



## **MASSACHUSETTS ASSOCIATION OF CONSERVATION COMMISSIONS**

### **COMMENTS TO THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS' OFFICE OF LAW ENFORCEMENT ON THE USE OF RECREATIONAL VEHICLES AND SNOW VEHICLES**

**MAY 9, 2011**

The Massachusetts Association of Conservation Commissions (MACC) represents the interests of the 351 Conservation Commissions across the state. We build support for community conservation by working with federal and state agencies, legislators, the courts, partner nonprofits and the general public. MACC advocates for strong, science-based laws, regulations and policies; we assist relevant state agencies in their outreach efforts and serve as mentor for other conservation groups. Working in collaboration with the Executive Office of Energy and Environmental Affairs, MACC has encouraged the protection of thousands of acres of wetlands and critical natural resources across the Commonwealth. MACC and the state depend on the efficiencies of public-private partnerships to accomplish our mutual goals.

MACC supported passage of *An Act Regulating the Use of Off-Highway and Recreational Vehicles* because it addresses environmental concerns regarding Off Highway Vehicles (OHVs). The new law provides enforcement officers and communities with the potentially effective tools they need to curb illegal, dangerous and destructive OHV use. If implemented through strong, consistent and clear regulations, this law will reduce the serious damage caused by OHVs to wetlands, conservation land, rare species habitat and other natural resources.

The regulations proposed by the Environmental Police are a step in the right direction. However, they need to be strengthened and clarified if they are to achieve the intent of the law. Regulatory provisions dealing with the enforcement against illegal riding should be strong and predictable, especially where sensitive areas such as wetlands, vernal pools, and rare species habitats are impacted. Riding must only be allowed on designated, clearly marked trails, where use of those trails does not risk sensitive wetlands resources and habitat, and where enforcement actions deter and hopefully prevent illegal riding.

We respectfully request the Office of Law Enforcement amend its proposed OHV regulations to clarify that riding in any wetland or vernal pool, at any time of year, is prohibited. The proposed clause about wetlands is far too lenient in allowing access to these destructive vehicles except where their use risks "to destroy or damage wetland plants" in areas "designated and posted as a protected wetland areas." This provision (Section 323 CMR 3.03(10)) should be deleted as it is inconsistent with the current law which prohibits riding in all wetlands and does not require them



to be posted. Another section of the proposed regulations at 323 CMR 3.03(7) mirrors the statutory language. However, the proposed provision at 323 CMR 3.03(10) undermines and confuses this provision by requiring posting of wetlands. To avoid confusion or defense of illegal and damaging activity, the provision regarding posted wetlands should be deleted.

In addition, under Section 3.03(7) we propose that damage to wetlands plants or any permanent or temporary alteration in soil, topography or biota in wetlands, vernal pools, or riverfront areas be specifically included in any determination of “damage to public or private property.”

There are other areas where the regulations could be improved through further refinement. Exemptions for use of agricultural, forestry, lumbering and construction vehicles should not extend to use beyond the area reasonably necessary to carry out the exempt activity.

MACC commends the provision for joint and several liabilities for parties who fail to effectively supervise operators below the age of 18, but suggests clarification to ensure that parties who may be otherwise for the actions of those minor operators (i.e., parents or guardians) should also be held jointly and severally liable.

MACC also suggests several minor wording changes in Section 3.03(6). In particular we suggest insertion of the word “greater” between other and depth in line 3 of that section to ensure there is no possible reduction of a minimum depth of 4 inches of packed snow. Also, in Section 3.06, we suggest extending the authority of law enforcement to allow direction to immediately cease operation to all violations of the regulations, not just those associated with unsafe operations.

We commend the Office of Law Enforcement, and the Legislature, for taking steps to address this important issue and we look forward to the establishing of final regulations in the near future and thank you for this opportunity to comment.

If you have questions, please contact Linda Orel, MACC Executive Director at [Linda.Orel@maccweb.org](mailto:Linda.Orel@maccweb.org) or 857-636-9673.