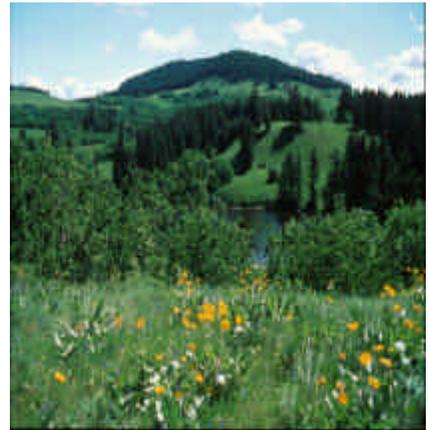


Alternatives for Regulation of All-Terrain Vehicles in BC

July 2001



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**This document was prepared on contract to CPAWS-BC
on behalf of the ad hoc ATV Committee.**

**We gratefully acknowledge West Coast Environmental
Law for making this research possible.**

Published by: Canadian Parks and Wilderness Society – BC Chapter and West
Coast Environmental Law
Vancouver, Canada

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Citation: Rutherford, S., *Alternatives for Regulation of All-Terrain Vehicles
in BC*. Canadian Parks and Wilderness Society–BC Chapter and
West Coast Environmental Law
Vancouver, Canada, 2001

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I. INTRODUCTION: BACKGROUND

The idea of regulating all terrain vehicles in British Columbia has been discussed since as early as the 1970's, when off-road motorized vehicular recreation first hit the market in a noticeable way; but, the discussion has not always resulted in decisive action. In British Columbia, early attention and discussion of the matter led to the passage of the *Motor Vehicle (All Terrain) Act*. This was an important step; but, unfortunately, the step did not go far enough. The legislators made the fatal flaw of putting off until later the decision on which vehicles to have the statute govern. Due to departmental wrangling and jurisdictional confusion since then, to this day, the only vehicles which are regulated by the Act are snowmobiles. "ATVs" and other all terrain vehicles (mini bikes etc.) are not presently regulated by the *Motor Vehicle (All Terrain) Act*.

Over the years, various concerned citizen groups have urged the government to take action on the issue.¹ In 1993, 1996 and 1999, the Union of BC Municipalities (UBCM) passed resolutions regarding all terrain vehicle regulation. The resolutions raised concerns regarding safety; damage to ground cover on both public and private property; and the use of the vehicles by children, noted to be as young as five or six years old. The resolutions urged the provincial government to gain some control over the situation by implementing a licensing and registration scheme as well as mandatory operator training.

With a few exceptions, the government has typically responded to these concerns by abeying the issue to further consider it, and to clarify the roles and responsibilities of the various government ministries and agencies involved. A few attempts did get made to address the issue in a unified way; but, unfortunately, these attempts did not succeed: for example, on July 4, 1989, Cliff Serwa, MLA, Okanagan West, and then Minister of State for Nechako and Northeast and Minister Responsible for Native Affairs in the Vander Zalm government, introduced a Private Member's Bill (M 219) entitled, *An Act Respecting the Operation of All Terrain Vehicles in the Province*. The Bill was proposed to replace the existing Act; but, unfortunately the Bill never made it to Second Reading. In 1992, the Corporate Policy wing of the Ministry of Environment, Lands and Parks (MELP) prepared a draft *Motor Vehicle (All Terrain) Act Regulation* (based partly upon the 1989 Serwa Bill); but, unfortunately again, the Regulation never got passed.

To date, regulatory action has been piecemeal. A few regulations have been passed further to the authority of the *Land Act* and the *Wildlife Act* to limit motorized recreation during select times and in critical areas. The *Forest Practices Code of British Columbia Act* and the Province's policy on commercial tenures are also pertinent. Such laws and policies do not, however, represent a unified approach for handling all terrain vehicle problems. Many issues remain outstanding without regulation.

In the interim, the need for leadership and regulatory management of off-road motorized recreation has now become urgent. One reason is that snowmobiling, ATV riding and

¹ e.g. Federation of B.C. Naturalists, Kamloops Naturalist Club, Outdoor Recreation Council of B.C., and B.C. Cattlemen's Association., CPAWS-BC and Grasslands Conservation Council of B.C. - to name a few

off-road 4x4/SUV driving have all grown in popularity in North America, including in B.C. Commercial tourist operations of snowmobiles and ATVs are now even becoming popular. Newer vehicle technologies are allowing vehicles to venture further into the backcountry than ever before.² Superimposed upon these developments is a growing potential for abuse which, unfortunately, can stem from ignorance of the detrimental impacts; or, alternatively, from a macho attitude which is all too often reinforced in our popular culture. A current example of the pop culture attitude to off-road driving is a “PlayStation 2” videogame entitled “ATV Offroad Fury”. The front cover depicts an ATV racing wildly; the back cover screams to players, “*CONQUER THE TERRAIN!...Careen off the dirt path and take on rocky hillsides; sandy deserts or deeply forested mountains in your dash to the finish line...*”

Ecological damage from motorized recreation is increasingly evident in British Columbia, particularly in the grasslands, wetlands and alpine areas of the province. The damage includes compaction of soil, erosion of soil, spread of noxious weeds, trampling of habitat, increased risk of fire and litter, and changes in ground cover affecting soil temperature and moisture.³ Other concerns are deep tracks, dust, noise, air pollution, gas and oil spills, and damage to flora. Countless anecdotal reports confirm the damage is happening every day; and even the government’s sources acknowledge the damage is happening.

For example, in October 2000, MELP and the Ministry of Forests (MOF) released an Information Bulletin which was headlined, “Off-Road Vehicles Damage Fragile Grasslands”. The press release described “severe damage” suffered by important grasslands and alpine ecosystems in the Cariboo Region, particularly around Yanks Peak near Horsefly, locations west of Lac La Hache, the Sheep Creek grasslands west of Williams Lake and the Churn Creek area in the South Chilcotin. The Ministries urged the public to cooperate by sticking to well-established roads and trails; and noted the ministerial power to close sensitive areas to off-road vehicles.

In addition, MELP’s web-based *Okanagan Critical Habitat Atlas*⁴ accepts that ATVs degrade critical grasslands habitats in the Okanagan; and encourages landowners to take measures to control ATV access to their land, in order to reduce the impacts on grasslands.⁵

The *Expanded Kootenay Region Interim Wildlife Guidelines for Commercial Backcountry Recreation in British Columbia*⁶, which now apply across B.C.⁷ to

² Wildlands Center for Preventing Roads, *Roaring from the Past*, p. 3.

³ MELP Information Bulletin dated October 2000, “Off-Road Vehicles Damage Fragile Grasslands.”

⁴ MELP, *Okanagan Critical Habitat Atlas*, on-line at:
www.elp.gov.bc.ca/sir/fwh/wld/okanwld/atlas/atlas2d.htm

⁵ *Ibid*, at 3.2.5 and 3.2.6.

⁶ MELP, November 2000.

⁷ Temporarily, pending development of broader guidelines.

commercial recreation⁸, and which are designed to avoid or mitigate the risks of commercial recreation on sensitive wildlife and habitat, include as “listed management strategies”: seasonal closures; limited or regulated activity including the imposition of speed limits; and the prevention of access to off-highway vehicles and snowmobiles, in certain cases and areas.

The environmental impact of motorized recreation, including impacts on wildlife, has been noted and studied extensively,⁹ particularly in the United States where motorized recreation is even more popular than it is here. These reports are relevant to B.C. as well, and they provide awesome warnings of problems on a larger scale.

Aside from the ecological impacts, the increased presence of motorized recreation has led to increased conflict, and potential for conflict, concerning access to recreational trails and public land in British Columbia;¹⁰ and concerning noise, exhaust emissions, speed and safety, and increased use/impact on trails. Reconciling the interests and needs of both self-propelled recreationists and motorized recreationists appears to be one of the hottest issues currently facing land use managers.

This report examines the current regulatory situation in B.C. and finds that it falls short of properly managing the issue. While regulations such as those passed under the *Wildlife Act* and the *Land Act* mitigate impacts and user conflicts to some degree, they are insufficient. An important impediment to enforcing even what laws we do have is the lack of a registration or licensing requirement for ATVs, which makes identification of infractors difficult and sometimes impossible. Aside from this, the system suffers from a lack of overall direction, coherence and outreach.

Fortunately, experience elsewhere with this issue is plentiful and instructive. This report looks elsewhere and finds that most of the jurisdictions reviewed have specific statutes, regulations and policies for managing ATVs and related environmental concerns. A range of models and tools is available for study, as well as a range of successes and failures to learn from.

Given all of the developments and an increasingly urgent situation, the time has come for B.C. to follow up on what it started 30 years ago. Some relatively simple steps can be taken immediately to improve the situation; other decisions could be put to a formal

⁸ Under the *Land Act*, commercial recreation land use tenures are issued by B.C. Assets and Lands Corporation (BCALC) on behalf of MELP. Individuals seeking a commercial tenure must apply to BCALC. [Note: as a result of the change in government in spring 2001, all land use decisions now rest with the Ministry of Sustainable Resource Management.]

⁹ At the end of this report I list documents and reports which investigated or referred to the environmental impacts of motorized recreation. Some have significant bibliographies which are highlighted.

¹⁰ User conflicts were the subject of comment in both the July 2000 Columbia Forest District *Revelstoke Area Recreation Inventory* prepared by Future Legacy Consulting Group for Revelstoke Community Futures Development Corporation, and the November 2000 *Public Recreation Study of the Squamish Forest District* prepared by the Outdoor Recreation Council for the Ministry of Forests and the Land Use Coordination Office. See also Chris Morris (Canadian Press), “Unhappy Trails: Trouble on Trans Canada Trail over Inclusion of All-Terrain Vehicles” (Jan. 18/2000)

consultation process for study, thought and discussion. There is no shortage of experience available to inform government on this issue; therefore, if the will is there, the way is clear.

II. FACTS AND FIGURES

Because there is no requirement to register ownership of an ATV, or to obtain a license for recreational use of an ATV in B.C. (unless on a Forest Service road, where a regular driver's license is required), it is difficult to know how many ATVs are currently in use in British Columbia. The Canadian All-Terrain Vehicle Distributors Council (CATV) reports "use in Canada has doubled in the past three years."¹¹

In search of retail sales statistics, I contacted the CATV, being "a national, non-profit trade association which represents the responsible interests of the major ATV distributors, as well as manufacturers, distributors and retail outlets of ATV-related products and services, and individual owners and riders of all-terrain vehicles in Canada." The CATV provided me with sales statistics broken down by province for each year since (and including) 1987.¹²

The CATV suggested that for the purposes of calculating a figure for cumulative total sales, I ought to assume a scrappage rate of six per cent per year. Using the CATV sales figures, some additional information affecting those figures and a 6% annual scrappage rate, my calculations suggest there are likely to be approximately 25,000 ATVs (not including snowmobiles, dirt bikes or other cycles¹³) currently operating in B.C., and that B.C.'s share of total sales ranges between approximately 5 and 7.5 per cent of total units sold in Canada, compared to B.C.'s share of approximately 12 per cent of the population. Québec and Ontario together comprise a whopping 50 per cent of market share, as compared to 60 per cent of population.

The CATV has existed at the national level since 1984. Very recently, British Columbia ATV recreationists have also made the move to get organized by forming the BC ATV Association. Despite being founded late in 2000, the BC ATV Association already has some 300 members to its credit.

Browsing on the world wide web, there is evidence that motorized off-road recreation is popular in British Columbia. In the course of my searches, I came across eight clubs which appear to be active.¹⁴

¹¹ See Chris Morris, *supra*. note 10.

¹² The CATV Sales Figures are attached as Schedule 1.

¹³ My best guess is that the statistics include quads and 3-wheeled ATVs, but I was unable to absolutely confirm this fact.

¹⁴ BC ATV Association, Interior Motorcycle Association of BC - off-road, MX, Island4X4.com, 4WDABC, BC4X4.COM, Island Rock Crawlers, Nanaimo Sidewinders and Lionsgaters Four Wheel Drive Society.

III. THE CURRENT REGULATORY SITUATION IN BRITISH COLUMBIA

The use of off-road vehicles in B.C. is affected by government laws and policy flowing from all three levels of government: federal, provincial and municipal. I will discuss each.

Federal Statutes, Regulations and Policies

The federal government has the jurisdiction to regulate off-road vehicles in each of each of the following areas of authority: safety/equipment, environment, trade, and (in a limited way) land use.

Briefly, the federal *Motor Vehicle Safety Act* and the Regulations under it prescribe vehicle and equipment standards, with a view to “reducing the risk of death, injury and damage to property and the environment.” The prescribed standards apply either at the point of manufacture or at the point of trade or import into Canada. Compliance with prescribed standards is evidenced by the bearing of the National Safety Mark and the display of the statement of compliance required by the Regulations. B.C. has formally adopted the prescribed Canada Safety Standards for motor vehicles, further to s. 223 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318.

Under federal law, “all-terrain vehicles”¹⁵ are considered “restricted-use motorcycles” for the purposes of prescribing which Canadian Standards apply. The vehicle standards which are prescribed for “restricted-use motorcycles” are Standard 108 “Lighting System and Retroreflective Devices” and Standard 115 “Vehicle Identification Number.” Regrettably, “restricted-use motorcycles” are not currently required to meet the federal standards for vehicle [air] emissions or noise emissions.¹⁶ However, as of February 17, 2001, Environment Canada has committed to proceeding with the development of emissions control programs for off-road engines, aligned with US federal programs, which currently regulate emissions for smaller off-road vehicles (e.g. diesel and gasoline spark-ignited utility < 25hp - such as those used for lawn and garden or construction).¹⁷

¹⁵ Defined in the Regulations as: ““all-terrain vehicle” means a wheeled or tracked vehicle, other than a snowmobile or work vehicle, designed primarily for recreational use or for the transportation of property or equipment exclusively on undeveloped road rights of way, marshland, open country or other unprepared surfaces.”

¹⁶ For prescribed vehicles only, vehicle emissions standards are found in Canadian Motor Vehicle Safety Standard 1100 of the *Motor Vehicle Safety Regulations*, now in effect under the *Canadian Environmental Protection Act, 1999*. Noise emissions standards are found in Canadian Motor Vehicle Safety Standard 1106 of the *Motor Vehicle Safety Regulations*, in effect under the *Motor Vehicle Safety Act*.

¹⁷ *Canada Gazette*, Vol. 135, No. 7 (Part I); and telephone conversation with Morrie Kirshenblatt of Environment Canada’s “Off-Road Regulation Section”, working under *CEPA, 1999*. See also *Off-Road Vehicle and Equipment: GHG Emissions and Mitigation Measures - Final Report* (August 1999), prepared by ICF Kaiser Consulting Group for National Climate Change Process: Technology Issues Table.

However, the US federal government is starting to look at regulating larger engines (such as those for ATVs); and the Canadian government has indicated that it too will consider the development of programs for those engines once those programs are finalized in the United States.¹⁸

Another area of federal jurisdiction over ATVs is the regulation of trademarks, copyright and international and interprovincial trade issues affecting them. It is arguable that in some fashion, this jurisdiction impacts upon ATV use in B.C.; however, since the impact is remote, I have not addressed this issue.

Federal jurisdiction over land use within B.C. is limited; however, the *National Parks Act* does govern the use of ATVs in National Parks within B.C.'s borders. Section 41(2) of the *National Parks Highway Traffic Regulations*, C.R.C. c. 1126 provides, "*No person shall operate an all-terrain vehicle in a park except for purposes of administration of the park and with the permission of the superintendent.*" Recreational snowmobile use is permitted, but only with the "written permission of the superintendent." Snowmobilers must also comply with the licensing, registration, snowmobile equipment, clothing and other equipment requirements of the province in which the park is situated; and travel is restricted to the conditions and areas as the superintendent may specify.¹⁹

An interesting, somewhat related, new development at the federal level concerns the regulation of personal watercraft ("Sea-Doos", jet-skis, etc.). In May 2001, the Honourable Senator Spivak introduced Bill S-26, *An Act concerning personal watercraft in navigable waters* which, if passed, would establish a method by which a local authority could propose to the Minister of Fisheries and Oceans that use restrictions or a prohibition on the use of personal watercraft be established for a specific waterway whose shoreline is within the local authority's jurisdiction or area. The Bill proposes that the partial bans would be initiated at the local government level, after consultation with local residents and with law enforcement agencies. The Bill has gone through First and Second Reading (May 2 and June 5, 2001 respectively) and is currently before the Transportation and Communications Committee.

There are many comparisons to be drawn between personal watercraft and ATVs, both in terms of environmental impacts and the user conflicts which accompany them. Interestingly, Bill S-26's Preamble states boldly, "*AND WHEREAS Parliament also recognizes that personal watercraft have given rise to considerable public concern because of the particular safety and environmental problems associated with their use....AND WHEREAS further restrictions on their use are desirable...*" Senator Spivak was interviewed on CBC Radio following the introduction of the Bill, and I was interested to hear her stressing the particular polluting and noise characteristics of two-

¹⁸ *Ibid.* Note "The Canadian Council of Snowmobile Organizations, the International Snowmobile Manufacturers Association and the [CATV] supported the concept of aligning Canadian emissions standards with the U.S. federal program once it becomes known." - Environment Canada *Support Document to the Notice of Intent on Cleaner Vehicles, Engines and Fuels* (Environment Canada, February 2001), at p. 24.

¹⁹ Section 41(1)

stroke engines which are commonly used by personal watercraft. This issue is shared with all terrain vehicles, and constitutes yet another reason for B.C. to take decisive action on all terrain vehicles.

Provincial Statutes, Regulations and Policies

B.C. enjoys a wide scope for legislating in respect of ATVs and/or in respect of the environment, wildlife or communities which might be affected by ATV use.²⁰ This next section discusses the statutes, regulations and policies which affect ATV use in the province.

The Motor Vehicle (All Terrain) Act

It would be easy to fall into the trap of thinking that B.C.'s *Motor Vehicle (All Terrain) Act* regulates all terrain vehicle use in the province. In fact, however, this Act does not apply to ATVs (as those vehicles are commonly known), dirt bikes, sand buggies or any other kind of all terrain vehicle, except snowmobiles. For a vehicle to be an "all terrain vehicle" within the meaning of the Act, a vehicle must be designated by regulation as an "all terrain vehicle" within the meaning of the Act. Currently, the only regulation to designate a vehicle as an "all terrain vehicle" is the *Snowmobile Regulation, BC Reg 65/72*, which designates snowmobiles for that purpose.

The Act's primary shortcoming is that it currently applies to snowmobiles only. However, it has other shortcomings as well.

Simply put, the Act is not very comprehensive. The Act currently has ten sections only, addressing:

1. Definitions
2. Operation prohibited without registration
3. Dealers
4. Operation of an all terrain vehicle
5. Equipment
6. Accident reporting
7. Power to make regulations
8. Offences and penalties
9. Suspension by Insurance Corporation of British Columbia
10. Administration

²⁰ The *Constitution Act, 1867* gives provinces the exclusive right to legislate in respect of "Property and Civil Rights in the Province" (s. 92(13)), "Generally all Matters of a Local or Private Nature in the Province"(s. 92(16)) and "The Management and Sale of the Public Lands Belonging to the Province and of the Timber and Wood thereon" (s. 92(5)). Provinces also have the right to legislate in respect of the environment, wildlife, nuisance, and pollution.

The “Equipment” section is entirely a “shell”, stipulating that “A person must not operate an all terrain vehicle unless the all terrain vehicle is equipped as prescribed by the regulations.” As none have been prescribed, none are required. Most jurisdictions would at least require a helmet.

Similarly, the Act does not prescribe vehicle licensing or insurance, nor does it establish minimum age requirements for operators or operator licensing requirements. All are noticeably absent.

Finally, the Act is not divided into organizational headings, which makes for rather erratic reading.

A few provisions are commendable and explicitly address avoidance or mitigation of environmental impacts; specifically, ss. 4(1)(a), (b), (e) and (f), and s. 4(5), which provide as follows:

Operation of an all terrain vehicle

4 (1) A person must not operate an all terrain vehicle

(a) in a careless, reckless or negligent manner so as to endanger or cause injury or damage to a person or property of another,

(b) in a tree nursery or planting, in a manner that may damage or destroy growing stock,

(e) in such a manner as to drive, harass, chase, run over, injure or kill wildlife or a domestic animal, or

(f) in areas, seasons or periods of time prohibited by the regulations.

(5) This section is subject to restrictions and prohibitions prescribed by the *Park Act*, the *Forest Act* or the *Land Act* or in any regulations made under those Acts.²¹

Section 8 of the Act makes contravention of the Act or the regulations an offence and limits fines to no more than \$500.

Section 10(1) imposes upon ICBC (“under the direction of the minister”) the responsibility to establish a system of registration and identification for all terrain vehicles. The system which has been established (for snowmobiles) is rudimentary, neither computerized nor easily accessible by law enforcement agencies. There is also reputedly very poor compliance with the registration system.

Section 10(2) provides that the Director of the Fish and Wildlife Branch of the Ministry, under the direction of the Minister, “...must institute a program of public information and safety education, including a training program of juvenile operators.” I understand BC Environment did support such a program for several years through grants to non-profits;

²¹ Subsection (5) fails to reference the *Wildlife Act* and the *Forest Practices Code of British Columbia Act*, and regulations thereunder.

however, the program was apparently discontinued after it was moved to BC Parks, and the \$25,000 in grant money was moved to the ministry executive account.²²

Ironically, one of the Act's strengths is that the Lieutenant Governor in Council is given a very broad power to make regulations, at section 7:

²² Information from MELP "Communications Strategy" dated June 30, 1992 revised up until July 21, 1992.

Power to make regulations

7 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) designating any type of vehicle propelled by motorized power as an all terrain vehicle and prescribing a name for that vehicle;
- (b) respecting the operation or prohibition of the operation of all terrain vehicles;
- (c) prescribing the method and manner of identification of registered all terrain vehicles;
- (d) prescribing rules for driving an all terrain vehicle on a highway, across a highway or a place other than a highway;
- (e) requiring the use or incorporation of any equipment or device in or on an all terrain vehicle and prescribing the specifications for it;
- (f) respecting the registration of all terrain vehicles, including the form and issue of certificates, the renewal, replacement or transfer of them, the payment of fees for them and prescribing the amount of the fees;
- (g) establishing a public information and safety education and training program, including the form and issue of juvenile safety certificates under section 4 for operation of all terrain vehicles;
- (h) respecting the operation of and the issue of permits for certain all terrain vehicles in prohibited areas, seasons or periods of time, and for the conduct of special sporting or competitive events, and operation on a highway;
- (i) prescribing the form, amount and terms of insurance coverage for designated classes of all terrain vehicles rented out by dealers;
- (j) designating certain persons as enforcement officers;
- (k) respecting the form and manner of reporting accidents under section 6;
- (l) respecting the form and location of all terrain vehicle control signs;
- (m) respecting other matters necessary or required to carry out the purpose of this Act;
- (n) exempting certain all terrain vehicles used in specified areas or for specified purposes from specified provisions of this Act, other than sections 4, 5 and 6;
- (o) defining, for the purpose of the regulations, a word or expression used in this Act and not defined in it;
- (p) requiring the use of safety equipment by operators and passengers, defining types of safety equipment, and prescribing the standards required for safety equipment sold, offered or exposed for sale or delivered to a purchaser.

Many topics are covered here; and given this very broad power, the potential exists for the Act's shortcomings to be addressed largely through the passage of regulations.

The *Snowmobile Regulation* establishes some detail requirements; but not very many, at the end of the day. The regulation first of all confirms that a snowmobile is an "all terrain vehicle" for the purposes of the Act. The regulation confirms the need for owner registration with ICBC, and for the certificate of registration to be carried while the snowmobile is in operation. It also stipulates that owner's decals are to be displayed on the snowmobile for identification purposes. (Competition snowmobiles on circuit are excluded from this requirement.) The regulation addresses various details of registration for owners, and for rental dealers; and specifies that rental dealers are required to carry liability insurance.

Notably, the regulation is silent with respect to the existence of other insurance requirements; about safety equipment or other related safety issues; and about vehicle registration requirements vis-à-vis highway use. There is nothing in the regulation addressing environmental concerns of any kind.

There are many shortcomings to the current system of regulation, not just for all terrain vehicles outside of the Act and Regulation, but for snowmobiles within their scope as well. Thoughtful examination of some of the issues affecting snowmobile use can be found in two recent studies:

(1) *Inter-jurisdictional Review of Snowmobile Related Legislation, Regulations & Policy*²³, prepared by the BC Snowmobile Federation, carried out a survey of snowmobile practices in other jurisdictions and recommended several improvements to B.C.'s system of regulation.

(2) *Recommendations to Improve Snowmobile Trail Use and Management*, a summary team report dated February 2001, from the snowmobile review team (a large government and non-government review team working together on snowmobile issues). The report makes recommendations in respect of:

1. Establishing trails.
2. Trail passes.
3. Non-highway road use.
4. Off-highway liability insurance.
5. Registration, licensing and on-highway insurance.
6. Highway use.
7. Safety.
8. Permit for on-highway use.
9. Safety.
10. Resource stewardship.
11. Enforcement.
12. First Nations.

The report's emphasis is on the creation of a trail network; and there are many useful discussions of issues related to trail creation and management, some of which are applicable to other all terrain vehicles (but likely on a much smaller scale). The report states:

The overarching purpose of the recommendations is to better facilitate a provincial network of well-managed snowmobile trails so that the following benefits may accrue:

- improved winter recreation opportunities for British Columbians wishing to snowmobile
- improved winter tourism opportunities for local communities by providing long-distance trails that link communities for both residents and non-residents

²³ Prepared by Clayton Prince of the British Columbia Snowmobile Federation, for the B.C. Land Use Coordination Office (December 2000).

- well managed user-maintained trails by developing secure funding mechanisms and through formal management agreements with appropriate agencies
- improved identification of snowmobiles so vehicles and operators can be readily identified for reasons such as safety/rescue, recovery of stolen vehicles and enforcement
- providing safer opportunities for snowmobile use by establishing trails and improving a variety of safety features (e.g. helmet use; safety courses; locating safe highway crossings); and
- reducing environmental impacts by promoting snowmobile use in appropriate areas and better managing and restricting use in inappropriate areas²⁴

I noted earlier that in 1989, MLA Cliff Serwa introduced Bill M 219 *An Act Respecting the Operation of All Terrain Vehicles in the Province*; and in 1992, MELP's Corporate Policy Branch prepared a draft Regulation based upon the failed Bill, and this also failed to get implemented. I should point out that both of these draft legislations were more comprehensive and better organized than the existing Act and *Snowmobile Regulation*, particularly on basic safety requirements (and each proposed a fairly broad definition of "all terrain vehicle"²⁵); however, both the Bill and the draft Regulation failed to address environmental impacts in any significant way.

Laws Respecting Forest Service Roads and Highways

Forest Service Roads

One of the places where ATVs are driven the most in B.C. is on Forest Service roads. The requirements affecting the use of Forest Service roads are set out in the *Forest Service Road Regulation, B.C. Reg 173/95* passed further to the authority of the *Forest Practices Code of British Columbia Act (the Code)*. Section 2 of the Regulation provides

²⁴ At page 2 of the *Recommendations*.

²⁵ The two definitions are very similar but have some differences. The Bill stipulated:

““**all terrain vehicle**” means any motor vehicle designed or adapted to travel off road on unprepared surfaces and, without limiting the generality of the foregoing, includes

- (a) amphibious machines,
- (b) dirt bikes,
- (c) dune buggies,
- (d) 4 wheel drive vehicles,
- (e) mini bikes,
- (f) motorized snowmobiles, and
- (g) vehicles designed to travel on 3 or more low pressure tires with the operator positioned on a seat and steering is by means of handlebars, but does not include,
- (h) any vehicle which is specifically designed for use and is being used in agriculture, forestry, mining or construction,
- (I) golf carts,
- (j) any motor vehicle registered under the *Motor Vehicle Act*,
- (k) personal vehicles, other than motor vehicles, for the mobility of handicapped persons, or
- (l) any vehicle exempted from the application of this Act by regulation.

The draft Regulation adds in “motorcycles”, and removes, modifies and adds some exemptions.

that some sections of the *Motor Vehicle Act* apply to Forest Service roads, the most important of which are:

- drivers must hold and have a valid driver's license; and
- there must be a valid and subsisting policy of third party liability insurance for a minimum of \$200,000 third party liability.

Section 3 of the *Forest Service Road Regulation* stipulates a special exception for snowmobiles. Snowmobilers using Forest Service roads need not hold a driver's license under the *Motor Vehicle Act* nor carry liability insurance, so long as they comply with s. 3(3) of the Regulation, which stipulates that "*A person must not operate a snowmobile on a forest service road if it appears that the road has been snowploughed, or that the road is otherwise fit for travel by motor vehicles other than snowmobiles.*"

Highways

As s. 4(3) of the *Motor Vehicle (All Terrain) Act* points out, all terrain vehicles must make themselves aware of the special rules which apply to use of highways. Specifically, s. 3 of the *Motor Vehicle Act* provides that any "motor vehicle" (which definition includes both an ATV and a snowmobile) must be registered, licensed and insured under the *Motor Vehicle Act* before it may be operated on a highway.

According to s. 24.04 of the *Motor Vehicle Act Regulations, BC Reg 26/58*, ATVs may not be granted a permit to travel across or next to a highway unless they are used for farming or industrial purposes. The ICBC *Autoplan Manual* (used by Autoplan agents) confirms that only industrial or farming ATVs may be registered, licensed, and insured; and that they are to be assigned a numbered plate labelled "restricted" at the top. According to the *Autoplan Manual*, this kind of a licence permits:

- crossing of a highway at a site designated by the RCMP or municipal police
- operation along a highway right-of-way for industrial purposes such as cutting grass, spraying and ditch clearing. The licence permits the use of the ATV only on the highway right-of-way to actually conduct the industrial operation. It does not permit travelling from point A to point B along a highway.²⁶

Snowmobiles may under limited circumstances²⁷ use highways (note that wanting to cross a highway while driving *off*-highway is considered "highway use"); but, to do so, snowmobilers must have a driver's licence (be 16+) and their vehicles must be licensed and insured.

Snowmobiles have to go through a rather complicated process to become authorized to cross a highway. The *Autoplan Manual* confirms that to start the process, snowmobilers

²⁶ ICBC *Autoplan Manual*, Volume 1, at p. 5

²⁷ Subject to the terms and conditions of a permit issued by the RCMP or municipal police: see s. 24.01 of the *Motor Vehicle Act Regulations, BC Reg 26/58*.

are first supposed to contact police to check that the police will issue a permit for operation on roads in that area. Once this preliminary check with police has checked out, the snowmobiler is then to go to an Autoplan agent for licensing, registration and insurance; then the snowmobiler is supposed to return to the police to obtain an Operation Permit! The insurance rate class will vary, depending on whether the snowmobile is just used for on highway use only or both on and off highway. According to the *Autoplan Manual*, on-highway snowmobiles get one passenger plate, a validation decal and a day decal.

Insurance

To meet off-highway insurance needs, ICBC offers an “off-highway” vehicle insurance policy, called an Unlicensed Vehicle Policy. It is for operating a vehicle off-highway for pleasure only. Operators must be at least 16 years of age to operate a vehicle insured under this policy. As noted above, further to the *Forest Service Road Regulation*, the policy is mandatory for ATVs operating on Forest Service roads; however, for snowmobiles insurance is not mandatory for driving on Forest Service roads, provided they comply with s. 3(3) of the Regulation.²⁸

The ICBC “Unlicensed Vehicle Policy” is also available for dune buggies, off-road motorcycles, amphibious machines and go-peds. Owners must be residents of BC; and the vehicle must be in storage or used only for pleasure purposes (off-road). The Policy is not available to farm tractors, garden tractors, or Go-Karts.

Land Use and Wildlife Protection Laws

Aside from the motor vehicle laws outlined above, ATV use in the province has more commonly been regulated through land use or wildlife protection laws and policies. Some of the statutes which fall under this heading are the *Land Act*, the *Ministry of Forests Act*, the *Forest Practices Code of British Columbia Act*, the *Park Act* and the *Wildlife Act*.

The *Ministry of Forests Act* stipulates that the responsible minister has an obligation to consider the various uses and values associated with forest and range lands, and to plan so that these values are coordinated and integrated.²⁹ There is a duty to consult, not only publicly, but with other government agencies as well. The forest uses which the Act contemplates as needing to be “coordinated and integrated” include:

²⁸ ICBC guidelines for eligibility for the insurance stipulate, “When a snowmobile is operated on a Forest Service road in accordance with...[provisions described in s. 3(3)]... the operator is not required to have liability insurance or a driver’s licence. The operator must, however, be 16 years of age or older and must not have a driver’s licence that is suspended, cancelled or surrendered.”

²⁹ Section 4.

- production of timber and forage
- harvesting of timber
- grazing of livestock
- realization of fisheries, wildlife, water, outdoor recreation and other natural resource values³⁰

The Act requires the Ministry to complete a forest and range resource analysis on a regular basis.³¹ The information gathered in the analysis can then be used to assist the Ministry in developing management policy.³²

Several Forest Districts and communities have embarked upon undertaking recreation inventories and recreation management planning. A couple of examples are the *Public Recreation Study of the Squamish Forest District* (November 2000)³³ and the *Revelstoke Area Recreation Inventory* (July 31, 2000).³⁴

Protection of Sensitive Areas from ATVs

Section 66 of the *Land Act* provides that use of Crown land may be prohibited in designated areas. This prohibition power has been exercised vis-à-vis motor vehicles, all terrain vehicles³⁵ and snowmobiles in *Prohibition Regulations Nos. 1-8*. The regulations identify lands which are vulnerable to damage, or have already been damaged, whether due to the fact the lands constitute fragile ecosystems (such as alpine meadows), or function as critical wildlife habitat. The regulations place time and area restrictions and prohibitions on motor vehicles, all terrain vehicles and/or snowmobiles³⁶, as set out in the schedules.

Section 5 of the *Forest Practices Code of British Columbia Act* (the *Code*) provides similarly that a district manager or a designated environmental official may establish an area as a sensitive area.

³⁰ *Ibid.*

³¹ The last one was in 1994 and they are due every ten years following: see “Introduction” to *1994 Forest, Range & Recreation Resource Analysis*, on the web at www.for.gov.bc.ca/pab/publctns/frrra/chap1.htm

³² *1994 Forest, Range & Recreation Resource Analysis*, Chapter 1, found on the web at www.for.gov.bc.ca/pab/publctns/frrra/chap1.htm

³³ Prepared by Future Legacy Consulting Group for Revelstoke Community Futures Development Corporation.

³⁴ Prepared by the Outdoor Recreation Council for the Ministry of Forests and the Land Use Coordination Office.

³⁵ The definition for this is: ““all terrain vehicle” means any type of vehicle propelled by motorized power and capable of travel on or off a highway as defined in the *Highway Act*.”

³⁶ Currently, areas affected by these regulations include: certain lands in Lillooet District near Fraser River; Porcupine Ridge on the Bonaparte Plateau north and west of Kamloops; Osoyoos Division of Yale Land District; Elko, Canal Flats and east of Columbia Lake in the Kootenay Land District; Marmot River, Portland Canal and Rainey Creek areas lying to south of Stewart; Babine Mountains. Blackcomb Mountain is a special case where all such is prohibited except to Fortress Mountain Resorts Ltd. and its agents, employees and contractors.

Also, s. 105 of the *Code* permits a district manager to issue an order restricting, prohibiting or attaching a condition to a non-recreational or recreational use of an area, for the protection of that area, and to post notices advising the public of that order. Part 2 of the *Forest Recreation Regulation, B.C. Reg 58/99* establishes that when a s. 105 order is proposed, notice of the proposed order should normally be published in a newspaper in advance of being established, for public review and comment, unless the district manager is of the opinion that the order does not significantly affect the public.

Section 105 orders typically arise after a planning process or initiative at the community level, addressing the management of multiple uses.³⁷ Such processes typically involve extensive stakeholder consultations.³⁸ Approximately twenty s. 105 orders are extant, and a large portion of these restrict or prohibit motorized use in certain areas.³⁹

If enforcement of a s. 105 order becomes an issue, it is accomplished usually through sending out officials to inform and educate about the rules, calling in the RCMP as necessary and essentially, negotiating solutions such as finding other areas that motorized users can use without creating conflict.⁴⁰

Recreation policy and facilities

The *Code* provides two sources of authority for recreational trails and facilities: s. 6 and s. 102. Section 6 trails are more formalized whereas s. 102 trails are merely authorized.

Under s. 6(1) of the *Code*, the chief forester may establish Crown land as an interpretive forest site, recreation site or recreation trail. Further to s. 6(3) of the *Code*, if an area is established under s. 6(1), the chief forester must establish objectives for the area, in accordance with the regulations, within 6 months of the establishment. According to the *Higher Level Plans Policy and Procedure* guide, s. 6 objectives are stated to clarify how the site, trail or area will be managed and protected.⁴¹ There is a spectrum of types of objectives to choose from (“recreation experience objectives”, “recreation feature objectives”, “recreation activity objectives”, “public recreation access objectives” or “forest interpretation objectives”), together with details which may be inserted in a standardized format from the *Standards and Procedures Manual*. Standardized formats for objectives are recommended to ensure objectives are “..expressed in a consistent and standard manner, and that the objectives are measurable to enable monitoring and evaluation of success in achieving objectives...”⁴²

³⁷ Conversation with Bill Marshall, Senior Recreation Forester with the MOF’s Forest Development Section.

³⁸ *Ibid.*

³⁹ *Ibid.* Also, a draft MOF document entitled “A.9 Section 105 Recreation Orders” addresses policy and has several sample orders attached to it. The orders mostly concerned ATVs or other motorized use.

⁴⁰ Telephone conversation with Bill Marshall.

⁴¹ *Higher Level Plans: Policy and Procedures*, at Chapter 7.

⁴² *Ibid.*

Section 7 stipulates that if an area has been established as an interpretive forest site, recreation site or recreation trail, the minister may develop, maintain, repair or close an interpretive forest site, recreation site or recreation trail on the area.

A 44-page on-line brochure published by the BC Forest Service, “Campgrounds, Trails & Interpretive Forest Sites” provides an inventory of the recreational facilities maintained by the BC Forest Service on Crown land in the Province. The brochure lists literally hundreds of campgrounds, trails and interpretive sites and indicates (by placing a “bullet” inside a column associated with an activity) which activities are “normally associated” with the recreation facility. One of the available activity columns is “ATV use”. I reviewed the brochure and compiled the following summary information:

- 15 campgrounds indicate ATV use is a “normally associated” use
- 24 trails or sites indicate ATV use is a “normally associated” use
- 8 trails or sites indicate ATV or motorized use is prohibited

If a trail is listed in the brochure, it is a “designated recreation trail” further to s. 6 of the *Code*.⁴³ An indication that a ATV use is “normally associated” with a trail or campground does not mean that the trail is available solely for ATV use; and likewise, if ATV use is not indicated, this does not mean that ATVs are not “approved” for using it.⁴⁴ What is indicated in the brochure is merely the activity “normally associated” with the facility (and this information may be out of date).⁴⁵ Unless otherwise prohibited, any trail or recreation facility may be used by an ATV (if feasible, considering terrain conditions).⁴⁶

It turns out that the s. 6(3) objectives for trails are usually “wide open” and do not usually take the form of imposing restrictions on users: by default, Forest Service recreation facilities are designated multiple use and, generally, “anything goes” in terms of ATV use or otherwise, unless otherwise posted or restricted.⁴⁷ As policy, the MOF aims to keep its trails multiple use so that there are not “ribbons of trails” throughout the same area of a forest.⁴⁸ Only where conflicts develop or where there is evidence of environmental damage occurring would change action be taken - for example to “harden” the site or trail or to restrict use.⁴⁹

Aside from s. 6 recreational trails and facilities, people may (indeed, must) further to s. 102 of the *Code*, apply to the district manager for permission to construct, rehabilitate or maintain a trail or other recreation facility on Crown land. While authorized, s. 102 trails are not necessarily advertised as recreation trails.

⁴³ Telephone conversation with Bill Marshall.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

In reviewing a s. 102 request for authorization, the Ministry considers the potential conflicts arising out of the proposed project; and also the group's ability to manage and maintain the trail in the future.⁵⁰ Such things as the group's track record, demonstrated commitment, provincial organizational backing, group membership, etc. are all factors.⁵¹ Financial commitment is not part of the requirement, because realistically, such groups don't usually have good funding, unless they obtain funding from lotteries or corporate sponsors.⁵² Previously (up until funding cuts in 1997) the MOF would support groups with funding; however since 1997, the MOF has only been able to offer training, equipment and supplies.⁵³

The MOF is receiving increased contact from ATV, snowmobile and mountain bike user groups requesting trails, as a result of increased pressure in other areas such as parks and is doing its best to try to accommodate user groups.⁵⁴

Recreation rules

Section 6 of the *Forest Recreation Regulation, B.C. Reg 58/99* places certain restrictions on the use of motor vehicles in wilderness areas and on recreation sites, trails and interpretive forest sites:

(1) A person must obtain prior authorization from a district manager, except in an emergency, or unless permitted under another Act, before doing any of the following in a wilderness area:

(a) using a motor vehicle or a bicycle...

(2) A person must not operate a motor vehicle or a bicycle on a recreation site, recreation trail or interpretive forest site in a manner that is likely to do any of the following: (a) cause damage to a structure or natural resource (b) endanger, injure or damage people or property; (c) harass, injure or kill wildlife or any other animal

One could deduce that if an area is not a "wilderness area", or "recreation site, recreation trail or interpretive forest site", a person might, without any specific permission or restriction, randomly ride an all terrain vehicle over Crown land.

Damage is prohibited under s. 17 of the Regulation: a person must not (a) in a careless or negligent manner, damage, or cause any alterations to, a structure or natural resource on a recreation site, recreation trail or interpretive forest site or in a wilderness area, or (b) unless authorized by a designated forest official move a structure that is on a recreation site, recreation trail, interpretive forest site or in a wilderness area.

⁵⁰ *Ibid*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

Enforcement powers are set out at Part 6 of the Regulation. Under this Part, a designated environment official or a peace officer may order a person to vacate a recreation site, recreation trail, interpretive forest site or wilderness area, if that person contravenes the Act, the regulation or the *Forest Fire Prevention and Suppression Regulation*.

Commercial recreation policy

Special rules apply to commercial recreation activities, including commercial ATV recreation. In particular, MELP's 1998 *Commercial Recreation Crown Land Policy* sets out eligibility and use permit requirements for all fee-for-service use of provincial Crown land. It is beyond the scope of this report to describe all of the details of the Policy; however a quick review of the Policy confirms the following:

- where motorized equipment is an “integral part” of the recreation experience, the activity is not considered to be “low impact”
- hence, the Policy does not allow “incidental commercial use” of ATVs without an appropriate permit or tenure being reviewed and granted
- for the same reason, commercial recreation involving the riding of ATVs is disqualified from eligibility for a “Short Term Low Impact Use (Temporary Permit)”
- commercial operators of ATV recreation must therefore apply either for a License of Occupation or for a Lease
- applications for each of these latter tenures must, according to Policy, include a draft management plan, specifying (amongst other things) measures to “...*protect environmental integrity; ensure public access is maintained; ensure affected parties’ interests are protected; and minimize/mitigate impacts on other resource users.*”⁵⁵

Watersheds

ATV recreation may also create issues for watersheds and forest development plans. According to the *Coastal Watershed Assessment Procedure Guidebook and Interior Watershed Assessment Procedure Guidebook*, (2nd Ed., April 1999)⁵⁶:

A watershed assessment is required before any forest development plan is prepared for a community watershed. Assessments may also be requested jointly by a Ministry of Forests district manager and a designated environmental official in watersheds that are determined to have significant sensitivity, significant downstream fisheries values, or licensed domestic water users. A district manager can also require a watershed assessment for any situations in which he or she deems it to be necessary.⁵⁷

⁵⁵ *Commercial Recreation on Crown Land Policy* (May 1998, MELP), under Part 9.5

⁵⁶ See www.for.gov.bc.ca/TASB/LEGSREGS/FPC/FPCGUIDE/wap/zipped/wap.pdf

⁵⁷ At page 1.

The 1999 Guidebook notes that non-forestry land uses such as cattle ranging, recreation and mining may have potential impacts, and assumes that the professional hydrologist involved will use professional judgment and experience to incorporate assessment of these non-forestry land uses.⁵⁸

An earlier version of the Guidebook, entitled *The Interior Watershed Procedure Guidebook* (September 1995)⁵⁹ (which pre-dates a consolidation with *The Coastal Watershed Assessment Procedure Guidebook*) gives more specific guidance on non-forestry impacts, and states, with respect to all terrain vehicles,

All-terrain vehicle (ATV) recreation is not uncommon in interior watersheds. In forested watersheds, ATV use most commonly occurs along linear rights-of-way, such as for hydro or gas lines. Water quality is affected where ATVs expose mineral soil, allowing surface runoff of sediment-laden water to enter streams. As part of the level 1 IWAP, Forest Service recreation officers will provide an assessment of whether there are locations in a watershed where ATV recreation occurs. If such locations exist, they must be examined in the field and assessed for sediment impacts. Where field assessment indicates that ATV recreation on Crown land is contributing to water quality degradation in a watershed, the Forest Service should develop prescriptions to reduce and eliminate the impacts.⁶⁰

Provincial Parks

The B.C. *Park Act* does not itself address the issue of all terrain vehicles; however, the *Parks and Recreation Regulation, B.C. Reg 180/90* does address the issue of motorized vehicle use of parks. In particular, s. 24 of the Regulation provides:

24(1) No person shall use or operate a motor vehicle, motorcycle or other self-propelled vehicle in a park or recreation area except (a) on a park road, (b) in an area as permitted by a sign or other device, or (c) as authorized by a park officer.

...

(3) No person shall use or operate a snowmobile in a park or recreation area except (a) in an area or on a trail as permitted by a sign or other device, or (b) as authorized by a park officer.

Land use decisions to permit off-road motorized vehicle use of parks are currently made within the park management planning process.

In terms of public communications of its rules respecting ATVs, the B.C. Parks Recreation website states under the heading, “Wilderness/Backcountry Areas”, “*Motor vehicles, including motorcycles, ATVs and similar vehicles, are restricted to the vehicle roads and parking lots.*” Many of the “web brochures” describing individual parks also

⁵⁸ *Ibid.*

⁵⁹ On-line at: <http://www.for.gov.bc.ca/tasb/legsregs/fpc/fpcguide/iwap/iwapp14.htm>

⁶⁰ At Appendix 14.

stipulate whether ATV use is restricted in the park, or whether there are trails open to ATVs in the park or outside of the park in the general vicinity.

Wildlife

Section 27 of the *Wildlife Act* makes it an offence to discharge a firearm or wound or kill wildlife from a motor vehicle, or to herd or harass wildlife with the use of a motor vehicle or other mechanical device. Section 90 stipulates that a conservation officer is entitled to inspect a firearm found in a motor vehicle or boat. Section 93 stipulates that an officer may, without a warrant, stop and search a motor vehicle for fish or wildlife killed, if there are reasonable grounds to believe that fish or wildlife have been killed; and under s. 95, an officer may stop a vehicle to determine if hunting took place.

Section 4 of the Act provides for the designation of wildlife management areas, and a ss. 108 and 109, the Act also provides that regulations may be made to prescribe conditions under which motor vehicles or snowmobiles may be used for hunting or viewing wildlife; to regulate use of a wildlife management area; and to prohibit, restrict or allow access by members of the public to designated areas of B.C., for the purposes of wildlife management. Further to this power, the *Motor Vehicle Prohibition Regulation, B.C. Reg 196/99*, specifically addresses motor vehicle,⁶¹ all-terrain vehicle⁶² and snowmobile use and establishes different kinds of closures for the purposes of wildlife protection, including:

- motor vehicle closed areas
- motor vehicle hunting closed areas
- ATV and snowmobile closed areas
- ATV and snowmobile hunting closed areas
- snowmobile hunting closed areas
- ATV hunting closed areas
- snowmobile closed areas

Areas which fall under the described closures are listed in the Schedules to the regulation.

The Liquor Control and Licensing Act

⁶¹ The definition is: ““motor vehicle” means a device in, on or by which a person or thing is being or may be transported or drawn, and which is designed to be self propelled, and includes an atv or snowmobile, but does not include (a) a device designed to be moved by human, animal or wind power, (b) a device designed to be used exclusively on stationary rails or stationary tracks, or (c) a boat propelled by motorized power.”

⁶² The definition is: ““all-terrain vehicle” or “atv” means a wheeled or tracked vehicle propelled by motorized power, and capable of travel on or off a highway, including a motorcycle but not including (a) a snowmobile, or (b) a motor vehicle that is licensed for highway travel under the *Motor Vehicle Act*.”

Alcohol is a common factor in ATV accidents. It bears noting that under s. 44 of the *Liquor Control and Licensing Act*, transport of open alcohol is forbidden in “motor vehicles”. The definition of “motor vehicle” includes ATVs.

The Workers Compensation Act

The B.C. *Occupational Health and Safety Regulation* addresses safety concerns around the use of all terrain vehicles in the workplace. The Regulation prohibits outright the use of 3-wheeled all-terrain cycles⁶³ in “any occupational, industrial or commercial workplace.” While the Regulation permits 4-wheeled ATV⁶⁴ use, modifications to ATVs must be certified by a professional engineer; and the following rules for use are also stipulated:

- Ensure ATV operators are properly trained in the safe operation of the vehicle
- Make a pre-trip inspection to ensure the ATV is in safe working order
- Operate the vehicle in accordance with the manufacturer’s instructions, including instructions on the number of people allowed to ride on a vehicle
- Use proper personal protective gear (ankles, legs and arms) and headgear and eye protection

Municipal ByLaws⁶⁵

The *Motor Vehicle (All Terrain) Act* specifically authorizes municipalities to pass by-laws controlling all terrain vehicle use within municipal limits. Local governments also have jurisdiction to regulate nuisances further to authorities granted them under the *Local Government Act*.

At least three B.C. municipalities have exercised their jurisdiction to either prohibit or regulate the use of all terrain vehicles within municipal boundaries. These municipalities include the District of Logan Lake (ByLaw No. 234) (1985), the City of Kamloops (ByLaw No. 23-39, amended by ByLaw No. 23-44) (1985 and 1988), and the City of Terrace (ByLaw No. 1702-2000) (2000).

⁶³ Defined as ““all-terrain cycle” means a motorized off-highway vehicle designed to travel on 3 low pressure tires, with a seat designed to be straddled by the operator and handlebars for steering”

⁶⁴ Defined as “all-terrain vehicle” or “ATV” means a motorized off-highway vehicle, designed to travel on 4 or more low pressure tires with or without tracks added, with a seat designed to be straddled by the operator and handlebars for steering.”

⁶⁵ As noted under Background, in 1993, 1996 and 1999 the Union of B.C. Municipalities passed resolutions concerning the need for ATV regulations.

Analysis of B.C.'s Current Regulatory System

In terms of strengths to capitalize on, it can be said that:

1. While far from perfect, the *Motor Vehicle (All Terrain) Act* is a foundation upon which to build, whether by the addition of a detailed regulation or amendments to the Act.
2. There are already some thoughtful regulations in place for protecting habitat and wildlife from ATVs. These should be preserved but enhanced by being made more accessible through cross-referencing them in the ATV regulation or elsewhere.
3. The system of local land use planning encourages local awareness of environmental impact issues, and invokes a sense of ownership over, and dedication to, the process and the decisions arising out of the process - all of which are likely to encourage compliance with local land use decisions.

The main weaknesses in B.C.'s current regulatory system are:

1. To date, no ministry has asserted "ownership" over the all terrain vehicle issue, and there is a resulting lack of leadership and policy guidance over laws, regulations and policies affecting all terrain vehicle use. The result has been a mostly reactive, piecemeal, sometimes inconsistent approach to problem-solving issues flowing from all terrain vehicle use.
2. The fact that the *Motor Vehicle (All Terrain) Act* does not currently apply to most all terrain vehicles (only snowmobiles) creates a confusing, misleading situation requiring rectification. The presence of the Act invites the wrong conclusion that ATV issues are being managed in a streamlined way. In fact, the opposite is true.
3. The fact that all terrain vehicles are not required to be registered or licensed seriously compromises the ability of peace officers and conservation officers to identify owners and to enforce what existing laws and regulations there are. It also compromises B.C.'s ability to keep records on how many all terrain vehicles are in use, or where all terrain vehicle use is highest - all of which is information that is needed for planning.
4. The various laws, regulations and policies are scattered among various ministries and vary from location to location. Nothing has been done to draw the rules together into a single, sensible package of easy, "one-stop" information, nor is there any apparent overriding policy. The complexity created by multiple layers, and the inaccessibility of information and policy direction, cannot help but impact negatively upon compliance and enforcement efforts.
5. I have a concern that MOF recreational trails policy concerning the management of all terrain vehicle and other motorized recreation is reactive rather than proactive. The default policy of allowing all activities on all trails unnecessarily opens up all trails (particularly sensitive areas) to damage which can result from even a single all

terrain vehicle trip. A small amount of planning to assess and manage potential impacts and conflicts from the outset, could result in better use of trails.

6. Insufficient regulatory controls and penalties exist to directly address environmental impacts from all terrain vehicles, such as noise, emissions, effects on wildlife and terrain, littering, etc.
7. There is a lack of policy, material and training available to users about the real negative impacts of all terrain vehicles on the environment and how to avoid/mitigate them. Again, inaccessibility of information cannot help but impact negatively upon compliance and enforcement efforts.
8. Growing multi-user conflicts on trails and Crown land more generally, suggest a need for policy direction specific to managing all terrain vehicle land use, compliance and enforcement efforts.
9. Proper funding for planning and enforcement with respect to all terrain vehicle use needs to be secured.

In sum, B.C.'s laws, regulations and policies toward all terrain vehicles are not entirely ineffective; but, the reactive and piecemeal way in which these have evolved has resulted in some noticeable weaknesses. The system needs to have injected into it an overall structure, strategy and set of tools for managing all of the concerns connected with all terrain vehicle use.

Plenty of experience exists elsewhere to assist B.C. in making intelligent planning choices. Now that ATV clubs/users are starting to organize in B.C., it is a timely opportunity to work cooperatively with responsible ATV clubs/users to put together a responsible plan for management.

IV. REGULATORY OPTIONS

In the course of my research into environmentally sensitive regulatory options, I reviewed the regulatory schemes being used in other jurisdictions for all terrain vehicles, and I also took notice of schemes regulating other activities within British Columbia. The other jurisdictions that I reviewed included Québec, Ontario, Newfoundland, New Brunswick, Alberta, Manitoba and Saskatchewan, as well as U.S. Federal laws, California and Oregon.

Below is a summary spreadsheet which compares some of the regulatory features.

	BC	California	Oregon	US Fed	Quebec
One Act for ATV and snowmobiles?	Yes: the <i>Motor Vehicle (All Terrain) Act</i> ; but Act currently applies only to snowmobiles	Yes; but two Acts govern both: the <i>Chappie Z'berg Off-Highway Motor Vehicle Law of 1971</i> (California Vehicle Code, Division 16.5); and the <i>Off-Highway Motor Vehicle Recreation Act of 1988</i> (California Public Resources Code)	Yes: chapter 821 of Oregon Revised Statutes	n/a	Yes: <i>An Act Respecting Off-Highway Vehicles</i>
Rules address 4x4s?	N	Y	Y	Y	N
ATV and snowmobiles handled in same regs or separate?	separate	same	same	same	separate
Govt department in charge?	Land Water and Air Protection (formerly MELP); ICBC for reg'n	Motor Vehicles (reg'n); Parks and Recreation (OHV MVR Program)	Parks and Recreation for trail permits; Motor Vehicles for snow vehicle reg'n; other agencies for trail mgemt USBLM, USFS, Oregon ATV Assoc	Forest Service	Transport
Vehicle ownership registration compulsory?	N - ATV; Y - snowmobile	Y	N - OHV ; Y - snow vehicle	n/a	Y
Registration fee?	snow: \$10	all: \$21 US	n/a - OHV; \$10 US snow	n/a	\$54 to register; \$6 annual
Annual or biennial licence?	snow: one-time registration only	biennial	OHV - n/a; biennial for snow	n/a	annual
Plate or decal?	ATV - n/a; snow - decal or plate	plate and green or red sticker permit	[trail permit only a small sticker]	n/a	plate
Where located on ATV?	ATV - n/a	left rear quadrant	n/a	n/a	rear
Liability insurance compulsory?	ATV - compulsory on forest service roads; snow - compulsory on highway			n/a	Y \$500,000
Operator license/safety course required?	ATV - driver licence on forest service roads; snow - driver licence on highway	ATV on public lands safety certificate or accompanied by adult with safety	basically need driver license or operator permit (after ATV safety course) or supervision	n/a	<16 yrs need operator's permit with certif of competence; highway need driver licence
Age restriction?	N		mini-bike: age 7+	n/a	12+ learner's veh, supervis, own land; 14+ ATV
Trail or other program?	N	Y	Y	n/a	Y
Trail permit extra money?	snow **	N - with registration	\$10 US all three classes; good for 2 yrs from date of issue	n/a	\$6 annual to trails from fee
Land use controls?	Act refers to possibility of area, season or time prohibitions in regs; also refers to restrictions possible in municipal by-law, <i>Park Act</i> , <i>Forest Act</i> , <i>Land Act</i> or regs under	trail system; grants require enviro assessment, monitoring, planning; Wildlife Habitat Protection program (federal agencies); soil conservation standards	trail system; not really specified except that need permit to go on trails	Presidential Executive Orders; Code of Federal Regs; local National Forest admin	Act refers to other Acts having restrictions; also addresses pvt land, highways, trails, etc.
Vehicle noise regulation?	N	Y: muffler and dB specs according to year of manuf (range 82dB - 92 dB and 101 dB)	ATV - 93-99 dB dep on location; snow 82 dB	n/a	Y cannot modify, remove or render inoperative the muffler
Vehicle exhaust/air emissions regulation?	N	Y: Veh Code has spark arrester; mv pollution control device rules	N	n/a	N
Other environmental provisions?	don't damage ppty; don't damage growing stock; don't run over, injure or kill wildlife or a domestic animal; regs elsewhere re: time/area prohibitions and restrictions	Stakeholder Roundtable; speed limits; civil dges if removal of sign offence proximately causes environmental impacts; no dge to land, wildlife; no litter provisions; TreadLightly! endorsed; safety course incl. enviro consids; red sticker; Preamble in PRC	TreadLightly! endorsed; offence to hunt/harass wild animals from ATV/snow; offence to operate snow or Class I/II ATV so as to expose underlying soil or vegetatin or to injure, damage trees	Exec. Orders preamble states need for resource protection in light of widespread use of ORVs on public lands; orders incl planning for devt of zones of use, monitoring of effects and review; special protective measures	Rules re: noise, harassing/killing animals, littering
Enforcement provisions?	peace, conservation, forest, park officers; other designated	peace officers	peace officers	CFR with local implementation	peace officers; volunteer Trail Security Officers

REGULATORY OPTIONS Continued

	Ontario	Alberta	New Brunswick	Newfoundland	Manitoba	Saskatchewan
One Act for ATV and snowmobiles?	No: <i>Off-Road Vehicles Act and Motorized Snow Vehicles Act</i>	Yes: <i>Off Highway Vehicle Act</i> (and coming soon, the <i>Traffic Safety Act</i>)	Yes: <i>All-Terrain Vehicle Act</i>	Yes: <i>Motorized Snow Vehicles and All-Terrain Vehicles Act</i>	Y: <i>The Off-Road Vehicles Act</i>	N: <i>The All Terrain Vehicles Act; The Snowmobile Act</i>
Rules address 4x4s?	N	Y	N - unless not registered as hwy. veh.	N - unless not registered as hwy. veh.	Y	N
ATV and snowmobiles handled in same regs or separate?	separate	same now but will be separate when <i>Traffic Safety Act</i> in force	same	same	unknown	separate
Govt department in charge?	Transportation; (except Tourism for snowmobile trails)	Transportation and Utilities	Public Safety(except Business New Brunswick for snowmobile trails, together with Trail Mgr.)	Works Services and Transportation	Registrar of motor vehicles to register.	Highway Traffic Board
Vehicle ownership registration compulsory?	OHV - Y; snow - Y unless on own lands	Y unless on own land	Y	Y	Y	N
Registration fee?	OHV \$35; snow \$30 once and \$15 annual	\$24 (NB a "personal licence plate" costs \$165!!)	ATV - \$16; snow - \$26	"about \$20"	unknown	n/a
Annual or biennial licence?	OHV one-time; snow - annual	annual	annual exp Dec 31	one time	regular periodic	n/a
Plate or decal?	OHV - plate and permit; snow - decal and permit	plate	plate or decal	plate	plate and sticker	n/a
Where located on ATV?	3 or less wheels conspic place; >3 wheels, conspicuous at rear of vehicle	front or rear but clearly visible, readable and not obscured	rear in conspicuous position	conspicuous, each side of front	unknown	n/a
Liability insurance compulsory?	Y	Y need insurance to register (and register unless on own land only)	ATV - N; snow - Y unless operated on own land only	if cross highway	Y	if highway or public land
Operator license/safety course required?	ATV - N; snow - for kids, after pass cours eof instruction and pass test	N	N	N	only if registrable under Highway Traffic Act	Y if 12-15 on public land, or accompanied by licensed adult
Age restriction?	12+ unless on own land under close supervision	14+ if public place, unless under supervision of adult	14+ to cross roadway not a highway; 16+ cross any roadway	never <12; 16+ unless accompanied by 19+; snow 13+ unless accompanied	<14 need adult supervision	16+ unless on own land
Trail or other program?	N (but is for snow)	N	ATV being discussed; snow in place	N	N	N
Trail permit extra money?	\$10 for snow	n/a	Y	n/a	n/a	n/a
Land use controls?	N (Act only addresses where Act does not apply or permit not required)	N; but Forest Rec reg imposes time/area restrictions	no travel within 7.5 m of highway; munic may make bylaw	Reg sets out what is an "approved area" by land type mostly; Act addresses highway use	Y	Y
Vehicle noise regulation?	N	Y - Reg	Y	Y muffler	Y	N
Vehicle exhaust/air emissions regulation?	N	Y - exhaust, flames/sparks	Y	Y - flames and sparks	Y - spark arrester	N
Other environmental provisions?	N	"Shifting Gears" program by Alberta Environment partnered with Alberta OHV Assoc (re: Ghost River-Waiparous Creek area only)	N	Regs address avoiding user conflicts; no tire chains on ATVs	N [but did not view Regs]	N
Enforcement provisions?	OPP; can suspend licence if fail to stop for police	RCMP, munic police, forests and conserv. officers	RCMP, NB police, park warden, game warden, fishery officer	Offence to kill/harass etc. wildlife; HTA officer, munic police, RCMP, forestry official, fisheries officer, wildlife officer, officer under Prov Parks Act; Note there is a ticketing system in place	RCMP, traffic officer, Natural Resources Officer (Conservation Officer, Park ranger, Park Patrol)	Violation of Act/Regs is offence; Sask. police, HTA traffic officer

While the schedule is helpful for quick comparisons, it is an insufficient tool for reviewing the merits of different options, or for really understanding how different features are integrated. This next section discusses the features of good management.

Discussion

Taking a “bird’s eye view”, the most admirable systems which I encountered in the course of my research had the following key components:

1. Environmentally sensitive policy direction.
2. Solid, clear directing legislation.
3. Detailed regulations.
4. Strategies and tools for management.
5. Strategies and tools for compliance.
6. Strategies and tools for enforcement.
7. A funding plan or model.
8. Clear interaction and communications with stakeholders, both at the outset and ongoing.

In my view, each of these components is key to a properly managed system. If even one component is missing, the system can be weakened and become broken.

I will now discuss each component in turn, with specific examples on implementation.

1. Environmentally sensitive policy direction

The best example of the need for environmentally sensitive policy direction is California’s program, which was established in 1971 and became increasingly broken up until the program’s review in 1999/2000. What was missing was clear and balanced policy direction. The environment suffered serious harm in the intervening years.⁶⁶

An official in California’s Off-Highway Motor Vehicle Recreation Program advised me that up until 2000, California’s problems stemmed from a lack of political will to do anything about the environmental degradation resulting from off-road vehicles.⁶⁷ The result was there was little in the regulations concerning environmental protection and little, if any, enforcement on such issues.

However, the same official advised me that the situation is now starting to turn around. My understanding is that a legal action was brought against the government in respect of

⁶⁶ The devastating effects are documented in Teri Shore, *Off-Road to Ruin: How Motorized Recreation is Unraveling California’s Landscapes* (Davis, CA: California Wilderness Coalition, March 2001). Found at www.calwild.org.

⁶⁷ Telephone conversation with Don Fuller, California OHMVR program.

the OHV program, which sought both greater accountability and changes to protect the environment. Because the legislation was subject to a “sunset clause”, the program’s complete cancellation was threatened if the issues were unable to be worked out. Ultimately, a new governor appointed a new program director. The governor also instructed the new director to embrace a new mandate to balance the program and to clean up the environmental situation before moving forward. As a result of this, and as a result of stakeholder consultations which have since raised and discussed issues of concern, California now has fresh regulations, and a clearer mandate to take environmental protection seriously - including the appointment of environmentalist representation at the Commission table. In sum, the new political will to act on the issues has resulted in a clearer, stronger program for California.

2. Solid, clear directing legislation

Legislation which is well organized and easy to understand communicates a strong, clear message. In my view, the best legislation accounts for all of the important and relevant topics, commitments and standards; and leaves the details of implementation to be set out in the regulations, which can be more easily changed, as needs require.

There seems to be little dispute that off-highway/all terrain vehicles should be governed through specific legislation tailored to issues arising out of the use of these vehicles; my review suggests other jurisdictions almost uniformly accord such vehicles special legislation.⁶⁸ The purpose of the legislation is usually two-fold: (1) for identification and control purposes, to capture into a registration scheme those vehicles which are not usually caught by the normal highway vehicle registration scheme; and (2) to regulate all off-highway motorized recreation activities, whatever the vehicle. Given these purposes, most legislative schemes typically embrace snowmobiles under the same legislation.⁶⁹ Because of the second purpose (directed to the activity rather than the registration need), some jurisdictions have cleverly included SUVs/4x4s when driven off-highway within the embrace of their legislation as well.⁷⁰

Whichever vehicles are included in the system, statutes regulating ATVs/ORVs should clearly address and/or provide clear guidance on the following important topics:

- which vehicles are regulated
- vehicle registration/licensing requirements
- operator licensing requirements
- insurance requirements/financial responsibility
- equipment requirements safety, emissions and noise

⁶⁸ Alberta currently has specific legislation devoted to all-terrain vehicles; however, in a move to “simplify” its legislation, Alberta is working to consolidate all motor vehicle laws into one “super-statute” which will leave all of the specific details to a separate regulation covering ATVs.

⁶⁹ With a few exceptions: Ontario regulates snowmobiles separately under the *Motorized Snow Vehicles Act* as does Saskatchewan with its *Snowmobile Act*.

⁷⁰ California, Oregon, Manitoba and Alberta have all done this.

- comprehensive land use and environmental impact rules
- driver conduct, safety and responsibility rules
- enforcement provisions

It is helpful if a law starts off with a preamble to give it a context; however, this is not absolutely necessary. California's legislation, the *Off-Highway Motor Vehicles Recreation Act of 1988*, which is found at Section 5090.01 of California's *Public Resources Code* (PRC), has a preamble that reveals much about California's philosophy in approaching the problem:

5090.02 (a) The Legislature finds that off-highway motor vehicles are enjoying an ever-increasing popularity in California and that the indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, native wildlife and native flora.

(b) The Legislature hereby declares that effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement are essential for ecologically balanced recreation.

(c) Accordingly, it is the intent of the Legislature that:

(1) Existing off-highway motor vehicle recreational areas, facilities and opportunities be expanded and managed in a manner consistent with this chapter, in particular to maintain sustained long-term use.

(2) New off-highway motor vehicle recreational areas, facilities and opportunities be provided and managed pursuant to this chapter in a manner that will sustain long-term use.

(3) When areas or trails or portions thereof cannot be maintained to appropriate established standards for sustained long-term use, they shall be closed to use and repaired, to prevent accelerated erosion. Those areas shall remain closed until they can be managed within the soil loss standard or shall be closed and rehabilitated.

(4) Prompt and effective implementation of the Off-Highway Motor Vehicle Recreation Program by the Division of Off-Highway Motor Vehicle Recreation shall have an equal priority among other programs in the department.

(5) Off-highway motor vehicle recreation be managed in accordance with this chapter through financial assistance to local government and joint undertakings with agencies of the United States.

Such a preamble is useful in that it constitutes a sort of "mission statement" laying out the intent of the legislation. Here, to California's credit, California states "up-front-and-centre" its concern that uncontrolled off-highway activities may lead to deleterious impacts on the environment, wildlife habitats, native wildlife and native flora. California follows the preamble by stating its adopted philosophy for controlling those impacts: a plan to both expand the recreational facilities and opportunities and to increase the management of the facilities. I think this management philosophy is more controversial; but, it is at least stated on the record for everyone to know and understand what the program is about.

Québec's statute does not have such a preamble; but, it is extremely well-organized, comprehensive and clear. The Act is divided into nine chapter headings, which makes it very easy to locate information:

I. Scope

- II. Mandatory Equipment
- III. Areas of Use
 - Division I: General Provisions*
 - Division II: Off-Highway Vehicle Club Trails*
- IV. Off-Highway Vehicle Operating Rules
 - Division I: Operators' Rules*
 - Division II: Traffic Rules*
- V. Enforcement
- VI. Regulatory Provisions
- VII. Penal Provisions
- VIII. Amending Provisions
- IX. Transitional and Final Provisions

Manitoba's and Newfoundland's laws are also comprehensive and well organized.

It is important that a statute does not ignore important, relevant topics. For the sake of clarity, it is better to at least provide some basic direction on a topic; and if the topic is handled by other legislation, to reference that legislation. Certainly it is stronger if specific rules relating to the topic can be set out within the statute; but an alert referring to the existence of laws elsewhere at least notifies readers that a regulatory issue exists, and that regulations found elsewhere govern the issue. This can be a reasonable interim measure, pending the development of specific rules for that statute. This legislative strategy was adopted in Québec's *Act Respecting Off-Highway Vehicles* as a means to address the topic of environmental and land use restrictions. Under Chapter III "Areas of Use", Division I "General Provisions" it is provided, at s. 8:

8. An off-highway vehicle may be operated on lands in the domain of the State, subject to the conditions, restrictions and prohibitions imposed:

(1) by the following Acts: the *Act respecting the conservation and development of wildlife* (chapter C-61.1), the *Act respecting threatened or vulnerable species* (chapter E-12.01), the *Forest Act* (chapter F-4.1), the *Mining Act* (chapter M-13.1), the *Parks Act* (chapter P-9), the *Environment Quality Act* (chapter Q-2), the *Watercourses Act* (chapter R-13), the *Ecological Reserves Act* (chapter 26.1), the *Act respecting agricultural lands in the domain of the State* (chapter Y-7.1) and the *Act respecting the lands in the domain of the State* (chapter Y-8.1);

(2) by government regulation or municipal by-law, including a by-law made by a regional county municipality under article 688.2 of the *Municipal Code of Québec* (chapter C-27.1), elsewhere than on a trail referred to in section 15 or in areas subject to the conditions, restrictions or prohibitions referred to in subparagraph 1.

In addition, in the areas in which a lease, a right of occupation or a similar right has been granted under an abovementioned Act, the operation is subject to the authorization of the holder of the right unless otherwise provided in the abovementioned Acts.

Where a government regulation is inconsistent with a by-law or a municipality, the former shall prevail.

Sections 9 through 14 of Québec's Act address other land uses: highway use, private land use, trails, etc. The result is a very thorough statement of where off-highway vehicles can and cannot go.

Section 4 of British Columbia's Act notes the possibility of land use restrictions and prohibitions being set out in other listed statutes. Unfortunately, however, not all of the relevant statutes appear on the list. Noticeably absent are the *Forest Practices Code of British Columbia Act* and the *Wildlife Act*, and their regulations. This shortcoming could be addressed in a regulation, which is easier to amend.

New Brunswick's law can be criticized for being absolutely silent on the issue of land access. Reading the statute, one would never know that there are land use restrictions in both the *Crown Lands and Forests Act* and in the *Parks Act*.

3. Detailed regulations

The importance of having detailed regulations is a lesson learned from the American⁷¹ experience with the issue of off-road vehicle regulation. The need for detail arises out of the fact that if regulations fail to specify the standard to be met, there is a real risk that the local implementation of the rule will not be at a sufficiently high standard, and there will be a significant variation in local implementation or methodology. This leads both to confusion and to an erosion of standards.

As an example of the hazards flowing from a lack of specificity, it is useful to examine the U.S. federal experience on this issue, and some revealing work done by the Wildlands Center for Preventing Roads (WCPR), an interest group based in Montana.

As a start, the U.S. situation has to be understood with a view to its jurisdictional differences from Canada. Whereas in Canada, Crown lands fall under provincial jurisdiction and management, in the U.S. public lands largely fall under federal jurisdiction and management, as National Forests managed by the U.S. Forest Service. Contrasted with this, recreation is managed and funded at the state level, and therefore, there can be significant differences between how ATV use is managed in National Forests from one state to the next.

At the federal level, two U.S. Presidents have made Executive Orders in relation to off-road vehicle use of federal lands. The first was Executive Order No. 11644 made by President Richard Nixon in 1972. That Order was amended by Executive Order 11989 made by President Jimmy Carter in 1977.

⁷¹ Both the California official and staff at the Wildlands Center for Preventing Roads emphasized to me the importance of regulations being specific in terms of setting out standards; and the dangers associated with non-specific standards.

These Executive Orders were intended to provide a unified federal policy toward off-road vehicle use, to meet the growing popularity of the sport which was already noticeable in the 1970s. The stated purpose of the Executive Orders was to “...*establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.*”

The Executive Orders, which are quite brief, give general policy direction to the administrative agencies with respect to the following topics:

- designation of zones of use
- development of regulations concerning operating conditions
- distribution of information to the public regarding zones of use and conditions on use
- establishment of enforcement mechanisms
- consultation with the Secretary of Energy and the Nuclear Regulatory Commission
- compulsory monitoring with feed-back to zoning changes upon a review of the effects
- special protection of public lands where “considerable adverse effects” resulted to soil, vegetation, wildlife, wildlife habitat or cultural or historic resources.

Following upon the Executive Orders, the U.S. *Code of Federal Regulations* (CFR), Chapter 36, Part 295, entitled “Use of Motor Vehicles Off Forest Development Roads”, codifies the policy set forth in the Executive Orders. Interestingly, the CFR does not add much in the way of further detail; rather, the Regulations in essence direct the existing land management planning process to consider the issues outlined in the Regulations. The regulations apply to off-road vehicle use of National Forest System lands. Part 261 of the same Chapter provides regulations concerning prohibitions regarding the use of vehicles off roads.

In 1998, the WCPR carried out a Freedom of Information request which surveyed the situation then existing vis-à-vis controls on off-road vehicle use in each of the National Forests. The WCPR compiled the results of the survey in a document entitled *Roaring from the Past: Off-Road Vehicles on America’s National Forests*.⁷² The WCPR concluded that there were serious problems with the federal regulations and with their implementation at the local, National Forest, level. The failures documented in the report include inconsistencies and failures in managing trails for the protection of natural resources; inconsistencies and failures in addressing user conflicts; inconsistencies and failures in monitoring standards; and inconsistencies and failure in effectively enforcing violations. *Roaring from the Past* recommended changes.

⁷² Prepared by Dave Havlick for WCPR, Missoula, Montana, 1999

The report highlights the change in the character of off-road vehicle recreation which has evolved in the decades since the Executive Orders: specifically, there is now more manufacturing; there have been advances in technology; marketing is now aggressive; and, with the increasing popularity of the sport, there is now more vocal support for motorized access to public lands.⁷³ The report also quoted increases in annual sales figures for off-road vehicles, from 1991 to 1997 from 150,000 to 343,000; and for snowmobiles during the same period from 80,000 to 174,000.⁷⁴

The WCPR followed *Roaring from the Past* with an impressive legal document entitled *Petition to Enhance and Expand Regulations Governing the Administration of Recreational Off-Road Vehicle Use on National Forests* which WCPR, through legal counsel, submitted to the U.S. Forest Service.⁷⁵ The Petition received the support of more than 95 organizations. In the Petition the WCPR identified numerous problems with the existing regulatory scheme and its practical implementation; and proposed numerous detailed changes to the management framework. The WCPR pitched “five basic changes to the management framework”:

- ORV [“Off Road Vehicle”] use shall be allowed only on system roads and trails designated and posted as open for ORVs. Cross-country travel shall be prohibited.
- Designation of ORV routes shall only occur on Forest Service system roads where the agency demonstrates in a public process that use of the route by ORVs will not cause adverse environmental impacts.
- Designation of ORV routes, construction of new ORV routes, upgrading of existing routes to accommodate new or additional ORV use, and the construction and upgrading of facilities for ORV use must be fully analyzed under the National Environmental Policy Act.
- ORV use shall be prohibited unless adequate monitoring and enforcement of the use and impacts are fully funded and implemented.
- ORV use shall be prohibited in legislatively or administratively proposed wilderness areas, inventoried roadless areas, and other areas with roadless values except on roads for which their use has been formally designated.⁷⁶

The report elaborates at length on why these five basic changes are necessary and legally defensible; and proposes new, detailed, and standard-specific wordings to amend the Code of Federal Regulations. As if to underline the need for more concise and specific regulations, it is interesting to note the *Petition* argues that the existing U.S. federal laws could have achieved some measure of environmental protection, had more detailed regulations (and a will on the part of the Forest Service) been in place to more clearly define the standard to be adhered to.

⁷³ *Roaring from the Past*, Executive Summary.

⁷⁴ *Ibid.*

⁷⁵ Prepared by Schubert & Associates, Glendale Arizona for WCPR. According to WCPR, a petition is “a formal legal document that includes detailed information regarding an issue and a request to the responsible federal agency that they take action to remedy the problems”. Also according to the WCPR, responsible federal agencies are required by law to respond to petitions. If they do not, or if the response is not acceptable, then litigation becomes an option. In this case, it is the USFS which must respond to the *Petition*.

⁷⁶ *Petition*, at pp. 3-4.

The *Petition* is well documented with evidence previously gathered in the Freedom of Information process and otherwise. In sum, the *Petition* is a well-organized, thoughtful and persuasive document, and provides a valuable precedent for law reform efforts in other jurisdictions.

In a similar move to tighten controls over implementation, California's Program regulations now describe in detail what needs to be done in order to qualify for a program grant. The Program appears to be structured to encourage a continuum of planning and maintenance of an off-highway recreation system, with each stage of the process being a different type of project⁷⁷ with different requirements. For each project type, the Off Highway Vehicle Grants Regulation sets out a statement describing what that project type is about, as well the requirements for grant funding. For example, for Planning Projects, the Regulation stipulates:

⁷⁷ Listed as project types are Planning Projects, Acquisition Projects, Development Projects, Operation and Maintenance Projects, Resource Management Projects, Safety Education Program Projects and Equipment Purchases.

4970.02 PLANNING PROJECTS

- (a) Planning projects are intended to evaluate and determine the viability of an area or project prior to the commitment of acquisition, development or resource management funds.
- (b) Planning projects will include, at a minimum, the following:
 - (1) An inventory of features, including: plants, animals and cultural resources.
 - (2) A wildlife habitat protection program (PRC 5090.35).
 - (3) Geologic survey and slope maps or topographic maps.
 - (4) Toxic or hazardous waste site survey of the area and adjacent property that may impact the site.
 - (5) An analysis of the impact of OHV [“Off Highway Vehicle”] recreation on adjacent lands, residents, and potential conflict with other recreational users.
 - (6) An evaluation of OHV recreation on air and water quality.
- (c) The preparation of an environmental document in conformance with CEQA or NEPA will be considered a project.
- (d) The preparation of a Recreation Management Plan, OHV Plan, or the OHV portion of a General Plan will be considered a project. A General Plan, Recreation Management Plan and OHV Plan are documents prepared by cities, counties and agencies to guide the management of the land within their jurisdiction.
- (e) If the project scope is to prepare an environmental document, the Division shall receive a copy of the completed environmental document as proof of project fulfillment.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.
Reference cited: Sections 5090.32, 5090.50, and 5090.55, PRC.

Another section details the criteria used to evaluate grant proposals.

Newfoundland’s ATV regulations appear to be unique in Canada insofar as the regulations specifically stipulate where ATVs may be operated by specifically defining what are “approved areas” for use, as follows:

- 2.(c) “approved area”, for the purpose of section 5, means:
 - (i) forested lands underlain by mineral soil as shown on the Land Use Atlas on file in Lands Branch, Department of Government Services and Lands,
 - (ii) a trail constructed under licence issued under the Lands Act,
 - (iii) beaches unless otherwise prohibited by the minister,
 - (iv) abandoned railway corridors, highways abandoned under the Works, Services and Transportation Act, forest access roads as defined under the Forestry Act, roads constructed under licence issued under the Lands Act, and any other road constructed for the purpose of providing vehicular access to resources including but not limited to forestry, agriculture, hydroelectric, recreation, mining, industrial and similar developments,
 - (v) privately owned lands less than 10 hectares,
 - (vi) working farms,
 - (vii) lands in Labrador north of 54° latitude, and
 - (viii) lands when snow-covered and frozen below the ground surface;

Section 5 of the Regulation, with a few exceptions, restricts use and operation of all terrain vehicles to an “approved area”. Section 5.1 (which was introduced further to an amendment to the regulations in 1999), provides that an ATV may be used or operated in

an unapproved area, for the purposes of transporting big game from the place where it was killed, during hunting season.

Setting out the land use rules applicable to ATVs in the ATV regulation is commendable insofar as it provides virtual “one stop shopping” for finding out where ATVs can and cannot go in Newfoundland. The only difficulty lies with the fact that the current definition of “approved areas” can be criticized for environmental soundness. Laura Jackson, an executive director of CPAWS who resides in Newfoundland, and a representative of the Protected Areas Association of Newfoundland, advised me that there is still work to be done,⁷⁸ as the new hunting exemption is very problematic, considering the number of ATVs currently in use (she said some 40,000) and the number of big game licences issued every year (some 32,000-34,000!) Lots of damage can be done in the Fall, even from “single trips” by hunters!

Newfoundland’s unique approach may not work in a jurisdiction where there is a high value placed on local decision-making in land use planning. Newfoundland is sufficiently small that one set of rules seems to make sense. More vast jurisdictions might prefer the rules to be tailored to different locales. Nonetheless, considering the clarity which flows from having a central set of rules for ATVs, it might make sense even in larger jurisdictions to consider the scope for setting at least some rules as universal rules and/or setting guiding principles for the rules, and leaving the specifics to be finally determined through a local land use process.

4. Strategies and tools for management

(a) Which vehicles?

One of the most important decisions to be made is deciding which vehicles are going to be regulated under the all terrain vehicle statute and regulations. As discussed earlier, two motivating factors usually underlie vehicle description: (1) for identification and control purposes, to capture into an off-highway vehicle registration scheme those vehicles not caught by the normal highway vehicle registration scheme; and (2) to regulate all off-highway motorized recreation activities, whatever the vehicle.

Those jurisdictions which are solely concerned about registration of unregistered vehicles tend to opt for a vehicle definition which excludes vehicles already registered under regular motor vehicle/highway laws.⁷⁹

⁷⁸ Ms. Jackson is also concerned that there is access to sandy beaches; and Ms. Jackson voiced concern over the “frozen ground” provision - noting that with Newfoundland’s “freeze and thaw” climate, ground conditions can change very quickly (even over a week-end) and leave the door open to ATVs doing considerable damage to soggy ground on the “return” trip.

⁷⁹ See e.g. Ontario, Newfoundland, Québec and Saskatchewan.

Those jurisdictions which are more focused on the activities, as opposed to registration, tend to opt for a vehicle definition which includes (for some purposes) highway-capable vehicles when they are operated off-road.⁸⁰

In addition to these two philosophies, some confusion emanates from the fact that there are so many different kinds of vehicle that are capable of off-road travel. The ones I have heard of include:

- SUV, 4x4 trucks and jeeps
- other vehicles with low-pressure tires
- quad (4-wheeled) ATVs
- 3-wheeled ATVs
- 2-wheeled mini-bikes, dirt-bikes, dual-purpose motorcycles or motorcycles when used off-road
- dune-buggies, sand-buggies, go-Karts, mopeds, go-peds, swamp-buggies
- air-cushioned vehicles
- amphibious machines
- snowmobiles and other snow vehicles

Some vehicles have handlebars and others have a steering wheel; most are straddled but some (e.g. Argos) you sit inside.

Vehicle definition varies widely from jurisdiction to jurisdiction. Some definitions adopt a functional description (“designed for or capable of travel over land, water, snow, ice, marsh....etc.”); others opt for a description of types and models; and others yet combine the two description methodologies as an attempt to cover all possibilities.

Of all the definitions which generally⁸¹ excluded SUV/4x4 vehicles, I thought that Newfoundland’s definition was one of the clearest:

“vehicle” means all motorized vehicles designed and constructed for travel on or immediately over land, water, snow, ice, marsh, swampland, and other natural terrain, including four wheel drive or low-pressure tire powered vehicles, low-pressure tire motorcycles and related two-wheel vehicles, snowmobiles, amphibious machines, ground effect or air-cushioned vehicles, but does not include a motor vehicle.

“motor vehicle” means a motor vehicle registered under the *Highway Traffic Act*.

Of all the definitions which included SUV/4x4 vehicles, Oregon’s was the simplest:

Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain...

⁸⁰ See e.g. California, Oregon, Manitoba and Alberta.

⁸¹ “Generally” because if an SUV/4x4 were not registered under the *Highway Traffic Act*, it would fall into the definition.

New Brunswick's Act is somewhat ambiguous about whether an SUV/4x4 which is not registered under the *Motor Vehicle Act* would be covered:

“all terrain vehicle means” any motor vehicle designed or adapted for off-road use and, without limiting the generality of the foregoing, includes dirt bikes, dune buggies, motorized snow vehicles and amphibious machines but does not include any vehicle which is designed for use and is being used in agriculture, forestry, mining or construction, any vehicle registered under the *Motor Vehicle Act* or any vehicle exempted from the application of this Act by regulation.

In my opinion, there is an advantage to designing laws and policy so as to embrace all vehicles, whenever they are used off-road. This means that similar activities, which have a similar potential for damage, are addressed together. This means that the message being sent to all off-road motorized recreationists, whether in small or large vehicles, is a consistent message. It is perhaps slightly more difficult to design legislation in this way, but I believe that it makes sense.⁸²

(b) Dedicated departments

There are potentially limitless issues related to off-road vehicle management. In some states in the United States, the state has even seen fit to create a department dedicated to the management of such issues. The two examples which I looked at, California and Oregon, both had dedicated departments within the state Parks and Recreation Department.

One can fairly say that a dedicated department became necessary when each of these states embarked upon actively planning, creating, managing and promoting a motorized recreation trails system. Most other jurisdictions do not have such a trail system and therefore, their organizational needs and resources are not as great.

In California, the program is called the Off-Highway Motor Vehicle Recreation Program. The Off-Highway Motor Vehicle Recreation Commission, consisting of seven appointed members representing a range of stakeholder interests, provides policy for the program and authorizes expenditures. As noted earlier (under the discussion of the need for Detailed Regulations), the California OHV Grant program now sets out detailed requirements to be met for funding everything in the continuum of planning, acquisition, management and maintenance of projects. It also imposes clear environmental protection guidelines, educational projects and enforcement requirements.

There are both advantages and disadvantages to management by a dedicated department. The advantage a dedicated department presents is that a single department has the opportunity is familiar with all of the issues related to off-highway vehicle recreation; and there is one centralized place where decisions can be made and policy set. A

⁸² Manitoba, which revised its laws in 1987, has done an admirable job of handling this issue; notably Manitoba also has state-run motor vehicle insurance.

dedicated program creates the opportunity to build a coherent overall strategy and detailed management model for all facets of the recreational activity. Having all of these various and related challenges housed under one administrative “roof” is appealing.

One of the disadvantages, however, is that if the program is broken or is dominated by one interest, the effects will be felt everywhere. Therefore, if a decision is made to embark on a centralized system of management, it is important to design an excellent program with checks and balances to ensure it stays excellent. Another potential disadvantage of a centralized program is that it seems very likely that such a system would accord greater attention and status to motorized recreational activity. The extra attention and status risks an increase in the activity’s overall popularity and allocated resources. Unless appropriate environmental controls are put into place, there is the risk that the recreational agenda will run amok.

It is interesting to note that Oregon’s All Terrain Vehicle program started off (in 1986) being housed in the state’s Department of Transport. In 1999, the program was moved to the Department of Parks and Recreation, where it was considered to be a better “fit”. Oregon’s program manager advised me that the switch was a good one.

(c) Registration of ownership/annual and biennial licensing

In all the jurisdictions that I reviewed which had a registration requirement for ATVs,⁸³ the responsibility for all terrain vehicle registrations was delegated to the provincial or state registrar of motor vehicles, even when other departments were responsible for land use issues relating to ATVs.

The spreadsheet demonstrates that registration varies from a one-time event to a biennial or annual registration/vehicle licensing requirement. Even in jurisdictions where registration is one-time only, there is almost always a requirement to re-register on a transfer of the vehicle.

There are many reasons to support a system of registration of ownership. First and foremost, it facilitates a system of identification and accountability for a particular vehicle: if you can determine who owns a vehicle, you can start to control what that vehicle does. Ready identification is key; hence the importance of a prominently displayed, large digit registration plate. To be effective, registration needs to be linked with the regular tools of law enforcement, such as computerized data storage. Peace officers should be able to call up a vehicle’s registration number and immediately gain access to the ownership information associated with that vehicle. This allows for speedy enforcement whether it is a rider infraction or a question of a vehicle theft.⁸⁴

⁸³ Only B.C., Saskatchewan and Oregon currently do not.

⁸⁴ Oregon’s program manager volunteered to me that Oregon’s lack of a vehicle registration system has been a real impediment to law enforcement efforts, both in the field or in theft investigations. Currently in

Vehicle licensing is technically a separate thing from registration of ownership. Establishing a vehicle licensing system achieves more than registration of ownership or title: perhaps most fundamentally, from a theoretical perspective, a licensing system establishes that the use of the vehicle within the jurisdiction is subject to the conditions of an annual or biennial licence, and that a licence is a privilege which may be lost, if the privilege is abused. The licence sets some enforceable boundaries upon proper use.

Annual registration and licensing encourages closer management: it allows for an annual tabulation of how many vehicles are being used, and where they are situated. It also allows for an annual opportunity to communicate directly with users. However, an annual system requires more personnel to support it; and it runs the risk of frustrating infrequent users with bureaucratic requirements. However, the fact that other jurisdictions have been able to overcome these barriers suggests they are not so formidable.

Registration/licensing fees in the jurisdictions I reviewed ranged between \$35 for a one-time registration to \$54 annually.

(d) Driver licensing

As the spreadsheet demonstrates, very few jurisdictions have adopted an operator's licensing requirement for ATVs; and those which have, have imposed it only upon children or those wanting to travel on or across highways.

Typical conditions for operator licences include age restrictions, a prerequisite course of safety instruction,⁸⁵ passage of a test of competence and knowledge, and an acceptable record of infractions.

All of these conditions can be imposed upon drivers without the institution of a formal licensing system; however, the mechanism of a licence ("proof" of which can be demanded and a privilege which can be lost) facilitates better control over all of these issues.

(e) Environmental protection

I encountered a number of strategies and tools which can be used for managing environmental protection issues associated with ATVs:

Oregon, ATVs are not required to register ownership. Trail permit stickers are small and are not readily visible unless the vehicle is stopped.

⁸⁵ California's ATV safety course includes curriculum addressing environmental impact concerns.

Land use restrictions

The most prevalent environmental issue related to all terrain vehicles is public land use or access policy. Significant debates arise over access to highway shoulders, power line clearances, railway rights-of-way, and so forth.⁸⁶

A more significant environmental concern is land use policy affecting forests and other open lands. A fundamental decision to be made is whether the default policy stipulates access or no access unless otherwise approved. In *Roaring from the Past*, WCPR supports keeping wild areas wild and prohibiting their opening for motorized recreation purposes. With respect to existing trails, WCPR recommends adopting a consistent public trails policy specifying that lands are closed to off-road vehicles unless signed open:

When a trail is closed unless there is an official sign opening it, motorized recreationists no longer have an incentive to remove or damage signs. Signing trails as “open” also encourages land managers to identify routes that can sustain use without adverse effect, rather than waiting and responding to damage by posting areas “closed”.⁸⁷

I would note that such a system will only work effectively if it is otherwise well advertised that “no sign means no access.”

In every jurisdiction, there are undoubtedly categories of land where ATVs ought not to go since the effects are too destructive, whether to the soil or because of disturbance to wildlife and habitat. As noted above, Newfoundland has taken a stab at distinguishing between land types when specifying “approved areas” within its regulations. This achieves some goals but fails to meet others. For example, while certain land types may be less vulnerable to erosion than others; for other policy reasons, it may not be desirable to allow access to all areas where those land types are prevalent. It may therefore make more sense to use a land type approach when specifying “no-go zones” rather than “go-zones”; .e.g. “never in grasslands unless on an authorized trail”.

For wildlife and habitat protection, a common management tool is to implement area and seasonal closures, in critical places and times. This strategy is currently employed in many areas of B.C. further to the *Wildlife Act’s Motor Vehicle Prohibition Regulation*; and is also employed in the Muskwa-Kechika Management Area, the latter of which reportedly works quite well.⁸⁸ This strategy has also been suggested in the *Expanded*

⁸⁶ See e.g. the snowmobile working group’s *Recommendations to Improve Snowmobile Trail Use and Management*, discussed *supra*.

⁸⁷ *Roaring from the Past*, p. 5

⁸⁸ Conversation with Andy Ackerman, Regional Fish and Wildlife Manager, Fort St. John, B.C. A restriction of this type was challenged and examined before the Environmental Appeal Board in *McLoughlin v. Deputy Director of Wildlife* (December 15, 1995); and before the BC Human Rights Tribunal in *McLoughlin v. HMQ as rep’d by MELP and Deputy Chief Commissioner, BC Human Rights Commission* (August 24, 1999).

*Kootenay Region Interim Wildlife Guidelines for Commercial Backcountry Recreation in British Columbia.*⁸⁹

User conflicts are also a problem, given that the noise, speed and pollution of ATVs impact greatly on self-propelled recreationists and their safe use and enjoyment of the wilderness. As ATVs grow in popularity and numbers, so too does the need to manage multiple uses. In this regard Alberta has adopted a strategy of imposing seasonal and trail-specific closures for motorized recreation. These are set out in the *Forest Recreation Regulation*, passed further to the authority of the *Alberta Forests Act*. Unfortunately, there is no mention of the restrictions in the *Off-Highway Vehicle Regulation*. The closures are designed to avoid multi-use conflicts on trails.

Newfoundland's Regulation, at s. 4(b), also addresses potential user conflicts, but adopts a functional (rather than site-specific) approach for controlling them:

...a person shall not drive or operate a vehicle...where persons are engaged in skiing, skating, tobogganing or engaged in other recreational activity so as to create a hazard to or endanger those persons or their property.

Environmental impact planning or assessment

Another strategy for managing environmental protection involves requiring environmental impact assessments or studies before any project action is taken, and requiring ongoing monitoring of projects for detrimental impact afterward. For example, in both California and Oregon, no trail or recreation area may be approved unless it first complies with the *National Environmental Protection Act*. Each state also has its own environmental legislation to meet.

As part of its environmental assessment requirements, California has imposed specific soil conservation standards. Also, federal agencies involved in cooperative ventures must develop and implement a Wildlife Habitat Protection program. Making the standards clear at the outset not only increases the chances of a proper system being implemented but makes the task of monitoring more meaningful.

The WCPR endorses formal planning and management requirements. Looking again at the "five basic changes" listed in the *Petition*,⁹⁰ a fundamental theme emerges: no action without environmental assessment in accordance with NEPA requirements and no action unless there is an ongoing commitment (including a funding commitment) to monitor impacts.

⁸⁹ MELP, November 2000.

⁹⁰ Discussed above under "3. Detailed regulations."

Equipment standards

While many jurisdictions fail on this score, it is encouraging to note that a good number of jurisdictions have seen fit to specify equipment standards imposing requirements vis-à-vis exhaust/air emissions and noise emissions from ATVs. In terms of exhaust/air emissions, two issues need to be managed. One is pollution and the other is the possibility of sparks or flames, which creates a risk of fire.

In terms of pollution control, I encountered only two jurisdictions imposing equipment standards related specifically to exhaust systems: New Brunswick and California. New Brunswick's standard is simple and is stated within its Act, at s. 23:

- No person shall drive an all-terrain vehicle if
- (a) it is not equipped with a muffler and exhaust system in continuous operation and in good working order;
 - (b) it is equipped with a muffler cut-out or by-pass, or a similar device, or
 - (c) it is causing excessive or unusual noise.

California's rules for pollution control devices are set out at sections 38390 through 38397 of the *California Vehicle Code*. Essentially, these sections stipulate that for vehicles of the 1978 or later model years, vehicles must meet the requirements laid out for vehicles in the *California Health and Safety Code* and in the *Clean Air Act*.

California has this year controlled emissions further by "keying" its off-road trail permit system to the vehicle's equipment, or emissions levels. Whereas "green stickered" vehicles have full access to public land trails; "red stickered" vehicles (those vehicles manufactured after January 1, 1997 which do not meet the emission standards set by the California Air Resources Board) are subject to area and seasonal restrictions which depend upon local air quality.⁹¹

Newfoundland, California, Manitoba and Alberta have all set standards with respect to sparks and flames. Manitoba and California both require installation of a spark arrester, whereas Alberta's Regulation (s. 14) speaks to required equipment and prohibits modifications:

Inadequate muffler

- 14(1) No person shall operate an off-highway vehicle that is not equipped with an exhaust muffler consisting of a series of pipes or chambers that ensures that the exhaust gases are cooled and expelled without excessive noise and without the emission of any flame or sparks.
- (2) No person shall drive or operate an off-highway vehicle when the muffler with which the vehicle is required to be equipped
- (a) is cut out or disconnected from the engine,
 - (b) has had a baffle plate or other part removed,
 - (c) has been altered by having an attachment or device attached that
 - (i) increases the noise of the expulsion of the gases from the engine, or

⁹¹ Information taken from the program website.

(ii) allows a flame to be ignited from the exhaust system.

In terms of noise restrictions, these range from a rather ambiguous prohibition in New Brunswick's regulation against "excessive or unusual noise" to others, which actually stipulate the acceptable sound intensity (or decibel (dB)) levels. California specifies a range of 82 to 101 dB, depending on the year of manufacture; Oregon specifies a range of 93 to 99 dB, depending on the location of use. Québec does not specify any standard for ATVs, but the snowmobile regulation specifies 82 dB for snowmobiles. Newfoundland's Regulation targets and prohibits popular modifications:

s. 13. Noise reducing equipment

A vehicle shall be equipped with a noise muffler or other noise reducing equipment which shall be kept in good working condition and which shall prevent excessive or unusual noise and a person shall not equip a vehicle with a muffler cut-off, straight exhaust, gutted muffler, hollywood muffler, by-pass or other device which has the effect of by-passing or reducing the efficiency of that noise reducing equipment.⁹²

In terms of other notable equipment standards which appear to be designed to protect the environment, Newfoundland's Regulation prohibits the use of tire chains on all terrain vehicles.⁹³

⁹² Reg., s. 13.

⁹³ Reg. s. 5(4).

Constraints on behaviour

Aside from the usual prohibition against reckless and dangerous driving likely to cause injury or damage to property, a very common prohibition on behaviour addresses the use of all terrain/off-highway vehicles to chase, kill, hunt, harass or maim wildlife. A prohibition of this type is found in each of B.C., Newfoundland, California, and Oregon. Québec has a similar prohibition in its snowmobile regulations.

A few jurisdictions⁹⁴ have also specifically identified and prohibited the problem of littering, which is too frequently associated with off-road motorized recreation. For example, Québec's snowmobile regulation stipulates, at s. 71:

It is forbidden to throw or deposit on or beside a trail any glass, bottle, tin can or any other waste or refuse liable to injure a human being or animal, or damage a vehicle or spoil the environment.

California addresses malicious behaviour that can lead to environmental damage. At section 38319 of the *California Vehicle Code*, it is stipulated:

No person shall operate, nor shall an owner permit the operation of, an off-highway motor vehicle in a manner likely to cause malicious or unnecessary damage to the land, wildlife, wildlife habitat or vegetative resources.

Section 38318.5(a) of the *Vehicle Code* makes the removal of trail signs and directional markers a misdemeanor. Subsection (b) speaks to the erection of cables, chains, ropes and the like for malicious purposes, with intent to do "great bodily injury". Further to each of these, subsection (c) provides:

Any person convicted under subdivision (a) or (b) shall, if the violation proximately causes one or more adverse environmental impacts, also be liable in civil damages for the cost of mitigation, restoration, or repair thereof, in addition to any other liability imposed by law.

Aside from these specific laws and regulations, both California and Oregon have endorsed the "Tread lightly!" program.⁹⁵ Alberta has also recently commenced a limited-area initiative called "Shifting Gears"⁹⁶ and this endorses the "Tread lightly!" mantra.

⁹⁴ California Vehicle Code, s. 38320; and Québec snowmobile regulations.

⁹⁵ "Tread lightly!" is a not-for-profit organization which promotes the following environmentally responsible principles: "T ravel only where permitted; R espect the rights of others; E ducate yourself; A void streams, meadows, wildlife, etc.; D rive and travel responsibly." The organization has many members and sponsors. Information is available on the world wide web at: www.treadlightly.org

⁹⁶ An Alberta Environment campaign delivered in partnership with the Alberta Off-Highway Vehicle Association. It is limited toward promoting "...responsible off-highway vehicle (OHV) use and random camping in the Ghost River-Waiparous Creek area northwest of Calgary and elsewhere along the Eastern Slopes of Alberta's Rocky Mountains and foothills".

Age laws

Age restrictions are an indirect means for protecting the environment, since understanding and responsibility comes with age. I note that California's ATV Safety Course includes environmental considerations.

Funding

Funding is another means of managing and protecting environmental concerns. Discussed below under "7. A Funding Plan or Model" are various strategies and tools for diverting sufficient funding to environmental assessment, monitoring, habitat, conservation and enforcement causes.

(f) Trail programs

Many jurisdictions have adopted a strategy which supports the building of trails on public land. Access is a big issue for owners of vehicles: once a vehicle is purchased, owners want a place where they can ride. Building trails is one means to fulfill riders' desire for access to the woods. As noted for California, what is often behind the idea of a government-supported "trail program" (besides pressure from user groups) is the environmental argument that if the trail is there, people will use the trail rather than travel wildly all over the land. This sounds good as a theory; but, as the California experience demonstrates, it is an assumption that does not always prove true, and it has to be matched with an even stronger enforcement strategy, since it invites the risk that more trails and more access will mean more users, where some of those users will almost certainly be abusers.

Some jurisdictions provide the administrative framework for funding a trail-building program. This is the case in California, Oregon and Québec, where there is a permit system in place. In these jurisdictions, recreationists buy a permit or sticker with monies which are then directed into a dedicated fund. The permit grants an entitlement to its purchaser to use the trails within the system. In California and Oregon, individuals, groups and agencies may apply to a publicly managed fund for grants to build new trails.

California has recently incorporated environmental concerns into its trail permit scheme, resolving on a compromise solution between environmental and ownership concerns. As described above (under "Equipment Standards"), vehicles which meet current emissions standards are eligible for a "green sticker" permit. Vehicles which do not may purchase only a "red sticker." Green stickered vehicles may use trails year-round (provided the trail is otherwise open); however, red stickered vehicles are subject to area and time-of-year restrictions which depend upon air quality in the particular riding area.

New Brunswick has a mixed administrative system for its snowmobile trail system. The province's legislation provides for the appointment of a "Trail Manager." While the province remains responsible for snowmobile registrations, it has carved off all responsibilities for trail building, management and enforcement to the Trail Manager. Currently the Trail Manager is the New Brunswick Federation of Snowmobile Clubs. The province establishes expectations and administrative requirements in a contract with the Trail Manager made pursuant to section 7.2(3) of the *All-Terrain Vehicle Act*. Under Crown Land rules, snowmobile trails are available exclusively to snowmobiles during the period December 1 to April 15 of each year. As a general rule, ATVs do not have access to New Brunswick's snowmobile trails, although some provision for limited access is being negotiated.

Oregon's program establishes established three different classes of trail permit. Which class to purchase is determined according to vehicle type, categorized into all terrain vehicles, motor bikes, and SUVs or 4x4s. The cost of the permit is the same for each; but, different driver age requirements apply, and license requirements apply, depending on whether the vehicle is street-legal or not. The permit is only needed for use of the system of trails.

I was advised that in Québec, trails for ATVs and snowmobiles are not shared but are kept separate due to safety considerations.⁹⁷ Indeed, Québec's snowmobile regulations reflect the government's safety concerns over mixed use of trails, and protect the rights of each user group their own trails:

72(1) No skier, snowshoer or pedestrian may make use of a snowmobile trail except in case of accident or emergency; in such cases he must cross the trail in a manner so as not to cause an accident or cause obstruction to normal use of the trail by any snowmobilst.

(2) No snowmobilst may use a trail reserved solely for another sport such as cross-country skiing, downhill skiing or snowshoeing except in case of accident or emergency; in such a case, he must be certain that he can do so without risk and take the necessary precautions so as not to cause an accident or cause obstruction to normal use of such a trail by any user.

(3) Except in cases of accident or emergency, no road vehicle other than a snowmobile and its cutter may be used on a snowmobile trail save to cross it as directly as possible; in such cases, the trail must be crossed in a manner so as not to cause an accident or to obstruct normal use of the trail by a snowmobilst. This provision does not apply to a vehicle used for the upkeep of the trail, such as a groomer or a packer.

In other jurisdictions, such as in Newfoundland, there is no trail program dedicated to ATVs but merely the usual Crown land tenure system. Groups must apply for a license to build a trail and must come up with their own funding for completing the project. Following completion of the trail, it becomes dedicated as a public trail. Clubs remain responsible for maintenance. This system is rather comparable to the system currently in place in B.C.

⁹⁷ Conversation with Denis Gagnon, Québec Ministry of Transport.

(g) Safety

Safety is certainly an important issue which needs management.⁹⁸ Since my focus was on regulatory measures to protect the environment, I chose not to examine this issue in detail; however, suffice it to say safety issues can involve considerations of vehicle and driver equipment, speed, signage, buffer zones, alcohol bans, and age limitations - both across the board, or vehicle-specific (Québec has even defined a “learner’s vehicle”⁹⁹). All terrain vehicles have attracted many studies on safety and there is no shortage of ideas available on how to reduce the risk of accidents.¹⁰⁰

5. Strategies and tools for compliance

It is one thing to have a good set of rules. It is a beautiful thing to have a set of rules with which people willingly comply! There are many “tricks of the trade”, but the key theme here has to be “open and defensible”.

(a) Educational courses and materials

Many jurisdictions are struggling with getting educational material out to the user public, to address issues such as safety, the environment and nuisance concerns.

Oregon’s program manager believes an ideal system would capture recreationists at the outset, through the implementation of a mandatory course which would address

⁹⁸ For example, a July 1993 Sports and Recreation Communiqué published by the Ontario Ministry of Tourism, Culture and Recreation tabulated the reported “serious or catastrophic” recreational injuries. Out of a total of 561 injuries divided among 37 recreation categories, ATVs were 7th from the top of the list, with 23 such injuries, 4 of which were fatalities. Motorcycling/dirtbiking accounted for 9 more such injuries, 2 of which were fatalities. Snowmobiling was at the top of the category list, with 95 “serious or catastrophic” injuries, 42 of which were fatal.

⁹⁹ At section 1 of the Regulation: ““learner’s vehicle”: a passenger vehicle with 2 or more wheels designed for recreational driving off a public highway and having a net mass of not more than 85 kg.” Over concerns for safety, in 1996 Québec revised its Act to tighten up safety requirements.

¹⁰⁰ The American Academy of Pediatrics (AAP) was so concerned with safety issues that they actually drafted a Model Bill, the *All-Terrain Vehicle Regulation Act*, which may be viewed at www.aap.org/policy/m951.html. A Policy Statement entitled “All-Terrain Vehicle Injury Prevention: Two-, Three-, and Four-Wheeled Unlicensed Motor Vehicles (RE9855)” appears on the AAP’s website and at *Pediatrics*, Volume 105, No. 6, pp. 1352-1254 (June 2000). The (U.S.) Consumer Product Safety Commission has published a Proposed Resolution at *Federal Register*, Volume 63, No. 174, September 9, 1998. In Canada, R. Wayne Elford for the Ministry of Supply and Services Canada, compiled “Prevention of Motor Vehicle Accident Injuries”, ch. 44 in *The Guide to Clinical Preventive Health Care*. Causes and prevention of ATV injuries are discussed at pp. 514-524. The *Guide* is found on the web at www.hc-sc.gc.ca/hppb/healthcare/pubs/clinical_preventive.

environmental and safety concerns. Such a system would ensure that environmental responsibility and safety messages would be delivered at least once.

There are ready precedents for driver certification course requirements: driving and hunting are obvious examples. Québec has already implemented a safety course certificate requirement for ATV drivers under age 16. In Ontario, snowmobilers aged 12 to 15 must have a motorized snow vehicle operator's licence if they want to operate their vehicle on a trail. Snowmobilers aged 16 and older must have either a motorized snow vehicle operator's licence or a regular driver's licence to drive either on a trail or on a highway.

In terms of educational publications, Ontario has published a booklet addressing off-road vehicle laws and issues. *The Official Off-Road Vehicles Handbook - Including Snowmobiles, ATVs, Mopeds and Trailers* is easy to read, compact in size, and is divided into chapters addressing each kind of vehicle respectively. Unfortunately, there is a charge for the booklet (\$4.95) which presents a disincentive to reviewing it; but at least the charge is not too onerous. I was extremely disappointed and surprised to find that the booklet says nothing about the impacts of ATVs on the environment. On the other hand, the chapter on snowmobiling encourages good stewardship by invoking the TreadLightly! campaign.

In B.C., a great example of an educational handbook to laws and regulations is the "Freshwater Fishing Synopsis" currently posted on the web. It is a layperson's guide to all of the regulations concerning freshwater fishing - it explains the types of licenses, types of charges; restricted waters; explains about ecological reserves, provincial and national parks, inspection policies, the "record and report" program, etc. It also explains species; discusses angling ethics; and advertises special events like "B.C. Family Fishing Week-end". A similar publication for hunting regulations is also posted on the world wide web.

Many other potential educational opportunities are available. Educational material might be distributed at the point of sale or distribution, registration, at recreational clubs or even, at trail heads. Seminars might be delivered, on a volunteer basis. Information could be published on the web. There are limitless opportunities, none of which needs to be terribly expensive.

Both California and Oregon have published a tremendous amount of ORV program and legal information on the web in an easy-to-understand format.

(b) Signage

One of the easiest ways to communicate the existence of a law and to encourage compliance with it, is to post a sign.

Inconsistency in sign practices among the US National Forests was one of the key downfalls identified by WCPR in its reports. As discussed above, the WCPR is also of the opinion that it is better to sign a trail “open” than it is to sign a trail “closed”. Whichever way one does it, consistency reinforces the message.

(c) Stakeholder consultations

People are more likely to be wedded to an idea if they participate in the idea’s making. That is the rationale for encouraging stakeholder consultation on rule-making issues.

Oregon’s program manager advised me that it was his experience that many of the issues which lead to conflicts are “soft enforcement” issues such as noise. It is his view that users would respond more favourably to a “softer” approach based on education on that issue and looking for cooperation; rather than a pure enforcement approach. We discussed the fact that if people are trusted to look at an issue and solve a problem with a responsible solution which they have developed, or assisted in developing, they are more likely to believe that living by that rule is the right thing to do, and to encourage others to live by it as well. If the rule simply comes down from “on high” from a group of bureaucrats, the understanding of the issue is likely to be less, and the resentment higher.

6. Strategies and tools for enforcement

There is a common set of strategies and tools used for law enforcement across the various jurisdictions. This set of tools includes:

- easily visible means of identification through large digit, reflective licence plates
- linkage of the license numbering system with regular law enforcement computer data banks
- use of police forces
- use of conservation and wildlife officers to regularly patrol and monitor activities and environmental effects, with appropriate feedback consequences
- use of volunteers for self-regulation
- signage
- penalties and fines for infractions

A range of penalties and fines exists. Newfoundland's regulations describe a rather extensive ticketing system. In Ontario, a failure to stop for the Ontario Provincial Police can lead to a driver's licence suspension. California's Off-Highway Motor Vehicle Recreation Commission recently resolved to support an increase in fines for intrusion of motor vehicles into wilderness areas to \$1,000 for first offenses, with higher penalties for subsequent offenses.

Some jurisdictions have tried to work with clubs and have encouraged self-regulation: for example, in Québec there is a force of volunteer "Trail Security Officers" who have limited powers of enforcement. No doubt this group of people has some impact; but, an official from the Ministry of Transport did admit to me that these trail officers lack sufficient power and are not as able to be effective in their trail-monitoring duties as one might hope.

Oregon's program manager made a specific point of advising me that their law enforcement efforts are very much impeded by the failure of their system to currently require registration or a licence plate - the same problem that B.C. now faces. All that the ATVs in Oregon currently have to sport on-trail is a small trail permit or sticker with a number that has no linkage to the owner; and this is completely inadequate for identification purposes. In this manager's view, there should be a large digit, visible plate, accessible by regular law enforcement authorities.

7. A funding plan or model

For any program to succeed, it must have a ready source of funding to keep it afloat. Indeed, funding concerns have been one of the sources of resistance voiced to date by the B.C. government in response to urgings to embark upon an effort to put in place a scheme

of registration or enforcement. Luckily, however, there are many possible models for funding and there are numerous examples of success.

(a) Registration of vehicle

As already described above, all of the jurisdictions that I reviewed except Oregon (and of course, B.C.) impose a registration/licensing requirement upon ATVs, with an associated fee which varies from place to place.

In some cases, these registration/licensing fees are fed back into the system to assist directly with funding the program. In other cases, the registration fees are simply applied to the general revenue fund for the province or state. The former is more popular with user groups than the latter.

(b) Trail permit

Of the jurisdictions reviewed, a few have established a publicly recognized trail permit system for funding trail construction and management. Systems of this nature currently exist in California, Oregon and Québec; and for snowmobiles in Ontario and New Brunswick. The basic model is that a fee is charged for the sale of a permit; and these fees are devoted to trail development and maintenance. Users of trails must hold a trail permit.

In Oregon, three different kinds of permit are available, with the type of permit depending upon vehicle type and driver licence type (motorbike, ATV or SUV/4X4). Permits in Oregon are \$10.00 US and are sold on a commission basis (agents may charge an extra \$0.50) through commercial agents, usually retailer distributors of those kinds of vehicles. Agents mail in the fees collected to the program. Oregon's program manager advised me that because retailers are involved in selling the permits, this assists in dispersing knowledge about the program, and lends it support as well.

Very recently, in Ontario, further to Bill 101, *An Act to promote snowmobile sustainability and enhance safety and enforcement*, Ontario has established a mandatory trail permit system for use of authorized snowmobile trails. The trail permits will be sold separately from a regular snowmobile permit, through authorized agents who may retain a commission. The Minister of Tourism is responsible for the new legislation. The Act also enables the privatization of issuance of operator's licences.

Trail permit fees range from \$6 per year (Québec) to \$21 US every two years (California).

(c) Gas tax revenue

A rich source of additional funding for trail programs in the United States is the diversion of a portion of gas tax revenues. Gas tax revenues fund both the California and the Oregon programs, and I suspect also fund off-road programs in other states as well.¹⁰¹ This diversion of tax revenues is achieved through reliance upon the fact that at law in these states, gas tax is only imposed, and justified to taxpayers, because it is directed toward highway construction and maintenance. Off-road motorists/taxpayers argued that such a tax being imposed upon gas consumed by off-road motorists was not justified, unless it was to be diverted into off-road programs. Detailed studies of off-road gas consumption¹⁰² ensued in each of these states; and the law was amended to provide for the diversion of monies.

This revenue provides a rich source of funding for these programs. This additional funding, together with traditional sources such as permit fees, means that typically some \$12-15 million is available annually for the grant program in California (after administrative overhead costs). \$3.5 million was available for Oregon in the 1997-1999 biennium. California has also “structured in” an automatic expansion of funding, by legislating that grants made to local agencies and safety grants require a 25% match.

Oregon’s 1996 gasoline survey results are interesting. They reveal average consumption, per vehicle, per year, for off-road recreation, as follows:

Class I (quads) = 99.12 gallons
 Class II (SUVs) = 234.57 gallons
 Class III (dirt bikes) = 99.05 gallons¹⁰³

California has legislated that 33 percent of the total monies diverted from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund are to be diverted to a special fund called the Conservation and Enforcement Services Account. By law, these funds are to be used,

...solely for the following activities on lands in the system:

- (1) Conservation activities carried out for the prevention or reduction of soil loss, wildlife loss, and habitat loss as defined in Sections 5090.35, 5090.50 and 5090.35.
- (2) Enforcement activities consisting of employing, equipping, and supervising peace officers for the purpose of protecting natural resources, enforcement of Division 16.6 (commencing with Section 38000) of the Vehicle Code, enforcement of Sections 4442

¹⁰¹ In 1999 the State of Maine passed an “Emergency Resolution” “...to Create the Commission to Study Equity in the Distribution of Gas Tax Revenues Attributable to Snowmobiles, All-terrain Vehicles and Watercraft”. The preamble in explaining the “emergency” references (in part) the fact that “the overall resource needs to enforce current snowmobile, all-terrain vehicle and watercraft laws and to effectively plan and provide the services required by current law are not presently known.”

¹⁰² Despite legislation which stipulates the study is to be performed every two years, California’s last completed study was in November 1990, “A Study to Determine Fuel Tax Attributable to Off-Highway and Street Licensed Vehicles used for Recreation Off-Highway”. California is currently conducting another study in order to up-date the allocation of funds; however the study is not expected to be completed until 2004.

¹⁰³ Information taken from the Oregon program website.

and 4442.5 of this code, and enforcement of other laws regulating the equipment and use of off-highway motor vehicles, and the construction of physical barriers and other means of traffic control....¹⁰⁴

This legislated allocation of funds to conservation and enforcement efforts seems to me to be a key safeguard to companion any trail-building program.

California's Off-Highway Motor Vehicle Recreation Fund distributes funds to the program through a grant process which is now highly regulated. As discussed above (under "Detailed Regulations") California now details all requirements related to the grant program. For example, the *California OHV Grant and Cooperative Agreement Program Regulations* stipulate in relation to the Conservation and Enforcement Account monies (at Section 4970.3, the "Conservation and Enforcement Services Account"):

- ...
- (f) The following activities are considered conservation:
 - (1) Soil, habitat and wildlife monitoring.
 - (2) Activities to prevent soil erosion and activities to repair existing soil erosion.
 - (3) Wildlife habitat enhancement projects.
 - (4) Aerial photography.
 - (5) Wildlife, habitat, and soil studies.
 - (6) Temporary closure of trails or areas, or closure and rehabilitation of unauthorized trails and trails not in compliance with PRC Section 5090.35(d) and (e).
 - (7) Reduction of dust related to OHV recreation.
 - (8) Reduction or prevention of siltation related to OHV recreation into streams.
 - (g) The following are considered enforcement:
 - (1) Peace officers, law enforcement officers (LEOs) and Federal technicians with citation authority who patrol the roads, trails and areas that receive funds from the OHV Program.
 - (2) Installation of barriers and signs to prevent resource damage.
 - (3) Reduction of noise impacts of OHVs on wildlife through the enforcement of noise regulations found in CVC Section 38370.

In terms of the potential for diverting gas tax revenue in British Columbia, it is interesting to note that British Columbia's *Motor Fuel Tax Act*, R.S.B.C. 1996, c. 317, is not directly analogous to the Californian gas tax law, in that there is no promise that all of the monies will be used for highway building and maintenance. In fact, for most areas where gas is sold in B.C., the "lion's share" of gas revenues are not promised to highways or transportation at all, but actually are tagged for general revenue. Less than half of the revenues are dedicated to specific transportation funds. For most of the province, gasoline tax is 11.0 cents/litre and the specifically dedicated portions break down as follows:

- 1.25 cents/litre to B.C. Ferries
- 3.25 cents/litre to B.C. Transportation Financing Authority¹⁰⁵

¹⁰⁴ Article 5090.64 of the Public Resources Code (PRC)

¹⁰⁵ Consumer Taxation Branch *Bulletin*, Minister of Finance and Corporate Relations (Revised March 2001)

More than half (6.5 cents/litre) goes to the province's Consolidated Revenue Fund. For Victoria,¹⁰⁶ just over half of gas tax revenues are dedicated to specific transportation funds; and in Vancouver,¹⁰⁷ some 12.5 cents out of the 15.0 cents/litre charged, goes to specific transportation funds and only 2.5 cents to general revenue.

Given that the connection between the tax and highways is less stringent in B.C. than it is in California, it is likely that it would be more of a challenge to persuade government that the diversion is appropriate.

(d) Environmental surcharge

A model which can work quite well for environmental protection is to impose an environmental surcharge upon an outdoor recreation license or permit. A successful example of this model exists right here in B.C., with the Habitat Conservation Trust Fund (HCTF) surcharges on hunting, guiding, trapping and fishing licenses. For example, currently the annual regular angling license fee is \$30 and this includes a surcharge of \$13.¹⁰⁸ There are also surcharges for specific species - e.g. \$15 for steelhead, \$10 for salmon, and \$5 or 10 depending on the kind of trout.

The HCTF is authorized by section 111 of the *Wildlife Act*. The Minister of Environment, Lands and Parks [now Minister of Water, Land and Air Protection] acts as Trustee, and a Public Advisory Board reviews proposed projects and makes recommendations for funding to the Minister as Trustee. The HCTF currently has annual revenues from the surcharges of approximately \$5 million. It also receives funds from the Crown Land Account, compensations funds from industry, donations, court awards and cost-sharing funds from co-operating groups. The monies fund four different types of program,¹⁰⁹ and some land purchases. Any individual or group may apply for funding from the HCTF. Proposals are subject to a technical review and approval process. As at April 2000, some 1700 projects had been funded since the 1981 inception of the program and its predecessor. In 1999, 159 projects received funding. In 1998-99 there were 113 new projects.

¹⁰⁶ [Bulletin] In Victoria, gasoline tax is 13.5 cents/litre, and the specifically dedicated portions break down as follows, with the balance of 6.5 cents/litre going to general revenue:

- 1.25 cents/litre to B.C. Ferries
- 3.25 cents/litre to B.C. Transportation Financing Authority
- 2.5 cents/litre to B.C. Transit

¹⁰⁷ [Bulletin] In Vancouver, gasoline tax is 15.0 cents/litre, and the specifically dedicated portions break down as follows, with the balance of 2.5 cents/litre going to general revenue:

- 1.25 cents/litre to B.C. Ferries
- 3.25 cents/litre to B.C. Transportation Financing Authority
- 8.0 cents/litre to Greater Vancouver Transportation Authority

¹⁰⁸ *Angling and Scientific Collection Regulation, BC Reg 125/90*, at Schedule C.

¹⁰⁹ The four projects are the Public Conservation Assistance Fund, Naturescape British Columbia, Wild BC and the Stewardship Series. More information is available at www.env.gov.bc.ca/hctf/

In terms of administrative set-up, commercial vendors may act as agents for selling hunting and fishing licences. Vendors in B.C. may retain a commission of 10% of a licence fee to a maximum of \$5.00, not including surcharges.¹¹⁰

The beauty of an environmental surcharge is that it is entirely defensible: the argument is that persons should not be allowed to “consume” wildlife, without “putting back” into the system. Hence the surcharge. The scheme recognizes that the recreation in question has an impact upon the environment and upon wildlife.

I did not encounter any jurisdiction where an environmental surcharge is currently being imposed upon all terrain vehicle permits. The lack of a direct precedent is somewhat frustrating; but, the model strikes me as apt nonetheless. All terrain vehicles do not “consume” wildlife in exactly the same way as hunters and anglers do; but, they do have an undeniable impact upon habitat, plant species and wildlife patterns which is comparable.

I spoke with Rod Silver at the HCTF and he advised me that he thought it would be possible to establish a similar environmental surcharge on all terrain vehicle licensing, in the event all terrain vehicles were to be licensed.

The only *caveat* is that the HCTF is solely concerned with habitat conservation programs and/or educational materials relating to habitat conservation. The HCTF has no mandate (or interest) to get involved in funding recreational projects such as trail-building or other kinds of educational initiatives related to issues like safety. Also, the HCTF as it is currently set up does not feed money back to communities proportionally from where the money originated. There is no good way to track where the licence will be used; so the monies simply get funneled into one pot at the HCTF.

While this would impede a model whereby ATV groups would “receive back” a distribution of monies “tagged” for conservation projects; this would not impede a scheme which would impose a surcharge for the HCTF, with perhaps an additional surcharge imposed for another kind of trust fund, dedicated to, for example, educational (safety/environmental awareness in riding) or trail building/maintenance purposes.

In terms of “carrot” versus “stick” philosophies, Mr. Silver confirmed that the “carrot” philosophy is the one followed by the HCTF, which tries to increase public understanding and support for habitat-based ecological values.

Building an environmental surcharge into the licence fee could lend credibility to the fee being charged and could assist in overcoming the fact that fees are a “hard sell” and are so often viewed as “just another tax grab”.¹¹¹ One model for managing a surcharge would

¹¹⁰ Section 6.01 of General Regulation 340/82

¹¹¹ Ideas from telephone conversation with Andy Ackerman, Regional Fish and Wildlife Manager in Fort St. John.

be to get clubs involved with rehabilitation projects, which would not only increase awareness and infuse users with a sense of “ownership” of the issue, but would also raise the profile of responsibility for such groups.¹¹²

(e) Environmental tax on sale of vehicle

In the course of reviewing minutes of the meetings of the New Brunswick ATV Task Force, I became aware that the concept of an environmental tax being imposed upon the sale of ATVs has been discussed. This avenue for funding merits further investigation.

Such a model would not be unprecedented in British Columbia: a \$3.00 environmental levy is currently applied when one purchases a new tire of \$30 or more. There is also a \$5.00 levy on purchases of new, lead-acid batteries. Both of these levies are directed into B.C. “Sustainable Environment Fund.”¹¹³

(f) Advertising and sponsorships from private sources

A popular source of funding for discrete projects, such as the production of educational brochures or videos, is to obtain sponsorships from private sources (like manufacturers or lottery funds) or to arrange for advertising. An infinite number of practical examples of joint efforts by government and private advertisers exist. In B.C., a clear precedent is the fishing and hunting regulations guides, discussed above.

8. Clear interaction and communications with stakeholders, both at the outset and ongoing

The final key component for a good regulatory system is clear interaction and communications with stakeholders. The reason this is important is that when a system is known, and when it is accessible and participatory, it has a greater chance of being considered legitimate, because the choices made, and the reasons for those choices, will be better understood by the stakeholders.

There are several ways to consult and communicate:

- roundtable meetings with stakeholders

¹¹² *Ibid.*

¹¹³ Authority for the levies is found in Division 9, ss. 66-68 of the *Social Services Tax Act*, R.S.B.C. 1996, c. 431.

- clustered meetings, one stakeholder group at a time
- written or other published materials
- invitations for comments
- joint/cooperative endeavours

A few real examples of effective consultation and communication warrant a brief discussion.

California's Off-Road Vehicle Recreation program is currently engaged in a series of monthly roundtable meetings with stakeholders. This is apparently being very well received by all members of the concerned community, whether recreationist or environmentalist. The consultation process is regarded by the program administrators as an important component of the program's ongoing development and evolution.¹¹⁴

In November 2000, New Brunswick announced, and launched, a Task Force into All Terrain Vehicles. The Task Force consulted with stakeholder groups in monthly meetings which convened between January and June 2001. The Task Force is expected to deliver its report this summer.¹¹⁵

In Québec, the Ministry of Transport has an ongoing relationship with the Federation Québécoise des Clubs Quad. As noted above, the Ministry entrusts clubs to assist with enforcement through self-regulation via the establishment of volunteer Trail Security Officers.

In terms of publications, the Ontario government has published a brief booklet on off-road vehicle use, which provides a synopsis of applicable laws and regulations. Both California and Oregon have devoted considerable resources to placing information about their programs and current events on the world wide web.

¹¹⁴ Information from California's program website.

¹¹⁵ I am on the mailing list to receive a copy of the report when it becomes available.

