MEMORANDUM OF AGREEMENT

Between
Department of Homeland Security
THE UNITED STATES COAST GUARD
And
THE STATE OF ARIZONA – DEPARTMENT OF GAME and FISH

1. PARTIES

The parties to this Agreement are State of Arizona Game and Fish Department (hereinafter referred to as "State") and the United States Coast Guard, Eleventh Coast Guard District (hereinafter referred to as "Coast Guard").

2. AUTHORITY

The Coast Guard is authorized to enter into this Agreement under the provisions of 14 U.S.C. Section 141, 46 U.S.C. Section 13109, and 33 CFR Part 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.

The State is authorized to enter into this Agreement under the provisions of A.R.S. Section 17.231.B.7, authorizing the Arizona Game and Fish Commission to enter into agreements through its administrative agency, the Arizona Game and Fish Department.

3. PURPOSE

To define the relationship between the State and the Coast Guard in the conduct of 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 State, that have been either congressionally, judicially, or administratively determined to be navigable waters of the United States using the criteria set forth in 33 CFR Section 2.36.

b. This Agreement covers all navigable waters located within the State of Arizona, specifically the waters of the Colorado River from the border of the Republic of Mexico and the United States to the border between the State of Utah and the State on Lake Powell. The Colorado River within the boundaries of the Lake Mead

National Recreation Area and the Grand Canyon National Park is under concurrent state/federal jurisdiction between the State and the U.S. National Park Service. The waters of the Colorado River within the boundaries of the Havasu Wildlife Refuge, Cibola Wildlife Refuge, and Imperial National Wildlife Refuge are under concurrent state/federal jurisdiction between the State and the U.S. Department of the Interior.

c. This Agreement does not abrogate or limit the jurisdiction of the State or the United States.

d. To the extent allowed by Federal law and Coast Guard Directives, the Commander, Eleventh Coast Guard District agrees to provide to the State a copy of statistical and other data pertinent to the matters agreed herein.

e. The State enters into this Agreement through its Arizona Game and Fish Commission, and pursuant to A.R.S. 5-311.A.7, the Commission is authorized to administer the boating enforcement and boating safety programs at the State level.

f. To the extent allowed by Federal law and Coast Guard Directives, the Commander, Eleventh Coast Guard District agrees to cooperate with State audits or inspections of the records relating to this agreement under A.R.S. 35-214, 35-215, and Section 41-1179.94 as amended.

5. 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 Arizona's navigable waters. The Coast Guard has responsibility for the enforcement of Federal statutes and regulations related to boating safety on Arizona'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) of the State and the Chief, Response Division of the 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 Coast Guard Sector San Diego at (619) 278-7033 for disposition.

(4) When a complaint is made to the Coast Guard alleging an offense that is a violation of State recreational boating laws or regulations, the Coast Guard will normally notify the Arizona Game and Fish Department at 2221 West Greenway Road, Phoenix, AZ 85023, phone number (602) 789-3383 or to local authorities. 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.

(5) A State 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 law enforcement officer who has observed a violation of a Federal boating law or regulation, will generally be made available on behalf of either government to testify as to factual matters in the State or Federal prosecution. Every effort will be made to make available testimony and other evidence, in accordance with State and Federal agency 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 impaired boat operators from the waterways. To this end, the State and the Coast Guard agree to coordinate their Boating Under the Influence/Operating Under the Influence (BUI/OUI) 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 impaired boat operator where concurrent jurisdiction exists. When this occurs, the Coast Guard will, 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 will:

(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 Arizona.

(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 a Federal forum in addition to State criminal proceedings.

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

(5) The State will, as operations permit:

(a) Respond to calls for assistance from the Coast Guard with respect to BUI/OUI 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/OUI enforcement efforts and concerns.

(e) If aware of any Coast Guard licensed operators that are BUI/OUI, will provide operator information to Sector San Diego.

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

(2) The Coast Guard will 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, SC, on an "as available" basis. Similarly, the State will 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 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 U.S.C. Section 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 or designated authority 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 waters of concurrent jurisdiction if the case warrants further investigation.

(2) The Coast Guard will forward Boating Accident Reports received or taken by Coast Guard personnel to the Boating Law Administrator of the Arizona Department of Game and Fish. The Coast Guard will 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 will be responsible for ensuring completion of the reports meeting State requirements. The Coast Guard and the State will concurrently be 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 unit 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 will be responsible for completing any investigation on non-recreational boating accidents as appropriate.

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

(7) The designated office for recreational boating accident reports on the Colorado River is Sector San Diego (619) 278-7652. .

(8) The State shall review for accuracy and completeness all accident/casualty reports and shall ensure that the cause and circumstance surrounding each reportable accident are determined and noted in the accident/casualty report, 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 CFR Section 173.55. An accident meeting State requirements is defined as above except that the property damage threshold is $500.00.

(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 take reasonable efforts 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 Architecture (G-OCC-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 will 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 or its political subdivisions have 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, including phone numbers, to the District Command Center.

(3) The State and the Coast Guard agree to 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 local agencies may, when appropriate, utilize the National Interagency Incident Management System (NIIMS) as defined in the Federal Emergency Management Agency's National Response Plan.

(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. The Coast Guard will share factual information and pertinent data relative to the investigation with the responsible State authority as permitted under Federal law, and provided that the information shared is not further released by the State in violation of 46 U.S.C. Section 6308. Coast Guard documents marked "DRAFT" or "FOR OFFICIAL USE ONLY" are generally withheld as exempted inter-agency or intra-agency memorandums or letters under the Freedom of Information Act, 5 U.S.C. Section 552. To ensure that such documents are not releasable as public records under State law, the Coast Guard will coordinate with the State prior to providing any information marked "DRAFT" or "FOR OFFICIAL USE ONLY".

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 U.S.C. Section 1233, contains the Coast Guard's authority to regulate marine events. Regattas and marine parades shall be administered in accordance with 33 CFR Part 100 and applicable Arizona State laws and regulations.

(3) The Coast Guard will provide to the State a copy of any notice of event or permit application that it receives for all events occurring on waters of concurrent jurisdiction. In turn, the State will provide to the Coast Guard a copy of any notice of event or permit application that it receives for all events occurring on waters subject to concurrent jurisdiction. Notice received by the Coast Guard of marine events that will take place solely on State waters will be forwarded to the State for appropriate action. Notice of events for which a Coast Guard permit has been issued under 33 CFR Section 100.30 may be published in the Local Notice to Mariners.

(4) The authorization and regulation of regattas and marine parades upon navigable waters of the United States that are subject to the concurrent jurisdiction of the State shall be within the province of the State when, in the opinion of the District Commander, the State is able to regulate, under State law, in such a manner as to ensure safety of life. However, the regulations issued by the State may not significantly impede the operation of other vessels, commercial or recreational, operating on waters subject to the jurisdiction of the United States. As per 33 CFR Section 100.10, the Eleventh District Commander reserves the right to assume primary responsibility for any regatta or marine parade on navigable waters of the United States when he or she deems such action to be in the public interest. The Coast Guard will notify the State of this determination in all such instances. Events of this type may include, but are not limited to:

(a) Those cases where a regatta or marine parade is of such size as to require patrols that the District Commander knows to be in excess of the resources available to the Department or other States involved; or,

(b) Those events on waterways where commercial or other traffic will be significantly impeded.

(5) The authorization and regulation of regattas and marine parades on waters that are under concurrent jurisdiction, shall be managed as follows:

(a) The Coast Guard will expeditiously provide copies of approved and disapproved permits for regattas and marine parades to the State. The State

will expeditiously provide copies of approved or disapproved State permits for regattas and marine parades to the Coast Guard, if applicable.

(b) If the territory of more than one State is involved, the State in which the majority of the event takes place will be responsible for coordinating participation by all affected States and will be called the "Coordinating State". The Coast Guard will determine in which State the majority of the event will take place from the information contained in the application and will notify the responsible Coordinating State.

(c) The State will further review and process each application received using its own criteria prior to Division approval or disapproval of the application.

(d) The State, before approving a regatta or marine parade, will review all applications using the criteria found in 33 CFR Part 100. A copy of the approved permit and all pertinent information including the number of State vessels assigned to the event will be sent to Sector San Diego. Any requests for Coast Guard or Coast Guard Auxiliary assistance should be included. To determine the best method of sending copies of marine events to Sector San Diego, call (619) 278-7264.

g. Use of U.S. Coast Guard Auxiliary

(1) The State may delegate, if authorized by law, to any political subdivision of the State or any local agency in Arizona having appropriate jurisdiction, the authority and responsibility for providing management and boating safety programs on sole 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 (VSCs), 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 VSCs 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 as per 14 U.S.C. Section 827.

(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 Coast Guard Pacific JAG Office will be notified prior to any Auxiliary participation in Law Enforcement operations. The Duty Operational Law Attorney may be reached through the Eleventh District Command Center at telephone (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 VSCs 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.

6. OTHER PROVISIONS

a. Nothing in this Agreement is intended to conflict with current Federal law or regulation or the directives of the Department of Homeland Security or the laws of the State of Arizona. 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 funds.

d. The Coast Guard acknowledges that, to the extent applicable to this Agreement, the State must comply with Arizona Executive Order 99-4 prohibiting discrimination in employment, the provisions of which are incorporated herein by reference.

e. The Parties agree to engage in any alternative dispute resolution procedures authorized by their statutes, regulations and court rules, including, but not limited to, 5 U.S.C. Section 575 and A.R.S. Section 12-1518.

f. This Agreement is subject to cancellation within three years of execution if any person who was involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the State of Arizona becomes an employee or agent of the other party.

g. The Coast Guard acknowledges that, to the extent applicable to this Agreement, the State must comply with Arizona Executive Order 2005-30, "Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors," the provisions of which are hereby incorporated herein by reference.

7. LIAISON

Liaison shall be as follows:

FOR THE STATE OF ARIZONA

Kevin Bergersen
Boating Law Administrator
2221 West Greenway Road
Phoenix, AZ 85023
Telephone (602) 789-3383

FOR THE UNITED STATES COAST GUARD

Paul Newman
Recreational Boating Safety Specialist
Eleventh Coast Guard District (dpi)
Coast Guard Island, Building 50-8
Alameda, CA 94501-5100
Telephone (510) 437-5364

8. MODIFICATION

A representative of each party will 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 (G-OPB-2).

9. TERMINATION/DURATION OF AGREEMENT

This Agreement will become effective upon the date subscribed by the last signatory and will remain in effect through 31 December 2010. 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.

10. SIGNATURES

STATE OF ARIZONA
ARIZONA GAME AND FISH DEPARTMENT/COMMISSION

(for) By: _____
Duane L. Shroufe
Director and Secretary of the Commission

Date: 2/13/07

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

Date: 3/3/07