

CALIFORNIA OCEAN AND COASTAL LEGAL RESEARCH

Background

Governor Arnold Schwarzenegger's ocean action plan calls on the California Ocean Protection Council to build on past successes in ocean management and to address those areas where fragmentation still impedes the effective and beneficial approaches to management of this resource (Action 2). Among the tasks identified in the action plan, two require substantial legal and policy analysis:

- *Update the California inventory of ocean and coastal laws and regulations for use by the California Ocean Council, legislators, industry, and the public and determine if these laws are being enforced (Action Plan, page 10).*
- *Monitor California's interests regarding international treaties (such as Law of the Sea) and its relationships with international organizations such as the International Maritime Organization regarding ocean and coastal management needs (Action Plan, page 11).*

State Coastal Conservancy staff and the Legislative Counsel have completed an initial inventory of California state laws related to coastal and ocean governance. At the international and national level, the final report of the U.S. Commission on Ocean Policy includes a select list of executive orders, federal laws, and International Treaties relevant to ocean governance. In order to be useful, the state inventory needs to be reorganized into subject areas similar to the commission's report, so that a more meaningful discussion of related laws can be provided to the council.

The staff is now considering how best to proceed. It seems likely that forming an advisory group would help fulfill some of the actions in the Governor's ocean action plan. An advisory group of government, academic, and industry experts could review current state, federal, and international laws affecting California's ocean and coastal resources and suggest possible improvements for consideration by the council. Following review by this advisory group, the legal inventory could be made available to the public to provide the council comments on both the completeness of the inventory and any recommendations for reorganization.

Monitoring California's interests in international treaties as well as federal law currently happens in an ad hoc way, led by the Assistant Secretary for Ocean and Coastal Policy at the Resources Agency assisted by staff at various state agencies, including the Department of Fish and Game, the State Lands Commission, the Coastal Commission, the State Coastal Conservancy, and others. Determining to what extent laws are being enforced is a potentially daunting task, which will necessarily involve assistance from the enforcement agencies themselves, and other interested parties.

Legal Advisory Group

The legal advisory group could refine the list of state and federal laws affecting ocean and coastal resources to make the list useful to the council, legislators, industry, and the public. An advisory group could help select a format to present the list of laws in a more logical and user-friendly format for review by all stakeholders. This would allow the council and the public to see to what extent the existing body of laws contains overlaps, duplications, gaps, and contradictions. This would assist the council in developing an understanding of the current legal framework governing the oceans and where potential areas for improvement by the council may lie.

In addition to this analysis, the legal advisory group will assist staff in identifying case studies of problematic management to study how effective reforms can be addressed. Two cases initially suggested for analysis include: 1) programs to eradicate non-indigenous marine species and 2) programs for management of sediments in the marine environment. In both cases, numerous approvals must be granted at the federal, state, and local level for actions to be implemented. A specific analysis can identify where duplication, or gaps, exist in these processes that could be addressed by the council.

Cost and Project Implementation

The Conservancy will provide staff and support services to form and support the legal advisory group. It is anticipated that formation of the legal advisory group, review, and re-organization of the inventories will take six months. Staff expect the first phase of the project to be completed by September 2005. Development of case studies and recommendations for legal reform would be reported to the council by June 2006.

DRAFT CALIFORNIA OCEAN AND COASTAL STATE LAW INVENTORY

SUMMARY

The attached draft inventory of state laws affecting ocean and coastal resources was developed in response to Action Item 2 of the Governor's ocean action plan. The inventory is still draft in anticipation of future review by the public and the legal advisory group that the staff will form. Once complete, this inventory will provide a useful tool for evaluating the efficacy of California's management of these important resources.

Overview of Draft Inventory

The *California Ocean and Coastal State Law Inventory* is a generalized list of laws which affect ocean and coastal resources within the state's jurisdiction. This new inventory was adapted from prior inventories completed by the Legislative Counsel and the Resources Agency and expanded to capture a wider variety of laws which concern ocean and coastal resources. In all, the new inventory provides a more comprehensive review of laws that directly affect ocean and coastal resources. Laws that may affect the ocean and coast, but are not directly related to resources within these geographic areas are not included. For example, upland mining and timber laws are not included though the regulation of these resources indirectly affect coastal and ocean resources.

Included in this inventory are laws from the departments and commissions of the Resources Agency, such as the California Coastal Commission, State Lands Commission, Department of Boating and Waterways, Department of Conservation, Department of Fish and Game, Office of Oil Spill Prevention and Response, Department of Parks and Recreation, Energy Resources, Conservation and Development Commission, San Francisco Bay Conservation and Development Commission, the State Coastal Conservancy, and the Department of Water Resources. In addition, laws of various components of the California Environmental Protection Agency, the Department of Food and Agriculture, the Department of Transportation and the California Health and Welfare Agency, which pertain to ocean and coastal resources, are also included.

Reference to the ocean and coast can be found in our Constitution and the Organic Act, as well as in about half of California's 29 codes. While it is only mentioned in some sections, other sections provide a detailed regime for the identification and management of ocean resources. Two codes in particular provide detailed laws concerning ocean and coastal resources: the Public Resources Code and the Fish and Game Code. The inventory identifies these comprehensive areas of the law, but does not fully explicate their treatment of the resource, out of a concern that the inventory would become too unwieldy and quickly out-of-date if each section were listed.

Because the inventory sometimes treats whole divisions of the code as a single unit, the breadth and detail of these laws may not be self-evident from the attached inventory. Providing a section by section inventory of laws would require over 1,300 individual entries and would not prove useful in providing an overview of ocean and coastal laws within the state (Source: Westlaw, California Statutes database, accessed on March 7, 2005).

Next Steps

While the inventory identifies relevant portions of the code as germane to the management of ocean and coastal resources, an evaluation of how these laws integrate with federal or local law to work for the average Californian or resource manager requires another level of analysis. Further, this inventory in its present form does not provide an analysis of where current laws conflict or cause confusion in the management of these resources. It provides a starting point for persons interested in these resources to identify where these laws are likely to be found and may be useful for the work of subsequent, targeted analysis of where there is need for legal reform.