

**FROM THEORY TO PRACTICE: A COMPARISON OF STATE WATERCRAFT
INSPECTION AND DECONTAMINATION PROGRAMS TO THE MODEL LEGAL
FRAMEWORK**



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CALIFORNIA

Snapshot: How does California Compare to the Model Legal Framework?

California’s aquatic invasive species law and implementing regulations include about 43% of the core authorities set forth in the model legal framework. California has provisions that completely or closely match 3 out of 11 categories, with another three partially addressed. So, what’s missing?

X	Findings/Purpose Statement	
X	Definitions	
P	Powers and Duties	California law does not have an express provision authorizing cooperative agreements.
P	Owner Responsibilities & Conveyance Restrictions	California does not have “Clean, Drain, Dry” and drain plug provisions or launch restrictions.
✓	Conveyance Inspections	
P	Conveyance Decontamination	California does not have the authority to impose costs.
X	Documentation	
X	Certification of Personnel	
X	Authorization of Third Parties	
✓	“Local Boater” Programs	
✓	Penalties	

Detailed Comparison to Model

Sources: CAL. FISH & GAME CODE §§ 2301 – 2302; CAL. CODE OF REGS, Tit. 14, §§ 672 – 672.1

Core Authorities

Findings/Purpose Statement: None

Definitions:

Aquatic Invasive Species	No. California’s Watercraft Inspection and Decontamination (WID) program is limited in scope by statute to dreissenid mussels.
Certified Personnel	No
Conveyance	Yes. California Department of Fish and Wildlife (CDFW) regulations define conveyance as “any item that may contain or carry adult or veliger dreissenid mussels including, but not limited to, vehicles, watercraft, containers, and trailers. Conveyance does not include water supply systems, facilities, and infrastructure.”
Decontamination	No

Drain Plug	No
Infested Water	No
Inspection	No
Person	Yes. Person is defined in the general definitions section of the California Fish & Game Code as “any natural person or any partnership, corporation, limited liability company, trust, or other type of association.”
Positive Water	No
Receipt	No
Seal	No definition in state law or regulations, but seals are used throughout California. California refers to seals as watercraft bands. (<i>see Documentation section below</i>).
Suspect Water	No
Waters	Yes. The California Fish & Game Code states that “Waters of the state,” “waters of this state,” and “state waters” will have the same meaning as “waters of the state” under the California Water Code, which is “any surface water or groundwater, including saline waters, within the boundaries of the state.”

Powers and Duties of Department:

Identify AIS	Yes. The California Legislature has designated several invasive fish and crustaceans as “restricted live wild animals” by statute. CDFW has the authority to list additional species by regulation. The CDFW has exercised this authority to list zebra and quagga mussels as restricted animals.
Identify waters and locations affected by AIS	Yes. California law does not provide express authority. However, the CDFW is authorized to conduct inspections of state waters for the presence of dreissenid mussels and may close or restrict access if presence detected.
Possess and transport AIS for purposes of identification, sampling, testing, and disposal	Yes. No express authority, but prohibitions section includes the caveat “except as authorized by the department.” This provision would allow the CDFW to authorize possession and transport for these purposes.
Stop, detain, and inspect a conveyance	Yes. CDFW may conduct inspections of conveyances. In order to do so, CDFW is authorized to temporarily stop conveyances on any roadway or waterway.
Decontaminate or order the decontamination	Yes. CDFW may order a conveyance to be decontaminated.
Enter into agreements to facilitate cooperation or address management issues	No

Owner Responsibilities and Conveyance Restrictions

Prohibition on possession, importation, shipment, or transport	Yes. It is unlawful in California to import, transport, or possess restricted live wild animals. It is also unlawful to “possess, import, ship, or transport in the state, or place, plant, or cause to be placed or planted in any water within the state, dreissenid mussels.”
Prohibition on placement of out-of-compliance conveyance in waters	No
Requirement to Clean, Drain, and Dry	No. California’s outreach and education materials encourage boaters to Clean, Drain, and Dry.
Requirement to remove drain plug during transport	No
Prohibition on transport of conveyance with aquatic vegetation attached.	No
Comply with Inspection and Decontamination Protocols and Orders	No express obligation to comply with inspection and decontamination orders.

Conveyance Inspections:

Authority to Establish Inspection Stations	Yes. California law does not provide express authority to establish check stations. The CDFW does however have the authority to temporarily stop conveyances that may carry or contain dreissenid mussels on any roadway or waterway. This authority would presumably enable the CDFW to set up an inspection station in a particular location. In addition, the California Department of Food and Agriculture has the authority under the California Food & Agriculture Code to set up border protection stations at which they may inspect for invasive species.
Mandatory Inspections	Yes. The CDFW may require that conveyances removed from, or introduced to, affected waters be inspected, quarantined, or disinfected.
Law Enforcement Stops	Yes

Conveyance Decontamination:

Perform or Order Decontamination	Yes. The CDFW has the authority to “[o]rder that areas in a conveyance that contain water be drained, dried or decontaminated pursuant to procedures approved by the department.”
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Impound Conveyances	Yes. The CDFW may impound or quarantine a conveyance “in locations designated by the department for up to five days or the period of time necessary to ensure that dreissenid mussels can no longer live on or in the conveyance.”
Impose Costs	No

Documentation:

Receipt	No. The issuance of receipts is not required by state law. Receipts or other documentation may be issued by WID inspectors at some locations based on local policies or procedures.
Seal	Although the use of seals is not required by state law or regulations, watercraft bands are used throughout California for a variety of purposes. Bands may be attached to a watercraft that (1) has been quarantined per CAL. FISH & GAME CODE § 2031, (2) failed an inspection, (3) is required to undergo a drying period, or (4) passed an exit inspection.
Record Retention Requirements	No
Prohibition on Tampering with Seals	Yes. CDFW regulations state that “Tags, stickers, or other methods used to identify a conveyance as quarantined shall not be tampered with or destroyed prior to the conveyance being released from quarantine by the [CDFW].”
Reciprocity	Not on the state level. There are reciprocal agreements among some local WID programs.

Certification of Personnel: None

Authorization of Third Parties:

California law does not expressly authorize third parties to provide inspection and decontamination services. State law requires owners and managers of reservoirs where recreation, boating, or fishing activities are permitted to assess the vulnerability of the reservoir for introduction of dreissenid mussels and implement a program to prevent the introduction of mussels. At a minimum, the program must include public education, monitoring, and the management of the permitted recreational, boating, or fishing activities. Management options may include conveyance inspection and decontamination. In addition, if mussels are detected or may be present within waters of the state, the CDFW is authorized to order that conveyances entering or exiting those waters be inspected, quarantined, or disinfected. A variety of federal, state, regional, and local agencies operate watercraft inspection programs at 80 lakes and reservoirs in the state. The CDFW, however, does not have direct oversight over these programs.

California law, therefore, does not conform to the model legal framework which recommends direct state authorization of third party providers.

“Local Boater” Programs:

Yes. Some watercraft inspection programs in California have alternative inspection and decontamination protocols for local boaters.

Penalties:

California law provides for civil penalties.

Civil Penalties: Any person who violates the CAL. FISH AND GAME CODE § 2301 (dreissenid mussel provision) and related CDFW regulations is subject to a maximum penalty of \$1,000, which is to be imposed administratively by the CDFW. The minimum penalty is \$100. The owner of a conveyance involved in the violation of a quarantine may be held responsible for the violation, impoundment, and quarantine. CDFW regulations also set forth the administrative penalty and appeal procedures.

Criminal Penalties: None.

Supplemental Authorities

Aquatic Invasive Species Fund	Yes. California imposes a Quagga and Zebra Mussel Infestation Prevention Fee, collected through watercraft registration fees. Revenue from the fee goes into the Harbors and Watercraft Revolving Fund and may be used to cover some CDFW programmatic costs and to provide financial assistance to entities implementing dreissenid mussel infestation prevention plans.
Closure Authority	Yes. If the presence of dreissenid mussels is detected, the CDFW may order the affected waters closed to conveyances or otherwise restrict access.
Drying Time	No
Local Government Authority	Yes. Local governments that manage reservoirs where recreational, boating, or other fishing activities are permitted are required to develop and implement a program to prevent the introduction of dreissenid mussels.
Forfeiture	No
Immunity	Yes. The state’s dreissenid mussel law states that “the department and any other state agency exercising authority under this section shall not be liable with regard to any determination or authorization made pursuant to this section.”
Reporting	Yes. An entity that discovers dreissenid mussels within this state must immediately report the discovery to the CDFW.