

**SAN FRANCISCO BAY COORDINATED PERMITTING  
APPROACH**  
**Policy and Management Committee**  
**Permit and Policy Improvement List**  
**Updated May 2022**

The Policy and Management Committee (PMC) is part of the coordinated permitting approach agreement, which includes the Bay Restoration Regulatory Integration Team (BRRIT), and whose responsibilities are described in an interagency memorandum of understanding. The PMC is tasked with creating a system to identify and resolve policy issues and conflicts, and to identify a process for elevating issues that require agency policy shifts.

The policy issues are prioritized based on the significance of the issue to the review process, the overall benefit to the program, and benefit to regional restoration goals, and the capacity of the BRRIT and PMC to resolve the issue in the short term. Rankings are not prescriptive and are intended to categorize issues to identify opportunities. Prioritization is currently in progress and will be revised as issues are added and removed from the list.

1. **Benefit to process:** impact upon the decision-making timeline. 1 = the issue does not normally hold up review process. 5 = creates delays in the permit review process.
2. **Frequency:** it is a policy issue that comes up over and over. 1 = important consideration to permit decision process but seldom comes up. 5 = important to decision making process and comes up often.
3. **Benefits to regional restoration goals:** Does it result in projects getting in the ground faster and more efficiently? 1 = Does little to effect implementation. 5 = large impacts to implementation for multiple projects.
4. **Capacity:** can be accomplished in the next 3-4 years with projected resources and staffing. 1 = not likely within next 3-4 years. 5 = likely can get done

The permit and policy improvement list identifies the status of priority issues identified to date and a timeline for addressing the issues in the four categories below with a commitment to implement at least one initiative annually.

1. Issues that are **being addressed** during the current calendar year (initiatives currently underway, with an anticipated completion date in 2022).
2. Issues that **will be addressed** in the next one to three years (initiatives currently underway, with an anticipated completion date that may extend beyond 2022)
3. Issues and initiatives that **require further development** (no identified initiatives underway, or initial work has begun, but will not be completed until after 2022)
4. **Accomplished**

As the PMC begins to work, achieves some success, and faces anticipated challenges (e.g., collaborative decision making among agencies), this list and prioritization will be revised. New issues will be considered as they are brought to the PMC by the BRRIT and stakeholders, and the list will be revised at least annually.

<b>POLICY ISSUE: Fill for Habitat</b>	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency fix.	
<b>POC:</b> Sahrye Cohen, EPA	<b>Status:</b> Being Addressed
<p><b>Why is this an issue?</b> The creation of Habitat Transition Zones (i.e., ecotones or horizontal levees) via the import of fill material causes conflict with Bay fill policies, which can vary by agency. For example, BCDC asks projects to use the minimum fill required to achieve the project goals, while the RWQCB might ask a project to build in more resilience to the transition zone.</p> <ul style="list-style-type: none"> <li>• There is little empirical data to support optimal design</li> <li>• Agency conflicts are challenging to resolve.</li> <li>• This is a Sand in the Gears issue.</li> </ul>	
<p><b>Initiatives:</b> BCDC's San Francisco Bay Plan was amended to allow greater amounts of fill for habitat restoration and pilot projects. The Water Board recently completed grant-funded work to look at policies that may lead to Basin Plan amendments; BCDC amendment to the San Francisco Bay Plan.</p>	
<p><b>Updates 2020 and prior:</b></p> <ul style="list-style-type: none"> <li>• July 20, 2017, BCDC approved consideration of an amendment to the San Francisco Bay Plan to allow additional fill policies for habitat projects. Water Board, EPA, and USACE representative participation is intended to facilitate crosswalk policy discussions between BCDC and these agencies, specifically Clean Water Act Section 401 and 404 permitting.</li> <li>• The Bay Plan amendment process was completed on October 3, 2019.</li> <li>• On December 27, 2019, BCDC's San Francisco Bay Plan was amended to add policies to a variety of policy sections and allow greater amounts of fill for habitat restoration and pilot projects.</li> </ul>	
<p><b>Updates 2022:</b> Agency representatives identified for workgroup.</p>	
<p><b>Further discussion needed?</b></p> <ul style="list-style-type: none"> <li>• Coordination with the PMC would assist in creating permit review consistency.</li> </ul>	

<b>POLICY ISSUE:</b> Lack of collaborative decision-making among agencies	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative Fix:</b> Agency fix.	
<b>POC:</b> Luisa V., EPA	<b>Status:</b> Being addressed
<p><b>Why is this an issue?</b> Applicants tend to find the permitting process for restoration projects extremely confusing when it appears agency requirements are redundant or mutually exclusive to each other. Examples raised:</p> <ul style="list-style-type: none"> <li>• differing risk tolerances occur between different agencies</li> <li>• differing level of design needed to acquire a permit</li> <li>• additional requirements beyond those required by the agency that is primarily responsible for a specific resource.</li> <li>• The Sand in the Gears document touches on this at items 6, 7, and 8.</li> </ul>	
<b>Initiatives:</b> BRRIT outreach pre and post surveys to applicants.	
<b>Updates 2020 and prior to:</b> BRRIT outreach surveys	
<b>Updates 2021:</b> BRRIT outreach surveys	
<p><b>Further discussion needed?</b> Based on the BRRIT outreach surveys have the following action items to improve collaborative decision making among the agencies are:</p>	

<b>POLICY ISSUE: Fully Protected Species</b>	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative fix?</b> Agency fix and Legislative fix	
<b>POC:</b> Craig W., CDFW	<b>Status:</b> Being addressed
<p><b>Why is this an issue?</b> For restoration projects CDFW can issue permits to take FPS under a Natural Community Conservation Plan (NCCP), for necessary scientific research, or via development of an internal MOU. CDFW is unable to issue permits to take or possess a fully protected species (FPS) as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.</p> <ul style="list-style-type: none"> <li>• permitting pathways are unclear for restoration projects when FPS are involved. This is a common complaint amongst the restoration community.</li> <li>• restoration projects may have long- term benefits to special-status species, but project construction and establishment can have the potential to result in significant short-term impacts and under the State Fish and Game Code CDFW may be slow or unable to issue permits for take of FPS.</li> </ul>	
<p><b>Initiatives:</b></p> <ul style="list-style-type: none"> <li>• BRRIT assisting applicants by advising avoidance of FPS with conservation measures or in instances where that would not be cost effective or timeline feasible, by identifying mechanisms that CDFW uses to issue permits to take FPS (i.e., a NCCP or MOU).</li> <li>• CDFW will work with restoration projects to ensure recovery efforts for fully protected species are included in the restoration project.</li> <li>• Legislative fix is being explored outside of BRRIT and PMC to create a more time-effective permitting pathways with more certainty under certain circumstances for restoration projects.</li> </ul>	
<p><b>Updates 2021:</b> Work with restoration projects to ensure recovery efforts for fully protected species are included in the restoration project.</p>	
<p><b>Updates 2022:</b> Peggy McNutt to initiate legislative fix. Peggy M. will remain engaged with the PMC to request additional information as needed or to provide updates.</p>	
<p><b>Further discussion needed?</b> Estimate legislative policy fix – discussion target 2023.</p>	

<b>POLICY ISSUE: Develop Guidance for Project Applicants</b>	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency fix.	
<b>POC:</b> Jana A., USFWS	<b>Status:</b> Being addressed
<p><b>Why is this an issue?</b> Restoration projects often have similar issues and, while knowledge may reside in particular project proponents or consultants, many applicants tend to become confused by the numerous information, data, mapping requirements of federal and state regulatory and wildlife agencies.</p> <ul style="list-style-type: none"> <li>This issue can result in time consuming delays.</li> </ul>	
<p><b>Initiatives:</b> There is an opportunity to facilitate project development and permitting by completing FAQs and providing other guidance, such as typically approved management practices.</p>	
<p><b>Updates 2020 and prior:</b></p> <ul style="list-style-type: none"> <li>Create resources and tools for applicants that could include a recommended checklist of items and information needed for a complete application</li> <li>Create FAQs and a flow chart</li> </ul>	
<p><b>Updates 2021:</b></p> <ul style="list-style-type: none"> <li>Create resources and tools for applicants that could include a recommended checklist of items and information needed for a complete application</li> <li>Provide a link to the USFWS’s Environmental Conservation Online System (ECOS) to view example Biological Opinions or to construct a Biological Assessment through the Consultation Package Builder. General avoidance and minimization measures can be obtained through these example BiOps.</li> </ul>	
<p><b>Further discussion needed?</b></p> <ul style="list-style-type: none"> <li>Provide a link to the USFWS’s Environmental Conservation Online System (ECOS) to view example Biological Opinions or to construct a Biological Assessment through the Consultation Package Builder. General avoidance and minimization measures can be obtained through these example BiOps.</li> <li>Guidance documents can be shared publicly as they are available.</li> </ul>	

<b>POLICY ISSUE: Monitoring</b>	
<b>Date initiated:</b> 2020	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency fix.	
<b>POC:</b> Keith L., Water Board	<b>Status:</b> Requires further development
<p><b>Why is this an issue?</b> The cost of monitoring requirements can be extensive and associated funding is difficult to obtain. A desire for regionally relevant monitoring is sometimes in conflict with the site-specific needs, resulting in additional monitoring burden for applicants.</p> <ul style="list-style-type: none"> <li>• Monitoring is particularly challenging to fund, and therefore it would be helpful if mandated monitoring requirements were limited to the minimum required for the regulatory agencies to ascertain their regulations are being followed.</li> <li>• Project proponents are typically unable to sustain significant monitoring programs on their own, therefore monitoring should be targeted to actionable information.</li> <li>• The cost of additional monitoring for specific species and habitats or if broader questions need to be addressed should be shared through a regional monitoring program or similar arrangement.</li> <li>• Uncertainty associated with climate change and sediment availability exacerbates the challenges of evaluating project success.</li> <li>• This is a Sand in the Gears issue.</li> </ul>	
<p><b>Initiatives:</b></p> <ul style="list-style-type: none"> <li>• The Wetlands Regional Monitoring Project (<b>WRMP</b>) will implement regional-scale monitoring to evaluate wetland restoration project success and inform science-based decision-making.</li> <li>• The San Francisco Estuary Partnership developed a tidal wetland regional monitoring plan for the Bay Area that will help local, regional, state, and federal authorities evaluate the effectiveness of efforts to sustain healthy aquatic habitats and resources</li> <li>• <b>NMFS Fisheries Monitoring Framework</b>, NMFS is the Fisheries Technical Advisory Committee (Fish TAC) to develop wetland monitoring framework for fisheries in the greater SF Bay region</li> <li>• Wetland Habitat Assessment Team (<b>WHAT</b>). BCDC's internal habitat and restoration science and policy working group evaluates projects and monitoring reports and seeks regulatory program improvements.</li> </ul>	
<p><b>Updates 2020 and prior:</b> The San Francisco Estuary Partnership developed a tidal wetland regional monitoring plan for the Bay Area that will help local, regional, state, and federal authorities evaluate the effectiveness of efforts to sustain healthy aquatic habitats and resources. Using an EPA grant and stakeholder input, the plan was completed in April 2020.</p>	
<p><b>Updates 2021:</b> SFEP will continued to develop an implementation plan that describes a funding and governance structure, and a data management plan. SFEP hosted two agency-focused workshops to introduce the WRMP to regional, state, and federal agencies. Additional workshops in 2021 included the restoration practitioner and planning communities.</p>	

**Updates 2022:** UC Davis, NMFS, and the Water board launched the WRMP Fish and Fish Habitat Workgroups (FFH) Workgroup in 2021 to develop fish and fish habitat monitoring recommendations and standard operating procedures for wetlands in the greater SF Bay region. The FFH includes participation from multiple agencies and stakeholders and anticipates completion of initial Draft Recommendations in spring of 2022.

**Further discussion needed?**

<b>POLICY ISSUE: Wetland Habitat Type Conversion</b>	
<b>Date initiated:</b> 2020	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency fix.	
<b>POC:</b> Jen Siu, EPA	<b>Status:</b> ACCOMPLISHED; Being Addressed
<p><b>Why is this an issue?</b> To accomplish regional wetland restoration goals, it is necessary to convert one type of wetland habitat to another. For example, currently diked baylands or seasonal wetlands may be converted to tidal baylands.</p> <ul style="list-style-type: none"> <li>• When wetland-to-wetland conversion occurs in the process of restoring a site, some permitting agencies require compensatory mitigation while other agencies do not.</li> <li>• There are inconsistent approaches as regulators analyze projects and make mitigation decisions.</li> <li>• Regulatory decisions need to be supported by robust technical frameworks to avoid additional project costs, lack of regulatory certainty, conflicting requirements, and project delays.</li> <li>•</li> </ul>	
<p><b>Initiatives:</b> A multi-agency project is underway to develop a science-based framework for assessing habitat type conversion actions in the SF Bay Region and elsewhere. This framework would facilitate consistent and more transparent decision making. EPA/Corps are leading the effort with funding and staff while the other agencies are providing staff time. The PMC's goal was to use this effort to agree on a common decision-making approach by the end of 2019.</p>	
<p><b>Updates 2020 and prior:</b> The final framework was distributed to agency partners on February 14, 2020. Pilot implementation of the final framework was planned for a project under the BRRIT's purview in 2020.</p>	
<p><b>Updates 2021:</b> Pilot Project Conducted; Tool revisions based on pilot</p>	
<p><b>Updates 2022:</b> Aquatic Resource Type Conversion Evaluation Framework v.2 finalized and published.  <a href="http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/1110_ConversionFramework.pdf">http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/1110_ConversionFramework.pdf</a></p>	
<p><b>Next Steps 2022:</b> Outreach, adoption, and implementation</p> <ul style="list-style-type: none"> <li>• Outreach to agencies (Corps, Waterboards, etc.)</li> <li>• Article in wetlands journals</li> <li>• Presentation at JASM</li> </ul>	
<p><b>Further discussion needed?</b> Outreach, Implementation, and Adoption planning. Additional peer review from Corps/ERDC.</p>	

<b>POLICY ISSUE:</b> Siting Public access within multi-benefit habitat restoration projects	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency	
<b>POC:</b> Anniken L., BCDC	<b>Status:</b> Requires further development
<b>Why is this an issue?</b> BCDC is the only regulatory resource agency that includes public access requirements in its permits. Other agencies may require minimization of public access to protect habitat value. These potentially conflicting mandates create uncertainty for project applicants in designing a permissible restoration project and can result in project design delays.	
<b>Initiatives:</b> In 2012 BCDC amended the Bay Plan Public Access policies.	
<b>Further discussion needed?</b> Coordination between PMC members need to research current reports, science, and recreation trends and coordinate with the agency point of contact to discuss potential solutions to assist BCDC in their approach to amending the Bay Plan.	

<b>POLICY ISSUE:</b> Upland Alternatives to Fill for Habitat	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency	
<b>POC:</b> Keith L., Water Board	<b>Status:</b> Requires further development
<b>Why is this an issue?</b> Do we always have to fill the Bay to create habitat? What are the instances when we want to consider Bay-adjacent uplands as part of that equation, and how? Both federal and state regulations require consideration of upland fill before consideration of bay fill.	
<b>Initiatives:</b> Improve coordination with the Corps/EPA/water board on alternatives for 404(b)(1) analysis.	
<b>Further discussion needed?</b>	

<b>POLICY ISSUE:</b> Protecting Single Species in the Context of Larger, Holistic Restoration Goals	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency	
<b>POC:</b> Jana Affonso	<b>Status:</b> Requires further development
<p><b>Why is this an issue?</b> Legal requirements for a single protected species can preclude actions that are deemed beneficial to the larger system by all other agencies. Examples:</p> <ul style="list-style-type: none"> <li>• Snowy Plover habitat needs can preclude tidal restoration in certain areas, and concerns over fish entrapment can prevent certain types and locations of habitat connectivity.</li> <li>• In an urban estuary, multi-objective projects intended to achieve a balance between a range of habitat improvements for individual special-status species and a wide range of general habitat enhancements over a broad area may require some trade-offs.</li> </ul>	
<b>Initiatives:</b>	
<b>Further discussion needed?</b>	

<b>POLICY ISSUE:</b> Short-term impacts of wetland restoration activities vs. long-term benefits of the overall wetland restoration	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency or Legislative Fix?</b>	
<b>POC:</b>	<b>Status:</b> Requires further development
<p><b>Why is this an issue?</b> Agencies necessarily and appropriately require careful analysis and disclosure of construction impacts and even short-term habitat losses that must be weighed against the magnitude, timing, and certainty of long-term benefits. Arguably, however, it is inefficient to treat the short-term impacts from implementing a voluntary restoration project in the same way as a project that would not bring the same significant long-term benefits. This is particularly true for noise- and other short-term disturbance effects (less so for actual habitat changes like excavating a channel through the marsh to connect the slough with a pond interior).</p>	
<b>Initiatives:</b>	
<p><b>Updates 2021:</b> The USFWS identified this policy issue and their guidance is to consider long-term benefits and encourage proven, demonstrated restoration methods that benefit listed species.</p>	

**Further discussion needed?**

<b>POLICY ISSUE:</b> Improving Consultations with other non-BRRIT agencies – i.e. SHPO, Tribes, State Lands Commission	
<b>Date initiated:</b>	<b>Priority:</b>
<b>POC:</b>	<b>Status:</b> Requires further development
<b>Why is this an issue?</b> Consultation with certain agencies, groups such as SHPO, area Tribes, State Lands Commission have added review timeline uncertainty (Lower Walnut Creek Project, India Basin Project, etc).	
<b>Initiatives:</b> BRRIT member agencies could develop procedures for more efficient and coordinated outreach to benefit permitting process.	
<b>Further discussion needed?</b>	

<b>POLICY ISSUE:</b> General Programmatic Efforts (E.g., Programmatic permits/guidance for applicants regarding piling removal).	
<b>Date initiated:</b>	<b>Priority:</b>
<b>Agency and/or Legislative Fix?</b> Agency fix.	
<b>POC:</b> Jana A., USFWS	<b>Status:</b> Requires further development
<b>Why is this an issue?</b> Programmatic approaches to permitting can enable a shorter permitting timeline for certain types of actions, but must be weighed against the time and effort to initially establish the programmatic approach	
<b>Initiatives:</b> <ul style="list-style-type: none"><li>• potential utilization/adoption of State of Washington’s guidelines for pile removal</li><li>• NMFS and USFWS Programmatic Biological Opinions for restoration projects</li><li>• potential RGP for living shoreline projects</li><li>• Sustainable Conservation programmatic section 7 consultations</li></ul>	
<b>Updates 2022:</b> Identified initiatives.	
<b>Further discussion needed?</b>	

<b>POLICY ISSUE: Elevation and Resolution of Issues</b>	
<b>Date initiated:</b> 2019	<b>Status:</b> Completed 2020
<b>Agency and/or Legislative Fix?</b> Agency	
<b>POC:</b> N/A	<b>Status:</b> <b>ACCOMPLISHED</b>
<p>An agreed-upon process for resolving issues elevated to the PMC from the BRRIT. The elevation process considers each agency's law, policies, and authority with a decision-making process prior to elevating issues.</p>	

<b>TOPICS FOR FUTURE DISCUSSION</b>	
Outreach to tribal communities and environmental justice communities for BRRIT projects	
Restoring Watershed to Bay Connection to Improve Sediment Supply to Baylands	