
May 23, 2019

The Honorable Betty McCollum
Chair
Subcommittee on Interior, Environment, and
Related Agencies
Committee on Appropriations
U.S. House of Representatives
B-308 Rayburn House Office Building
Washington, D.C. 20515

The Honorable David Joyce
Ranking Member
Subcommittee on Interior, Environment, and
Related Agencies
Committee on Appropriations
U.S. House of Representatives
B-308 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair McCollum and Ranking Member Joyce:

Western Governors remain concerned about the risks that aquatic invasive species, including quagga and zebra mussels, pose to western waters. Every year, invasive mussel infestations cause significant ecological impacts and cost millions of dollars of lost economic activity to sectors such as irrigation, hydroelectric power, and outdoor recreation. Vessels with attached organisms also have increased fuel costs due to drag created by biofouling organisms. Accordingly, preventing the spread of these invaders to uninfested waterbodies is a high priority of Western Governors. The most effective strategy is to contain them in waterbodies that are already infested, including federal impoundments located throughout western states. In addition to containment, early detection and rapid response are effective tools for controlling their spread.

We appreciate the attention the Subcommittee has paid to this important issue. By increasing fiscal year 2018 and 2019 appropriations for quagga and zebra mussel management, you have helped provide for the implementation of state-led invasive mussel management containment programs. We also appreciate Department of the Interior (DOI) engagement with Western Governors on this issue through the DOI Safeguarding the West from Invasive Species effort and participation in the Western Governors' [Biosecurity and Invasive Species Initiative](#).

The containment of invasive quagga and zebra mussels at infested waters in the West depends on the collaboration of federal, state and local agencies. Many state-led containment programs benefit from federal cooperation and funding, and state and federal agencies should be encouraged to sustain and expand these effective partnerships as necessary. To adequately protect the West from the movement of aquatic invasive species, however, federal agencies must be able to act as full partners in invasive species containment efforts and must have the authorities and funding necessary to contain invasive species within lands and waters under their jurisdiction. To this end, federal agencies, including the National Park Service and the Bureau of Land Management, should be vested with clear authority to manage watercraft upon their departure from infested waterbodies under federal jurisdiction.

Western Governors have engaged with DOI on this issue in several conversations and through correspondence dated [June 22, 2017](#), and [November 2, 2017](#). The DOI Office of the Solicitor sent Western Governors an opinion on February 15, 2018, stating that DOI does not have statutory authority to conduct such inspections, decontamination, and quarantine activities and these authorities would need to be specifically provided by Congress. A copy of the opinion is included as an attachment.

In the 115th Congress, Committee report language accompanying the House Interior, Environment, and Related Agencies appropriations bill directed:

the Secretary of the Interior, in cooperation with the Chief of the Forest Service, through the Secretary of Agriculture, and the U.S. Army Corps of Engineers/Civil Works, to work with the Western Governors' Association and individual western governors to develop a joint Federal/State incident command system [ICS] that would allow for cooperative and rapid response to new detections of invasive mussels in the West.

Western states already have effective invasive mussel rapid response programs developed around states' individual capacity, needs and expertise. These place-based programs are tailored to unique regional and local conditions and build upon states' statutorily defined authority to manage delegated resources within their borders. Federal agencies should look for opportunities to expand cooperation with respect to these programs, particularly where states are working to help protect federal water resources from the introduction of new aquatic invasive species through the contribution of state expertise, manpower, and financial resources.

We believe that Congress and the Administration should work to support and empower state-led rapid response programs, rather than create a new system. Congress and the Administration can support interagency cooperation and state-led rapid response programs by taking the following steps:

- Expanding the use of the ICS for invasive mussel response and preparing for these responses through increased interagency training and preparedness exercises between state, federal, local and tribal agencies;
- Increasing federal funding for state-led aquatic invasive species rapid response programs, including those that provide mechanisms for flexible, long-term support of state early detection rapid response efforts;
- Streamlining federal permitting and approval processes for treatment and management actions for new mussel detections;
- Creating a single federal authority for aquatic invasive species treatment permitting and approval in freshwater systems;
- Simplifying reporting on new invasive mussel infestations by creating a single federal phone number or point of contact for new mussel detections; and
- Working with western states to create an ICS training module for invasive mussel and aquatic nuisance species rapid response.

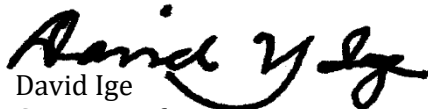
We encourage Congress and the Administration to engage in early and substantive consultation on decisions that affect state resources. Western Governors hope you will consider these recommendations as you examine the Department's response to the Committee and contemplate

The Honorable Betty McCollum
The Honorable David Joyce
May 23, 2019
Page 3

additional actions that would assist with the containment and eradication of invasive aquatic species.

We appreciate the Subcommittee's attention to this issue and would be especially grateful for your continued support of state-led invasive mussel rapid response programs.

Sincerely,



David Ige
Governor of Hawai'i
Chair, WGA



Doug Burgum
Governor of North Dakota
Vice Chair, WGA

Attachment



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

February 15, 2018

To: whom it may concern

From: Office of the Solicitor, Department of the Interior

Subject: National Park Service Authority to Regulate Aquatic Invasive Species

The National Park Service (NPS) administers NPS system units under the NPS Organic Act, 54 U.S.C. §100101 *et seq.*, which directs the NPS to “conserve the scenery, natural and historic objects, and wild life in the System units” and to “leave them unimpaired for the enjoyment of future generations.” NPS also has authority to regulate boating and other activities on or relating to water located within system units. 54 U.S.C. §100751(b). These statutes give the NPS broad authority to take actions to prevent aquatic invasive species from *entering* NPS waters such as requiring inspection and decontamination of boats entering NPS units.

NPS also has authority to cooperate with state law enforcement agencies to enforce state invasive species control laws within park units, which potentially could apply to the movement of invasive species out of the park unit. 54 U.S.C. §102701(b)(2). State laws generally apply on NPS-administered lands unless a park unit is under exclusive federal jurisdiction, or where state law interferes with federal functions or conflicts with federal law; neither of these is the case here. Cooperation with state law enforcement agents may be accomplished through a Memorandum of Understanding between state agencies and NPS units, under which 1) NPS invites state agents to enforce state law within park units, and/or 2) a state government deputizes NPS officials to enforce state law.

For example, Lake Mead, Glen Canyon, and Curecanti National Recreation Areas each currently have agreements with state agencies to assist in the enforcement of state invasive species control laws. These parks work closely with states to provide inspection and decontamination sites upon both entry and exit, as well as to provide visitor education. The specifics of inspection and decontamination enforcement depend, among other things, on whether the state prefers to focus on enforcement or voluntary inspection and education initiatives. For instance, Lake Mead works with and provides some funding for the Nevada Department of Wildlife to offer free, voluntary inspection and decontamination to visitors entering and exiting park waters at key access points. Glen Canyon has an agreement with the State of Utah under which state agents are invited onto park units to make inspections and operate NPS-owned decontamination sites for vehicles exiting park waters, and NPS officials educate visitors about the requirements of state law and

direct boaters to inspection and decontamination sites. In those less common instances where parks have exclusive federal jurisdiction, and so state law does not apply, parks may nonetheless inform boaters leaving the park that state law prohibits transportation of aquatic invasive species within the state. Finally, NPS has authority under applicable concessions statutes to require marinas operating under NPS concession contracts and other businesses operating within park units to provide decontamination services in order to comply with state invasive species control laws.

However, NPS has more limited authority under federal law to regulate activity for the sole purpose of protecting resources outside of park units, even if the activity occurs within NPS units. Several federal authorities, including the National Invasive Species Act (16 U.S.C. §4701 *et seq.*), the Clean Boating Act of 2008 (P.L. 110-288), and Executive Order 13751, Safeguarding the Nation from the Impacts of Invasive Species (December 5, 2016), provide federal agencies with some authority to regulate certain invasive species in specified geographic locations, but they do not provide clear authority to regulate activities that could cause the spread of invasive species as they leave a National Park unit.

For more information, contact: Hilary Smith, Senior Advisor for Invasive Species, Department of the Interior, hilary_smith@ios.doi.gov, 202-208-4103