

March 23, 2012

MOLLY THEODOSSY

Policy Coordinator

Office of the Provost and Executive Vice Chancellor

Re: Proposal to Create Policy and Procedure Manual 290: Boating Safety

The Davis Division of the Academic Senate forwarded the referenced proposal to all 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 Committee from College of Agricultural and Environmental Sciences.

Lingering concerns are summarized below:

The College of Agricultural and Environmental Sciences commented; there are "several areas that will need to be considered at some point. First, the policy, as written, really applies more to marine applications than fresh water applications. Second, the policy does not seem to recognize that there are two distinct uses of boats in research. The first is for transportation to the research site. However, there are also boats that are the research tool themselves. Often, these boats are redesigned and engineered to do specific procedures related to the research effort. It may not be in the scope of the "boating officer" to understand the "experimental boat" or design of the boat for specific research efforts. There was concern that the boating safety program would be housed at Bodega Bay. It is suggested that a Boating Safety Administrative Advising Committee be constituted, similar to other safety committees on the campus housed in EH&S. This would provide for faculty input. Perhaps, exclude modified boats from the inspection procedures stated in the policy or develop some other remedy to the problem, possibly abandoning the VSCF for a more appropriate, UC Davis-generated boat assessment approach.

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, we assume 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.

There is concurrence that PPM 290-82 should use the term "motorboats" rather boat or boats. This policy focuses on the safety concerns of motorboats and we believe that using the generic term "boats" could cause needless misunderstandings about the scope of this policy in the future.

The draft policy would *require* the use of the U.S. Coast Guard's Vessel Safety Check Form (VSCF) as the tool for enforcement for inspection of boats. (Refer to the enclosed full text of the Committee on Academic Freedom and Responsibility's (CAFR) response.)

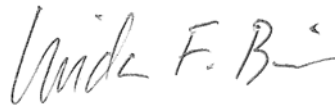
Many of the committees responding indicated that a faculty oversight committee is preferred to a staff BSO housed at the Bodega Marine Laboratory. It is not appropriate to utilize a staff person as the BSO and, therefore, oversee the research of faculty. A Boating Safety Officer (BSO) is *unsuitable* for the purpose of ensuring safety partly because he/she will *not* have the specialized training and experience needed. In this manner, the BSO assumes an "arbitrary and potentially capricious authority." Every CAFR since 2006, has determined that this is a violation of APM-010. (Refer to the enclosed full text of the Committee on Academic Freedom and Responsibility's (CAFR) response.) As an example, PPM 290-75 establishes four committees related to radiation use and one committee for light and laser use.

According to the charge that governs those committees, each one has a Faculty/Academic Federation chair and members of the faculty/academic federation who all together oversee a Radiation Safety Officer (RSO). Additionally, there is another committee above those committees – the Radiation Safety Committee. This structure provides a robust level of program operation and oversight at multiple levels. Presumably the university could have chosen to ignore having multiple committees with a complex structure and simply assigned an RSO authorized to “ensure safety”, as the administration is proposing to do for motor boating.

There is concern that the policy enables a less-safe approach to motor boating safety than is commonly practiced at the university. Such a simple structure might have been easier to establish in the administration's eyes. However, in virtually all applications of ensuring safety, the best practice followed by the university involves use of a faculty committee, which may also include a staff officer or not.

The committees and Davis Division agree a policy is necessary. In fact, we believe a policy is overdue and encourage finalization.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda F. Bisson".

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

Enclosure: Committee Response Report



Davis Division Academic Senate

Request for Consultation Responses

Proposal to Establish PPM 290-82: Boating Safety

March 16, 2012

In December 2011, the Division reviewed and commented on an early draft of proposed policy 209-82. The policy has been submitted again for an official proposal review to establish PPM 290-82. This is the final review prior to implementation of the proposal. The December 2011 response and a memo concerning the administration's response to comments sent forward are enclosed for reference.

Academic Freedom & Responsibility

March 12, 2012 2:36 PM

Response continued on next page.

UCD CAFR established review procedures for the 2011-2012 academic year on October 9, 2011. CAFR reviewed the latest draft of this proposed policy. While several elements of the policy have merit, we found some new concerns upon deeper investigation as well as the persistence of easily solved academic freedom problems.

1. Beginning with the 10/21/2011 proposed policy for motorboating, the administration suddenly brought forward the enforcement of an inspection of boats in which the U.S. Coast Guard Vessel Safety Check Form (VSCF) would be used. It has taken us time to investigate that thoroughly and we have determined that the administration is likely unaware of significant details that make this an inappropriate inspection tool as of the 2/7/12 policy draft. We recommend that the administration reconsider this on the basis of the following findings:

A) Page 4 of the Vessel Safety Check Manual states that there are 5 types of motorboats that are not eligible for a Vessel Safety Check, but the proposed PPM policy does not account for that. Most importantly, ineligible types relevant to UC Davis use of boats include motorized surfboards, emergency life rafts, amphibious vehicles, and "craft of experimental or unproven design." The fact is that UC Davis research involving motorboats includes these vessels, including modifying boats to achieve unique functionality for a specific scientific need, but which may affect boat performance and require specialized training and experience typical of academic pursuit of novel research. This is partly why a BSO is unsuitable to ensure safety, but we now learn that this common practice for research use of boats at UC Davis makes the proposed use of the VSCF as the basis of inspection unworkable- modified boats are not eligible for the use of this assessment tool. Either the policy needs to exclude these ineligible categories of motorboats from the inspection procedures stated in the policy or develop some other remedy to the problem, possibly abandoning the VSCF for a more appropriate, UCD-generated boat-assessment approach. The University cannot prevent faculty from using the ineligible craft, as there is nothing wrong with using these types of common and customized motorized vessels.

The proposed policy states that third party inspections will be accepted, however, a Vessel Examiner cannot examine ineligible vessels, so the policy requires some re-thinking about how to make this work. The administration cannot say that this is acceptable, but then in fact it cannot be done in reality, as that is disingenuous. Further, if the BSO were to go ahead and use the VSCF for any of the ineligible motorized vessels as required by the policy, it would be a violation of the Vessel Safety Program and the examiner could face repercussions. We would be obligated to report such a violation of the VSC Program by the BSO to the Coast Guard.

B) The documentation about the Vessel Safety Check Program specifically states that the VSCF is not intended for inspections, but the proposed policy uses it in that way to

determine if a boat may be used or not. According to the VSC Manual, the people who are certified to use the VSCF are not “inspectors”. In fact, the documentation states that certified Vessel Examiners are conducting voluntary viewings of vessels that are intended to provide a “one-to-one educational opportunity for the boater.” A Vessel Examiner must wear the uniform and follow Examiner protocols, but the UC Davis proposed policy is asking VE’s, including the BSO, to deviate from the VSC Program’s policy and do things that are not allowable. What the UCD administration is trying to do is informally use a special tool to do something it is not intended to do, but then imbue it with a special authority at UC Davis that it is not intended to have. Federal and state laws dictate motorboating safety requirements, not the VSCF. Use of motorboats must already adhere to the law, and it is not clear how the problems with the proposed use of the VSCF can be addressed within a command-and-control regulatory framework as the administration intends it.

Although the VSCF is generally a useful aid to educate boaters about vessel safety, UCD motorboating safety policy cannot rely on the VSC Form as the basis for inspection due to the details of the Vessel Safety Check Program being in conflict with the text of the proposed PPM policy. **Consistent with U.S. Coast Guard documentation, CAFR recommends that the policy be amended to state that the VSCF will be used as an aid to improve vessel safety, but exclude all text stating that the VSCF will be used to suspend motorboats from service. A decision to suspend motorboats from service should be under the authority of a committee with expertise in the diversity of boat types, not a BSO and not on the basis of the VSCF.**

2. The most important concern that has been consistently raised by CAFR since constitutional law professor Alan Brownstein commented on the 2006 draft of the proposal remains that the administration plans to have a staff person oversee the research of faculty. That highly regarded legal scholar opined that the Boating Safety Officer (BSO) takes on “arbitrary and potentially capricious authority”. Every CAFR since 2006 has determined that this is a violation of APM-010.

In the cover letter to the latest policy draft, the administration claims that there is no academic freedom problem, because the BSO is imbued with authority by virtue of working under an administrator who is also a professor: “the Boating Safety Officer’s authority is granted through the Director of Bodega Marine Laboratory (who is a faculty member).” The contention that a staff person gains authority over an arena of scholarly activity that is pre-designated as under faculty oversight according to shared governance and APM-010’s assertion of “correlative duties of professional care” simply by virtue of working for one faculty member is blatantly false. This claim flies against policy and procedure for all faculty authority over curriculum and scholarly research. A staff employee of one faculty member cannot not have oversight authority to suspend the research or teaching of any other faculty member. By analogy, the staff person of the chair of a curriculum committee could be granted sole authority to decide the appropriateness of

classes without any faculty participation, simply by virtue of working for a professor. That makes no sense and is simply untrue.

The administration also responds that the policy would not oversee research projects, but just ensure safety of vessels. First, having a single BSO (with no specific training or employment requirements stated in the policy) oversee all motorized craft used for all arenas of research is not going to ensure safety, because the BSO does not have experience with the diversity of vessels used and boating conditions present in the wide-ranging aquatic systems in California contents. Faculty have long educated the administration that a Bodega-located BSO is problematic, because the majority of boating is on inland waters and involves diverse and unique factors beyond the scope of experience of any staff BSO. This is the very reason why virtually all research oversight, and most especially for ensuring safety (e.g. deadly radioactive materials as well as use of animals in research), involves a committee of faculty and staff. The best way to ensure safety in the diverse motorboating in an academic setting is to follow standard UC practice and set up a committee of experts drawing on faculty and staff

The administration points out SCUBA as having one officer and no committee. On that point there are two factors in response. First, the fact that a mistake occurred and that a policy and procedure was created in violation of APM-010 and using poor practices of oversight does not serve as a good basis for doing that again. It is something that should be fixed, not mimicked. Second, the range of SCUBA applications is much less than that for motorboating. Not that SCUBA couldn't involve highly experimental applications and diverse settings, but in practice the amount of diverse motorboating at UC Davis is simply greater, so it is even more important to have a policy and procedure for motorboating that ensures safety in all uses. If a SCUBA accident occurred, then a plaintiff could identify the difference in safety oversight between SCUBA and standard practice on virtually all other safety oversight practices involving committees of experts as evidence of UCD liability. As proof that the administration is choosing a less-safe approach to motorboating safety that is commonly practiced at the university, we note that PPM 290-75 establishes 4 committees related to radiation use and 1 committee for light and laser use. According to the charge that governs those committees, each one has a Faculty/Academic Federation chair and members of the faculty/academic federation who all together oversee a Radiation Safety Officer (RSO). In addition, above those committees there is another committee- the Radiation Safety Committee, so there is robust structure of program operation and oversight at multiple levels. Presumably the university could have chosen to ignore having those committees with that complex structure and just assigned a RSO authorized to "ensure safety", as the administration is proposing to do for motorboating. That would have been easier in the administration's eyes. However, in virtually all applications of ensuring safety, the best practice followed by the university involves use of a faculty committee, which may also have a staff officer or not. If a mortal boating accident were to occur under the proposed policy, the university is exposed to liability on the grounds of not

following its own standard practice for ensuring safety, drawing on a committee of experts, led by a faculty chair. This has been the point raised by the faculty and CAFR going back to 2006.

The administration has never once explained why it refuses to include faculty in oversight of motorboating in light of the success of the faculty/staff partnership in overseeing all other forms of safety on campus (except SCUBA, which is arguably unsafe on campus right now for lack of this proper form of faculty/staff oversight as well). ***As always, CAFR recommends that the administration adopt the simple and standard best procedure of creating a committee of faculty and staff to oversee motorboating.***

CAFR Review Conclusions

CAFR recommends that the proposed policy on motorboating must be amended to address two critical elements of the policy that are not viable as currently written. The policy states that inspections are to be done using the Vessel Safety Check Form, but the Vessel Safety Program and Manual specifically state several facts that the proposed PPM policy is in violation, which creates a significant problem. Contrary to the proposed PPM policy, there is no ability to get third-party inspections when in fact Vessel Examiners cannot inspect anything and several types of motorboats used at UC Davis are ineligible for a safety check by any Vessel Examiner. If the proposed UCD Boating Safety Office were to use his/her certified authority as a Vessel Examiner (which requires wearing the VE uniform, among other things) to inspect boats with the intent of potentially taking them out of service, this could also include inspections of ineligible boats. This approach would then be a violation of the Coast Guard's Vessel Safety Program and the Coast Guard would have to be notified of that abuse. Beyond this serious problem with the proposed inspections, it remains the case that the administration, for no stated reason whatsoever, refuses to follow standard best practice and empower a boating committee chaired by a faculty member and including faculty and staff to oversee motorboating safety at UC Davis. Not only is this a violation APM-010, as explained by a constitutional law professor, but it also fails to ensure safety and increases the risk of legal liability in the event of a future accident. Safety is ensured when experts spanning motorboating participate in safety oversight. This is done all across Safety Services at UC Davis. The proposed policy requires revision to address these concerns.

Council of School & College Faculty Chairs (AGRICULTURE)

March 16, 2012 11:10 AM

March 16, 2012

The Executive Committee for the CA&ES approved the draft of the boating policy. In so doing they pointed out several areas that will need to be considered at some point. First, the policy, as written, really applies more to marine applications than fresh water applications. Second, the policy does not seem to recognize that there are two distinct uses of boats in research. The first is for transportation to the research site. However, there are also boats that are the research tool themselves. Often, these boats are redesigned and engineered to do specific procedures related to the research effort. It may not be in the scope of the “boating officer” to understand the “experimental boat” or design of the boat for specific research efforts. There was concern that the boating safety program would be housed at Bodega Bay. It is suggested that a Boating Safety Administrative Advising Committee be constituted, similar to other safety committees on the campus housed in EH&S. This would provide for faculty input.

Elections, Rules & Jurisdiction

March 16, 2012 8:59 AM

No response at this time.

Faculty Welfare

March 16, 2012 10:45 AM

Faculty Welfare's Response to Proposal to Establish PPM 290-82: Boating Safety

The Faculty Welfare Committee spent some time discussing the proposed reform of boating safety and the detailed criticisms of this proposal by the Committee on Academic Freedom and Responsibility (CAFR). It is clear that both sides of this debate share a desire to ensure that safety is a high priority in the use of motorboats by University faculty, students, and staff. The differences emerge in the means to fulfill that laudable goal. Our discussion produced only limited agreement on a small number of the points in dispute.

We believe that CAFR is persuasive in arguing that PPM 290-82 should use the term “motorboats” rather than boat or boats. This policy focuses on the safety concerns of motorboats and we believe that using the generic term “boats” could cause needless misunderstandings about the scope of this policy in the future.

The Committee also found that PPM 290 provided unworkable expectations for chartering motorized vessels in many countries, especially in developing regions of the world. Insurance may often be unavailable for “Protection and Indemnity, and Hull and Machinery”. The requirements of this section are so unrealistic that they could effectively halt research using motorboats in developing states. The policy draft Faculty Welfare reviewed was subsequently revised and the section on chartering motorboats was dropped from the policy. We would urge that any effort to revisit this issue should seriously consider the limited options that are available for chartering motorboats in many areas of the world.

The central point in dispute concerned different judgments about the breadth of academic freedom that would be allowed for faculty using motorboats to pursue their research. The Faculty Welfare Committee split in its assessment of this issue. One side found that CAFR raised valid criticisms. The original draft of this policy permitted unwarranted intrusion on faculty members’ prerogatives in pursuing their research. The policy allowed non-tenured faculty a potentially important role in regulating the use of motorboats and, by implication, the research activities of tenured faculty. These concerns were not shared by all Committee members. Almost an equal number believed that the policy identified reasonable requirements for using motorized vessels. The proposed role of the boating safety officer in this policy was seen as similar to the regulatory approach the University currently uses for scuba diving.

Graduate Council

February 8, 2012 11:15 AM

No response at this time.

Planning & Budget

March 16, 2012 8:59 AM

No response at this time.

Research

March 16, 2012 8:58 AM

The Committee on Research discussed PPM 290-82: Proposed Boating Safety Policy. Overall, the committee stands by their original response (included below) with one additional recommendation. There is no provision in the proposed policy for faculty involvement or oversight regarding safety inspection of boats used for research. COR unanimously agrees that there should be faculty participation and oversight in this process similar to the advisory committees for Environmental Health & Safety (E&HS) on the campus.

COR Original Response – dated November 28, 2011

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.