



CALIFORNIA OCEAN PROTECTION COUNCIL

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Steve Westly, *State Controller*
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Sheila Kuehl, *State Senator, Ex officio Member*
Pedro Nava, *State Assemblymember, Ex officio Member*

MEMORANDUM

TO: California Ocean Protection Council

FROM: Sam Schuchat, Executive Officer, Coastal Conservancy
Jonathon Gurish, Staff Counsel Coastal Conservancy

DATE: June 9, 2006

RE: Adoption Council Operating Procedures (Agenda Item #2)

Requested Action

Staff recommends that the California Ocean Protection Council adopt the following resolution:

“The California Ocean Protection Council adopts the recommended *Operating Procedures of the California Ocean Protection Council* and the *Statement of Incompatible Activities*, attached”

Background

After discussions at the January and April, 2006 Council meetings, the Council requested staff recommend specific proposals to assist in the operation of the Council. Staff suggests the Council adopt the following procedures:

- A quorum of the Council shall consist of at least two voting members of the council for purposes of taking action. However, the Council may hold or continue to hold a hearing with at least one voting member present;
- Council members may delegate their authority to vote by proxy limited to the individual meeting and must indicate the scope of the proxy's power to vote;
- The Council will operate informally, however Robert's Rules of Order will be used to resolve ambiguities or questions as to how to proceed;
- The State Coastal Conservancy, Resources Agency, and State Water Quality Control Board shall adopt a statement of incompatible activities in a form similar to the attached;
- The Council shall have one committee, the Science Advisory Committee, which shall be responsible for advising the Council on questions of scientific application that are presented to the Council and to assist the Council in coordinating the collection and

sharing of scientific data related to coast and ocean resources between agencies, other ad hoc committees may be formed as need and resources dictate.

Conflict of Interest Code

At its January 2006 meeting the Council approved a draft conflict of interest code for publication and submission to the Fair Political Practices Commission's adoption. That code has been accepted by the Commission and is currently in the 45-day review period. The code is expected to be adopted by the Commission in early July. Upon acceptance of the Code by the Commission, the Code will be published in the California Code of Regulations and the Council's website.

Incompatible Activities Statement

Government Code section 19990 prohibits state officers and employees from engaging in activities which are incompatible with their positions as state officials. State agencies are required to adopt incompatible activities statements in order to implement this provision.

Staff has developed an incompatible activities statement for your consideration. Assuming the Resources Agency and the Water Board are willing to adopt similar statements, the Council should direct staff to work with these agencies to adopt a statement of incompatible activities in a form similar to the one attached to this staff recommendation.

Rules of Order

Although no state statute requires it, many government agencies informally follow Robert's Rules of Order Newly Revised as a general guideline for the conduct of their meetings. These rules provide an objective and relatively familiar method of resolving disputes over how the body will conduct its affairs. These parliamentary rules have the advantage of being comprehensive and authoritative on issues of parliamentary procedure.

Staff recommends that when possible, Council meetings will be conducted collegially and informally. At the request of any member at any time, parliamentary procedure will be observed. The rules contained in Robert's Rules of Order, Newly Revised, to the extent they are relevant and not inconsistent with the Council's governing statute or other adopted rules, shall govern the question of how Council will proceed.

Quorum / Proxy Voting

The Council can choose how non-voting members can participate in deliberations and the procedures for proxy voting.¹ The Council may wish to consider an agreement as to what constitutes a quorum for conducting Council business. According to Roberts Rules § 40, the general rule is that the organization's organic documents determine what constitutes a quorum. In the absence of a specific rule to that effect, the general rule is that a majority of all of the members constitute a quorum (*Id.* at 335). With voting and non-voting members, the Council may wish to indicate a quorum is constituted out of the majority of voting members of the Council. In a similar vein, the Council may wish to decide how it will treat voting by alternates or proxies. Again, the Council has authority to determine what procedure it will

¹ See *Lavin v. California Horse Racing Bd.* (1997), 66 Cal.Rptr.2d 843 (in the absence of an express statutory directive to the contrary, administrative agency may exercise its discretion in selecting methodology by which it will implement authority granted to it by legislature).

adopt, but it should determine whether voting by proxy is permitted, and how the authority to vote by proxy is communicated to the rest of the Council.

Staff has developed a draft policy of what constitutes and quorum for conducting a council meeting and a proposed policy on proxy voting. Staff suggest the rather small voting membership of the Council requires a minimum of two voting members, or their proxies, be required to conduct the business of the Council. Absent two voting members, the Council would be unable to take action on items before the Council. The Council is unique in that it broadcasts its meeting on the internet, making them available to members and the public alike. The Council may wish to amend the proposed policy to specifically allow telephonic voting, where the member participates by phone and webcast. In addition, the policy specifically allows the council to hold hearing in the absence of a quorum. Given the small voting membership of the Council and the relative infrequency at which the Council meets, this exception would allow some Council business to proceed in the absence of a quorum.

Amendment of Policies

Staff recommends that the foregoing policies may be added to, modified, amended or suspended at any time by simple majority vote.

Organizational Structure

The Council has already created a science advisory committee to assist the council in evaluating the complex scientific questions that arise in ocean governance. This committee is responsible for developing scientific recommendations on issues identified by the Council, ensuring that projects brought before the Council meet scientific standards, synthesizing information necessary for the development of policy by the Council and assisting in the implementation of the Council's *California Ocean and Coastal Information, Research, and Outreach Strategy*.

Staff suggests that the Council await full development of this committee before forming additional committees. In the future, the Council may wish to consider forming a legal advisory committee to assist in the review of state and federal legislation and the development of ocean policy per the Council's responsibilities under Public Resources Code §35615.² A policy on the formation and membership of additional committees is provided in the attached set of policies. Adoption of this rule will facilitate formation of new committees should the Council consider them appropriate.

² Public Resources Code § 35615 provides: (a) (1) Coordinate activities of state agencies, that are related to the protection and conservation of coastal waters and ocean ecosystems, to improve the effectiveness of state efforts to protect ocean resources within existing fiscal limitations, consistent with Sections 35510 and 35515.

(2) Establish policies to coordinate the collection and sharing of scientific data related to coast and ocean resources between agencies.

(3) Identify and recommend to the Legislature changes in law needed to achieve the goals of this section.

(b) (1) Identify changes in federal law and policy necessary to achieve the goals of this division and to improve protection, conservation, and restoration of ocean ecosystems in federal and state waters off the state's coast.

(2) Recommend to the Governor and the Legislature actions the state should take to encourage those changes in federal law and policy.

Conclusion

The procedures suggested in this memorandum arise from current and foreseeable procedural issues associated with the work of the Council. Obviously, other issues may arise which would require the development of procedures to address those issues. For example federal grant requirements or procedures may require additional procedures. The staff will make recommended changes as the need and opportunity arises.