide insight as to whether trails will be properly used, how best to manage the potential for environmental damage or wildlife disturbance, and whether established rules can be followed by users. For many landowners, the experience at Mt. Blue will determine the degree of their willingness to make their own lands available for controlled ATV use. The trail has been designed to prevent environmental and social conflicts and will be closely monitored by BPR staff. A separate monitoring program will be undertaken by Unity College. If conflicts or impacts are present which are not solvable, the trail will be closed. Mt. Blue State Park was chosen for its significant, remote acreage and the presence of staff and facilities to monitor trail use. There are no plans to establish ATV trails in other state parks.

The formation of ATV clubs and their success in working with landowners will also have a large affect on the future of ATV use in Maine.

## **VI. RESPONSIBILITIES OF ATV USERS**

With encouragement and assistance from the Bureau of Parks and Recreation's ATV Program, the number of ATV clubs has increased from 4 in 1986 to 25 in 1988. Some of the controversy surrounding ATV use may subside and opportunities for new trail development will increase if more operators become members of clubs. The 1986 ATV report emphasized that

"...the formation of ATV clubs is probably viewed by most people as the single most important action which can occur to change the public perception of ATVs as being a problem. Clubs can have a significant beneficial impact on nearly every major issue: developing good relations with landowners and other recreationalists; educating and placing controls on young riders to ease law enforcement problems; providing facilities for the users and so on.

Although not everyone sees clubs as a panacea, the ATV users themselves were probably representative of others when 90% of them responded in the survey that ATV clubs can be effective in promoting safe and responsible use of ATVs..."(5).

The ATV phenomenon is often compared to that of snowmobiles. Twenty years ago the latter were the "new machine" and viewed as loud, intrusive, and environmentally damaging. In the ensuing years, responsible users, in partnership with the state, have

formed clubs, developed a network of trails spanning thousands of miles, and are usually well accepted. Although the comparison between ATVs and snowmobiles is not valid in several respects, only time will tell whether more organization, education and enforcement help solve the present problems, as they apparently have with snowmobiles.

It is clear that ATV operators must become better organized, work more to assist landowners and enforcement agencies, and police themselves if formal ATV use opportunities are to be increased.

### **VIII. LEGISLATIVE RECOMMENDATIONS**

#### **Recommendation 1. All ATVs manufactured after January 1, 1991, for sale in Maine, should be equipped with working brake lights.**

As more ATV clubs are formed and more trails are developed, the use of ATVs may continue to increase. It is likely that groups riding ATVs will frequent the new areas. Working brake lights should be visible to the rider behind to warn that the vehicle ahead is preparing to slow down or stop.

#### **Recommendation 2. The law prohibiting ATV use on intertidal zones and sand dunes should be clarified to include marine beaches.**

Current statutory language creates an uncertainty regarding the area between the dunes and the intertidal zone.

"...Operating an ATV in a prohibited area.

A person is guilty of operating an ATV in a prohibited area if he operates an ATV on a salt marsh, intertidal zone, sand dune or any cemetery, burial place or burying ground or if he operates an ATV on alpine tundra or on a freshwater marsh or bog, other than on a trail designated for ATV use by the Department of Conservation, when the ground is not frozen and sufficiently covered with snow to prevent direct damage to the vegetation..." (12 MRSA Sec. 7857, Subsec. 22-A).

It is believed that this language intended to prohibit ATVs from coastal beaches. The demarcation between the dunes and the intertidal zone is not easily discernible and can lead to enforcement difficulty.

It is recommended that "marine beach" be added to this law to make it clear that ATVs are not permitted on any portion of coastal beaches.

**Recommendation 3. By January 1991, all new ATVs should have a 3 1/2" x 6" space provided by the manufacturer, on the front and rear of the ATV for vertical mounting of plates and/or decals, as high as possible above the tires;**

It was agreed that having a place for the registration plates in the same, clearly-visible general area on each machine would make identification quicker and easier for both law enforcement personnel and landowners.

**Recommendation 4. A person shall be at least 10 years of age to operate an ATV.**

Nationally, organizations which study safety and ATV use agree that young children should be prohibited from operating ATVs. The U.S. Consumer Products Safety Commission recommends a minimum age of 12, stating that children under twelve typically:

"...lack adequate size and strength, cognitive abilities, motor skills and perception to operate a motor vehicle safely. ATVs are difficult to ride and require constant attention to avoid accidents..."(6).

The American Academy of Pediatrics prefers a minimum age of 16 because:

"...ATV operation requires coordination, dynamic balance, quick reflexes, good visual and auditory perception, and a good sense of judgment. These characteristics and developmental maturity often are lacking or not fully developed in children under the age of 16..."(7).

The consent decree of 1987 establishes a recommended minimum age of 12 to operate a 70-90cc youth size ATV and 16 for an adult size, of greater than 90cc. The decree further provides that the manufacturers will affix to all new ATVs a warning label stating the recommended minimum age for operation of the vehicles. Neither the CPSC, American Academy of Pediatrics, nor the consent decree includes accompaniment by an adult in their recommendations.

The law only requires that persons under 18 years of age complete a safety training course approved by the Department of Inland Fisheries and Wildlife before they can operate an ATV. In addition, no person under 15 can operate an ATV unless accompanied by an adult, or unless operating on his/her own land.

Maine law requires that a person be at least 12 years old to operate a boat powered by a 10 horsepower or greater motor. Below 10 horsepower, there is no age restriction. Jet skis are considered personal watercraft and the same restrictions apply to

them as to boats. There are no statutory minimum age requirements for snowmobile operation; however, persons must be at least 10 in order to operate without an accompanying adult, and at least 14 to cross a public way. For hunting, the minimum age is 10 to carry a firearm when accompanied by an adult. After age 16, no accompanying adult is required.

An age limit, which would help assure a level of skill, maturity, and responsibility, is desirable for ATV operation. The recommended minimum age of 10 to operate an ATV is consistent with the age for hunting with a firearm, and is consistent with the recommendation in the report of the Maine Special Commission on Boating to "...prohibit anyone under 10 from operating a motorized watercraft..."(8).

**Recommendation 5. The age limit for the requirement of completion of a Department of Inland Fisheries and Wildlife-approved ATV training course should be reduced from 18 to 16,**

Current Maine law requires any person under 18 to have completed an ATV safety training course before operating an ATV. However, a person can operate an automobile at age 16, or 15 upon completion of a driver training program. There is not a compelling basis for requiring more stringent training for ATVs than for automobile use. In the interest of consistency, the ATV requirement should be changed to 16. Furthermore, the age limits would be consistent with hunting without accompaniment of an adult, and consistent with the recommendation in the report of the Maine Special Commission on Boating "...if the person is under 16, he or she can operate a motorized watercraft when accompanied by a person at least 16 years old, or after completing an approved safety course (emphasis added)..."(9).

In addition, the ATV Advisory Committee endorsed the statement in the report of the Maine Special Commission on Boating "...that all the age restrictions for all motorized recreational vehicles - watercraft, ATVs, and snowmobiles - be the same. These limits will coincide with the age limits for hunting and fishing licenses..."(10).

**Recommendation 6. The recommendation of the Maine Special Commission on Boating to increase the Warden Service Staff should be approved.**

The enforcement of recreation laws is an issue of increasing concern generally. For example, the recent increase in use of power boats on Maine waters and their speed has led to problems of such proportions that a Special Commission on Boating was established to examine the situation and make recommendations to

the Legislature. In its report, the Boating Commission recommends

"...10 more warden positions be created and funded. These 10 officers would not be assigned to separate districts as other wardens are, but the territories would be large enough to allow them to be assigned wherever needed the most. Their duties would focus on the various motorized recreational vehicles..."(11).

Additional wardens whose responsibilities would be predominantly enforcement of boating and recreational vehicle laws, and whose assignments would be where "needed the most" would contribute to better managing ATV use.

### **VIII. PROGRAM RECOMMENDATIONS**

#### **Recommendation 1. Instruction in the enforcement of the ATV laws should be included as part of the curriculum at the Maine Criminal Justice Academy.**

Although Maine law states that "...all law enforcement personnel, including those of the Bureau of Forestry, shall have the powers and duties to enforce (ATV laws)..." (12 MRSA Sec. 7056, Subsec. 4), each law enforcement agency is also responsible for enforcing a multitude of other laws. The number of conservation and recreation related laws has expanded considerably in the last few years. Many law enforcement officers lack the knowledge and/or training to adequately enforce the ATV laws. Enhanced training in the ATV laws and a sharing of responsibilities for ATV law enforcement should lead to more responsive enforcement activity.

#### **Recommendation 2. Registration plates or decals should have bold characters of a color which contrasts with the plate color, and should be mounted vertically on the front and rear of the vehicle, as high as possible above the tires;**

The characters on the current registration plates are difficult to distinguish because of their size, location on the vehicle, color, and the background color of the plate. The existing system consists of narrow 1 1/2 inch characters on a whose plate color fails to contrast well with the color of the numbers.

This change in the registration number can be accomplished by the Department of Inland Fisheries and Wildlife's rule-making.

**Recommendation 3. The Department of Inland Fisheries and Wildlife's ATV training course should include, when relevant, instruction in proper and safe handling of two-wheel off-road vehicles.**

Handling a two-wheel ATV, such as a trail bike, differs significantly from handling a three or four-wheeled vehicle. Training in proper use and operation of two-wheeled ATVs is needed, especially for operators 18 and under, who are required to take a training course.

**Recommendation 4. Educational efforts to make ATV users aware of their responsibilities when using private property, and to make both users and landowners more knowledgeable of ATV laws and programs should be increased.**

Programs of the Departments of Conservation and Inland Fisheries and Wildlife have contributed to an improved safety record and more responsible ATV use, sensitive to the environment and landowners' rights. Educational efforts of these agencies should be increased to promote a wider knowledge of landowner rights, laws relating to the use of ATVs, enforcement powers and the willingness of ATV clubs and state programs to assist landowners.

**Recommendation 5. The Bureau of Public Lands should review its current policy on the use of ATVs on Public Reserved Lands in order to clarify when and where trails might be acceptable.**

The Advisory Committee and state agencies heard private landowners complain that the state, in not providing more opportunities for ATV use on publicly-owned lands, was encouraging use of private lands, sometimes against the landowner's wishes, who, given the difficulties of enforcing trespass against ATV users, in many instances were powerless to prevent such use.

Agencies, both state and federal, have different legislative mandates and management philosophies which are reflected in their policies concerning ATV trails on lands in their jurisdiction.

ATVs are not prevented from using game management lands belonging to the Department of Inland Fisheries and Wildlife. The Commissioner of the Department can adopt rules regulating such use on these lands, but it has not yet been necessary for him to do so.

Maine Bureau of Parks and Recreation policy prohibits motorized vehicle use, except on roads or trails designated for that purpose. The Bureau is establishing an "experimental" ATV trail in a portion of Mt. Blue State Park where it is not

expected to cause environmental damage, disrupt wildlife or conflict with other recreational uses. This is being done with careful monitoring, to learn more about user preferences and potential environmental, wildlife, and social impacts of a regulated trail system. The Bureau has no plans to establish additional trails at this point. Most of its holdings do not have the abandoned road system or remoteness that Mt. Blue does, and ATV trails would thus conflict with other recreational uses.

In the wake of requests from ATV users, the Bureau of Public Lands is currently reviewing its present policy generally prohibiting ATVs on the state's Public Reserved Lands, which was adopted without opposition in 1986 after extensive public review. If the possibility of changing this policy is pursued by the Bureau, public input will again be sought before any final decision in this regard is made.

The current policy is as follows:

"...In keeping with the defined purpose that the focal point for recreational use and enjoyment of this landbase shall be essentially primitive, off-road travel by motorized vehicles of any sort (except snowmobiles) is prohibited. Within this context, it has been determined that all terrain vehicles (ATVs) generally reflect an incompatible use. In addition to posing a threat to the resource base (erosion, damage to new forest growth, disruption of habitat, etc.), they enable such intrusions into the backcountry as to diminish its value for solitude and primitive use. Use of such vehicles, therefore, will be limited to administrative purposes and to extraordinary situations covered by special use permit, at the discretion of the Director. However, in order to contribute in a positive fashion to the resolution of problems associated with ATV use, the Bureau will, while continuing the general prohibition of their use, cooperate, on an experimental basis, with duly constituted and legally incorporated groups engaged in bona fide research on this issue..."(12).

Baxter State Park does not feel ATV use would be consistent with the Management objectives established by Governor Baxter's Deeds of Trust.

Acadia National Park does not allow ATVs.

There is one ATV trail in the White Mountain National Forest and the Forest Plan calls for investigating the expansion of such use.

Federal law generally prohibits ATVs in National Wildlife Refuges, although in some instances they are specifically allowed. They are not allowed at Moosehorn or the Rachel Carson Wildlife Refuge.



**Recommendation 6. The role of the Bureau of Forestry forest rangers in ATV law enforcement should be expanded.**

Maine law gives law enforcement powers and duties to Bureau of Forestry forest rangers. Typical fire control duties of forest rangers include patrols in privately owned wooded areas, where ATVs are often operated. During the fire season, which coincides with the time of year in which there is greatest use of ATVs, additional fire control personnel are employed to assist with enforcing recreation laws, such as the issuing of campfire permits. The Bureau of Forestry is in a strategic position to assume an increased responsibility for ATV law enforcement. Rangers will receive law enforcement training at the Criminal Justice Academy and should be allowed, by the Director of the Bureau, to increase their activities in responding to complaints concerning ATVs.

**IX. IDEAS AND ISSUES DISCUSSED BUT NOT RECOMMENDED BY THE DEPARTMENTS**

**Issue 1. Except in the case of an emergency, no ATV designed for one rider should be operated with a passenger aboard.**

ATVs are equipped with warning labels stating that they are designed as vehicles upon which a passenger should not be carried.

"...The specialty Vehicle Institute of America maintains ATV injuries generally result from disregard of common sense warnings provided to riders, carrying passengers on vehicles intended for single rider use (emphasis added), riding under the influence of alcohol, and riding on paved surface..."(13).

"...The CPSC injury survey data show that (nationally) thirty-one percent of investigated ATV accidents involved carrying passengers and twenty percent of the injured people were passengers..."(14).

Maine statistics are similar; almost one-third of the accidents in the last two years involved riding double.

Carrying passengers on machines designed for a single rider should be discouraged. "... (ATVs) have unique handling characteristics. The presence of a passenger seriously impairs the driver's ability to shift weight in order to steer and control the ATV..."(15).

Most of the Committee, while recognizing the danger of carrying passengers, felt that the manufacturer's warnings and education were preferable to state regulation of this activity.

## **Issue 2. All ATVs should be registered.**

In Maine, ATVs must be registered only if they are operated on the land of another. They are exempt from registration if they are operated on the user's own property, or the property upon which he/she resides, or if they are exclusively for farm use. Law enforcement officials may encounter situations in which an unregistered ATV is being operated in an illegal manner, is reported by a landowner or other observer, leaves the location of the incident, and returns to the property which the operator owns or upon which the operator resides. Identification of the vehicle certain enough to permit prosecution may be impossible if there are no registration numbers.

Of the 38 states responding to a Department of Conservation survey, 22 require registration of all ATVs. In Maine, the number of registered ATVs has remained at approximately 20,000 since 1984; however, the number of operating ATVs is estimated to be considerably higher.

Registration of all ATVs in Maine would provide additional revenue for safety and training programs, and for trail construction.

Law enforcement agencies represented on the Advisory Committee did not feel that general registration would really be much help to them in enforcement. The majority of the Committee felt that to require registration of ATVs for farm use or use on one's own property would be an unwarranted infringement of personal rights and an unnecessary departure from Maine tradition, if it did not significantly facilitate enforcement.

## **Issue 3. The definition of "owner" should be clarified.**

In the ATV statutes (12 MRSA Sec. 7851, Subsec. 4) "owner is defined, for registration purposes, as "any person holding title to an ATV." However, unlike an automobile an ATV has no certificate of title. To register an ATV, the purchaser of an ATV presents only a bill of sale.

Because "any owner of an ATV...shall be jointly and severally liable with the operator for any damages caused in the operation of the vehicle..." (12 MRSA Sec. 7858) and "a person is guilty of failure to report an ATV accident, if he is...the owner of the involved ATV having knowledge of the accident, should the operator of the ATV be unknown...(12 MRSA Sec. 7857, Subsec. 22, Par. A), it was initially thought to be important that the definition of "owner" be clarified. In further discussion, it became evident to members of the Advisory Committee that this "loophole" has not caused a problem to enforcement agencies. It was the consensus of the Advisory Committee members attending the last meeting that this should be dropped as a recommendation.

**Issue 4. Law enforcement officials should have the power to suspend the user's motor vehicle operators license if an ATV user is found guilty of operating on a public way.**

According to statistics the of Department of Inland Fisheries and Wildlife, more than one-third of the ATV warnings issued and violations cited are due to operating ATVs on public ways. Nationally, "...almost ten percent of the injuries and over twenty-five percent of the deaths occurred while operating the ATV on paved roads. These accidents occur because of collisions with other vehicles and because ATVs are difficult to control on pavement..."(16).

Suspension of the motor vehicle operator's license in cases of operating ATVs illegally on a public way was considered but not recommended because this action would not be applicable to those persons who did not have a license or to nonresident license holders.

**Issue 5. Mandatory liability insurance should be required for all ATVs.**

Some landowners are reluctant to open their lands for public use for fear of being held liable in cases of personal injury or environmental damage. The law currently relieves landowners of having to assure safe conditions or even to give warning of hazardous conditions (14 MRSA Sec. 159-A, Subsec. 2). Additionally, an ATV operator must stop and identify himself/herself upon the request of the landowner or designee (12 MRSA Sec. 7856, Subsec. 2). Also by law, an owner of an ATV is responsible for any damages caused by the operator of the ATV (12 MRSA Sec. 7858). Furthermore, in the event of court action in which the landowner is found not liable, direct legal costs are awarded to the landowner (14 MRSA Sec. 159-A, Subsec. 6).

The cost of individual liability insurance to cover the concerns expressed above was also deemed to be prohibitive.

The Department of Conservation's ATV program, through ATV clubs, provides liability insurance coverage up to \$1,000,000 for approved trails.

**Issue 6. An ATV operator should be required to obtain affirmative permission before operating on a landowner's property.**

Current law "...is in no way to be construed as giving license or permission to cross or go on the property of another" (12MRSA Sec. 7856, Subsec. 1). It is unlawful to operate an ATV on a "private road after having been forbidden to do so...". (12 MRSA Sec. 7857, Subsec. 4).

In Maine law:

"... anyone entering another person's land without authorization is a trespasser, whether or not the land is posted...In practice, trespass laws are somewhat unenforceable...Indeed, it is difficult to convict a trespasser in the absence of a verbal warning. Even with conviction, if there is no damage to property, no threats, or injuries to other persons, and no unauthorized entry into other buildings, penalties tend to be light..."(17).

The concept of affirmative permission was rejected by the Legislature in 1986. It was opposed by some landowners who did not want to be bothered by extensive, frequent contacts, and enforcement agencies who viewed it as unenforceable.

The issue of trespass goes well beyond the use of ATVs. Difficulties associated with the enforcement of trespass violations are becoming an issue of increasing concern as traditional property rights are less respected, population pressures grow and new recreational activities become popular. At present, no single enforcement agency is willing to take the lead and be the principal contact for trespass complaints associated with ATV use, nor is there logically, one agency which should do so. The issue of trespass law and enforcement is beyond the scope of this study and should be addressed by a separate legislative review.

#### **Issue 7. Lights should be on at all times**

This idea will first be tried under the rules for use of the ATV trail at Mt. Blue State Park to see if it leads to safer use or facilitates enforcement.

#### **Issue 8. Decals, with bold characters of a color which contrasts with the background, should be affixed to either side of the vehicle in such a manner as to be clearly visible.**

It was the view of the police agencies, that this wouldn't really help in enforcement. It also was pointed out that it would be hard to find a place available on the side of the machine, for the stickers where they wouldn't be hidden by the operators legs.

#### **Issue 9. The Commissioner of Inland Fisheries and Wildlife should have the discretionary power to suspend the ATV registration in cases of violations of ATV laws.**

As previously discussed, comparatively few violations of ATV laws result in prosecution. According to statistics of the Department of Inland Fisheries and Wildlife, in 1987, the numbers

of violations, warnings, and complaints issued on ATVs increased by 30, 12, and 19 percent respectively over those in 1986.

As a deterrent for violating ATV laws, discretionary power could be provided the Commissioner of the Department of Inland Fisheries and Wildlife to suspend ATV registrations. This recommendation is consistent with provisions in hunting and fishing statutes, which state that:

"...if any person holding a license or permit...is convicted of a violation of any provision of chapters 701 to 721 (of the laws of the Department of Inland Fisheries and Wildlife) the commissioner may revoke or refuse to grant any license or permit held by the person for a period not less than 3 months nor more than 5 years..." (12 MRSA Sec. 7077).

The Department of Inland Fisheries and Wildlife believes this provision would be difficult to implement and it is therefore not recommended.

## REFERENCES CITED

1. "All-Terrain Vehicle Information," Specialty Vehicle Institute of America, Costa Mesa, California, p.2
2. Consumer Research Magazine, vol. 70, Dec. 1987, p. 38.
3. "Management of All-Terrain Vehicles: Recommendations Prepared for the Maine Department of Conservation," presented by Maine Tomorrow, January, 1986, p.i.
4. "A Report and Recommendations for the Management of All-Terrain Vehicles in Maine," submitted to the 112th Maine Legislature, Second Regular Session by the Bureau of Parks and Recreation, February 1, 1986, p.3.
5. "Report and Recommendations for the Management of All-Terrain Vehicles in Maine," p. 15.
6. "Consumer Product Safety Alert,"
7. "What Further Action Should New York State Take to Regulate the Use of All-Terrain Vehicles?: A report to the Legislature by the Legislative Commission on Critical Transportation Choices," January, 1988, p.10.
8. "Draft Report of the Maine Special Commission on Boating," p. 25.
9. Ibid., p.25.
10. Ibid., p.25.
11. Draft report of the Maine Special Commission on Boating, page 22.
12. "Public Reserved Lands of Maine: Integrated Resource Policy," Bureau of Public Lands, Department of Conservation, p.15.
13. "Overview: The Atv Issue", sheet issued by the specialty Vehicle Institute of America, Costa Mesa, California, p. 1.
14. "Consumer Product Safety Alert," U.S. Consumer Product Safety Commission, Washington, D.C., May, 1987.
15. Ibid.
16. "Consumer Product Safety Alert."
17. Hasbrouck, Sherman, "Access to Coastal and Inland Waters: The Public Use of Private Land," University of Maine, Land and Water Resources Center, May 1988, p.8.



**APPENDIX A**

**P.L. 1985, C. 762, SECTION 28**





P.L. 1985, C. 762, Section 28

**Sec. 28. Report.** The Department of Conservation and the Department of Inland Fisheries and Wildlife shall jointly monitor the effects of this Act. The Department of Conservation shall be the lead agency. These departments shall make a report to the Legislature no later than January 31, 1989, in which they document the results of their monitoring, present recommendations dealing with all important issues and submit any required legislation approved by the Attorney General covering all important issues. The departments shall obtain input from all parties included in section 3 of "AN ACT Relating to the Regulations and Distribution of Funds for All-terrain Vehicles," Public Law 1985, chapter 301. The study shall assure that the input of the various interest groups represents a consensus for each group. Subcommittees shall be utilized when necessary. Minority recommendations shall be included when appropriate.



**APPENDIX B**

**PROPOSED LEGISLATION**



FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

AN ACT to Amend the Laws Governing the Regulation of ATVs

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA, Section 7853, subsection 1-A, is enacted to read:

1-A. Minimum age. No person less than 10 years of age shall operate an ATV.

Sec. 2. 12 MRSA, Section 7853, subsection 2, is amended:

2. Training. A person under ~~18~~ 16 years of age is required to successfully complete a training program approved by the department prior to operating an ATV on any land other than the land on which that person is domiciled or land owned or leased by that person's parent or guardian. The training program shall include instruction on the safe operation of ATVs,

the laws pertaining to ATVs, the effect of ATVs on the environment and ways to minimize that effect, courtesy to landowners and other recreationists and other materials as determined by the department.

Sec. 3. 12 MRSA, Section 7857, subsection 1-A is enacted to read:

1-A. Display of Registration Numbers. Every new ATV sold in Maine after January 1, 1991, shall have a 3 1/2" x 6" space provided on the front and rear of the machine, as high above the tires as possible, for the vertical display of the registration numbers.

Sec. 4. 12 MRSA, Section 7857, subsection 13 is amended:

13. Unlawfully operating an ATV while under age.

A person is guilty of unlawfully operating an ATV while under age, if he is under the age of 15 years and operates an ATV across any public way maintained for travel or if he operates an ATV while unaccompanied by an adult, except as provided in subsection 24, paragraph E, or if he is under the age of 10 years.

Sec. 5. 12 MRSA, Section 7857, subsection 16-C is enacted to read:

C. Every new ATV sold in Maine after January 1, 1991, shall be equipped with working brake lights.

Sec. 6. 12 MRSA, Section 7857, subsection 22-A is amended:

22-A. Operating an ATV in a prohibited area. A person is guilty of operating an ATV in a prohibited area if he operates an ATV on a salt marsh, intertidal zone, marine sand beach, sand dune or any cemetery, burial place of burying ground or if he operates an ATV on alpine tundra or on a freshwater marsh or bog, other than on a trail designated for ATV use by the Department of Conservation, when the ground is not frozen and sufficiently covered with snow to prevent direct damage to the vegetation.



## STATEMENT OF FACT

Section 1 establishes a minimum age of 10 for the operation of ATVs, which is consistent with the hunting laws.

Section 2 reduces the age below which training is required from 18 to 16 to be consistent with motor vehicle laws.

Section 3 requires that new ATVs sold after January 1, 1991 have a 3 1/2" x 6" space for the display of registration numbers.

Section 4 makes the operation of an ATV by a person under 10 unlawful.

Section 5 requires that new ATVs sold in Maine after January 1, 1991 have working brake lights.

Section 6 makes it unlawful to operate an ATV on a marine sand beach.

This legislation accompanies a study by the Departments of Conservation and Inland Fisheries and Wildlife of the current ATV Statutes required by the 113th Legislature.