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September 27, 2012

MEMORANDUM

TO: Council members

FROM: Jim Ruff – Manager, Mainstem Passage and River Operations

SUBJECT: Update on August 22-23, 2012, Workshop on Legal and Regulatory Efforts to Minimize the Spread of Invasive Mussels by Watercraft Movements in the West

On August 22-23, 2012, I attended a workshop about the legal and regulatory efforts to minimize expansion of invasive zebra and quagga mussels through watercraft movements in the western U.S. This workshop was hosted by the Arizona Department of Game and Fish and convened in Phoenix, Arizona, by the U.S. Fish and Wildlife Service, the National Association of Attorneys General, Oregon Sea Grant, and the National Sea Grant Law Center.

The purpose of the workshop was to engage Assistant Attorneys General, natural resource agency attorneys, law enforcement supervisors, policy makers, and the aquatic invasive species coordinators from 15 Western states, interstate organizations, and Federal agencies to establish clear legal and regulatory approaches and opportunities for effective aquatic invasive species (AIS) abatement and reform, with a particular emphasis on zebra/quagga mussels. These invasive shellfish from Eurasia can clog water systems, foul power plants, disrupt ecosystems, impact fishing and boating, and cost hundreds of millions in dollars in damage and control wherever they spread. A list of the 80 or so workshop participants is included as Attachment 1.

The workshop examined the impacts of these invasive mussels on local recreation, economies and infrastructure, the challenges to effective control measures, and the 100-plus-year-old federal Lacey Act, which could provide a regulatory tool for approaching the problem. Sessions included discussion of state authority to stop boats for inspection, quarantine and decontamination, what programs and laws have been successful in Western states, how interstate cooperation could be fostered, invasive species education and enforcement programs, and how cash-strapped states might fund such programs. A summary report, presentations and webinars from the conference and recommendations from the workshop will be posted at the [Oregon Sea Grant](#) and the [National Sea Grant Law Center](#) websites.

In addition, a series of background papers on key legal and regulatory issues were prepared to facilitate discussion and learning at the workshop. The papers and additional background documents are available for download at <http://nsglc.olemiss.edu/watercraftmovements/>. These legal issue papers, most of which were drafted by attorneys at the National Sea Grant Law Center and/or the National Association of Attorneys General, should be considered draft as they were prepared as background material and starting points for discussion at the workshop.

The legal papers are currently being revised based on discussion and input during the workshop. It is expected the revised papers will be submitted for publication in the proceedings of the Arizona Journal of Environmental Law and Policy in spring of 2013. A listing of these draft legal, regulatory and technical papers is provided below.

- Compilation of Federal and State Laws and Regulations
- Preventing the Spread of Zebra and Quagga Mussels: The Role of the Lacey Act
- Authority to Stop and Inspect Watercraft
- Implications of the Privacy Act for State Efforts to Prevent the Spread of Quagga and Zebra Mussels
- Defining and Assessing Viability: Legal and Enforcement Challenges
- Determining Viability of Dreissenid Mussels Intercepted on Watercraft and Other In-Water Equipment – A Scientific Overview
- Implementing Legislation and Regulations to Prevent the Spread of Aquatic Invasive Species

Another key product from this workshop was development of an action plan which identifies needed actions at the federal/national, regional, state, and local levels to limit the spread of invasive mussels by boat movements in the West. Attachment 2 is the action plan that was developed by participants at the workshop.

At the October 9 Fish and Wildlife Committee meeting in Whitefish, Montana, I will present an overview of the agenda and discussions at the workshop, with an emphasis on the action plan items that were developed.

Attachments (2)

Attachment 1. List of Participants at the August 22-23, 2012, Workshop on Legal and Regulatory Efforts to Minimize Spread of Invasive Mussels by Watercraft Movements in West

Last	First	Affiliation
Adams	Jas	Oregon Department of Justice
Adams	Jeff	Washington Sea Grant, University of Washington
Bergersen	Kevin	Arizona Game & Fish Department
Boatner	Rick	Oregon Department of Fish & Wildlife
Britton	David	US Fish & Wildlife Service
Broscheid	Bob	Arizona Game & Fish Department
Brown	Elizabeth	Colorado Parks and Wildlife
Brown	Wendy	Washington Invasive Species Council
Buonamici	Rob	Nevada Dept. of Wildlife
Bushman	Marty	Utah Division of Wildlife Resources
Chan	Sam	Oregon Sea Grant, Oregon State University
Chilton	Earl	Texas Parks & Wildlife Dept.
Chilton	Steve	US Fish & Wildlife Service
Choma	Mike	Wyoming Game & Fish Dept.
Christofferson	Ron	States Organization for Boating Access
Cookson	David	State of Nebraska
Cornum	Kara Kay	US Custom & Border Protection
Cotter	Paula	National Association of Attorneys Generals
Dalton	Larry	Utah Division of Wildlife Resources
Davis	Tammy	Alaska Department of Fish & Game
DeBruyckere	Lisa	Oregon Invasive Species Council
Dickerson	David	National Marine Manufacturers Association
Dolphin	Glenn	Oregon State Marine Board
Draheim	Robyn	PSU Center for Lakes and Reservoirs US Fish & Wildlife Service
Draxler	Jack	Utah House of Representatives
Elwell	Leah	Invasive Species Action Network
Ferriter	Amy	Idaho State Department of Agriculture
Fowlks	Mike	Utah Division of Wildlife Resources
Gear	Marsha	California Sea Grant
Hansen	Gregory Brian	Utah Division of Wildlife Resources
Hill	Brady	California Department of Fish & Game
Kaufmann	Angela	Office of the Attorney General (NMC)
Klein	Carl	Washington Dept. of Fish & Wildlife
LaBay	Jennifer	California Department of Fish & Game
Lam	Jennifer	Oregon Sea Grant, Oregon State University

Landry	Bryan	US Fish & Wildlife Service
Little	Shannon	California Department of Fish & Game
Martin	Craig	US Fish & Wildlife Service
Masters	Elroy	Bureau of Land Management
McMahon	Bob	University of Texas at Arlington
McMahon	Tom	Arizona Game & Fish Department
Mitchell	Michael	Natural Resources Anchorage
Moore	Bryan	National Park Service
Newton	David	Nevada State Attorney General
Noble	Jim	US Attorneys Office Eastern District of Texas
Odenkirk	Jim	Office of the Attorney General of Arizona
Parker	Blaine	Columbia River Inter-Tribal Fish Commission
Pfiffner	David	Nevada Dept. of Wildlife
Phillips	Stephen	Pacific States Marine Fisheries Commission
Pleus	Allen	Washington Dept. of Fish & Wildlife
Pollock	Linda	Office of the Attorney General of Arizona
Post	Melissa	National Park Service
Rahe	Sherril	Wyoming Game & Fish Dept.
Ruff	James	Northwest Power and Conservation Council
Showalter Otts	Stephanie	NSGLC
Smith	Ronald	US Fish & Wildlife Service
Squires	Cindy	National Marine Manufacturers Association
Thayer	Ted	Tahoe Regional Planning Agency
Vargas	Karen	Nevada Dept. of Wildlife
Wang	Jessica	Oregon Sea Grant, Oregon State University
Watters	Ashlie	National Park Service
White	Rachel	NSGLC
Williams	Lori	National Invasive Species Council
Wilson	Ethan	Oregon State Police
Wiltshire	Bob	Invasive Species Action Network
Wise	Neil	Washington Attorney General's Office
Wizzard	Elaine	Office of the Attorney General of Colorado
Wolfman	Sonia	Office of the Attorney General of Washington
Wullschleger	John	National Park Service

AN ACTION PLAN TO IMPLEMENT LEGAL AND REGULATORY EFFORTS TO MINIMIZE EXPANSION OF INVASIVE MUSSELS THROUGH WATERCRAFT MOVEMENTS IN THE WESTERN UNITED STATES

On August 22–23, 2012, a workshop was hosted by the Arizona Department of Game and Fish and convened in Phoenix, Arizona, by the US 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. The purpose of the workshop was to engage Assistant Attorneys General, natural resource agency attorneys, law enforcement supervisors, policy makers, and the Aquatic Invasive Species (AIS) Coordinators from the 19 Western states, interstate organizations, and Federal partners to establish clear legal and regulatory approaches and opportunities for AIS abatement and reform. One clear deliverable from this workshop was the creation of an action plan that articulates needed actions at the federal/national, regional, state, and local levels to minimize the expansion of invasive mussels through watercraft movements in the western United States. The following actions were drafted at the meeting:

FEDERAL/NATIONAL

1.1 Obtain a commitment from one or more members of Congress to champion the listing of the *Dreissena* mussel genus as injurious (under the Lacey Act) in the interests of wildlife and the wildlife resources of the United States.

- Lead: Pacific States Marine Fisheries Commission
- Participants: Northwest Power and Conservation Council, Tahoe Regional Planning agency, tribes, and western states
- Timeline: 2013

1.2 Deliver on the Department of Interior and Fish and Wildlife Service leadership's goal of using the injurious wildlife provisions of the Lacey Act (18 USC 42) as an effective 21st Century conservation tool for preventing the introduction and establishment of invasive non-native species into US ecosystems.

- Lead: US Fish and Wildlife Service
- Participants: National Invasive Species Council
- Timeline: 2013

1.3 Work with national boat/recreational/angling associations and organizations to share information, obtain support, and champion efforts to reduce the spread of *Dreissena* mussels.

- Lead: David Dickerson, Government Relations Director, National Marine Manufacturers Association
- Participants: State Aquatic Invasive Species (AIS) Coordinators
- Timeline: December 2013

1.4 Define roles and responsibilities of all entities and organizations associated with the management of *Dreissena* mussels.

- Lead: Aquatic Nuisance Species Task Force members
- Participants: State, interstate, and Federal AIS Coordinators, NISC?
- Timeline: December 2012

1.5 Using existing established western forums to collate and share information with decision makers about the economic impacts of *Dreissena* mussels at a variety of scales (statewide, regional, western United States, e.g.). Create a repository for economic and other data on *Dreissena* mussels at www.aquaticnuisance.org.

- Leads: Entities that have produced economic impact documents; individual western states; Invasive Species Councils; Pacific States Marine Fisheries Commission; AIS Coordinators
- Participants: Staffs to the Pacific Northwest Economic Region, Western Association of Fish and Wildlife Agencies, Western Governors' Association, Northwest Power and Conservation Council's Independent Economic Analysis Board, and other forums
- Timeline: December 2012

1.6 Obtain the commitment from one or more members of Congress to champion reauthorization of the National Invasive Species Act.

- Lead: Western Invasive Species Councils
- Participants: Existing legislative forums (Pacific Northwest Economic Region, e.g.)
- Timeline: December 2013

1.7 Broaden the scope of federal regulations to include preventing the movement of *Dreissena* mussels onto and off of federal lands and waters.

- Leads: Craig Martin (US Fish and Wildlife Service) and Lori Williams (National Invasive Species Council)
- Participants: Western states, NPS, BLM, USFS, BOR, USFWS?
- Timeline: December 2014

1.8 Review and modify National Park Service regulations and Superintendent Compendiums based on Lacey Act language for prevention and containment of *Dreissena* mussels.

- Lead: National Park Service staffs
- Participants: US Fish and Wildlife Service

- Timeline: December 2014

1.9 Expand decontamination, containment, communication programs, and efforts to include “source” areas—the Lower Colorado, Midwest and Great Lakes—with a focus on consistent messaging (e.g., Clean, Drain, Dry) aimed at pathways.

- Lead: AIS Coordinators, federal agency AIS staff
- Participants: Federal agency staff, Invasive Species Councils, State AIS Coordinators
- Timeline: Ongoing

1.10 Host a follow-up session to the AIS meeting in Phoenix, Arizona, and report on action item progress at National Invasive Species Awareness Week in Washington, DC, March 3-8, 2013.

- Lead: Lori Williams (National Invasive Species Council)
- Participants: Western state staffs, Invasive Species Councils, State AIS Coordinators, National Sea Grant Law Center, National Association of Attorneys General
- Timeline: March 2013

REGIONAL

2.1 Enhance and improve timely communication about movements and inspections of high risk boats in the West via the creation and use of a database that captures information about moored boats in infested waters.

- Lead: US Fish and Wildlife Service – Dave Britton
- Participants: National Park Service, National Park Service concessionaires, State AIS Coordinators, Pacific States Marine Fisheries Commission
- Timeline: March 2013

2.2 Build on existing Uniform Minimum Protocols and Standards for Watercraft Interception Programs for *Dreissena* Mussels in the Western United States (UMPS) document with a goal of consistent decontamination protocols and reciprocity across the western states.

- Leads: Pacific States Marine Fisheries Commission, Colorado
- Participants: State and interstate AIS Coordinators, Tahoe Regional Planning Agency
- Timeline: December 2013

2.3 Develop standard definitions for language used in efforts to prevent the transport of *Dreissena* mussels.

- Lead: National Invasive Species Advisory Committee (via Bob Wiltshire)
- Participants: State AIS Coordinators
- Timeline: March 2103

2.4 Develop standard criteria for *Dreissena* mussel monitoring, testing, and the protocols for listing and de-listing of positive (infested) water bodies.

- Lead: State and interstate AIS coordinators
- Participants: Pacific States Marine Fisheries Commission, US Fish and Wildlife Service
- Timeline: March 2013

2.5 Define roles and responsibilities of the numerous regional entities (Western Association of Fish and Wildlife Agencies, Western Regional Panel, etc.) involved in preventing the spread and establishment of *Dreissena* mussels.

- Lead: 100th Meridian
- Participants: All regional entities
- Timeline: March 2013

2.6 Develop model statutory/regulatory language for a comprehensive watercraft inspection and decontamination program.

- Lead: National Sea Grant Law Center
- Participants: Federal and state regulatory agency staffs
- Timeline: July 2013

2.7 Create a smartphone application for boat inspections to achieve Clean, Drain, Dry.

- Lead: Oregon, Washington, and Idaho Invasive Species Councils
- Participants: State AIS Coordinators, Sea Grant and other Universities
- Timeline: December 2013

2.8 Analyze and compare fines for violations of aquatic invasive species laws related to the trailered boat vector throughout the western region and share with all western states.

- Lead: National Association of Attorneys General
- Participants: National Sea Grant Law Center
- Timeline: July 2013

2.9 Explore the establishment of a compact among the western states to share AIS violation data and potentially revoke fishing and/or boating licenses for significant/repeated violations.

- Lead: State attorney general's office staffs
- Participants: State wildlife law enforcement staffs
- Timeline: December 2013

2.10 Increase international border protection participation in AIS issues.

- Lead: Pacific Northwest Economic Region Invasive Species Working Group

- Participants: Pacific Northwest Economic Region states-Canadian provinces/territories, US Customs and Border Protection Agency
- Timeline: December 2014

2.11 Standardize boat inspection documentation/seals and other similar types of materials across regions.

- Lead: State AIS Coordinators
- Participants: State agencies and local entities using seals and documentation (see for ex. CA)
- Timeline: December 2014

STATE

3.0 Host a summit with the Council of State Governments - West (aligned with the Western Invasives Mussels Summit) to share information about AIS economic and environmental issues as well as regulatory needs to prevent the transport, spread, and establishment of AIS in the western states.

- Lead: Sea Grant
- Participants: Western state staffs, AIS Coordinators, Invasive Species Councils
- Timeline: December 2013

3.1 Increase decontamination information and infrastructure at all high-risk water bodies in the West.

- Lead: Department of Interior, AIS Coordinators (to achieve consensus on list of high risk water bodies where decontamination information and infrastructure is most needed)
- Timeline: December 2012 (to identify high risk water bodies); March 2013 (to develop an approach for funding)

3.2 Review existing state legal and regulatory authorities related to the movement of AIS by trailered watercraft, and compare these state programs to a model law/regulation (see action 2.5) to identify areas where gaps in each state can be addressed.

- Lead: National Sea Grant Law Center
- Participants: State attorney general office staff, AIS coordinators
- Timeline: December 2013

3.3 Explore a tiered fine strategy for repeat offenders of AIS laws.

- Lead: Attorney general office staff
- Participants: State law enforcement officials and state fish and wildlife agencies
- Timeline: December 2013

3.4 Launch a western states “See it—Report It” outreach campaign for fouled boats, emphasizing the 877 STOP ANS, and Stop Aquatic Hitchhikers messages (with a supporting smartphone application – see action 2.6)

- Lead: State AIS Coordinators and Invasive Species Councils
- Participants: All western federal and state fish and wildlife agencies
- Timeline: December 2013 (for 2014 boating season)

3.5 Ensure all state boating education material includes AIS information.

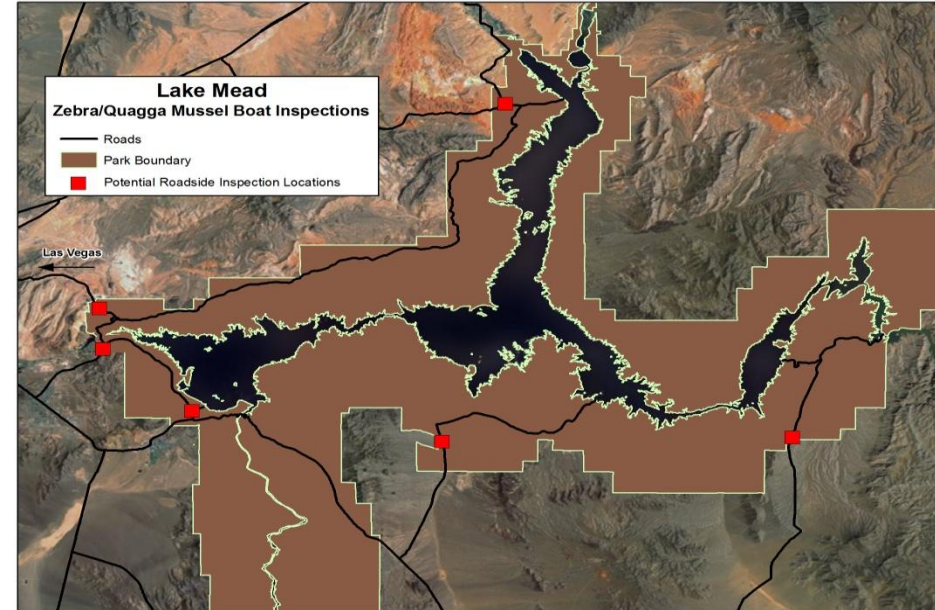
- Lead: State agencies that produce boating materials
- Timeline: December 2013

LOCAL

4.0 Explore the establishment of small business loans to foster private industry efforts to develop decontamination infrastructure (including decontamination training and boat inspection training), particularly in rural locations.

- Lead: National Invasive Species Council
- Participants: Western states
- Timeline: December 2013

Summary of Workshop on Legal and Regulatory Efforts to Stop the Spread of Invasive Mussels by Boat Movements in West



Fish and Wildlife Committee Meeting
Whitefish, MT
October 9, 2012

Invasive Mussel Workshop

- Hosted by AZ Dept. of Game and Fish
- Convened by USFWS, NAAG, Oregon Sea Grant and National Sea Grant Law Center
- Purpose: to establish clear legal and regulatory approaches for effective AIS abatement and reform
- Workshop had ~70 participants



Q/Z Mussel Workshop Sessions

- State authority to stop boats for inspection, decontamination and/or quarantine
- AIS laws and programs in Western states
- How to improve interstate cooperation
- AIS education and enforcement programs
- How states have funded AIS programs



Legal and Regulatory Papers

- Preventing the Spread of Q/Z Mussels: The Role of the Lacey Act
- State Authority to Stop and Inspect Watercraft
- Implications of Privacy Act for State Efforts
- Defining and Assessing Viability: Legal and Enforcement Challenges
- State Authority to Decontaminate and Quarantine Watercraft
- <http://nsglc.olemiss.edu/watercraftmovements/>



Action Plan-Federal Actions

- Get Congress to list *Dreissena* mussels as “injurious under Lacey Act
- Compile and share info about economic impacts of *Dreissena* mussels-econ. database
- Congressional reauthorization of the NIS Act
- Broaden federal regs to prevent movement of boats on/off federal lands and waters
- Hold a follow-up work session during NIS week in Washington D.C. on March 3-8, 2013

Action Plan-Regional Actions

- Develop a west-wide database of high risk moored boats in infested waters
- Develop model regulatory language for a comprehensive boat inspection/decon program
- Compare and share info re: fines for violations of AIS laws for trailered boats in West
- Explore forming a compact among western states to share AIS violation data
- Increase international border protection for AIS

Action Plan-State Actions

- Host a summit with Council of State Govts. to share info about AIS econ, envir & regul needs
- Increase decontamination info & infrastructure at all high-risk water bodies in West
- Explore a tiered fine strategy for repeat offenders of AIS laws
- Launch a western states “see it-report it” campaign for fouled boats



Q/Z Mussel Regulatory Workshop

Questions or Comments?

