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# MODEL MEMORANDUM *of* UNDERSTANDING *for* WATERCRAFT INSPECTION *and* DECONTAMINATION PROGRAMS

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# MODEL MEMORANDUM OF UNDERSTANDING FOR WATERCRAFT INSPECTION AND DECONTAMINATION PROGRAMS



This document was prepared by the National Sea Grant Law Center to support the efforts of the western states to limit the introduction, spread, and impacts of aquatic nuisance species into the Western Region of North America.



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A multidisciplinary Model MOU Advisory Committee was formed in July 2018 to provide input and guidance to the National Sea Grant Law Center on the structure and content of the document. The following individuals graciously volunteered their time to serve on the Working Group.

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## EXECUTIVE SUMMARY

Invasive species, and especially those in aquatic systems, do not observe political boundaries. As such, states must work together to limit the introduction, spread, and impact of these species. Invasive species can be spread in many ways, both intentionally and unintentionally. Trailered recreational boats are an important vector, or pathway, in the spread of aquatic invasive species. Aquatic invasive species often “hitchhike” on boats as they move across marine or inland waters; on boats and trailers as they are moved between waters; and on equipment (bait buckets, waders, scuba tanks, anchors, etc.) used in recreational activities.

States, especially in the western United States, have taken significant action to reduce the aquatic invasive species risk associated with the recreational boating pathway. In addition to enacting laws and regulations that prohibit the possession, transport, and release of aquatic invasive species, over a dozen states have developed extensive watercraft inspection and decontamination (WID) programs. WID programs seek to reduce the risk of aquatic invasive species spread through the mandatory inspection and decontamination of boats and equipment by trained personnel. State regulatory programs are reinforced by a number of national, regional, and local outreach programs that educate the boating public on how to avoid transporting aquatic invasive species. The recreational boat industry has also devoted resources and attention toward minimizing aquatic invasive species transport through the design and construction of boats, trailers, engines, components, and accessories.

Interstate and partner collaboration is essential for states to achieve their risk reduction goals. Waters often form or cross state boundaries and people frequently transport recreational boats across state lines when moving along or between these and other waters. Inconsistency, overlaps, and gaps between neighboring states’ legal regimes can hinder prevention and enforcement efforts. Since 2012, the National Sea Grant Law Center has been working with western state partners to develop a model legal framework for WID programs to enhance consistency and collaboration among the states.

The “Model Memorandum of Understanding for Watercraft Inspection and Decontamination Programs” is the final piece of this model legal framework. In April 2014, the Law Center and the Association of Fish and Wildlife Agencies released “Preventing the Spread of Aquatic Invasive Species by Recreational Boats: Model Legislative Provisions & Guidance to Promote Reciprocity among State Watercraft Inspection and Decontamination Programs.” In December 2016, the Law Center and the Association of Fish and Wildlife Agencies finalized the “Model Regulation for State Watercraft and Inspection Programs.” The Model Memorandum of Understanding (MOU) provides a model framework for the formalization of interstate and regional collaborations through the development of written agreements. With the publication of the Model MOU, policymakers and regulators now have access to a model legal framework identifying model WID provisions from legislation through implementation.

## INTRODUCTION

Invasive species, and especially those in aquatic systems, do not observe political boundaries. As such, states must work together to limit the introduction, spread, and impact of these species. Once established in a given environment, they can compete with native species for food and habitat and can significantly impact ecosystems by altering food webs, reducing biodiversity, and changing water quality. Researchers have estimated that economic damages associated with invasive species and measures to control them exceed \$120 billion per year.<sup>1</sup>

Invasive species can be spread in many ways, both intentionally and unintentionally. Trailered recreational boats are an important vector, or pathway, in the spread of aquatic invasive species. Aquatic invasive species often “hitchhike” on boats as they move across marine or inland waters; on boats and trailers as they are moved between waters; and on equipment (bait buckets, waders, scuba tanks, anchors, etc.) used in recreational activities. Overland transport of recreational boats is thought to be responsible for the spread of several aquatic invasive species, including spiny waterflea (*Bythotrephes longimanus*), Eurasian watermilfoil (*Myriophyllum spicatum*), and zebra and quagga mussels (*Dreissena* spp.).

States, especially in the western United States, have taken significant action to reduce the risk of spreading aquatic invasive species, including risk associated with the recreational boating pathway. In addition to enacting laws and regulations that prohibit the possession, transport, and release of aquatic invasive species, nineteen states and the Tahoe Regional Planning Agency have developed extensive watercraft inspection and decontamination (WID) programs.<sup>2</sup> WID programs seek to reduce the risk of aquatic invasive species spread through the mandatory inspection and decontamination of boats and equipment by trained personnel. State regulatory programs are reinforced by a number of national, regional, and local outreach programs that educate the boating public on how to avoid transporting aquatic invasive species.

The recreational boat industry has also devoted resources and attention toward minimizing aquatic invasive species transport through the design and construction of boats, trailers, engines, components, and accessories. These include considerations to limit the number of surfaces to which species can attach, improve draining of boat and trailer components, and reduce standing water after draining. In collaboration with the American Boat and Yacht Council, the U.S. Fish and Wildlife Service, Association of Fish and Wildlife Agencies, and other partners held a Boat Design Summit in January 2015. The summit participants indicated strong support for the development of voluntary boat design standards, and acknowledgment of the mutual benefits to the boating public and the recreational waters

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<sup>1</sup> See David Pimentel, Rodolfo Zuniga, & Doug Morrison, *Update on the environmental and economic costs associated with alien-invasive species in the United States*, 52 *ECOLOGICAL ECONOMICS* 273 (2005).

<sup>2</sup> STEPHANIE SHOWALTER OTTS, NATIONAL SEA GRANT LAW CENTER, FROM THEORY TO PRACTICE: A COMPARISON OF STATE WATERCRAFT INSPECTION AND DECONTAMINATION PROGRAMS TO THE MODEL LEGAL FRAMEWORK 6 (Rev. Dec. 2018), available at <http://nsglc.olemiss.edu/projects/model-legal-framework/files/state-comparison-revised.pdf>.

on which they depend. A follow-up Aquatic Invasive Species Summit was held in September 2018, following the American Boat and Yacht Council's release of a technical information report on design and construction considerations.<sup>3</sup>

Collaboration is essential for states to achieve their risk reduction goals. Waters often form or cross state boundaries and people frequently transport recreational boats across state lines when moving along or between these and other waters. Inconsistency, overlaps, and gaps between neighboring states' legal requirements can hinder prevention and enforcement efforts. When state statutory and regulatory regimes are more closely aligned, boaters are provided with consistency, which reduces confusion and eases compliance burdens.

Collaboration among WID programs is also critical to increase programmatic efficiency and reduce expenses. One of the primary barriers to state implementation of WID programs is funding. Some states have dedicated funding sources for WID programs, such as state appropriations or revenue from boater registration fees. Most states, however, struggle to find the funds needed to hire seasonal staff and purchase equipment. In 2015, the Maryland Department of Natural Resources estimated the start-up costs of a mandatory WID program to be between \$768,460 and \$4,768,460.<sup>4</sup> These estimates included costs associated with training personnel (\$7,500), purchasing equipment (\$23,780 for each WID station, two per lake), and retrofitting infrastructure to accommodate stations at the sixteen state-owned and managed water bodies. Annual operating costs were estimated at approximately \$1 million.<sup>5</sup> WID program costs will vary among states depending on, among other things, the size of the state, number of waters, amount of recreational boating activity, and whether WID services are performed exclusively by the state or in partnership with third parties.

Effective collaborations among WID programs can help states and other partners leverage existing training programs, eliminate redundancies, and develop innovative funding strategies. Given the enormous environmental and economic costs associated with aquatic invasive species establishment, WID programs can provide a significant return on investment. More than \$2.5 million was spent in 2011 and 2012 to manage just two invasive species – Asian clam and zebra mussels – in Lake George, New York.<sup>6</sup> Eurasian watermilfoil management costs the State of Washington and private individuals \$1 million per year.<sup>7</sup>

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<sup>3</sup> For more information on the American Boat and Yacht Council's efforts, see ABYC, Press Release, ABYC and Boat Manufacturers Work to Minimize the Spread of Aquatic Invasive Species (Aug. 14, 2018), available at <https://abycinc.org/news/413205/ABYC-and-Boat-Manufacturers-Work-to-Minimize-the-Spread-of-Aquatic-Invasive-Species-.htm>.

<sup>4</sup> MARYLAND DEPARTMENT OF NATURAL RESOURCES, WORKGROUP TO EVALUATE ACTIONS THAT REDUCE THE SPREAD OF INVASIVE SPECIES FROM VESSELS PLACED IN LAKES THAT ARE OWNED OR MANAGED BY THE STATE: REPORT TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE & THE HOUSE ENVIRONMENT & TRANSPORTATION COMMITTEE 21 (Dec. 2015).

<sup>5</sup> *Id.*

<sup>6</sup> MEGHAN JOHNSTONE, ET AL. BOAT INSPECTION AND DECONTAMINATION FOR AQUATIC INVASIVE SPECIES PREVENTION: RECOMMENDATIONS FOR THE ADIRONDACK REGION 7 (2014).

<sup>7</sup> Washington Department of Ecology, Non-Native Invasive Freshwater Plants: Eurasian Watermilfoil, <http://www.ecy.wa.gov/programs/wq/plants/weeds/milfoil.html> (last visited Dec. 8, 2016).

Stronger, more consistent state laws and regulations can also reduce the need for federal action to address a regional problem. Political gridlock and fiscal constraints can make it difficult for Congress and federal agencies to effectively tackle emerging aquatic invasive species threats. Interstate coordination can help strengthen opportunities for regional invasive species management without reliance on federal injurious wildlife regulations via Title 18 of the Lacey Act (18 U.S.C. § 42). Furthermore, Title 16 of the Lacey Act (16 U.S.C. § 3372) elevates the violation of state, tribal, or foreign wildlife laws to federal offenses. Stronger state laws provide a firmer foundation for Title 16 prosecutions of interstate wildlife violations.

Interstate cooperation and reciprocity is essential to effectively manage aquatic invasive species risks from recreational boats and other pathways. On August 22 and 23, 2012, the U.S. Fish and Wildlife Service, the National Association of Attorneys General, Oregon Sea Grant, the National Sea Grant Law Center, and the Western Regional Panel on Aquatic Nuisance Species convened a workshop in Phoenix, Arizona, hosted by the Arizona Game and Fish Department. The purpose of the workshop was to engage assistant attorneys general, natural resource agency attorneys, law enforcement supervisors, policy makers, and aquatic invasive species coordinators from the nineteen Western states, interstate organizations, and federal partners to identify clear legal and regulatory approaches and opportunities for aquatic invasive species abatement and improved management.

At the conclusion of the workshop, participants drafted “An Action Plan to Implement Legal and Regulatory Efforts to Minimize Expansion of Invasive Mussels through Watercraft Movements in the Western United States.” One of the recommended actions was to develop model state legislative and regulatory language to authorize a comprehensive state WID program whereby states could voluntarily choose to adopt all or parts of the model, as applicable. Participants also envisioned that states implementing these model laws and rules would need to coordinate with neighboring states to facilitate cross-border traffic of watercraft without compromising aquatic invasive species protections.

In April 2014, the National Sea Grant Law Center and the Association of Fish and Wildlife Agencies released “Preventing the Spread of Aquatic Invasive Species by Recreational Boats: Model Legislative Provisions & Guidance to Promote Reciprocity among State Watercraft Inspection and Decontamination Programs” (“Model State Legislative Provisions”).<sup>8</sup> The “Model Regulation for State Watercraft and Inspection Programs” (“Model Regulation”) was released in December 2016.<sup>9</sup> The “Model Memorandum of Understanding for Watercraft Inspection and Decontamination Programs” (“Model MOU”) is the final piece of this model legal framework. With the publication of the Model MOU, policymakers and regulators now have access to a model legal framework identifying model WID provisions from legislation through implementation.

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<sup>8</sup> Available for download at <http://nsglc.olemiss.edu/projects/files/Model-Legislative-Provisions-Guidance.pdf>.

<sup>9</sup> Available for download at <http://nsglc.olemiss.edu/projects/model-legal-framework/files/modelregulation.pdf>.

## Purpose of the Model

A number of western states have entered into MOUs with federal agencies, such as the National Park Service and U.S. Forest Service, to facilitate WID inspections and decontamination programs on federal lands. States have also entered into MOUs with local governments to implement WID activities. With respect to interstate partnerships, however, state aquatic invasive species coordinators have primarily relied on informal, verbal agreements when seeking to work across state lines. Such common, informal “handshake” agreements can lead to problems if there are misunderstandings among the parties. To avoid misunderstandings, parties agreeing to implement programs in a common manner or work together to achieve shared goals should formalize such agreements in writing to document the intent and responsibilities of each of the parties.

An MOU is a type of written agreement between two or more parties that includes only general understandings. MOUs are less formal and simpler than contracts, and usually not legally binding. MOUs generally do not include a commitment of resources or bind a party to any specific action. Rather, MOUs create guidelines for each party as they contribute their efforts and resources towards an important project or shared goal.

The Model MOU provides a model framework for the formalization of interstate and regional collaborations through the development of written agreements. The Model MOU is designed to facilitate the development of agreements that would enable parties to engage in some form of reciprocity, such as accepting each other’s inspection or decontamination paperwork. It outlines key considerations that should be addressed by the parties during negotiations and provides template language for major provisions.

It is important to note that this Model MOU is not intended to provide guidance for parties seeking to enter into agreements to redistribute funds or share resources. A different type of arrangement will often be required in such situations. States agencies, for instance, may not be able to make legally binding financial or personnel commitments through an MOU. Adding language relating to funding to an MOU can result in additional layers of administrative review or result in some entities being unable to sign. Parties seeking to redistribute funds or share resources will likely need to negotiate a more formal cooperative agreement or contract. If negotiating agreements relating to funding, parties may need to consider additional issues that are outside the scope of the Model MOU such as financial reporting and pass-through of funds to subrecipients.

## Structure of the Model

The structure of the Model MOU closely mirrors the structure of existing agreements related to WID activities. In each section, suggested language is provided followed by Explanatory Notes that highlight key issues to consider during negotiations and drafting. It is important to read these Explanatory Notes for the thoughts and details they provide to enhance understanding of the intent of each section of the Model MOU.



Specifically, the structure of the Model MOU includes the following:

- **Whereas Clauses:** Provides background information explaining the rationale for the parties' desire to enter into the agreement.
- **Responsibilities:** Outlines the responsibilities and duties of the parties with respect to communication, monitoring, watercraft inspection and decontamination, training, boater outreach, law enforcement, and public information releases.
- **Designated Representatives:** Identifies the individuals with the authority to make a commitment on behalf of their respective agencies during negotiations.
- **Term of Agreement:** Sets forth the time period in which the agreement will be in effect.
- **Dispute Resolution:** Outlines the process for handling disputes.
- **Modification:** Outlines the process by which parties may modify the terms of the agreement.
- **Termination:** Outlines the process by which parties may terminate the agreement prior to the designated end date.
- **Indemnification:** Sets forth the intent of the parties not to indemnify the other party.
- **Sovereign Immunity:** Sets forth the intent of the parties not to waive sovereign immunity.
- **Fiscal Necessity and Non-Appropriation:** Provides that parties are not obligated to undertake activities beyond available resources.

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**[AGENCY/ENTITY]**  
**And**  
**[AGENCY/ENTITY]**

This Memorandum of Understanding (“MOU”) is entered into by and between [name of agency/entity, address] and [name of agency/entity, address] (collectively, “Parties”).

WHEREAS, aquatic invasive species are a threat to aquatic ecosystems and biodiversity; water quality; irrigation, diversion, and power infrastructure; and recreational values;

WHEREAS, the Parties desire to facilitate meaningful and effective interstate communication, coordination, and collaboration to prevent the spread of aquatic invasive species through public outreach and education, watercraft inspection and decontamination, early detection monitoring, and rapid response efforts;

WHEREAS, the Parties wish to enhance watercraft inspection and decontamination operations for aquatic invasive species prevention and containment by providing procedures and guidance for coordination and cooperation among Parties.

WHEREAS, this partnership and agreement would help harmonize and increase the efficiency of watercraft inspection operations thereby improving customer service for the boating public.

WHEREAS, the Parties have the authority, pursuant to [statutory authority citations], to enter into such agreements and cooperate with [state, federal, local, or tribal] agencies in control and eradication efforts regarding invasive species.

[Optional] WHEREAS, the Parties wish to continue an earlier aquatic invasive species prevention agreement, [title/number], which was effective over [time period].

***Explanatory Notes:***

The introductory text of an MOU generally provides background information explaining the rationale for the parties’ desire to enter into the agreement. Whether or not the word “Whereas” is used, this background language in an agreement is commonly referred to as “Whereas clauses.” The information addressed in the preamble should be limited to intentions, desires, statements of fact, and citations to the authority of the parties to enter into the agreement. If desired, party-related clauses may be added that describe their expertise or operational goals. Information on past efforts or previous agreements is not necessary to reference, but parties may wish to include it to provide historic context. Whereas clauses should not include any obligations, conditions, or duties as they are generally considered non-binding and are not a part of the agreement’s operational provisions. Although currently drafted for two parties joining the agreement, more than two entities could join.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the Parties agree as follows:

## **I. Responsibilities.**

### **A. Communication.** The Parties will:

1. Develop, maintain, and share a contact list of individuals with responsibilities related to this agreement and the scope of their authority.
2. Meet biannually, either in-person or through virtual means, to review implementation of this agreement, discuss issues of mutual concern, and carry out functions related to the ongoing coordination of specific aquatic invasive species management actions. Meeting dates and times shall be set by the Parties at their mutual convenience.
3. Freely exchange available information related to prevention, containment, and enforcement of aquatic invasive species to the extent allowed under public records laws.
4. Agree to notify all Parties by phone within 24 hours of any confirmed reports of new aquatic invasive species sightings or any unforeseen situation involving aquatic invasive species management.

### ***Explanatory Notes:***

Good communication is an essential part of any partnership. When negotiating an MOU, parties should consider how they wish to communicate with respect to the terms of the agreement itself and the implementation of programmatic activities carried out pursuant to the agreement. Parties should also consider how they wish to handle unanticipated issues that will inevitably arise and may need immediate attention. The individuals with the authority to sign the agreement are likely to be different than the people responsible for conducting surveys, setting up inspection stations, distributing outreach materials, and enforcing violations. It is important that the parties know who all the key individuals are and their respective decision-making authority. This information should be routinely updated and shared among the parties as personnel change. Parties may wish to specify a frequency for reviewing the accuracy of the contact list (e.g., every six months).

Regular meetings among key personnel are essential for building working relationships and trust, as well as providing opportunities to address aspects of the agreement that might not be working and renegotiate as necessary. The desired frequency of meetings would depend on the number of parties and the geographic distance between them. Parties may choose to meet quarterly, or more frequently if deemed beneficial. Parties may also wish to specify which records and information are expected to be shared under the terms of the agreement, such as invasive species sighting reports, sampling results, watercraft inspection records, and notices of violations or judgments.

B. Monitoring. The Parties will:

1. Develop and implement a monitoring plan for quagga and zebra mussels in adherence to mutually agreed upon protocols and standards.
2. Share the results of sampling events as soon as feasible upon receipt.
3. Provide prompt notice of significant changes to monitoring plans, as well as regulatory or policy decisions triggered by sampling results including, but not limited to, rapid response actions, quarantines, and reclassification of waters.

***Explanatory Notes:***

Numerous governments, academic, and private entities monitor for zebra and quagga mussels. Sampling frequency and protocols vary based on the goals, funding, and scope of a monitoring program. Information about ongoing monitoring efforts and existing protocols is available at <https://www.westernais.org/monitoring>. Parties may also be concerned about species other than mussels that can be transported by boats, such as aquatic plants and Asian carp. In such cases, Parties may wish to expand this language to include other species.

When negotiating an MOU, parties should consider current monitoring efforts, the variety of sampling methods, and the capacity of the parties to conduct the level of monitoring necessary to achieve programmatic goals. Parties may not have the financial resources or staff time to actively monitor all waterbodies within their jurisdictions. Parties should review and discuss monitoring plans and priorities during the negotiations so that issues or concerns can be identified and addressed. Parties may not always come to an agreement on standards for monitoring. One party may follow stricter protocols for internal or political reasons. Parties may disagree about the reliability of eDNA sampling techniques or how much weight to give eDNA results. In cases of consensus, however, parties may wish to specify in the agreement the protocols and standards to be followed and how results will be handled.

C. Watercraft Inspection and Decontamination. The Parties will:

1. Conduct watercraft inspections and decontaminations in adherence to mutually agreed upon standards and protocols.
2. Place a seal on all watercraft when a watercraft has passed inspection and provide a receipt (certificate) of inspection or decontamination.
3. Enter records of watercraft inspection and decontaminations into a data sharing system selected by mutual consent.
4. Recognize Parties' inspections as valid and, to the extent possible, develop and implement expedited processes for sealed watercraft with receipts.

### ***Explanatory Notes:***

Interstate cooperation on watercraft inspection programs is necessary to increase efficiency and reduce burdens on both inspectors and boaters. Boaters can become annoyed at long lines on busy holiday weekends or duplicative requirements. When boats are traveling from known infested waters, such as Lake Powell, multiple inspections and decontaminations may be necessary to remove or kill mussels missed by previous efforts. In many cases, though, a single inspection by trained personnel would be sufficient to identify the boat as “low risk” – that is, presenting a low risk of spreading aquatic invasive species due to location of previous launch, length of time out of the water, or compliance with “Clean, Drain, and Dry” or similar requirements. If a boat arrives at an inspection station with a documented inspection history, an inspector with confidence in those previous efforts may be able to expediate the inspection process by replacing a full visual and tactile inspection with a brief interview and verification of inspection paperwork. Such “streamlining” is only possible if entities are carrying out inspections and decontaminations in the same way and share records of inspections and decontaminations.

*The Model Regulation for State Watercraft Inspection and Decontamination Programs* does not mandate inspection and decontamination standards and procedures, leaving states flexibility to develop those standards and procedures. Because of this flexibility, parties should review and discuss their current watercraft inspection and decontamination protocols and standards during the negotiations to ensure that they are comparable. Many entities, for instance, adhere to the *Recommended Protocols and Standards for Watercraft Interception Programs for Dreissenid Mussels in the Western United States* developed by the Pacific State Marine Fisheries Commission (<https://bit.ly/2DRFGfG>). This document, known as “UMPS,” was first released in 2009 and adopted by the Western Regional Panel on Aquatic Nuisance Species, and then updated in 2012 and 2016.

Parties may wish to specify in the agreement the protocols and standards to be followed, similar to the model provisions suggested for seals/receipts and data sharing (see C1 and C2), and how deviations from those standards will be handled. For example, discrepancies exist between state documentation practices so reaching agreement on what information a receipt or certificate should include is important.

If there are shared locations where agents from multiple agencies are working together, parties should consider how those activities will be coordinated. For instance, parties may wish to add a provision designating one party as the lead for scheduling inspectors and managing day-to-day operations. Parties should also discuss and incorporate into the agreement whether they are allowed to use each other’s equipment, such as fixed or mobile decontamination units, and who is responsible for maintenance and utilities.

Parties should regularly review the agreed upon standards and protocols to ensure that they continue to adequately address emerging threats. Boat designs change, as well as the classifications of waterbodies. Frequent communication and updates to standards and protocols are essential to maintain trust and confidence in each party’s program.

D. Training. The Parties will:

1. Ensure that employees and agents are properly trained and qualified to enforce the standards and protocols referenced in Section C.
2. Participate in an independent quality control assessment program selected by mutual consent and share results of quality control reports as soon as feasible upon receipt.

***Explanatory Notes:***

Proper training and supervision are critical to the success of any watercraft inspection program. If inspectors are not adhering to the agreed upon protocols and standards, parties cannot rely on a boat's inspection history during the risk assessment process. Parties should discuss their existing training programs during negotiations to ensure that any concerns can be addressed. If desired, parties could add a provision agreeing to a cross-system of training where all inspection staff are sent to the same training program. Each party, however, would remain responsible for the continuing education, supervision, and conduct of their own employees, volunteers, agents, and contractors.

The effectiveness and accuracy of watercraft inspection should be evaluated on a regular basis. A quality control program can help managers confirm that protocols are being followed and identify problems with training, supervision, or protocols. A common evaluation method is the use of "secret shoppers" evaluations where individuals or teams posing as boaters take boats through inspection stations and complete forms providing quality assurance scores. Entities may rely on internal staff to implement a quality control program or use outside contractors. Some organizations provide quality assurance/quality control services to entities for a fee. Parties should consider whether an internal or external quality control program is desired, how program information will be shared, and how identified problems will be addressed.

E. Boater Outreach. The Parties will:

1. Deliver, to the extent feasible, consistent messaging to boaters in person, on signage, and online about preventing the spread of aquatic invasive species.
2. Assist with basic education to boaters bound for another Party's jurisdiction, including sharing information on that Party's inspection requirements, contact information for the Party, and distributing outreach materials as provided by the Party.
3. Identify and target messaging to key partners, such as marinas and service providers, on aquatic invasive species prevention.

***Explanatory Notes:***

“Clean, Drain, Dry” has been the primary outreach message to recreational boaters, fishermen, and other recreational water users to prevent the spread of aquatic invasive species through their activities. Although this is the predominant message, variations of the campaign exist in many states. Consistent messaging by partner organizations can help reduce confusion, reinforce desired behavioral changes, and increase compliance with regulatory requirements.

Marinas can be key partners in aquatic invasive species prevention efforts. Marinas can share outreach messaging and materials with their customers and, in some states, offer inspection and decontamination services. Marina owners can also assist with regulatory compliance efforts by including provisions relating to watercraft inspection and decontamination in leases. Parties may wish to consider developing and agreeing to a set of standard practices and procedures for marina owners and marina slip leaseholders.

F. Law Enforcement. The Parties will:

1. Share information on enforcement activities involving watercraft inspection and decontamination with other law enforcement agencies.
2. Render assistance to another law enforcement agency in its enforcement activities to the extent compatible with the laws and interests of the assisting law enforcement agency.

***Explanatory Notes:***

Enforcement of aquatic invasive species laws and watercraft inspection requirements is hindered by the transitory nature of the recreational boating pathway. Boaters frequently cross state lines and it can be difficult for states to enforce drying times and quarantines if a boater is heading out of state. Sharing information about violations can help law enforcement agencies identify repeat offenders. Cooperation among state law enforcement agencies may also help identify violations and strengthen prosecutions by federal law enforcement officials under Title 16 of the Lacey Act (16 U.S.C. § 3372). Parties should develop law enforcement contact sheets that identify the person who is responsible for sharing information with appropriate personnel in their respective agencies. Parties should also establish information sharing systems, such as shared drives or a standard form that can be automatically entered into a shared drive or form site. Parties can choose who gets the notifications from such systems.

Parties seeking to conduct joint law enforcement activities or delegate authorities relating to law enforcement will likely need a separate law enforcement MOU or a cross-commissioning agreement. For instance, states and municipalities often have the authority to deputize federal law enforcement officers to enforce state and local laws on federal lands. In such agreements, the parties address such issues as scope of authority, issuance of citations, detention of suspects and witnesses, and supervision of law enforcement personnel.

## G. Public Information Release and Publication of Studies

1. No Party shall publicly disclose or issue any press release, make any other public statement, or otherwise communicate with the media, concerning the existence of the MOU or subject matter hereof, without the prior written approval of all Parties, which shall not be unreasonably withheld or delayed.
2. No Party may release or distribute any materials or information containing the name of another Party or any of its employees without prior written approval by an authorized representative of the non-releasing Party. The Parties retain the right to release public information regarding their own activities under this MOU.
3. All journal articles, presentations, and other communications created jointly by the Parties from the activities conducted or data generated under the MOU must be reviewed and approved in accordance with the policies of both parties prior to publication or presentation.

### *Explanatory Notes:*

Publicity clauses, also referred to as announcement or press release clauses, set forth the obligations of the parties regarding the release of information relating to the existence of the agreement. The clause ensures that the agreement and activities conducted pursuant to it are publicized in an appropriate form and agreed upon manner. Parties should discuss in advance how they want to announce the partnership. If language is developed during the negotiations, parties may wish to set out the agreed wording in an exhibit to the MOU. During the term of the agreement, parties may want or need to periodically release information related to their activities. If other parties will be mentioned in those releases, permission should be obtained from the other parties to ensure that there are no surprises or misunderstandings. Processes for obtaining approval from other parties should be identified and defined in advance whenever possible. Similarly, any collaborative reports, studies, or publication should be approved by all parties prior to release.

## II. **Designated Representatives.**

Communication on all matters relating to the terms of this agreement shall be by [specify spokesperson or approval arrangements].

### *Explanatory Notes:*

This provision starts the transition from the substantive obligations of the parties to boilerplate language addressing administrative and legal matters. Negotiations towards a written agreement may occur over an extended period of time and involve multiple representatives from each party. In this section, the parties should designate their point of contact for official communication relating to agreement.



### **III. Term of Agreement.**

This Memorandum of Understanding shall commence on the date of last signature by the duly authorized representatives of the parties to this Agreement and shall remain in effect until [designated term].

#### ***Explanatory Notes:***

Parties should clearly state the time period that the MOU will be in effect with start and end dates. The proper length of time for the agreement will vary depending on the types of activities contemplated and the desires of the parties. Parties may wish to revisit the agreement on an annual basis or set the term length to coincide with partnership activities. Due to the rapidly changing nature of aquatic invasive species issues, a term length of more than three years is not recommended.

### **IV. Dispute Resolution.**

In the event of a dispute, controversy, or claim arising out of or related to this Memorandum of Understanding, the Parties shall use their best efforts to settle such dispute through direct negotiation.

#### ***Explanatory Notes:***

Misunderstandings and conflicts are bound to arise in any collaboration. Communication breakdowns, staff turnover, or budgetary changes may lead to disagreements about parties' performance under the MOU. If the parties are meeting frequently and sharing information in a transparent manner, it should be possible to resolve misunderstandings before they become major disputes. A dispute resolution provision is optional, as any party that is unhappy with the agreement could withdraw from the MOU on 30 days' notice pursuant to the termination clause. However, parties may wish to consider how disputes will be handled if conflict escalates. In the MOU context, direct negotiations among the parties should be sufficient. Parties, however, could specify the use of a mediator or neutral third-party facilitator if desired.

### **V. Modification.**

This Memorandum of Understanding may be modified by mutual consent by all Parties. Any Party wishing to modify this Memorandum of Understanding must notify the other Party in writing of its desire to do so. Representatives for the Parties will discuss any changes that are needed. If modifications are made, the revised document will be submitted to the Parties for signature.

#### ***Explanatory Notes:***

Parties may need to modify the terms of the agreement to address changing circumstances or resolve a conflict. MOUs are usually modified by mutual agreement by all parties. This provision should outline the process that the parties will follow to request, review, and execute a change to the MOU.

## **VI. Termination.**

This MOU will remain in effect until the end date specified in the Term of Agreement section below, unless all Parties mutually agree to terminate this MOU prior to the end date. Either Party may terminate this MOU upon giving thirty (30) days prior written notice to the other Party.

### *Explanatory Notes:*

A termination clause is important as it defines how the MOU may be ended prior to the specified end date. With two-party agreements, the process for termination is often written 30-day notice. With a multi-party agreement, parties should consider whether the withdrawal of one party should result in the termination of the MOU for all parties or modified to enable continuation by remaining parties. For multi-party agreements, the following language could be substituted: “Any party may withdraw from this MOU upon giving thirty (30) days prior written notice to the other parties. After one party’s withdrawal, the remaining parties may choose to continue under the MOU, terminate it, or modify it under Section V.”

## **VII. Indemnification.**

Each Party to this agreement shall assume the risk of liability arising from their own conduct. Neither Party agrees to insure, defend, or indemnify the other.

### *Explanatory Notes:*

Indemnification is a contractual obligation by one party to pay or compensate for the losses, damages, or liabilities incurred by the party to the contract. In business contracts, an indemnification clause ensures that one party will protect the other against future claims or damages incurred by one party or a third party and arising out of the agreement. Indemnification clauses in MOUs, however, can serve a different purpose. With MOUs, parties may want to expressly state their intention *not* to indemnify the other party. Federal and state law often restricts agencies from agreeing to indemnification of another party without specific statutory authorization. Such language also reinforces the intention of the parties that the execution of the MOU not result in legally binding commitments.

### **VIII. Sovereign Immunity.**

The Parties do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the MOU.

#### ***Explanatory Notes:***

Federal, state, and local governments generally enjoy sovereign immunity from lawsuits. Federal and state governments, therefore, cannot be sued without their consent. States often extend similar protections to local government, especially with respect to tort lawsuits. This provision expressly states the sovereign immunity protections are not waived by execution of the agreement. If none of the parties to the MOU are governmental entities, this clause would be inapplicable and should be omitted.

### **IX. Fiscal Necessity and Non-Appropriation.**

Activities contemplated herein shall depend on the availability of the necessary financial and human resources as determined and appropriated by the Legislatures of the Parties. The Legislatures of the Parties are under no obligation to make appropriations to fulfill the agreement. The MOU does not obligate parties beyond their available resources.

#### ***Explanatory Notes:***

Federal, state, and local natural resource agencies are constrained by the resources made available to them by their respective legislative bodies. Parties should discuss available resources during the negotiations so that programmatic limitations are disclosed and concerns can be addressed. Parties should not enter into an MOU if they do not have the resources to carry out the contemplated activities. Parties, however, should also recognize that resource allocations may change through means outside their control.

In WITNESS WHEREOF, the parties hereto have executed this MOU on the date(s) set forth below.

[Signatures by Authorized Representatives of the Parties]

[Date]

## APPENDIX

### MODEL MEMORANDUM OF UNDERSTANDING FOR WATERCRAFT INSPECTION AND DECONTAMINATION PROGRAMS

This Memorandum of Understanding (“MOU”) is entered into by and between [name of agency/entity, address] and [name of agency/entity, address] (collectively, “Parties”).

WHEREAS, aquatic invasive species are a threat to aquatic ecosystems and biodiversity; water quality; irrigation, diversion, and power infrastructure; and recreational values;

WHEREAS, the Parties desire to facilitate meaningful and effective interstate communication, coordination, and collaboration to prevent the spread of aquatic invasive species through public outreach and education, watercraft inspection and decontamination, early detection monitoring, and rapid response efforts;

WHEREAS, the Parties wish to enhance watercraft inspection and decontamination operations for aquatic invasive species prevention and containment by providing procedures and guidance for coordination and cooperation among Parties.

WHEREAS, this partnership and agreement would help harmonize and increase the efficiency of watercraft inspection operations thereby improving customer service for the boating public.

WHEREAS, the Parties have the authority, pursuant to [statutory authority citations], to enter into such agreements and cooperate with [state, federal, local, or tribal] agencies in control and eradication efforts regarding invasive species.

*[Optional]* WHEREAS, the Parties wish to continue an earlier aquatic invasive species prevention agreement, [title/number], which was effective over [time period].

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the Parties agree as follows:

## **I. Responsibilities.**

### A. Communication. The Parties will:

1. Develop, maintain, and share a contact list of individuals with responsibilities related to this agreement and the scope of their authority.
2. Meet biannually, either in-person or through virtual means, to review implementation of this agreement, discuss issues of mutual concern, and carry out functions related to the ongoing coordination of specific aquatic invasive species management actions. Meeting dates and times shall be set by the Parties at their mutual convenience.
3. Freely exchange available information related to prevention, containment, and enforcement of aquatic invasive species to the extent allowed under public records laws.
4. Agree to notify all Parties by phone within 24 hours of any confirmed reports of new aquatic invasive species sightings or any unforeseen situation involving aquatic invasive species management.

### B. Monitoring. The Parties will:

1. Develop and implement a monitoring plan for quagga and zebra mussels in adherence to mutually agreed upon protocols and standards.
2. Share the results of sampling events as soon as feasible upon receipt.
3. Provide prompt notice of significant changes to monitoring plans, as well as regulatory or policy decisions triggered by sampling results including, but not limited to, rapid response actions, quarantines, and reclassification of waters.

### C. Watercraft Inspection and Decontamination. The Parties will:

1. Conduct watercraft inspections and decontaminations in adherence to mutually agreed upon standards and protocols.
2. Place a seal on all watercraft when a watercraft has passed inspection and provide a receipt (certificate) of inspection or decontamination.
3. Enter records of watercraft inspection and decontaminations into a data sharing system selected by mutual consent.
4. Recognize Parties' inspections as valid and, to the extent possible, develop and implement expedited processes for sealed watercraft with receipts.

D. Training. The Parties will:

1. Ensure that employees and agents are properly trained and qualified to enforce the standards and protocols referenced in Section C.
2. Participate in an independent quality control assessment program selected by mutual consent and share results of quality control reports as soon as feasible upon receipt.

E. Boater Outreach. The Parties will:

1. Deliver, to the extent feasible, consistent messaging to boaters in person, on signage, and online about preventing the spread of aquatic invasive species.
2. Assist with basic education to boaters bound for another Party's jurisdiction, including sharing information on that Party's inspection requirements, contact information for the Party, and distributing outreach materials as provided by the Party.
3. Identify and target messaging to key partners, such as marinas and service providers, on aquatic invasive species prevention.

F. Law Enforcement. The Parties will:

1. Share information on enforcement activities involving watercraft inspection and decontamination with other law enforcement agencies.
2. Render assistance to another law enforcement agency in its enforcement activities to the extent compatible with the laws and interests of the assisting law enforcement agency.

G. Public Information Release and Publication of Studies

1. No Party shall publicly disclose or issue any press release, make any other public statement, or otherwise communicate with the media, concerning the existence of the MOU or subject matter hereof, without the prior written approval of all Parties, which shall not be unreasonably withheld or delayed.
2. No Party may release or distribute any materials or information containing the name of another Party or any of its employees without prior written approval by an authorized representative of the non-releasing Party. The Parties retain the right to release public information regarding their own activities under this MOU.
3. All journal articles, presentations, and other communications created jointly by the Parties from the activities conducted or data generated under the MOU must be reviewed and approved in accordance with the policies of both parties prior to publication or presentation.

## **II. Designated Representatives.**

Communication on all matters relating to the terms of this agreement shall be by [specify spokesperson or approval arrangements].

## **III. Term of Agreement.**

This Memorandum of Understanding shall commence on the date of last signature by the duly authorized representatives of the parties to this Agreement and shall remain in effect until [designated term].

## **IV. Dispute Resolution.**

In the event of a dispute, controversy, or claim arising out of or related to this Memorandum of Understanding, the Parties shall use their best efforts to settle such dispute through direct negotiation.

## **V. Modification.**

This Memorandum of Understanding may be modified by mutual consent by all Parties. Any Party wishing to modify this Memorandum of Understanding must notify the other Party in writing of its desire to do so. Representatives for the Parties will discuss any changes that are needed. If modifications are made, the revised document will be submitted to the Parties for signature.

## **VI. Termination.**

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## **VII. Indemnification.**

Each Party to this agreement shall assume the risk of liability arising from their own conduct. Neither Party agrees to insure, defend, or indemnify the other.

## **VIII. Sovereign Immunity.**

The Parties do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the MOU.

## **IX. Fiscal Necessity and Non-Appropriation.**

Activities contemplated herein shall depend on the availability of the necessary financial and human resources as determined and appropriated by the Legislatures of the Parties. The Legislatures of the Parties are under no obligation to make appropriations to fulfill the agreement. The MOU does not obligate parties beyond their available resources.

In WITNESS WHEREOF, the parties hereto have executed this MOU on the date(s) set forth below.

[Signatures by Authorized Representatives of the Parties]

[Date]