
MODEL REGULATION *for*
STATE WATERCRAFT INSPECTION
and DECONTAMINATION PROGRAMS



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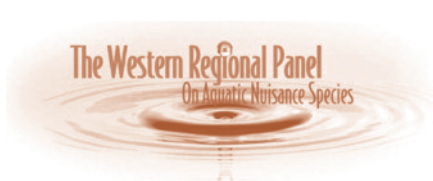
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TABLE OF CONTENTS

I. Executive Summary	i
II. Introduction	1
III. Model Regulation for State Watercraft Inspection and Decontamination Programs	7
• Legal Authority	7
• Purpose	7
• Definitions	8
• List of Aquatic Invasive Species	10
• Classification of Waters	10
• Conveyance Restrictions	12
• Conveyance Inspection Stations	13
• Conveyance Inspections	15
• Conveyance Decontamination	18
• Impoundment	19
• Certification of Personnel to Inspect and Decontamination Conveyances	19
• Authorization of Third Party Providers	20
• Local Programs	21
• Penalty	22
IV. Appendix A: Model State Legislative Provisions	23
V. Appendix B: Model Regulation	31

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 are often “hitchhiking” 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 boating industry has also devoted resources and attention toward minimizing aquatic invasive species transport by actively developing voluntary standards for recreational boat manufacturing.

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 Western Regional Panel on Aquatic Nuisance Species (WRP) “Building Consensus in the West” Committee has been working to develop a multi-state vision for WID programs to enhance consistency and collaboration among the states. This consensus building process involves aquatic invasive species coordinators, assistant attorneys general, and law enforcement officials from the nineteen Western states and three Canadian provinces.

The “Model Regulation for State Watercraft Inspection and Decontamination Programs” outlines a model regulatory framework to implement a package of recommended approaches for state WID programs as identified by the WRP Building Consensus Committee. It serves as a bridge between the model legislative provisions set forth in “Preventing the Spread of Aquatic Invasive Species by Recreational Boats: Model Legislative Provisions & Guidance to Promote Reciprocity among State Watercraft Inspection and Decontamination Programs” released in 2014 and model agency protocols developed through the Building Consensus process. The Model Regulation are designed to facilitate regional cooperation and coordination by laying the foundation for the adoption of reciprocal agreements among states adhering to these recommended approaches.

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. Generally speaking, invasive species are “alien species [i.e., species not native to an ecosystem] whose introduction does or is likely to cause economic or environmental harm or harm to human health.”¹ An estimated 50,000 non-native species have been introduced into the United States. Many of these species were intentionally introduced as crops, livestock, sport fish or game, and pets. These species are typically well managed and considered economically and socially beneficial. Some non-native species, however, have inflicted great economic and environmental damage. It is these harmful species that are considered invasive.

Invasive species can be spread in many ways, both intentionally and unintentionally. 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.²

Trailered recreational boats are an important vector, or pathway, in the spread of aquatic invasive species. Recreational boating is incredibly popular in the United States. According to the U.S. Coast Guard’s Recreational Boating Statistics, over 11.8 million recreational vessels were registered by the states in 2015.³ Many of these vessels are small enough to be towed overland on trailers, allowing boaters to enjoy the abundant fishing, water sport, and scenic opportunities available at waters around the country.

Unfortunately, more is moving than just boats. Aquatic invasive species are often “hitchhiking” 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. Boaters themselves are not always aware of the organisms their boats may be harboring, which can lead to the unintentional introduction and spread of aquatic invasive species. Overland transport of recreational boats is thought to be responsible for the spread of 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 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, sixteen states have developed extensive watercraft inspection and decontamination (WID) programs.⁴ WID programs seek to reduce the risk of aquatic invasive species spread through the mandatory inspection and

¹ Exec. Order No. 13112, 64 Fed. Reg. 6183, 6183 (Feb. 3, 1999).

² 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 ECON. 273 (2005).

³ U.S. Department of Homeland Security, U.S. Coast Guard Office of Auxiliary and Boating Safety, 2015 Recreational Boating Statistics 6 (May 2016).

⁴ STEPHANIE SHOWALTER OTTS & CATHERINE JANASIE, NATIONAL SEA GRANT LAW CENTER, FROM THEORY TO PRACTICE: A COMPARISON OF STATE WATERCRAFT INSPECTION AND DECONTAMINATION PROGRAMS TO MODEL LEGISLATIVE PROVISIONS 3 (2014), available at <http://nsglc.olemiss.edu/projects/model-legal-framework/files/state-comparison.pdf>.

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 by actively developing voluntary standards for recreational boat manufacturing. 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 (AFWA), 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 on which they depend.

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. When state statutory and regulatory regimes are more closely aligned, boaters are provided with consistency among states which reduces confusion and eases compliance burdens.

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 species invasion, 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.⁵ Eurasian watermilfoil management costs the State of Washington and private individuals \$1 million per year.⁶

Collaboration among WID programs can help states 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. The Maryland Department of Natural Resources recently estimated the start-up costs of a mandatory WID program to be between \$768,460 and \$4,768,460.⁷ 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 waters.

⁵ MEGAN JOHNSTONE, ET AL. BOAT INSPECTION AND DECONTAMINATION FOR AQUATIC INVASIVE SPECIES PREVENTION: RECOMMENDATIONS FOR THE ADIRONDACK REGION 7 (2014).

⁶ 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).

⁷ 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).

Annual operating costs were estimated at approximately \$1 million.⁸ 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.

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 (NSGLC), and the Western Regional Panel on Aquatic Nuisance Species (WRP) 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 (see, Action Plan Item 2.6) whereby states could voluntarily choose to adopt all or parts of the model, as applicable. This document is the result of that action.

In April 2014, the NSGLC and the Association of Fish and Wildlife Agencies (AFWA) 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”).⁹ The Model State Legislative Provisions were developed through a consensus building process that engaged aquatic invasive species coordinators, assistant attorneys general, and law enforcement officials from the nineteen Western states. The Model State Legislative Provisions offer guidance to states with existing WID programs on ways to expand or enhance their existing provisions to create a foundation for multistate reciprocal agreements. For states without WID programs, the provisions outline a legal framework to authorize the development of new WID programs or initiatives.

⁸ *Id.*

⁹ Available for download at <http://nsglc.olemiss.edu/projects/files/Model-Legislative-Provisions-Guidance.pdf>.

Approach to Development of the Model Regulation

In August 2015, the NSGLC and AFWA received funding from the U.S. Fish and Wildlife Service to facilitate the development and drafting of a model regulation with nationwide applicability. The Model State Legislative Provisions provide a framework to guide the authorization of WID programs. They do not address the details of implementation, as those are generally addressed in agency regulations and policy.

On January 28, 2015, a small group of aquatic invasive species coordinators, assistant attorneys general, and law enforcement officials meet in Las Vegas, Nevada to begin preliminary discussions on a model regulation. The NSGLC and AFWA outlined a draft regional policy framework for WID programs to guide the development of a model regulation. Through a series of webinars in July 2015, the NSGLC and AFWA solicited aquatic invasive species coordinator input to finalize the policy framework.

A multidisciplinary Model Regulation Working Group was formed in September 2015 to provide input and guidance to the project team. The following individuals graciously volunteered their time to serve on the Working Group.

Working Group Leads:

- Stephanie Showalter Otts, Director, National Sea Grant Law Center
- Priya Nanjappa, Invasive Species Coordinator, Association of Fish and Wildlife Agencies

Working Group Members:

- Beth Bear, Aquatic Invasive Species Coordinator, Wyoming Game & Fish Department
- Sean Costello, Deputy Attorney General, Idaho State Department of Agriculture
- Tammy Davis, Invasive Species Program Coordinator, Alaska Department of Fish and Game
- Greg Hansen, Assistant Attorney General, Utah Division of Wildlife Resources
- Jessica Howell, ANS Coordinator, Kansas Department of Wildlife, Parks, and Tourism
- Michael Lee, Game Warden, Montana Fish, Wildlife, and Parks
- Joe Panesko, Washington State Assistant Attorney General, Fish, Wildlife & Parks Division
- Harry B. Ward, Deputy Attorney General, Office of the Nevada Attorney General
- Karen Vargas, Aquatic Invasive Species Coordinator, Nevada Department of Wildlife
- Elaine Wizzard, Assistant Attorney General, State of Colorado

Purpose of the Model

The “Model Regulation for State Watercraft Inspection and Decontamination Programs” (“Model Regulation”) provides guidance to states seeking to implement all or portions of the Model State Legislative Provisions. This document outlines a model regulatory framework to implement a package of recommended approaches for state WID programs as identified by the WRP Building Consensus Committee. The Model Regulation is designed to facilitate regional cooperation and coordination by laying the foundation for the adoption of reciprocal agreements among states adhering to these recommended approaches.

Almost all states have regulations that address aquatic invasive species and many have provisions to manage the recreational boating pathway. As such, wholesale verbatim adoption of the Model Regulation is not necessary. States may adopt the Model Regulation in full, or in part, as applicable. The Model Regulation should be viewed simply as a resource states can draw upon when considering regulatory changes to their WID programs.

Achieving a greater level of regulatory consistency in WID programs benefits natural resources managers, boaters, and ultimately the public in a number of ways. Alignment of state regulatory provisions can increase the effectiveness of WID programs and minimize duplication of effort by enabling states to work together to achieve common goals. Alignment can also reduce confusion among the boating public and increase awareness, understanding, and compliance with WID programs. Stronger, more effective WID programs, coupled with increased boater compliance, reduce the risk of aquatic invasive species introduction and spread.

Structure of the Model

The structure of the Model Regulation closely mirrors the structure of the Model State Legislative Provisions. In each section, suggested regulatory language is provided followed by Explanatory Notes that highlight key issues to consider prior to adoption. 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 Regulation.

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

- **Legal Authority:** Provides an express reference to the sources of the legal authority for regulatory action – the Model State Legislative Provisions.
- **Purpose:** Provides insights as to the purposes of the regulation, which is to reduce the risk of aquatic invasive species transport by recreational boats through the implementation of recognized and effective best management practices, standards, and protocols, and spreading information about the risk of aquatic invasive species.
- **Definitions:** Defines the relevant terms used in the Model Regulation.
- **List of Aquatic Invasive Species:** Identifies which species the state classifies as “aquatic invasive species.”
- **Classification of Waters:** Outlines how states will classify waters in the implementation of the WID program. The term “watercraft” as used in the acronym WID is synonymous with the definition of conveyance as used in the Model Regulation.

- Conveyance Restrictions: Sets forth the legal obligations for conveyance owners when launching, transporting, and removing conveyances from waters.
- Conveyance Inspection Stations: Identifies where the state may establish conveyance inspection stations.
- Conveyance Inspections: Sets forth the required procedures for conveyance inspections.
- Conveyance Decontaminations: Sets forth the required procedures for conveyance decontaminations.
- Impoundment: Identifies when conveyances may be impounded.
- Certification of Personnel to Inspect and Decontaminate Conveyances: Sets forth the required procedures for the certification of individuals to conduct conveyance inspections and decontaminations.
- Authorization of Third Party Providers: Sets forth the required procedures for the authorization of outside entities to operate conveyance inspection stations.
- Local Programs: Provides that the state may develop separate conveyance inspection and decontamination requirements for boaters using a single body of water (referred to as local boaters).
- Penalty: Sets forth both civil and criminal enforcement mechanisms to respond to violations of the Model Regulation.

I. Legal Authority

These regulations are adopted under the legal authority of [state code provision], “Keeping Waters Healthy Act.”

Explanatory Notes:

An express reference to the source of legal authority for regulatory action may not be necessary in all states. This provision is included to provide a cross-reference for readers. These model regulatory provisions were developed to provide guidance to states interested in implementing the Model State Legislative Provisions for watercraft inspection and decontamination (WID) programs published by the National Sea Grant Law Center and Association of Fish and Wildlife Agencies in October 2014. The Model State Legislative Provisions provide background information necessary to understand the regulatory choices discussed below. The Model Regulation should therefore be read together with the Model State Legislative Provisions, provided for reference in Appendix A.

II. Purpose

Aquatic invasive species pose an immediate threat to the [State’s] water supply, flood control, power generation, native wildlife populations and biodiversity, and recreational fishing and boating infrastructure, and all other infrastructure associated with the transfer of water. The movement of recreational boats between waters is a primary vector for the spread of aquatic invasive species. The purpose of this regulation is to prevent the introduction and spread of aquatic invasive species within the State of [x] and throughout the country by defining procedures and regulations for monitoring waters, and inspecting and decontaminating recreational boats.

Explanatory Notes:

The primary purpose of a WID program is to reduce the risk of aquatic invasive species (AIS) transport by recreational boats through the implementation of recognized and effective best management practices, standards, and protocols, and spreading information about the risk of AIS. This state action is intended to result in boater behaviors that minimize the risk.

Recreational boating is very popular in the United States. The mission of many state natural resource agencies includes providing recreational fishing and boating opportunities. States implementing WID programs, therefore, must find the appropriate balance between environmental protection and recreational access.

Ideally, agencies charged with implementing WID programs would have regulatory authority for AIS, fish and wildlife management, and recreational boating. In many states, however, regulatory authorities are shared among agencies. Responsibility for invasive plant management may fall to the Department of Agriculture, invasive animals to the Department of Fish and Wildlife, and recreational boating to the Department of Parks. When authorities are shared among agencies, there may be duplication of effort, as well as communication and enforcement challenges. Similar issues can also arise when authorities are shared among divisions of a single agency or among state and federal agencies. Therefore, when feasible, programmatic authority should be designated at the level that most streamlines the regulatory process and maximizes compliance to reduce the risk of aquatic invasive species spread.

III. Definitions

1. “Aquatic Invasive Species” means those species listed in Section IV.
2. “Authorized Third-Party” means a state department, federal agency, municipal government, non-profit organization, or independent business that has been authorized by the Department to operate conveyance inspection stations.
3. “Certified Personnel” means an individual who has a valid certification from a conveyance inspection training course that meets the requirements established by the Department to authorize individuals to perform conveyance inspections and decontaminations.
4. “Conveyance” means a motorized or non-motorized recreational watercraft and associated equipment that may come in contact with water or that is able to transport water. Conveyance includes trailers, engines and motors, fish holds or live wells, ballast tanks, bilge areas, anchors, and other items that may come in contact with water or are able to transport or release water that could harbor an aquatic invasive species.
5. “Decontamination” means a process used to kill, destroy, or remove aquatic invasive species and other organic material that may be present in or on a conveyance.
6. “Department” means [Department of X].
7. “Drain Plug” means a valve or device used to control the drainage of water from a compartment designed to hold water, such as a bilge, livewell, or ballast tank.
8. “Infested Water” means a water designated by the Department as having an established population of aquatic invasive species.
9. “Inspection” means a visual and tactile examination of a conveyance to determine whether it may harbor any organisms or other organic material that could present a risk of spreading aquatic invasive species.

10. “Person” means an individual; a corporation, partnership, or other legal entity, or their legal representative, agent, or assigns; or a governmental entity.
11. “Positive Water” means a water where the presence of an aquatic invasive species has been detected in multiple subsequent sampling events.
12. “Receipt” means a written or electronic documentation issued by Certified Personnel following an inspection or decontamination that contains information regarding the conveyance, any action taken by Certified Personnel, and information correlating to an applied seal, if issued.
13. “Seal” means a tamper-proof device, band, sticker, or other marker that indicates the conveyance has not launched since the last inspection or decontamination.
14. “Suspect Water” means a water where an aquatic invasive species has been detected in a single sampling event but not verified by subsequent sampling.
15. “Waters” means public waters within the jurisdiction of the state used for recreational boating, including rivers, streams, and natural or manmade lakes, ponds, and reservoirs.

Explanatory Notes:

This section contains six key definitions found in Section III of the Model State Legislative Provisions: aquatic invasive species, conveyance, decontamination, inspection, person, and waters. The definition of conveyance is quite broad, and is inclusive of all water-holding or –transporting items. As noted in the introduction, the term conveyance is synonymous with “watercraft” with respect to references in the explanatory notes regarding state watercraft inspection and decontamination programs.

The definition of “waters” limits the jurisdictional scope of the Model State Legislative Provisions to public waters used for recreational boating. The recommended language is designed to avoid the legal framework’s applicability to public waters used for other purposes, such as irrigation or power, and private waters that may not fall within the jurisdiction of the relevant state agencies. Most states, however, already define “waters” for the purposes of natural resources management programs. Because the introduction of aquatic invasive species into water supply systems and private waters can also threaten public waters, some states choose to regulate these other waters as well. A state’s existing definition may be broader than the model definition. The jurisdictional reach of the WID program will therefore vary by state.

Terms defined in a statute are not usually redefined in corresponding regulations, although they may be incorporated by reference to the authorizing statute. Those definitions are restated here to inform the reader of the definitions in the Model State Legislative Provisions.

IV. List of Aquatic Invasive Species

The following species are classified as aquatic invasive species: [species listed as aquatic invasive species in State of (x)].

Explanatory Notes:

Section III of the Model State Legislative Provisions defines AIS very broadly to provide the responsible agencies with the maximum flexibility to classify and list species of concern. The Model Regulation defines AIS by reference to the Department's list. Most states have an aquatic invasive species list which, in practice, could be cross-referenced in the state's WID regulations.

This provision would only be necessary if a state lacks an AIS list or needs to narrow the scope of the WID program to address a subset of classified species. For example, some states maintain "white lists," in which permitted species are listed upon the determination by the state that they do not present an invasive risk. By default, any species not on that list is prohibited. Species of concern for a WID program would likely be prohibited, but a state might need to expressly list prohibited species for the purposes of the WID requirements.

Some states define AIS by reference to the federal "injurious species" list under Title 18 of the Lacey Act (18 U.S.C. § 42). Exclusive reliance on the federal list can result in regulatory gaps in state WID programs. Quagga mussels, for example, are not currently listed as an injurious species. Because states have a vested interest in the protection of natural resources within their borders, states should develop and maintain independent AIS lists that reflect the existing, emerging, and projected needs and priorities of their state. State AIS lists, like other state wildlife laws and regulations, can also provide the underlying state law necessary for federal prosecution of state wildlife law violations under Title 16 of the Lacey Act (16 U.S.C. § 3372).

V. Classifications of Waters

1. a. The Department may develop protocols to classify waters as "Suspect," "Positive," or "Infested" for the purpose of implementing the conveyance inspection and decontamination program.
- b. The Department may maintain a list of classified waters and make such list publicly available.
2. a. The Department may include waters outside the state on its list of "Infested" waters when it has credible evidence that an aquatic invasive species is established in that water.
- b. Where the number of Infested Waters in a particular area is numerous or growing, or where surveillance activities or containment actions are not consistent with Department protocols, the Department may designate geographical regions as Infested.

Explanatory Notes:

The Model Regulation provides notice to the regulated community that the Department will classify waters in accordance with protocols it develops. As part of the WRP's Building Consensus process, the state AIS coordinators have developed a waterbody classification system and minimum criteria for the classification of waters into six categories: status unknown, undetected/negative, inconclusive, suspect, positive, and infested. Three of the classifications – suspect, positive, and infested – trigger new or more extensive management actions, such as the implementation of WID protocols for conveyances either arriving or exiting such waters. As such, we recommend defining these three terms in regulation (see Section III) and identifying and explaining the remaining terms in agency policy manuals. If desired, a state could expand on the list in Section V(1)(a) to include other relevant waterbody classifications.

The referenced protocols and associated agency policies should outline the classification process and the required sampling and monitoring protocols. A Building Consensus subcommittee is currently working to develop minimum sampling and monitoring protocols. For states participating in the Building Consensus process, the protocols recommended for adoption pursuant to Section V(1)(a) are the Building Consensus minimum sampling and monitoring protocols.

The protocols should also outline the management actions that are triggered by a particular designation. Among Building Consensus states, for instance, the classification of a waterbody as infested sets into motion a formal notification system among state and federal partners. Other management actions might include public notification through press releases, mandatory signage at the designated water, establishment of inspection or decontaminations stations, and closure of the water to conveyances. The suite of actions chosen by the state will depend on the classification, the water, agency jurisdiction and authorities, and the available resources.

As mentioned above, the scope of the Model State Legislative Provisions, and therefore the Model Regulation, is limited to public waters (see Sec. III(14)). If a state's definition of "waters" includes private waters or other waters the relevant agency does not have jurisdiction over (i.e., waters managed by federal entities), regulatory provisions may need to be added to provide or clarify legal authority regarding physical entry for sampling or access to sampling data.

VI. Conveyance Restrictions

1. Except as authorized by the Department, a person shall not possess, release, import, ship, or transport within this state, or cause to be released, imported, shipped, or transported within this state, an aquatic invasive species.
2. Except as authorized by the Department, a person shall not place a conveyance, or cause a conveyance to be placed, into waters within this state without first complying with the inspection and decontamination procedures set forth in this rule.
3. Upon removal of a conveyance from waters, a person must, to the extent practicable, and in accordance with applicable requirements and protocols established by the Department:
 - a. Clean the conveyance by removing all visible organic material, including, but not limited to, plants, animals, and mud;
 - b. Drain the conveyance by removing any drain plug that prevents water drainage and run any pumps on board to expel water; and
 - c. Dry all compartments, spaces, and associated equipment that hold or may hold water to remove any standing water.
4. All drain plugs must be removed during any out-of-water transport of conveyances.
5. A person shall not transport a conveyance with aquatic vegetation attached on or within the conveyance.

Explanatory Notes:

Section VI(1) is a restatement of a prohibition contained in Section V(1) of the Model State Legislative Provisions with one important change. The term “release” is not mentioned in Section V(1). The omission of this key term was not intentional, but rather the result of a drafting oversight. Most states prohibit the release of listed aquatic invasive species. The term has been added to the Model Regulation to acknowledge the importance of release prohibitions.

The “Clean, Drain, Dry®” phrase (trademark registered to the Association of Fish and Wildlife Agencies) describes a nationwide outreach campaign encouraging recreational users of the nation’s waterways to implement best management practices to reduce the risk of AIS transport and introduction. The Model State Legislative Provisions require recreational boaters to clean, drain, and dry watercraft upon removal from a water. In July 2016, the Western Association of Fish and Wildlife

Agencies (WAFWA) passed a resolution encouraging its member states to adopt standardized regulations requiring watercraft operators to remove drain plugs and visible plant material from watercraft and trailers when leaving state waters. The resolution also called for states to adopt regulations that prohibit the overland transport of in-place drain plugs and plant material on conveyances. This regulation restates the conveyance restrictions contained in the Model State Legislative Provisions (see Sec. VI(3)) and adds sections VI(4) and (5) to provide guidance to states seeking to implement the WAFWA resolution.

States considering adopting drain plug removal requirements need to consider how to deal with pontoon boats and similar structures with drain plugs that are permanent and could cause damage or loss of function upon removal. Some states provide a regulatory exemption for permanent drain plugs, such as those on pontoon floats. Another option would be to clarify the scope of the drain plug removal requirements through the definition of “drain plug.”

In states with infested waters in which boaters may be removing conveyances that have AIS attached, boaters seeking to comply with the “Clean, Drain, and Dry[®]” requirements may attempt to clean the AIS off their boat themselves. States may wish to add a provision for encrusted conveyances requiring operators to contact the appropriate state department prior to moving a conveyance from the launch site to obtain instructions on how to comply with state law (e.g., proceed to nearest decontamination facility). For example, states that have waters infested with quagga and zebra mussels could add a subsection above which states:

5. Any conveyance with attached Quagga mussels (*Dreissena rostriformis bugensis*) or Zebra mussels (*Dreissena polymorpha*) may not depart from a launch site without prior written authorization from the Department.

VII. Conveyance Inspection Stations

1. The Department may establish inspection stations located at or along:
 - a. Publicly accessible boat ramps and conveyance launch sites;
 - b. Roads and highways;
 - c. Ports of entry, if the [Department of Transportation] authorized the Department to use the port of entry;
 - d. Department facilities; and

- e. Other locations where:
 - i. there is a high probability of intercepting conveyances transporting aquatic invasive species;
 - ii. there is typically a high level of boat and trailer traffic; or
 - iii. the inspection of conveyances will provide increased protection against the introduction of aquatic invasive species into a water.
- 2. The Department may authorize the establishment of inspection stations at locations owned, operated, or managed by Authorized Third Parties pursuant to Section XII.
- 3. Any person transporting a conveyance is required to stop at an inspection station during its hours of operation and submit that conveyance to the Department for inspection.

Explanatory Notes:

The siting of inspection stations requires consideration of many factors. The state is imposing legal requirements on boaters to obtain inspections prior to launching. Boaters are more likely to comply with these requirements if inspection services are convenient and readily available. It is not feasible, given limited resources, for state agencies to locate and staff inspection stations at every waterbody and point of entry. States, therefore, must prioritize.

Watercraft recently in infested waters pose the highest risk of AIS transport and introduction. Inspection stations should be sited in locations with the greatest chance of intercepting these high-risk conveyances. Ideally, inspection stations would be located at all infested waters to facilitate the inspection of conveyances upon exit. Such comprehensive coverage of infested waters, however, may be unrealistic due to a high number of infested waters or limited agency funds and personnel.

Stations at points of entry facilitate inspection of conveyances entering the state. Stations along highways and at major traffic chokepoints can help intercept any conveyance not inspected at a waterbody or upon entry into the state. Establishing stations on a regional level or at strategic locations near multiple waterbodies can also help states more efficiently achieve wider geographic coverage.

Inspection stations must be sited in a location with adequate space for conveyances to be stopped, inspected, and in some cases, decontaminated, without presenting a safety risk or significantly interfering with the public's use of the waterbody or highway. Lighting is also a serious consideration, as watercraft inspections are visual inspections and therefore difficult to conduct effectively in poor lighting conditions.

If decontamination will occur at an inspection station, additional environmental considerations must be taken into account. Best management practices for disposal of effluent are equally important, as it may be possible to perform decontamination and introduce AIS or environmental DNA into a nearby water. Runoff must be controlled to prevent contaminated water and AIS from entering nearby waterbodies or storm drains. AIS removed from a conveyance may also need to be transported offsite for proper disposal.

States must also determine when inspections stations will be open. The operating hours of an inspection station should maximize the number of conveyances inspected with available resources. Most states operate inspection stations seasonally (during popular boating months) and during daylight hours. Nighttime inspection are currently limited due to safety and lighting concerns.

Agency websites and inspection station signage should provide guidance to conveyance operators about what to do when an inspection station is closed or inspections are not immediately available. Given the number of recreational waters across the United States and the remote locations of some access points, there will be gaps in the state's inspection coverage. To address these gaps, states may consider regulating boat ramp hours to limit access outside station operating hours or developing guidance for operators removing conveyances from locations without inspection stations as to the proper procedure for complying with state law.

VIII. Conveyance Inspections

1. All conveyances in the [State] are subject to inspection for aquatic invasive species, consistent with the provisions of [relevant statute] and this rule. Areas subject to inspection include, but are not limited to:
 - a. the exterior of the conveyance;
 - b. livewells or fish holds;
 - c. bait buckets;
 - d. bilge areas;
 - e. anchor chains;
 - f. ballast tanks or bags; and
 - g. trailer used to transport conveyance.

2. Conveyance inspections may be conducted at:
 - a. inspection stations established by the Department;
 - b. Authorized Third-Party locations; or
 - c. other locations where Certified Personnel are available to conduct an inspection.
3. All conveyance inspections must be conducted in accordance with Department-approved standards and procedures.
4. A conveyance owner, operator, or transporter must provide the following to Certified Personnel, upon request:
 - a. Receipt from most recent inspection, if applicable.
 - b. If conveyance has not been previously inspected or does not have a valid receipt, the conveyance owner, operator, and transporter must provide the following to Certified Personnel, upon request:
 - i. Registration number of the conveyance;
 - ii. Name and location of water(s) in which the conveyance was launched within the previously 30 days; and
 - iii. Length of time the conveyance has been out of the water.
5. If during an inspection, the presence of an aquatic invasive species is discovered or documentation requested pursuant to subsection (4) is not provided or is not available, the conveyance may not leave the inspection station without authorization until it has been decontaminated in accordance with Department-approved procedures or other arrangements have been made to decontaminate the conveyance prior to launch.
6. Upon completion of an inspection, Certified Personnel may:
 - a. Remove a seal;
 - b. Affix a seal to the conveyance or issue a receipt to the conveyance owner, operator, or transporter; or
 - c. Require a decontamination pursuant to Section XI.
7. A conveyance owner, operator, or transporter shall retain the most recent inspection receipt with the conveyance.
8. It is unlawful for a conveyance owner, operator, or transporter to tamper with or remove a seal without authorization.

Explanatory Notes:

Since 2009, the Pacific States Marine Fisheries Commission has provided guidance on the current scientific information and minimum standards necessary to prevent the transfer of quagga and zebra mussels and other AIS by watercraft. Now in its third edition, the Commission's *Uniform Minimum Protocols and Standards for Watercraft Inspection and Decontamination Programs for Dreissenid Mussels in the Western United States* (UMPS III) facilitates interstate coordination through the adoption of consistent protocols. For states participating in Building Consensus, the protocols recommended for adoption pursuant to Section VIII(3) are *UMPS III* or subsequent versions.

In the event the presence of AIS is discovered during an inspection, or official documentation such as seals and receipts is not available, Section VIII(5) prohibits a conveyance owner, operator, or transporter from leaving an inspection station without authorization. Documentation provides important information to inspectors regarding the inspection history of conveyance. Section VIII(7) requires conveyance owners, operators, and transporters to retain receipts. Record retention requirements can facilitate communications among inspectors and assist with law enforcement efforts. When such documentation is unavailable, inspectors cannot accurately assess risk. The most protective action from a resource management perspective in that situation is to presume the presence of AIS and proceed accordingly.

The Model State Legislative Provisions provide the responsible agency with the authority to "stop, detain, and inspect" (Sec. IV(4)) and impound conveyances (Sec. VIII(3)). In most states, detaining or impounding conveyances are actions that can only be performed by law enforcement officials. If the agency responsible for implementing the WID program does not have law enforcement authority, interagency partnerships may be needed to facilitate enforcement at inspection stations.

Special events, such as fishing tournaments or boat races, have the potential to overwhelm the capacity of inspection stations. States may wish to consider adopting separate regulatory provisions to manage WID inspections in advance of special events. Inspection and decontamination requirements can also be incorporated into permits for tournaments and special events.

Section VII(8) makes it unlawful to tamper with or remove a seal without authorization. In some states, only certified personnel may remove seals. In those states, authorization to remove a seal would never be given to a conveyance owner, operator, or transporter. Other states permit conveyance owners, operators, and transporters to break and remove seals in certain limited situations. When a conveyance owner, operator, or transporter is authorized to remove seals, states may wish to consider imposing an additional regulatory obligation to retain the broken seal and associated receipt on board the conveyance.

IX. Conveyance Decontamination

1. If decontamination is required as a result of an inspection conducted pursuant to Section VIII, the conveyance shall be decontaminated by Certified Personnel in accordance with Department-approved protocols and standards.
2. Certified Personnel may impose a mandatory drying period in accordance with Department-approved protocols and standards if necessary to achieve complete desiccation of aquatic invasive species.
3. Following decontamination, Certified Personnel may re-inspect the conveyance.

Explanatory Notes:

As mentioned in the Explanatory Notes for Section VIII, the Pacific States Marine Fisheries Commission provides guidance on minimum standards and protocols for conveyance inspections and decontaminations. For states participating in Building Consensus, the protocols recommended for adoption pursuant to Section IX(1) are *UMPS III* or subsequent versions. As identified in *UMPS*, the best current technology for conveyance decontamination is hot water (140°F or 120°F at the point of contact) pressure washing and flushing of equipment.

Drying times, sometimes also referred to as quarantines, can be used as a complementary tool to achieve decontamination. If a conveyance is heavily encrusted with quagga or zebra mussels, for instance, it may not be possible to remove all mussels during a hot water wash. Decontamination can also be difficult if the boat is large or of a complex design where it may be impossible to verify the complete removal of all AIS after a hot water wash. In such situations, requiring a conveyance be kept out of the water for a certain period of time can ensure the mortality of AIS through desiccation. Drying times can also be used when hot water decontamination is not possible for any reason. The amount of time necessary to ensure mortality will vary by species, geographic location, and time of year. The recommended tool for determining the appropriate drying time for quagga and zebra mussels is the 100th Meridian Initiative's Drying Time Calculator (available at <http://www.100thmeridian.org/emersion.asp>). It is important to note, however, that not all states are represented in the Drying Time Calculator. State may need to develop state-specific drying time policies appropriate for their geography and species of concern.

Drying times can be enforced in a number of different ways, depending on the level of control desired by natural resources managers. Drying times can be accomplished through the voluntary actions of a conveyance owner who agrees to park the conveyance in their driveway or other storage location for a designated period of time. If a state is uncomfortable relying solely on the voluntary actions of a boater, mandatory options could include locking boats to trailers or official impoundment to enforce drying times.

X. Impoundment

1. If decontamination is not feasible at an inspection station established under Section VII, a law enforcement officer may detain, impound, or otherwise restrict the movement of the conveyance until the decontamination is complete.
2. A law enforcement officer may detain, impound, or otherwise restrict the movement of the conveyance if necessary to ensure completion of a drying period imposed pursuant to Section IX(2).
3. If a conveyance owner, operator, or transporter refuses to submit a conveyance for inspection or decontamination, a law enforcement officer may detain, impound, or otherwise restrict the movement of the conveyance until the inspection or decontamination is complete.

Explanatory Notes:

In most cases, a conveyance can be decontaminated at the inspection station. Watercraft that are large, heavily encrusted, or of complex design may be difficult or impossible for personnel to decontaminate on site. In those situations, agencies may need to impound, or take physical custody, of the watercraft. States may also wish to enforce drying times through physical impoundment, versus a boater keeping the watercraft out of the water at home or other storage facility of the boater's choosing. Impoundment may also be necessary in the event a conveyance owner or transporter refuses to comply with inspection or decontamination requirements.

Specific legislative authority is usually needed for states to impound vessels. Such authority is provided by Section VIII(3) of the Model State Legislative Provisions.

XI. Certification of Personnel to Inspect and Decontamination Conveyances

1. No person shall be eligible to conduct conveyance inspections or decontaminations unless such person is authorized by the Department as Certified Personnel. The Department may authorize a person as Certified Personnel upon the successful completion of a Department-approved training course.
2. Certified Personnel must maintain active certification and must comply with all quality assurance requirements.
3. The Department may conduct quality assurance checks to ensure that all Certified Personnel are adhering to Department-approved protocols and standards. If the Department documents quality assurance violations by Certified Personnel, the Department may take corrective action, including, but not limited to, issuance of a written warning notice, reassignment of duties, imposition of additional training requirements, or decertification.

Explanatory Notes:

Conveyance inspections and decontaminations should only be conducted by trained personnel. Inspectors must be able to conduct effective risk assessments and identify AIS of concern. Decontamination, if conducted improperly, can cause serious human injury or damage to conveyances. In 2004, the Pacific States Marine Fisheries Commission developed the Watercraft Inspection Training (WIT) Program. The WIT Program contains three levels of training designed to provide the necessary tools for WID program staff. For states participating in Building Consensus, the Department-approved training course referenced in Section XI(1) would be the PSFMC course or a state-implemented training course based on the WIT curriculum.

XII. Authorization of Third Party Providers

1. The Department may authorize third parties to operate inspection stations at locations as identified in Section VII.
2. Authorized Third Parties must operate stations in accordance with all Department rules and procedures.
3. All personnel conducting inspections and decontaminations at stations operated by Authorized Third Parties must be certified in accordance with Section XI.
4. The Department may conduct quality assurance checks of inspection stations operated by Authorized Third Parties to ensure the Authorized Third Parties are adhering to Department rules and procedures. If the Department documents quality assurance violations, then the Department may, at their discretion, issue a written warning notice, prohibit inspections or decontaminations at the specific location, or suspend or revoke the authorization under provisions of [relevant state administrative procedure rules].

Explanatory Notes:

To stretch limited resources and expand the reach of their WID programs, state agencies may choose to authorize non-agency entities to operate inspection stations and perform inspection and decontamination services. A local government, for example, may wish to operate an inspection station at a waterbody it manages.

Third-party providers should conduct inspections and decontaminations following the same protocols and standards as the responsible agency. All personnel employed by the

third-party provider should receive the same training and certification as personnel employed by the state agency. States can authorize third parties through a variety of mechanisms, including permits, licenses, or contracts. The procedural requirements and rights of third parties will vary depending on the authorization process, so states need to carefully evaluate their options to determine the right fit for their program. For example, there may be more due process requirements associated with the revocation of a license than the termination of a contract. Regardless of the method the state chooses, the state should develop guidelines on approval criteria, training requirements, services permitted, hours of operation, WID documentation, and quality assurance/quality control.

States generally provide inspection and decontamination services for free. Some states require boaters to purchase an AIS sticker or stamp to help offset the costs of AIS management, but boaters are rarely charged a direct fee for an inspection or decontamination unless the boats are complicated or heavily encrusted. Third parties may wish to charge fees for their services, which could raise questions among the boating public or reduce compliance with state WID programs. States may wish to consider setting standard fees for WID services or capping the amount a third party may charge.

XIII. Local Programs

The Department may develop inspection and decontamination programs, requirements, or protocols for individual waters or geographic areas.

Explanatory Notes:

At many popular recreational boating waters, the vast majority of boaters are local residents who may rarely travel to other waters. These local boaters pose a lower risk of AIS transport, and are a lower priority for regional WID activities. States may wish to develop separate WID requirements or protocols for local boaters. Such programs may allow self-inspections, exempt conveyances from decontamination or drying times, or utilize methods (e.g., stickers or passports) to streamline inspections. Because these programs often involve deviations from the UMPS protocols and standards, owners participating in these programs should be made aware that their conveyances will likely be deemed high-risk by other states and potentially subject to rigorous inspection and decontamination protocols if they travel across state lines.

XIV. Penalty

Option 1: Civil Enforcement Only

1. A person who violates or fails to comply with any provision of this rule is subject to a civil penalty of not more than [X] dollars.
2. All civil penalties collected under this section shall be deposited in [designated fund].

Option 2: Civil and Criminal Enforcement

1. Any person who knowingly violates or fails to comply with any provision of this rule commits a Class [X] misdemeanor.
2. Any person who complies with this rule's requirements for inspection and decontamination of conveyances is not subject to criminal sanctions under this section for violations of [regulatory section], unless the person knowingly conceals the presence of aquatic invasive species.
3. In addition to any other criminal penalty provided in this section, any person who knowingly violates or fails to comply with any provision of this rule may be assessed civil penalties in an amount not to exceed [X] dollars.
4. Civil penalties collected under this section shall be deposited in [designated fund].

Explanatory Notes:

This section is a restatement of the language from the Model State Legislative Provisions, with a slight change in option 2(2) to clarify that a person is only subject to criminal sanctions if they knowingly conceal the presence of AIS during an inspection or decontamination. This is a change from “knowingly contaminating a water.” Because the Model Regulation is focused on the activities at inspection stations, penalties should be more focused as well.

MODEL STATE LEGISLATIVE PROVISIONS
CORE AUTHORITIES

I. Short Title

This Act may be cited as the “Keeping Waters Healthy Act.”

II. Legislative Findings

It is hereby found and declared as follows:

1. Aquatic invasive species pose an immediate and significant threat to [State’s] water supply, flood control, power generation, native wildlife populations and biodiversity, and aquatic recreation infrastructure. Infestations from these species create a heavy financial burden for state and local government economies. Infestations of aquatic invasive species can also result in negative environmental and economic impacts caused by the devastation of native ecosystems.
2. The transportation of recreational watercraft and associated equipment from one waterbody to another is a primary vector for the spread of aquatic invasive species.
3. Inspection programs help prevent the spread of aquatic invasive species via transportation of conveyances. These programs provide for the inspection and decontamination of conveyances, as well as an opportunity for outreach and education on the risks posed by the introduction and spread of aquatic invasive species. The programs protect both the environmental and recreational values of [State’s] waters and [State’s] infrastructure and economy.

III. Definitions

1. “Aquatic Invasive Species” means an aquatic species that is not native to [State], including their seeds, eggs, spores, larvae or other biological material capable of propagation, and whose presence within [State] may cause economic or environmental harm.
2. “Conveyance” means a motorized or non-motorized recreational watercraft and associated equipment that may come in contact with water or that is able to transport water. Conveyance includes trailers, engines and motors, live wells, ballast tanks, bilge areas, anchors, and other items that may come in contact with water or are able to transport water that could harbor an aquatic invasive species.
3. “Decontamination” means a process used to kill, destroy, or remove aquatic invasive species and other organic material that may be present in or on a conveyance.

4. “Inspection” means a visual and tactile examination of a conveyance to determine whether it may harbor any organisms or other organic material that could present a risk of spreading aquatic invasive species.
5. “Person” means an individual; a corporation, partnership, or other legal entity, or their legal representative, agent, or assigns; or a governmental entity.
6. “Waters” means public waters within the jurisdiction of the state used for recreational boating, including rivers, streams, and natural or manmade lakes, ponds, and reservoirs.

IV. Powers and Duties of [Department]

The [Department] is authorized to take any of the following actions to prevent, control, contain, monitor, or eradicate the presence of aquatic invasive species within the state:

1. Identify aquatic invasive species subject to this Act.
2. Identify waters or other locations affected by the presence of aquatic invasive species, including but not limited to waters or locations outside the [State].
3. Possess and transport aquatic invasive species for the purposes of identification, sampling, testing, and disposal.
4. Stop, detain, and inspect, a conveyance.
5. Decontaminate or order the decontamination of a conveyance.
6. Enter into agreements with other governmental entities to facilitate interstate or intrastate cooperation regarding the inspection and decontamination of conveyances.
7. Enter into agreements with other governmental entities to address management issues associated with interstate or intrastate waters.

V. Prohibitions

1. Except as authorized by [Department], a person may not possess, import, ship, or transport within this state, or cause to be imported, shipped or transported within this state, an aquatic invasive species.
2. Except as authorized by the [Department], a person may not place a conveyance, or cause a conveyance to be placed, into waters within this state without first complying with the applicable requirements of section VI of this Act and rules adopted by the [Department] under this Act.

VI. Responsibilities of Conveyance Owners, Operators, and Transporters

1. A person removing a conveyance from waters shall, to the extent practicable, and in accordance with applicable requirements and protocols established by the [Department]:

- a. Clean the conveyance by removing all visible organic material, including, but not limited to, plants, animals, and mud;
 - b. Drain the conveyance by removing any plug or other barrier that prevents water drainage and running any pumps on board to expunge water; and
 - c. Dry all compartments, spaces, and associated equipment that hold or may hold water, including complying with measures for drying and drying times as established in rules promulgated by [Department] under this Act.
2. The [Department] by rule may establish requirements and protocols for the cleaning, draining, and drying of a conveyance.
3. Except as authorized by the [Department], a person may not place a conveyance, or cause a conveyance to be placed, into the waters of the state without first complying with the aquatic invasive species prevention requirements set forth in this Act or rules promulgated by [Department] under this Act.
 - a. Stop at all inspection stations established by [Department] under section VII of the Act on or near the conveyance's route of travel;
 - b. Comply with inspection and decontamination procedures set forth in this Act and rules adopted by [Department] under this Act; and
 - c. Comply with all lawful inspection and decontamination orders issued by the Department.

VII. Inspection of Conveyances

1. To prevent the introduction, importation, infestation, and spread of aquatic invasive species, the [Department] is authorized to establish aquatic invasive species inspection stations at any location within the state, including but not limited to: interstate borders, highways or other roads; locations adjacent to or near waters; and at [Department] offices.
2. At inspection stations established under this section, authorized [Department] personnel may inspect the exterior of conveyances for the presence of organisms or organic material that may harbor aquatic invasive species. Authorized [Department] personnel may also examine any interior portion of a conveyance that may carry or transport water or organic material, including, but not limited to, engines and motors, live wells, ballast tanks, and bilge areas. During the inspection, authorized [Department] personnel may also check for compliance with the requirements of this Act and with rules adopted by [Department] under this Act.
3. The [Department] by rule may establish standards and procedures for inspecting conveyances for the presence of organisms and organic material.
4. If organisms or organic material that may harbor aquatic invasive species are found or suspected to be present as the result of an inspection, the [Department] may decontaminate the conveyance or order the decontamination of the conveyance pursuant to [Section VIII].

5. A law enforcement officer may stop a conveyance at a location other than an inspection station established under this section, to inspect the conveyance for the presence of organisms or organic material that may harbor aquatic invasive species, or for proof of a certification issued pursuant to [Section IX], under the following circumstances:
 - a. If the conveyance is visibly transporting organisms or organic material, including, but not limited to, animals, plants, or mud, or the law enforcement officer otherwise reasonably believes, based on articulable facts, that the conveyance presents a risk of spreading aquatic invasive species; or
 - b. If the owner of the conveyance fails to stop at a required inspection station or to comply with [Department] required procedures related to inspection and decontamination of conveyances.
6. If a law enforcement officer conducts an inspection of a conveyance pursuant to this Act and finds or suspects the presence of organisms or organic material that may harbor aquatic invasive species or on the basis of other articulable facts that an aquatic invasive species is being transported, a law enforcement officer may:
 - a. Escort the conveyance to the nearest inspection station for immediate decontamination;
 - b. Issue an order requiring the decontamination of the conveyance; or
 - c. Detain or impound the conveyance until decontamination is complete.

VIII. Decontamination

1. Personnel authorized by the [Department] may decontaminate or order the decontamination of a conveyance found or reasonably believed to harbor aquatic invasive species after an inspection conducted pursuant to [Section VII].
2. The [Department] may by rule establish standards and procedures for decontaminating conveyances and disposing of organisms and organic material.
3. If a person refuses to submit to decontamination of a conveyance found or reasonably believed to harbor aquatic invasive species, or due to personal hardship is unable to immediately accompany the conveyance for decontamination, a law enforcement officer may detain or impound the conveyance until the decontamination is complete.
4. The owner of a conveyance that is decontaminated or detained due to failure to cooperate by the owner or person in possession of the conveyance is liable for all costs associated with the decontamination or impoundment, in accordance with the applicable rules promulgated by [Department] under this Act.

IX. Certification of Inspection and Decontamination

1. The [Department] may issue an inspection or decontamination certificate to the owner or person in possession of a conveyance that has been inspected. The certificate must reflect:
 - a. The name of the [Department] and of the person who conducted the inspection;
 - b. The date, place, and time of inspection;
 - c. Any preventative measures performed or ordered; and
 - d. Any decontamination performed.
2. If the [Department] issues an inspection or decontamination certificate to the owner or person in possession of the conveyance, the [Department] may attach a tamper-proof device to the conveyance. The device may be a seal, tag, or band that prevents the conveyance from coming in contact with water without being broken.
3. The [Department] by rule shall establish required retention periods for inspection and decontamination certificates issued under this section.
4. The [Department] may recognize by reciprocity an inspection or decontamination certificate issued by another governmental entity, if the other governmental entity adheres to the minimum standards for inspection, decontamination, and quarantine established in [agreed upon standard protocols, such as the Uniform Minimum Protocols and Standards for Watercraft Interception Programs].

X. Penalties

Option 1: Civil Enforcement Only

1. A person who violates or fails to comply with any provision of this Act or any rules adopted under this Act is subject to a civil penalty of not more than [X] dollars.
2. All civil penalties collected under this section shall be deposited in [designated fund].

Option 2: Civil and Criminal Enforcement

1. Any person who violates or fails to comply with any provision of this Act or any rules adopted under this Act commits a Class [X] misdemeanor.
2. Any person who complies with this Act's requirements for inspection and decontamination of conveyances is not subject to criminal sanctions under this section for violations of Section V(1) of the Act, unless the person knowingly contaminates or attempts to contaminate waters with an aquatic invasive species.

3. In addition to any other criminal penalty provided in this section, any person who violates or fails to comply with any provision of this Act or any rules promulgated under this Act may be assessed civil penalties in an amount not to exceed [X].
4. Civil penalties collected under this section shall be deposited in [designated fund].

SUPPLEMENTAL AUTHORITIES

Aquatic Invasive Species Fund

1. A person shall not operate a conveyance on the waters of this State unless the person has paid to the [Department] the aquatic invasive species fee established pursuant to Subsection (2).
2. The [Department] shall establish by regulation the fee structure for conveyances, which shall take into account the various categories and uses of conveyances, the financial needs of the aquatic invasive species program, and administrative costs.
3. The aquatic invasive species fee established pursuant to Subsection (2) shall be paid annually. The fee shall be deposited in the [Aquatic Invasive Species Fund] and used by the [Department] for enforcement of this Act, and for public education, research, and management activities to address aquatic invasive species.

Closure of Waters

1. The [Department] may restrict conveyance usage on waters of the state when necessary to prevent, control, contain, monitor, or eradicate the presence of aquatic invasive species within the state.
2. The [Department] by rule may establish standards and procedures for monitoring waters to determine whether they are affected by the presence of aquatic invasive species and what management actions are required.
3. The [Department] is authorized to develop procedures to ensure proper notification of person(s) affected by the closure of a water body pursuant to Subsection (1). The notification shall:
 - a. Set forth the reasons for the closure or restriction;
 - b. Identify the type and extent of conveyance restrictions; and
 - c. Identity the time period the restrictions will be in place.
4. The [Department] is authorized to work with person(s) responsible for the management of a water affected by conveyance restrictions to prepare and implement management plans to prevent, control, contain, monitor, or eradicate the presence of aquatic invasive

species. Plans shall be developed in accordance with rules promulgated by the [Department] under this Act.

- a. Upon approval of a management plan by the [Department], the [Department] may amend or rescind conveyance usage restrictions issued pursuant to Subsection (1).
- b. If the [Department] determines at any time that a management plan is not being effectively implemented, the [Department] may further restrict conveyance usage.

Drying Time

1. The [Department] may issue an order requiring the owner or person in possession of a conveyance to dry the conveyance for a designated period of time, not to exceed [x] days, before launching in waters.
2. The [Department] may allow the owner or person in possession of the conveyance to retain possession of the conveyance during the drying period, subject to any requirements established by the [Department].
3. The [Department] may impound a conveyance if necessary to ensure that the mandatory drying period is achieved.

Local Government Authority

1. This Act preempts a city, county, or other unit of local government from adopting local regulations or ordinances related to conveyance inspection and decontamination that are more stringent than those adopted by the state.
2. Any city, county, or other unit of local government that owns or manages a water where recreational, boating, or fishing activities are permitted, except a privately owned water that is not open to the public, is encouraged to do both of the following:
 - a. Assess the vulnerability of the water for the potential introduction of aquatic invasive species via conveyances; and
 - b. Develop and implement a program designed to prevent the introduction of aquatic invasive species via conveyances. Such program shall be authorized by the [Department] and carried out in accordance with rules promulgated by the [Department] under the Act. The program may include, as feasible and authorized by the [Department], the following components:
 - i. Monitoring of the water for the presence of aquatic invasive species;
 - ii. Management of the recreational boating and fishing activities that are permitted, particularly the potential pathways of aquatic invasive species introduction;
 - iii. Public education; and
 - iv. Conveyance inspection and decontamination.

Forfeiture

Any person who violates any of the provisions of this Act may have his or her boating license suspended or the conveyance forfeited to the [Department]. The conveyance may be disposed of by the [Department] through public auction and the proceeds thereof deposited in the [designated fund].

Immunity

The [Department] shall not be liable to any person for any loss resulting from damage to conveyances as the result of inspection or decontamination provided the [Department] adhered to all rules promulgated by [Department] under this Act.

Reporting

A person who discovers an aquatic invasive species within [State] or has reason to believe an aquatic invasive species may exist at a specific location shall report the discovery to the [Department] within 48 hours.

MODEL REGULATION

I. Legal Authority

These regulations are adopted under the legal authority of [state code provision], “Keeping Waters Healthy Act.”

II. Purpose

Aquatic invasive species pose an immediate threat to the [State’s] water supply, flood control, power generation, native wildlife populations and biodiversity, and recreational fishing and boating infrastructure, and all other infrastructure associated with the transfer of water. The movement of recreational boats between waters is a primary vector for the spread of aquatic invasive species. The purpose of this regulation is to prevent the introduction and spread of aquatic invasive species within the State of [x] and throughout the country by defining procedures and regulations for monitoring waters, and inspecting and decontaminating recreational boats.

III. Definitions

1. “Aquatic Invasive Species” means those species listed in Section IV.
2. “Authorized Third-Party” means a state department, federal agency, municipal government, non-profit organization, or independent business that has been authorized by the Department to operate conveyance inspection stations.
3. “Certified Personnel” means an individual who has a valid certification from a conveyance inspection training course that meets the requirements established by the Department to authorize individuals to perform conveyance inspections and decontaminations.
4. “Conveyance” means a motorized or non-motorized recreational watercraft and associated equipment that may come in contact with water or that is able to transport water. Conveyance includes trailers, engines and motors, fish holds or live wells, ballast tanks, bilge areas, anchors, and other items that may come in contact with water or are able to transport or release water that could harbor an aquatic invasive species.
5. “Decontamination” means a process used to kill, destroy, or remove aquatic invasive species and other organic material that may be present in or on a conveyance.
6. “Department” means [Department of X].
7. “Drain Plug” means a valve or device used to control the drainage of water from a compartment designed to hold water, such as a bilge, livewell, or ballast tank.

8. “Infested Water” means a water designated by the Department as having an established population of aquatic invasive species.
9. “Inspection” means a visual and tactile examination of a conveyance to determine whether it may harbor any organisms or other organic material that could present a risk of spreading aquatic invasive species.
10. “Person” means an individual; a corporation, partnership, or other legal entity, or their legal representative, agent, or assigns; or a governmental entity.
11. “Positive Water” means a water where the presence of an aquatic invasive species has been detected in multiple subsequent sampling events.
12. “Receipt” means a written or electronic documentation issued by Certified Personnel following an inspection or decontamination that contains information regarding the conveyance, any action taken by Certified Personnel, and information correlating to an applied seal, if issued.
13. “Seal” means a tamper-proof device, band, sticker, or other marker that indicates the conveyance has not launched since the last inspection or decontamination.
14. “Suspect Water” means a water where an aquatic invasive species has been detected in a single sampling event but not verified by subsequent sampling.
15. “Waters” means public waters within the jurisdiction of the state used for recreational boating, including rivers, streams, and natural or manmade lakes, ponds, and reservoirs.

IV. List of Aquatic Invasive Species

The following species are classified as aquatic invasive species: [species listed as aquatic invasive species in State of (x)].

V. Classifications of Waters

1. a. The Department may develop protocols to classify waters as “Suspect,” “Positive,” or “Infested” for the purpose of implementing the conveyance inspection and decontamination program.
- b. The Department may maintain a list of classified waters and make such list publicly available.
2. a. The Department may include waters outside the state on its list of “Infested” waters when it has credible evidence that an aquatic invasive species is established in that water.
- b. Where the number of Infested Waters in a particular area is numerous or growing, or where surveillance activities or containment actions are not consistent with Department protocols, the Department may designate geographical regions as Infested.

VI. Conveyance Restrictions

1. Except as authorized by the Department, a person shall not possess, release, import, ship, or transport within this state, or cause to be released, imported, shipped, or transported within this state, an aquatic invasive species.
2. Except as authorized by the Department, a person shall not place a conveyance, or cause a conveyance to be placed, into waters within this state without first complying with the inspection and decontamination procedures set forth in this rule.
3. Upon removal of a conveyance from waters, a person must, to the extent practicable, and in accordance with applicable requirements and protocols established by the Department:
 - a. Clean the conveyance by removing all visible organic material, including, but not limited to, plants, animals, and mud;
 - b. Drain the conveyance by removing any drain plug that prevents water drainage and run any pumps on board to expel water; and
 - c. Dry all compartments, spaces, and associated equipment that hold or may hold water to remove any standing water.
4. All drain plugs must be removed during any out-of-water transport of conveyances.
5. A person shall not transport a conveyance with aquatic vegetation attached on or within a conveyance.

VII. Conveyance Inspection Stations

1. The Department may establish inspection stations located at or along
 - a. Publicly accessible boat ramps and conveyance launch sites;
 - b. Roads and highways;
 - c. Ports of entry, if the [Department of Transportation] authorized the Department to use the port of entry;
 - d. Department facilities; and
 - e. Other locations where:
 - i. there is a high probability of intercepting conveyances transporting aquatic invasive species;
 - ii. there is typically a high level of boat and trailer traffic; or
 - iii. the inspection of conveyances will provide increased protection against the introduction of aquatic invasive species into a water.

2. The Department may authorize the establishment of inspection stations at locations owned, operated, or managed by Authorized Third Parties pursuant to Section XII.
3. Any person transporting a conveyance is required to stop at an inspection station during its hours of operation and submit that conveyance to the Department for inspection.

VIII. Conveyance Inspections

1. All conveyances in the [State] are subject to inspection for aquatic invasive species, consistent with the provisions of [relevant statute] and this rule. Areas subject to inspection include, but are not limited to:
 - a. the exterior of the conveyance;
 - b. livewells or fish holds;
 - c. bait buckets;
 - d. bilge areas;
 - e. anchor chains;
 - f. ballast tanks or bags; and
 - g. trailer used to transport conveyance.
2. Conveyance inspections may be conducted at:
 - a. inspection stations established by the Department;
 - b. Authorized Third-Party locations; or
 - c. other locations where Certified Personnel are available to conduct an inspection.
3. All conveyance inspections must be conducted in accordance with Department-approved standards and procedures.
4. A conveyance owner, operator, or transporter must provide the following to Certified Personnel, upon request:
 - a. Receipt from most recent inspection, if applicable.
 - b. If conveyance has not been previously inspected or does not have a valid receipt, the conveyance owner, operator, and transporter must provide the following to Certified Personnel, upon request:
 - i. Registration number of the conveyance;
 - ii. Name and location of water(s) in which the conveyance was launched within the previously 30 days; and
 - iii. Length of time the conveyance has been out of the water.

5. If during an inspection, the presence of an aquatic invasive species is discovered or documentation requested pursuant to subsection (4) is not provided or is not available, the conveyance may not leave the inspection station without authorization until it has been decontaminated in accordance with Department-approved procedures or other arrangements have been made to decontaminate the conveyance prior to launch.
6. Upon completion of an inspection, Certified Personnel may:
 - a. Remove a seal;
 - b. Affix a seal to the conveyance or issue a receipt to the conveyance owner, operator, or transporter; or
 - c. Require a decontamination pursuant to Section XI.
7. A conveyance owner, operator, or transporter shall retain the most recent inspection receipt with the conveyance.
8. It is unlawful for a conveyance owner, operator, or transporter to tamper with or remove a seal without authorization. If the conveyance owner, operator, or transporter is authorized by Certified Personnel to remove a seal, the conveyance owner, operator, or transporter shall retain the broken seal and associated receipt on board the conveyance.

IX. Conveyance Decontamination

1. If decontamination is required as a result of an inspection conducted pursuant to Section VIII, the conveyance shall be decontaminated by Certified Personnel in accordance with Department-approved protocols and standards.
2. Certified Personnel may impose a mandatory drying period in accordance with Department-approved protocols and standards if necessary to achieve complete desiccation of aquatic invasive species.
3. Following decontamination, Certified Personnel may re-inspect the conveyance.

X. Impoundment

1. If decontamination is not feasible at an inspection station established under Section VII, a law enforcement officer may detain, impound, or otherwise restrict the movement of the conveyance until the decontamination is complete.
2. A law enforcement officer may detain, impound, or otherwise restrict the movement of the conveyance if necessary to ensure completion of a drying period imposed pursuant to Section IX(2).

3. If a conveyance owner, operator, or transporter refuses to submit a conveyance for inspection or decontamination, a law enforcement officer may detain, impound, or otherwise restrict the movement of the conveyance until the inspection or decontamination is complete.

XI. Certification of Personnel to Inspect and Decontamination Conveyances

1. No person shall be eligible to conduct conveyance inspections or decontaminations unless such person is authorized by the Department as Certified Personnel. The Department may authorize a person as Certified Personnel upon the successful completion of a Department-approved training course.
2. Certified Personnel must maintain active certification and must comply with all quality assurance requirements.
3. The Department may conduct quality assurance checks to ensure that all Certified Personnel are adhering to Department-approved protocols and standards. If the Department documents quality assurance violations by Certified Personnel, the Department may take corrective action, including, but not limited to, issuance of a written warning notice, reassignment of duties, imposition of additional training requirements, or decertification.

XII. Authorization of Third Party Providers

1. The Department may authorize third parties to operate inspection stations at locations as identified in Section VII.
2. Authorized Third Parties must operate stations in accordance with all Department rules and procedures.
3. The Department may conduct quality assurance checks of inspection stations operated by Authorized Third Parties to ensure the Authorized Third Parties are adhering to Department rules and procedures. If the Department documents quality assurance violations, then the Department may, at their discretion, issue a written warning notice, prohibit inspections or decontaminations at the specific location, or suspend or revoke the authorization under provisions of [relevant state administrative procedure rules].

XIII. Local Programs

The Department may develop inspection and decontamination programs, requirements, or protocols for individual waters or geographic areas.

XIV. Penalty

Option 1: Civil Enforcement Only

1. A person who violates or fails to comply with any provision of this rule is subject to a civil penalty of not more than [X] dollars.
2. All civil penalties collected under this section shall be deposited in [designated fund].

Option 2: Civil and Criminal Enforcement

1. Any person who knowingly violates or fails to comply with any provision of this rule commits a Class [X] misdemeanor.
2. Any person who complies with this rule's requirements for inspection and decontamination of conveyances is not subject to criminal sanctions under this section for violations of [regulatory section], unless the person knowingly conceals the presence of aquatic invasive species.
3. In addition to any other criminal penalty provided in this section, any person who knowingly violates or fails to comply with any provision of this rule may be assessed civil penalties in an amount not to exceed [X] dollars.
4. Civil penalties collected under this section shall be deposited in [designated fund].

