MEMORANDUM OF AGREEMENT

Between
Department of Homeland Security
THE UNITED STATES COAST GUARD
And
THE STATE OF CALIFORNIA – DEPARTMENT OF BOATING AND WATERWAYS]

1. PARTIES

The parties to this agreement are State of California, Department of Boating and Waterways (Hereinafter referred to as "State") and the United States Coast Guard's Eleventh Coast Guard District (hereinafter referred to as "Coast Guard").

2. AUTHORITY

This Agreement is authorized under the provisions of 14 U.S.C. § 141, 46 U.S.C. § 13109, and 33 CFR § 100.10 authorizing the Coast Guard to enter into cooperative agreements and other arrangements with the States for the enforcement of boating laws and for coordinated joint efforts in such matters as search and rescue, issuing permits for regattas and marine parades, boating safety education, and training.

3. PURPOSE

To define the relationship between the State and the Coast Guard in the conduct of the Recreational Boating Safety Programs including enforcement of laws relating to boating safety on waters within the concurrent jurisdiction of the State and the United States.

4. BASIC GUIDELINES

a. For the purpose of this agreement, the term "navigable waters of the United States" (hereinafter referred to as "navigable waters") includes those inland waters of the United States which are subject to the concurrent jurisdiction of the Parties, and those waters that may in the future be congressionally, judicially or administratively determined to be subject to the concurrent jurisdiction of the Parties.

b. This agreement does not abrogate or limit the jurisdiction of the State or the United States.

c. To the extent allowed by Federal law and Coast Guard directives, the Coast Guard agrees to provide to the State a copy of statistical and other data pertinent to the matters agreed herein.

TERMS OF UNDERSTANDING

a. Law Enforcement

(1) The State and its political subdivisions have responsibility for the enforcement of State statutes and regulations related to boating safety on California's navigable waters. The Coast Guard has responsibility for the enforcement of Federal statutes and regulations related to boating safety on California's navigable waters.

(2) In order to provide the most effective law enforcement possible with the vessels and personnel available and to avoid duplication of efforts in a given area at a given time, the State Boating Law Administrator (BLA) and the Chief, Response Division, Eleventh Coast Guard District may coordinate law enforcement patrols on navigable waters. The State and the Coast Guard shall share information on law enforcement incidents of mutual concern.

(3) State law enforcement officers will report violations observed during vessel inspections or any other potential violations of Federal law by non-recreational vessels to the appropriate Coast Guard Sector. For incidents in Northern California, contact Sector San Francisco at (510) 437-3073. For incidents in Southern California, contact Sector Los Angeles/Long Beach at (562) 980-4478. For incidents in the San Diego area and the Colorado River, contact Sector San Diego at (619) 683-6496.

(4) When a complaint is made to the Coast Guard alleging an offense that is a violation of State or local recreational boating laws or regulations, the Coast Guard will normally notify the proper State or local authority in the appropriate State jurisdiction. When a complaint is made to the State of a violation of Federal boating laws or regulations the State will notify the local Coast Guard unit within whose area of responsibility the violation is located (as defined in subparagraph (3) above).

(5) A State marine law enforcement officer or a Coast Guard boarding officer will not normally board a vessel for a routine safety inspection if the operator produces evidence of a recent satisfactory State or Coast Guard examination safety check as indicated by the display of a current Coast Guard Auxiliary Vessel Safety Check decal. Notwithstanding a recent satisfactory examination, a boarding will be undertaken when there are indications of a violation of Federal or State statutes or regulations, or as part of a special law enforcement operation.

(6) A Coast Guard member who has observed a violation of a State boating law or regulation, or a State marine law enforcement officer who has observed a violation of a Federal boating law or regulation, will generally be made available to testify as to factual matters in the State or Federal prosecution. Best efforts

shall be made to make available testimony and other evidence, in accordance with State and Coast Guard directives, in proceedings other than criminal prosecutions.

b. Boating Under the Influence

(1) A common goal of the Coast Guard and the State is to eliminate intoxicated/ impaired boat operators from the waterways. To this end, the State and the Coast Guard agree to coordinate their Boating Under the Influence (BUI) enforcement efforts so that the most effective enforcement option is prosecuted in each case.

(2) In the course of normal operations, the Coast Guard may detect an allegedly intoxicated/impaired boat operator where concurrent jurisdiction exists. When this occurs, the Coast Guard shall, in the course of normal operations, administer field sobriety tests to the operator.

(3) If probable cause is established that the operator is under the influence of drugs or alcohol, the Coast Guard shall:

(a) Terminate the voyage, attempt to notify the State, and bring the vessel to the nearest safe mooring.

(b) Document the case completely for criminal prosecution in the State of California..

(c) Follow enforcement options available for the particular jurisdiction within the State.

(d) Provide documentation and appropriate witnesses to pursue criminal prosecution with the State in accordance with 6 CFR Part 5.

Note: The Coast Guard may pursue civil penalty proceedings in addition to State criminal proceedings.

(4) The Coast Guard shall, as operations permit, respond to calls for assistance from State enforcement agencies with respect to BUI enforcement.

(5) State enforcement agencies shall, as operations permit:

(a) Respond to calls for assistance from the Coast Guard with respect to BUI enforcement.

(b) Determine the extent of assistance the State can offer and advise the Coast Guard.

(c) Provide appropriate assistance within the agency's operational, logistical, and legal constraints.

(d) Provide local Coast Guard commands with a point of contact to facilitate and enhance mutual BUI enforcement efforts and concerns.

(e) If aware of any Coast Guard licensed operators that are BUI, provide operator information to the appropriate Coast Guard command.

(f) Coordinate closely with Coast Guard law enforcement units to ensure that Coast Guard boarding teams are fully aware of all critical elements of a successful state criminal Boating Under the Influence prosecution. This training should include best practices for field sobriety test and breathalyzer administration, as well as detention and transfer procedures for suspect boaters.

c. Public Education and Training

(1) The Parties shall cooperate in public education and safety information programs. The State shall distribute "Federal Requirements for Recreational Boats" and other Federal boating publications through its offices located in the vicinity of the aforementioned navigable waters. The Coast Guard shall distribute any State vessel casualty report forms, and such State boating pamphlets that are made available for such purposes. The Coast Guard shall furnish to the State information concerning the time and place of public education courses within the State which are sponsored by the U.S. Coast Guard Auxiliary. The State shall furnish to the Coast Guard information concerning time and place of public education courses offered by the State to the boating public. The Parties shall, whenever possible, cooperate in developing a public boating safety education program to be used within the State. The State shall provide, when available, State meeting rooms for U.S. Coast Guard Auxiliary boating safety public education classes.

(2) The Coast Guard shall provide boating safety training for State and local law enforcement personnel through the Marine Patrol Officer Course located at the Maritime Law Enforcement Academy, Federal Law Enforcement Training Center, Charleston, South Carolina, on an "as available" basis. Similarly, the State shall provide on an "as available" basis to the Coast Guard, instructors and facilities for the training of Coast Guard personnel. In addition, safe boating or boat handling programs may be arranged directly with Coast Guard Auxiliary resources. In order to provide a coordinated effort and standardized training, the U.S. Coast Guard Auxiliary is authorized to conduct boating classes for the training of State officers.

(3) The State may provide to the Coast Guard computer generated mailing lists or labels to be utilized to forward boating safety educational information to

registered boat owners.

(4) The National Association of State Boating Law Administrators (NASBLA) has developed under a Coast Guard grant "National Boating Education Standards". The State agrees that courses it approves under a recreational boating safety program as required in 46 USC 13102(c)(4), will meet those standards. The Coast Guard shall recognize NASBLA approved courses as acceptable to the National Recreational Boating Safety Program.

d. Boating Casualty Reports and Investigative Reports

(1) The State agrees to investigate all recreational boating fatalities and multiple vessel or serious injury accidents. The Coast Guard may, in cooperation with the State, investigate accidents involving fatalities on vessels used on the aforementioned navigable waters if the case warrants further investigation.

(2) The Coast Guard shall forward Boating Accident Reports received or taken by Coast Guard personnel to the Boating Law Administrator of the Department of Boating and Waterways. The Coast Guard shall provide to the State information on incidents that meet the definition of a state boating accident defined in section (D)(9), below. The State will determine whether an accident is reportable and shall be responsible for ensuring completion of the reports meeting State requirements. The Coast Guard and the State shall be mutually responsible for boating accident reports meeting Federal requirements.

(3) The State and the Coast Guard agree to share all information available concerning any boat accident on navigable waters. All information shall be provided in a timely manner so as not to impede or interfere with the fact gathering responsibilities of each party.

(4) When the Coast Guard does not have an available asset to respond to a non-recreational accident under Coast Guard jurisdiction, the State may assist as a first responder to secure the accident scene, preserve perishable evidence, and provide for public safety and the safety of property.

(5) The Coast Guard shall be responsible for completing any investigation on non-recreational boating accidents as appropriate.

(6) The State and the Coast Guard shall be mutually responsible for completion of boating accident reports on incidents involving recreational vessels <u>and</u> non-recreational vessels.

(7) The designated offices for recreational boating accident reports are: For incidents in Northern California, contact Sector San Francisco at (510) 437-3073. For incidents in Southern California, contact Sector Los Angeles/Long Beach at (562) 980-4478. For incidents in the San Diego area and the Colorado

River, contact Sector San Diego at (619) 683-6496.

(8) The State shall review for accuracy and completeness all accident/casualty reports and shall determine the cause and circumstances surrounding each reportable accident, including whether or not alcohol or drugs were a factor.

(9) For the purposes of this agreement, a boating casualty or accident is an incident involving a vessel or its equipment where a person dies, a person disappears from the vessel indicating death or injury, a person is injured requiring medical treatment beyond first aid, a complete loss of any vessel, or damage to a vessel or other personal property totaling $2,000.00 or more as defined in 33 C.F.R. Part 173.55.

(10) The State shall abstract accident data from each boating accident report form and enter such data into the Boating Accident Report Database (BARD), which was developed in cooperation with the National Association of State Boating Law Administrators (NASBLA). The State agrees to ensure the quality of data entry is accurate and complete providing for a successful data transfer into the national BARD located at Coast Guard Headquarters.

(11) An electronic copy of each accident and investigative report data, including any alcohol/drug test results, shall be forwarded to the Office of Command and Control Capabilities (CG-37RCC-2) at Coast Guard Headquarters within 30 days of receipt of the initial casualty or accident report. The Coast Guard will review the reports and investigations received.

(12) The Coast Guard shall ensure that all levels of the chain of command are informed of the boating accident reporting requirements involving recreational and non-recreational vessels.

e. Search and Rescue

(1) On State waters that are not within the jurisdiction of the United States, the State has exclusive responsibility for providing search and rescue service. On waters over which the Coast Guard has jurisdiction, the State and the Coast Guard will have joint responsibility. On inland waters over which both parties have jurisdiction, search and rescue facilities provided by the State and its political subdivisions shall have primary search and rescue responsibility.

(2) The State and the Coast Guard agree to coordinate their search and rescue operations so that the most effective assistance will be rendered to those in distress on waters within the State. To this end, each will encourage the establishment of mutual assistance and cooperative arrangements between Coast Guard, State and local governmental facilities which are established in the same area. The competent authority for providing Federal search and rescue assistance is the Eleventh Coast Guard District Command Center in Alameda

CA, telephone number 510-437-3701. The competent authority for exercising coordination of State search and rescue activities on the waters within the State lies with the State or local governmental agency having jurisdiction. The State shall provide, and keep current, a list of State and local search and rescue facilities responsible for search and rescue on waters of concurrent jurisdiction, including phone numbers, to the District Command Center.

(3) The State and the Coast Guard will endeavor to support and participate in local search and rescue workshops, water safety councils, and other such organizations to foster closer cooperation and coordination among State and local agencies, Federal agencies and others who have an interest in or authority to conduct search and rescue activities.

(4) The Coast Guard, the State and appropriate local agencies may, when appropriate, utilize the Incident Command System.

(5) Upon receiving a request from the State reporting authority for information from a Coast Guard maritime casualty investigation of a search and rescue operation, the Coast Guard will provide information and data to the State authority from the Marine Information for Safety and Law Enforcement (MISLE) System, as well as investigation materials and documentation available at the time of the request. Pages containing material that is deemed not releasable to the public will be marked "FOR OFFICIAL USE ONLY." Pages from activities that are open or incomplete will be marked "DRAFT." The State reporting authority will not release to the public, or to any other agency, any information or data provided by the Coast Guard that is marked "DRAFT" or "FOR OFFICIAL USE ONLY" without prior approval of the Coast Guard.

f. Regattas and Marine Parades

(1) For the purposes of this Agreement, the terms "regatta" and "marine parade" both mean an organized water event of limited duration that is conducted according to a prearranged schedule.

(2) Title 33, United States Code, Sections 1233, contains the Coast Guard's authority to regulate marine events. Regattas and marine parades shall be administered in accordance with 33 C.F.R. Part 100 and applicable California State and local laws and regulations.

(3) Notice of events for which a Coast Guard permit has been issued under 33 C.F.R. Part 100.30 may be published in the Local Notice to Mariners.

(4) A permit issued by the Coast Guard does not exempt the event sponsor from obtaining additional federal, state or local permits that may be required. Sponsors of approved marine events, for which the Coast Guard has issued a permit, will be directed to contact local agencies for any additional permitting

requirements. Copies of approved permits will be provided to local agencies that express an interest in regulating marine events. The Coast Guard shall notify the State of any large, non-recurring marine events for which a permit has been issued. Permit applications received by the Coast Guard for marine events that take place solely on State waters will be forwarded to the State for appropriate action.

g. Use of U.S. Coast Guard Auxiliary

(1) The State may delegate, to any political subdivision of the State, or to any other agency in California having appropriate jurisdiction, the authority and responsibility for providing management and boating safety programs on State waters, which are public recreational boating waterways under the sole jurisdiction of the State. Any such delegation shall be subject to the terms and provisions of this Agreement.

(2) The State or its delegated authority understands and acknowledges that the U.S. Coast Guard Auxiliary ("Auxiliary") is a component of the Coast Guard and that the Auxiliary is comprised of civilian volunteers organized and trained to promote public boating safety. The Auxiliary's activities include safety patrols, vessel safety checks (VSC's), and public boating safety education and classes.

(3) The State hereby requests that the Coast Guard provide the assistance of the Auxiliary, to the extent that Coast Guard and Auxiliary resources and funding are available and lawfully authorized, to assist the State in the promotion of boating safety on sole State waters, including VSC's and routine Auxiliary safety patrols, particularly on weekends and holidays. The Coast Guard hereby authorizes such Auxiliary assistance in compliance with Federal Regulations and applicable policy and subject to the availability of properly appropriated government funds. The parties agree that the terms of the Auxiliary assistance on sole State waters will be as follows.

(4) Terms of Understanding:

(a) When performing Auxiliary activities, Auxiliary members will be operating under and subject to Coast Guard authority, direction and orders, and all Auxiliary patrol boats operating under Coast Guard orders shall be deemed to be Public Vessels of the United States.

(b) As volunteers, Auxiliary members may not be available at the times of highest priority. Auxiliary members may, at any time, decline to perform any assignment or activity at their discretion.

(c) The Auxiliary has no authority to conduct law enforcement, but Auxiliarists may be involved in providing people or vessels to facilitate training and assisting with any other law enforcement activities, as long as those activities

do not involve the exercise of direct law enforcement authority and are within the capability of a trained civilian volunteer. The Eleventh Coast Guard District Legal Office shall be notified prior to any Auxiliary participation in Law Enforcement operations. The Duty Attorney may be reached through the Eleventh District Command Center at (510) 437-3701.

(5) State Support of Auxiliary.

(a) The State shall:

1. Whenever possible, provide sufficient space at launch ramps for launching Auxiliary patrol boats and, to the extent available, space at the launch ramps or other designated areas for Auxiliary members to perform VSC's and distribute material relating to the Auxiliary's public education boating safety classes.

2. Whenever possible, waive any and all appropriate fees on Auxiliary members engaged in official Auxiliary activities, including entry, launch ramp, vehicle and trailer parking, day and overnight camping, and boat fees.

3. Whenever possible, provide the Auxiliary with an assigned radio frequency and, if necessary, when available, a radio compatible with that used for official communications. A marine band radio meets this requirement.

4. Work with the Auxiliary Coordinator as the Coast Guard or Auxiliary may designate in writing as the Liaison between the State and the Coast Guard/Auxiliary for purposes of scheduling Auxiliary activities on sole State waters, subject always to Coast Guard authority, direction, and orders.

5. OTHER PROVISIONS

a. Nothing in this Agreement is intended to conflict with current Federal law or regulations or the directives of the Department of Homeland Security, the United States Coast Guard or the laws of the State of California.. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

b. This Agreement does not create a duty for the State or the Coast Guard to rescue or to assist any third party. No right of action shall accrue on this Agreement to or for the benefit of any third party.

c. This Agreement is not an agreement by the United States or the Coast Guard to

indemnify any party nor is it an agreement by the United States or the Coast Guard to assume financial, legal, or any other liabilities. This agreement is not an agreement by the United States or the Coast Guard to obligate or expend any funds.

6. LIAISON

Liaison shall be as follows:

FOR THE STATE OF CALIFORNIA

Raynor Tsuneyoshi
Director
Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, CA 95814-3896
(916) 263-4326

FOR THE UNITED STATES COAST GUARD

Paul Newman
Recreational Boating Safety Specialist
Eleventh Coast Guard District
Coast Guard Island
Alameda, CA 94501
(510) 437-5364

7. Modification/Duration of Agreement

This agreement remains in effect until canceled by either party. A representative of each party shall review the agreement biennially for the purpose of ascertaining whether a revised agreement is necessary. A copy of the review will be appended to each party's copy of the agreement and a copy will be provided to Commandant, U.S. Coast Guard (CG-3PB-2).

8. Termination

This agreement will become effective upon the date subscribed by the last signatory. Either party upon ninety (90) days written notice to the other party may terminate this agreement. This agreement may be extended by written agreement of both parties.

9. SIGNATURES

STATE OF CALIFORNIA
Department of Boating and Waterways

By: _____
Raynor Tsuneyoshi
Director
Department of Boating and Waterways

Dated: 6/26/07

UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

By: _____
J.A. Breckenridge
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District

Dated: 7/6/07