

December 19, 2011

MOLLY THEODOSSY

Policy Coordinator

Re: Davis Division Review: DRAFT UCD PPM Section 290-82 Boating Safety

The Davis Division of the Academic Senate forwarded the referenced review request to all of the divisional standing committees as well as Faculty Executive Committees within each college/professional school. Comments were received from the Committees on Academic Freedom and Responsibility, Faculty Welfare and Research as well as the Faculty Executive Committees from College of Letters and Science.

The Division appreciated receiving the policy in advance given the proposed policy's impact to teaching and research. I have enclosed the responses so they may be considered as the policy is revised into a final draft for campus wide review.

Both the Committee on Research and Committee on Academic Freedom and Responsibility (CAFR) raised issues with the translation of written policy into practice in the field. We believe these are important considerations that should be weighed carefully and woven into final policy language.

Additionally, CAFR provided a thorough and thoughtful response to the draft. CAFR's response indicates a violation of APM 010 based on review of faculty policy compliance by a non-tenured faculty member. We ask the campus to correct this issue through use of faculty advise such as referenced in the CAFR examples of RE89 and IACUC before the policy is issued for final campus review.

Sincerely,



Linda F. Bisson, Chair
Davis Division of the Academic Senate
Professor: Viticulture and Enology



Davis Division Academic Senate

Request for Consultation Responses

DRAFT UCD PPM Section 290-82 Boating Safety

December 12, 2011

The subject draft UCD PPM section is provided "in advance" of distribution campus wide. Specifically, Academic Senate comments are being sought to ensure the impact on teaching and research is evaluated officially by the Academic Senate in advance of campus wide review. Based on advance review results, the draft policy could be returned to the Academic Senate again during the official campus review period.

Academic Freedom & Responsibility

December 15, 2011 3:55 PM

Response continued on next page.

CAFR review of proposed PPM 290, section 82

UCD CAFR established review procedures for the 2011-2012 academic year on October 9, 2011. After CAFR review, the proposed policy change was found to raise significant concerns related to academic freedom.

1. Background

UC Davis has been attempting to develop a boating policy since deaths occurred in an accident in 2000, with intermittent drafts and meetings now extending over an 11-year period. CAFR has a long history of review and concern over iterations of this proposed policy dating back to May 31, 2006 when an early draft was first brought to the attention of CAFR. CAFR has actively sought to collaborate with the administration on drafts of the proposed policy, even going so far as to provide a comprehensive boating policy and manual for the administration to consider, but which has not been adopted. Recent precursor drafts of this latest administration-generated proposal for a policy limited to motor boating were reviewed and feedback provided in summer and early fall 2011.

2. Academic Freedom Context of Boating

Motor boating is subject to laws that all people must obey. This proposed PPM policy goes well beyond legal requirements to institute administrative controls on motor boating and academic activities at UC Davis. The basis of concern over this proposal with regard to academic freedom stems from the University's long-standing policy on academic freedom, which is articulated in APM-010 and APM-015. According to APM-010, "The exercise of academic freedom entails *correlative duties of professional care* when teaching, conducting research, or otherwise acting as a member of the faculty." Also, APM-010 "establishes that faculty have primary responsibility for articulating the professional standards by which academic freedom may be sustained." There are also sentences in sections APM-015 B and C that give Academic senate members the rights and freedoms to pursue their research and use their best professional judgment in their activities. Thus, it is clearly stated in University policy and practice that faculty are responsible for oversight of their professional activities.

Boating activities of all types (including but not limited to motor boating) involve skills that fall within the professional domain of faculty who use those skills in their research and teaching. As a result, responsibility for and oversight of boating (including but not limited to motor boating) activities lie with faculty. There is a welcomed and important role for the administration to assist faculty through the provision of information, services, and indirect cost returns that support faculty boating activities, but there is no role for superseding faculty responsibility for their correlative duties of professional care. Even where a legal obligation exists for the University to have oversight of faculty professional activities (e.g., scuba diving), there is no legal requirement that the oversight be

empowered to non-faculty, and in fact the faculty should lead all oversight of professional activities, with participation and collaboration by administrators and staff.

There are substantial differences in the education and training of motor boating skills across faculty. Some faculty are trained motor boaters who regularly teach motor boating skills and use these skills in research and teaching. Other faculty are not trained in motor boating skills, but ask their students and /or employees to have them. Still other faculty are not using motor boating skills in research and teaching at all, but require motor boats as a means of transportation for research and teaching. Thus, there exists differential needs for information and services for faculty, but the variation does not change the foundation that faculty oversee professional activities, of which motor boating is one.

Notably, the same variation in professional skills exists for many other outdoor-related activities (e.g., such as driving, hiking, and swimming) as well as many indoor laboratory activities (e.g., instrumentation and chemical usage). As a result, it is feasible and more efficient to have universal policies and procedures to cover all activities in similar fashion to the extent possible, while also respecting the policy on academic freedom.

It is important to bear these concepts in mind as a foundation for Academic Senate review of policies and procedures that affect professional faculty activities.

3. CAFR Concerns With Proposed PPM 290.82

In I.A. "...for all research or educational activities...". To be consistent with I.B. and the PPM overall, it should read "...for all University research or educational activities...". Obviously the policy can only regulate things that the University is involved in.

In I.B. the policy excludes motor boats used in sports and recreational activities from regulation and oversight. The same conditions, hazards, and risks exist for motor boats used in sports and recreation, so we do not understand why they are excluded from rules about operation, training, and inspection? This exclusion implies that a differential ability to perform these functions exists at the University, with those involved in research and teaching incapable relative to those involved in sports and recreation. How can that be justified?

In II. and throughout the proposed policy sentences reads, "Boats used..." Previously in I.A., "motorized watercraft" were given the parenthetical "(boats)". The problem is that these sentences present the perception that each sentence is true as written (without requiring additional interpretation), when in fact the policy intends to limit its applicability to just motor boats; it is not intended to apply to non-motorized boats. It is common in policy practice when jargon is used to have a simplified word, phrase, or acronym to make text shorter, but a

problem arises when the simplified word already has a common usage that is different and fundamentally changes the policy. As written, many sentences imply that the policy regulates all boats and boating activities, whereas I.A. intends that the policy only regulate motorized watercraft. The risk of taking sentences out of context and over-regulating all boating as well as causing people within and external to the University to misunderstand the policy far outweighs the very minor reduction in text from “motor boat” to “boat”. Therefore, it is important and necessary to amend the text to add the word “motor” in every instance where “boat”, “boats”, and “boating activity” (and similar usages that risk misconstruing the policy) are used in the text.

III.A.1. “Each boat...must have a designated operator.” It is unclear from this wording whether only one person may use a motor boat. It is common practice for several people to share ownership and use of a motor boat, with different people serving as the operator on different days. A simple edit to the text would be to replace, “Each boat used for...” with “Each motor boating activity for”.

III.A.2.f. By law, everyone must comply with all laws and governmental regulations. This sentence is wasteful text and should be deleted.

III.B.3. change “as required by law” to “when required by law”. The sentence presents the false supposition that life jackets are always required to be used by law, when in fact law only requires that each motor boat be equipped with life jackets, not that motor boat participants use them at all times.

III.B.5. Please clarify in the text if non-employee University students are required to complete the waiver.

III.C. “Office of Boating Safety” should be “Office of Motor Boating Safety”. As presented, there is no indication that this unit will have any expertise outside of motor boating, and so it should not be granted authority or the external perception of authority over non-motorized boats. This correction should be made throughout the proposed policy text.

III.C.2 and IV.A. The proposed policy text related to inspections violates APM-010, does not conform to University practices and standards, and is not acceptable as written. As a policy context, consider two existing policies that relate to administrative oversight of faculty research: RE-89 and IACUC.

Reference policy #1: RE-89 was imposed by a vote of the Board of Regents (with the Assembly of the Academic Senate voting against its adoption) and requires special review, approval, and reporting procedures for proposals to obtain research funding from the tobacco industry, but it does not assign that important job to a staff person and without any faculty participation or oversight, as proposed in the boating policy. The actual campus-based RE-89 procedures vary, but the policy suggested that “The scientific review committee will be

composed of at least three faculty members with expertise in areas of science relevant to the proposal being submitted, and will advise the Chancellor regarding whether the proposed study uses sound methodology and whether it appears designed to allow the researcher to reach objective and scientifically valid conclusions.” The actual decision was proposed to be made by the Chancellor on the basis of the faculty oversight report. The 2009 Chair of the systemwide University Committee on Academic Freedom requested that a representative from the divisional Committee on Academic Freedom be an ex officio member of RE-89 review committees.

Reference policy #2: IACUC is a committee required by law to oversee animal use and care. University policy requires that IACUC is chaired by a tenured faculty member and vice-chaired by a faculty member. The committee includes the Attending Veterinarian, who is a professional.

Relative to those two established policies that both rely on faculty to assess professional activities of faculty, the proposed motor boating policy (a) lacks faculty participation in oversight of motor boat inspections, let alone faculty control of it, and (b) gives total authority to an unspecified staff person with unspecified qualifications to determine whether faculty use of a motor boat for academic activities is permitted. Even if the proposed Office of Motor Boating Safety would actually be or include a certified professional motor boat operator on par with the qualifications expected of the Attending Veterinarian on IACUC, it is still an unacceptable violation of APM-010 to grant that individual total authority over academic activities. This was already ruled on by CAFR back in 2006 and has been explained to the administration several times. Nothing has changed. Authority should be invested either in a faculty body in totality or in a committee chaired and vice-chaired by faculty with participation by the professional motor boater employed by the proposed Office of Motor Boating Safety. There is no role for any staff without demonstrated professional expertise in boating to serve on this committee. This faculty-led committee would then oversee inspections.

The U.S. Coast Guard Vessel Safety Check form referenced in IV.A.2 is not required by law, but is offered to the public on a courtesy basis. The “requirements” on the form and proposed by the policy are actually used to obtain a decal and include many items that may not be applicable for most motor boats used at UC Davis. In fact, all but four “requirements” have the option of “N/A”, which means that they are not requirements at all, as confirmed by the explanatory second page after the form. The policy is unclear as to whether those optional items will be required or not (if so, when?) per policy and procedures, which allows for capricious oversight of academic professional activities by non-faculty staff.

In addition to having faculty oversee inspections, the inspection process should include an appeals process if there is a lawful academic reason to operate and maintain a motor boat according to different standards than those indicated on

the checklist. The appeal should be to a different faculty body than the regular oversight committee, wherein a higher faculty authority, such as the Academic Senate Committee on Academic Freedom and Responsibility or the Academic Senate Executive Council reviews the inspection dispute.

IV.A.3.a introduces for the first time the existence of a “vessel manager” who is not defined as having any Roles and Responsibilities in section III. Who is this person and what is the role relative to those listed for boat operators?

IV.C. The dictionary defines an “incident” as an event or occurrence. What does the usage of that word mean in this policy? Exactly what incidents must be reported? It seems like that word can be deleted from this entire section with no loss of meaning to the policy.

IV.C.2 sets a property damage standard that is too broad and a dollar limit of \$500 that is too low, potentially requiring unnecessary and excessive reporting. With regard to “property”, if a delicate, small but expensive scientific sensor is damaged while boating, say an employee drops it on the deck of the boat when the boat is stationary, how is that relevant to the Office of Motor Boating Safety? Scientific activity includes many simple but costly damages that have nothing to do with motor boating safety. The policy should limited property damage reports to only damages (a) to non-University property caused by the motor boat and (b) to the motor boat itself when damages to the boat are in excess of \$3000 or half the value of the motor boat, whichever is smaller. Recall that the University used to call every thing that cost >\$500 “equipment”, but changed that to \$5000 because it was too burdensome and inconsistent with external grant sponsors usage of the word. With a boat, a simple bump at a dock could cause \$1000 of minor cosmetic damage, and it does not make sense to have to report that.

IV.D. This entire section of the policy needs more thought and specification for different kinds of charters as well as in the U.S. and abroad. For example, what is the policy for when University personnel rent a small <16’ motor boat with no captain or crew on a nearby reservoir- the policy implies a requirement to have a USCG operators license for this kind of “bareboat charter” of a small boat, which does not make sense? What is the policy for riding on commercial ferries and other passenger transportation over water in the U.S. and abroad?

What is the policy for chartering vessels in foreign countries? In many developing countries where faculty do teaching and research, there may not exist vessel insurance for “Protection and Indemnity, and Hull and Machinery”, especially for chartering small boats, so what then? This unclear proposed policy has the potential to terminate all research and teaching related activities in developing nations, which is not appropriate or acceptable. Whatever proposed policy is developed in revision of this draft, foreign boating oversight for academic activities should also fall under faculty purview and not be delegated to a staff person. Staff can offer information and services.

VI.F. refers to a “boating manual”, which presumably is for motor boating only. No such manual exists. A policy should not refer to resources that do not exist, as the policy may be amended in the future with such information when and if it becomes available. If a motor boating manual exists, then it should be made available for review. The policy does not explain what the role of the manual would be relative to existing laws and regulations as well as University policies.

4. CAFR Review Conclusions

The proposed policy on motor boating violates APM-010 for the many reasons listed above, such as the transference of authority over research and teaching from faculty to non-academic, unspecified staff. The proposed policy requires revision to address the concerns raised by CAFR.

Administrative Partners (DANN TRASK)

December 7, 2011 5:38 PM

Dear Professor Bisson,

The L&S Executive Committee has reviewed the draft UCD PPM Section 290-82 (Boating Safety). The new policy seems reasonable and the committee supports its adoption, although we are confused on one point. On page 3, section B2, the policy states "The boat operator must notify his/her supervisor as soon as possible....". Since in many cases the boat operator is a faculty member, to whom must the faculty member report following the completion of a trip? Clearly, it would be helpful to resolve that ambiguity before the final policy is issued.

Sincerely,

Abigail Thompson, Chair
Executive Committee
College of Letters and Science

Council of School & College Faculty Chairs (VETERINARY MEDICINE)

November 18, 2011 11:47 AM

No response at this time.

Elections, Rules & Jurisdiction

November 28, 2011 4:17 PM

No response at this time.

Faculty Welfare

November 28, 2011 4:44 PM

Response continued on next page.

Submitted on behalf of 2011-12 Faculty Welfare Committee Chair Stuart Hill.

The Faculty Welfare Committee has reviewed the proposed policy on boating safety and has no comment at this time.

Planning & Budget

November 28, 2011 4:17 PM

No response at this time.

Research

November 28, 2011 4:17 PM

The Committee on Research discussed PPM 290-82: Proposed Boating Safety Policy. Overall, the committee agrees with the new policy. However, the committee does note the following concern:

Item III.A.2.d "Ensuring that all boat occupants have received a safety briefing regarding the location and proper use of safety, navigation, and communications equipment aboard the boat prior to departure."

COR agrees that may be impractical and unnecessary if the trip is a simple one, such as in California inland waters. COR agrees that all passengers should be familiar with safety equipment, but truly learning how to operate navigation and communication equipment can require hands-on practice, which is impractical if a large group is taking a short one-time trip. Even on a longer ocean-going voyage, COR assumes that the main concern is that the boat pilot/captain may become incapacitated, due to a heart attack or stroke. In that case, it seems sufficient that one "co-pilot" know how to operate all the equipment, rather than all the passengers.