

Appendix 1 Permit and Policy Improvement List

SAN FRANCISCO BAY COORDINATED PERMITTING APPROACH Policy and Management Committee Permit and Policy Improvement List Updated August 2023

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.

Prioritization will be based on the following criteria:

- **Benefit to review process and overall program:** impact upon the decision-making timeline.
- **Frequency of the issue:** it is a policy issue that comes up over and over.
- **Benefits to regional restoration goals:** Does it result in projects getting in the ground faster and more efficiently?
- **Capacity of BRRIT and PMC:** can be accomplished in the next 3-4 years with projected resources and staffing.

The permit and policy improvement list describes the status of priority issues with a commitment to make progress on and 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 2023).
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 2023)
3. Issues and initiatives that **require further development** (no identified initiatives underway, or initial work has begun, but will not be completed until after 2023)
4. **Accomplished**, indicates issues that have been resolved.

The list will be revised annually for items and prioritization. New items will be considered as identified by the PMC, or brought to the PMC by the BRRIT or stakeholders.

POLICY ISSUE: Fill for Habitat	
Date initiated:	Priority: 2023
Agency and/or Legislative Fix? Agency fix.	
POC: Sahrye Cohen, EPA	Status: Being Addressed
<p>Why is this an issue? Nature-based adaptation measures, such as habitat transition zones and oyster reefs, can result in the placement of fill material in aquatic habitat. The placement of fill material can cause 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 Water Board might ask a project to build in more resilience to the transition zone. The creation of oyster reef habitat can also cause conflict for CDFW which lacks a Statewide Artificial Reef Plan. In the absence of a Statewide Plan, CDFW cannot support artificial reef projects which can delay permitting for these types of projects.</p> <ul style="list-style-type: none"> • Novel restoration methods have little empirical data to support optimal design • Agency conflicts are challenging to resolve. • This is a Sand in the Gears issue. 	
Initiatives: BCDC’s San Francisco Bay Plan was amended to allow greater amounts of fill for habitat restoration and pilot projects. - ACCOMPLISHED	
Updates 2020 and prior:	
<ul style="list-style-type: none"> • 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. • The Bay Plan amendment process was completed on October 3, 2019. • 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. 	
Updates 2022: Agency representatives identified for workgroup to discuss how similar impacts can be evaluated under federal regulations.	
Updates 2023: EPA met with the Corps to discuss how fill impacts are evaluated under Clean Water Act Section 404.	
The Water Board adopted a non-regulatory Basin Plan Amendment on Climate Change and Aquatic Habitat Protection, Management, and Restoration to incorporate climate change information in it’s Basin Plan and provide information on how the Water Board permits dredge or fill activities associated with climate adaptation projects.	

Artificial Reefs. Representatives of CDFW's Marine Region joined the PMC to work collaboratively with the State Coastal Conservancy, Water Board, and BCDC to identify interim measures to avoid permitting delays until a Statewide Plan is developed.

Fill for habitat workgroup meeting to discuss how fill impacts are evaluated for ecotone and horizontal levees.

Initiatives: The Water Board is evaluating the need for a Basin Plan Amendment to provide clarifying information on how to first avoid, then minimize, and lastly compensate for unavoidable impacts to aquatic habitat within a climate change context.

Further discussion needed?

- Coordination with the PMC would assist in creating permit review consistency.

POLICY ISSUE: Lack of collaborative decision-making among agencies	
Date initiated:	Priority: 2023
Agency and/or Legislative Fix: Agency fix.	
POC: Luisa Valiela, EPA	Status: Being addressed
<p>Why is this an issue? 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"> • differing risk tolerances occur between different agencies. • differing level of design needed to acquire a permit. • additional requirements beyond those required by the agency that is primarily responsible for a specific resource. • The Sand in the Gears document touches on this at items 6, 7, and 8. 	
<p>Initiatives: BRRIT outreach; information gathering through surveys to applicants; BRRIT internal coordination; using PMC elevation process</p>	
<p>Updates 2020 and prior to: BRRIT outreach; satisfaction surveys</p>	
<p>Updates 2021: BRRIT outreach; pre-application satisfaction surveys</p>	
<p>Update 2023: BRRIT and SFBRA are increasing the frequency of reminders to applicants to complete these surveys and reassessing and updating survey questions to better understand how the BRRIT can help applicants through the permitting process. SFBRA will start obtaining individual feedback from applicants</p> <p>BRRIT coordination and early feedback on public access and wildlife concerns: Greenwood Gravel Beach, Tiscornia Marsh Restoration and Sea Level Rise Adaptation Project, Palo Alto Horizontal Levee Pilot Project, Lower Walnut Creek Restoration - North Reach Public Access Improvements</p>	
<p>Further discussion needed?</p>	

POLICY ISSUE: Fully Protected Species	
Date initiated:	Priority:
Agency and/or Legislative fix? Agency fix and Legislative fix	
POC: Craig Weightman, CDFW	Status: Being addressed
<p>Why is this an issue? 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"> • permitting pathways are unclear for restoration projects when FPS are involved. This is a common complaint amongst the restoration community. • 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. 	
<p>Initiatives:</p> <ul style="list-style-type: none"> • 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). • CDFW will work with restoration projects to ensure recovery efforts for fully protected species are included in the restoration project. • 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. 	
<p>Updates 2021: Work with restoration projects to ensure recovery efforts for fully protected species are included in the restoration project.</p>	
<p>Updates 2023: Under the State of California’s Cutting the Green Tape Initiative to increase the pace and scale of environmental restoration, CDFW has developed several restoration permitting tools under CDFW’s Cutting the Green Tape Program. Such tools include a Restoration Management Permit (RMP) that consolidates “take” authorizations for restoration projects under a single streamlined permit. The RMP can authorize take of CESA-listed as well as state fully protected species.</p> <p>In addition, SB-147 was approved and filed with the State on July 10, 2023 as part of the governor’s California Infrastructure Trailer Bill package. SB-147 authorizes CDFW to issue a permit under CESA to authorize take of fully protected species for certain types of infrastructure projects with mitigation. Note that the list of project types included in the trailer bill does not include restoration projects.</p>	

Updates 2023: Peggy McNutt to initiate legislative fix. Peggy M. will remain engaged with the PMC to request additional information as needed or to provide updates.

Further discussion needed? The PMC and EPA will follow up with Resources Legacy Fund to determine the status of their legislative efforts.

POLICY ISSUE: Develop Guidance for Project Applicants	
Date initiated:	Priority: 2023, continuous
Agency and/or Legislative Fix? Agency fix.	
POC: Jana Affonso, USFWS	Status: Being addressed
<p>Why is this an issue? 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, and mapping requirements of federal and state regulatory and wildlife agencies.</p> <ul style="list-style-type: none"> This issue can result in time-consuming delays. 	
<p>Initiatives: There is an opportunity to facilitate project development and permitting by providing FAQs and other guidance, such as typically approved management practices and conservation measures.</p>	
<p>Updates 2020 and prior:</p> <ul style="list-style-type: none"> Create resources and tools for applicants that could include a recommended checklist of items and information needed for a complete application. Create FAQs and a flow chart. 	
<p>Updates 2021:</p> <ul style="list-style-type: none"> Created resources and tools for applicants that could include a recommended checklist of items and information needed for a complete application. Provided 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. Reorganized BRRIT website to provide more clarity on the permitting process and how the BRRIT can help. The website now includes tabs for BRRIT Process, BRRIT Projects, BRRIT Eligibility, Resources and Tools, Policy and Management Committee, and FAQs. Added, under the BRRIT Process tab, a flow chart explaining the pre-application process. 	
<p>Updates 2022:</p> <ul style="list-style-type: none"> More items were added under the Resources and Tools tab on the BRRIT website, including the “Permit application checklist”, “Helpful Links”, and a link to “Box” website for delivering large files to the BRRIT. Some examples of “Helpful Links” include links to regulatory overview websites for each agency, streamlined permitting tools, relevant recovery plans, sea level rise guidance, and the WRMP. 	

- NMFS is developing a checklist for expedited informal consultation that will be available for regional use in SF Bay Area.

Updates 2023:

- **BCDC Permitting for a Resilient Shoreline.** BCDC is working to make improvements to its regulatory program as part of its overall efforts to implement the Bay Adapt Joint Platform. [Action 7](#) of the Joint Platform called for refining and accelerating regulatory approvals for resilient shoreline adaptation projects that align with regional goals. The effort includes work to: make BCDC permitting faster and more efficient, make the BCDC regulatory program easier to navigate, accelerate effective nature-based adaptation, work together with regulatory partners, and consider the role of BCDC's regulatory program in achieving desired adaptation outcomes. This effort is funded by a grant from the State Coastal Conservancy.
- BCDC is also receiving assistance to improve its regulatory program from the CA Department of Finance, through its Mission-Based Review (MBR) process. The goal of MBRs is to improve governmental programs through: analyzing the key requirements that drive the program's core mission; prioritizing limited resources to get the biggest return on investment; streamlining or eliminating functions within the program(s) that are not needed to support the core mission; and analyzing regional approaches to program delivery to eliminate or minimize disparities in staffing, standards, and levels of service. This will be an approximately 6-month process, which started in mid-2023.

Further discussion needed?

- Guidance documents can be shared publicly as they are available.

POLICY ISSUE: Monitoring	
Date initiated: 2020	Priority: 2023
Agency and/or Legislative Fix? Agency fix.	
POC: Keith Lichten, Water Board development	Status: Requires further
<p>Why is this an issue? Monitoring requirements can be a significant project cost and associated funding can be difficult to obtain, as some grants may not fund or may limit expenditures for monitoring. Regionally relevant monitoring that advances tidal wetland restoration does not fully address site-specific monitoring needs, which can increase the overall monitoring burden for applicants. Scientifically robust and meaningful monitoring is expensive and may be deprioritized when compared to the project proponent’s primary goal of enhancing habitat conditions. Monitoring costs are an expense for multi-benefit restoration projects and nature-based solutions that traditional grey infrastructure projects do not have to bear.</p> <ul style="list-style-type: none"> • Monitoring is challenging to fund, and therefore project proponents can support limiting mandated monitoring requirements to the minimum required for the regulatory agencies to ascertain their regulations are being followed. • Project proponents are typically unable to sustain significant monitoring programs on their own. • Individual projects are not necessarily well positioned to answer broader landscape-scale questions, such as those about specific species and habitats. Those broader questions are better considered through a regional monitoring program or similar arrangement. • Uncertainty associated with climate change and sediment availability exacerbates the challenges of evaluating project success, and site-specific monitoring can be at too small a scale to capture this issue. • This is a Sand in the Gears issue. 	
<p>Initiatives:</p> <ul style="list-style-type: none"> • The Wetlands Regional Monitoring Project (WRMP) will develop a regional-scale monitoring program to evaluate wetland restoration project success and inform science-based decision-making. NMFS is working collaboratively to advance the fish monitoring component of this program. https://www.wrmp.org/ • Wetland Habitat Assessment Team (WHAT). BCDC’s internal habitat and restoration science and policy working group evaluates projects and monitoring reports and seeks regulatory program improvements. 	
<p>Updates 2020 and prior: 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>	

Updates 2021: SFEP 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.

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 (SOPs) 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.

Updates 2023: The WRMP FFH Workgroup finished the draft monitoring recommendations and SOPs. The WRMP approved the Site Monitoring Network.

Agencies discussed the general information needed from applicants in order to determine if permits are needed for installation of monitoring equipment on a case-by-case basis.

Further discussion needed?

POLICY ISSUE: Wetland Habitat Type Conversion	
Date initiated: 2020	Priority:
Agency and/or Legislative Fix? Agency fix.	
POC: Jen Siu, EPA	Status: ACCOMPLISHED
<p>Why is this an issue? 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"> • When wetland-to-wetland conversion occurs in the process of restoring a site, some permitting agencies require compensatory mitigation while other agencies do not. • There are inconsistent approaches as regulators analyze projects and make mitigation decisions. • Regulatory decisions need to be supported by robust technical frameworks to avoid additional project costs, lack of regulatory certainty, conflicting requirements, and project delays. 	
<p>Initiatives: 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>Updates 2020 and prior: 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>Updates 2021: Pilot Project Conducted; Tool revisions based on pilot</p>	
<p>Updates 2022: Aquatic Resource Type Conversion Evaluation Framework v.2 finalized and published. http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/1110_ConversionFramework.pdf</p>	
Date initiated: 2022	Priority:
Agency and/or Legislative Fix? Agency fix.	
POC: Jen Siu, EPA	Status: Being Addressed
<p>Initiatives: Outreach, Adoption, and Implementation of the Aquatic Resources Type Conversion Framework.</p>	

Updates 2022: Presentation at Joint Aquatic Science Meeting.

Updates 2023: Outreach, adoption, and implementation

- On May 16, 2023 EPA hosted a Workshop for regional, state, and federal agencies introducing the Aquatic Resources Type Conversion Framework
- Published article in April 2023 in Society of Wetland Scientists *Wetland Science & Practice*

- **Further discussion needed?** Outreach, Implementation, and Adoption planning. Additional peer review from Corps/ERDC.

POLICY ISSUE: Siting Public access within multi-benefit habitat restoration projects	
Date initiated:	Priority:
Agency and/or Legislative Fix? Agency	
POC: Steve Goldbeck, BCDC development	Status: Requires further
Why is this an issue? 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.	
Initiatives: In 2012 BCDC amended the Bay Plan Public Access policies.	
Update 2023: The BRRIT has been successfully working among the member agencies and with applicants to reduce potential impacts from public access through appropriate siting, design, and management of public access areas and improvements. Examples include siting trails in appropriate areas to minimize wildlife impacts, using appropriate signage, implementing seasonal trail closures near sensitive areas, using “screening” vegetation to limit noise and visual impacts, and measures to avoid or minimize addition of predator perches when new structures are proposed. Example projects for which these measures will be used (all of which are currently in application or pre-application phase as of 8/9/2023) include: Greenwood Gravel Beach, Tiscornia Marsh Restoration and Sea Level Rise Adaptation Project, Palo Alto Horizontal Levee Pilot Project, and Pacheco Marsh Public Access Improvements Project.	
Further discussion needed? Coordination between PMC members needed to research current reports, science, and recreation trends and coordinate with the agency point of contact to discuss potential solutions in order to assist BCDC in their approach to amending the Bay Plan to update its public access policies regarding wildlife.	

POLICY ISSUE: Upland Alternatives to Fill for Habitat	
Date initiated:	Priority:
Agency and/or Legislative Fix? Agency	
POC: Keith Lichten, Water Board development	Status: Requires further

Why is this an issue?

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.

Initiatives: Improve coordination with the Corps/EPA/Water Board on alternatives for 404(b)(1) analysis.

Further discussion needed?

POLICY ISSUE: Protecting Single Species in the Context of Larger, Holistic Restoration Goals	
Date initiated:	Priority:
Agency and/or Legislative Fix? Agency	
POC: Jana Affonso, USFWS	Status: Requires further development
<p>Why is this an issue? 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"> • 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. • 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. 	
Initiatives:	
Further discussion needed?	

POLICY ISSUE: Short-term impacts of wetland restoration activities vs. long-term benefits of the overall wetland restoration	
Date initiated: 2023	Priority: 2023
Agency or Legislative Fix? Agency	
POC: EPA	Status: Requires further development
<p>Why is this an issue? 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>	
<p>Initiatives: The USFWS and NMFS's guidance is to incorporate measures into project descriptions to avoid and minimize short-term impacts as much as possible while recognizing the value of long-term benefits and encouraging proven, demonstrated restoration methods that benefit listed species.</p> <p>Add EPA language</p>	
<p>Updates 2021 thru 2023: The USFWS and NMFS worked with applicants in pre-application meetings to front-load avoidance and minimization measures into project descriptions and subsequently incorporated the benefits of restoration into Section 7 consultation documents.</p>	

Further discussion needed?

POLICY ISSUE: Improving Coordination with non-agency stakeholders.

Date initiated:

Priority:

POC: Keith L.

Status: Requires further development

Why is this an issue? Where utilities, flood control districts, railroads, and other entities with easements are present, they can increase the complexity of project design, and coordination with them may result in delays to project authorization and construction. There is an opportunity to improve the timing and quality of communication to facilitate restoration project design and construction.

Initiatives: BRRIT member agencies could develop procedures for more efficient and coordinated outreach to benefit permitting process.

PMC representatives will work on outreach to PG&E to identify lead PG&E contacts and facilitate their participation in future restoration project designs, authorization, and implementation. This could be, for example, by identifying a role for them in the pre-application process for affected projects. For example, on the Tiscornia Marsh Restoration and Sea Level Rise Adaptation Project, BRRIT members organized a meeting with PG&E and the applicant to successfully resolve a complicated issue related to proposed levee lowering, which would impact PG&E's ability to access its towers for maintenance.

Further discussion needed?

POLICY ISSUE: General Programmatic Efforts (E.g., Programmatic permits/guidance for applicants regarding piling removal).

Date initiated:

Priority: 2023, continuous

Agency and/or Legislative Fix? Agency fix.

POC: Jana Affonso, USFWS
Partially accomplished

Status: Requires further development;

Why is this an issue? 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

Initiatives/Potential Initiatives:

- Potential utilization/adoption of State of Washington's guidelines for pile removal
- NMFS and USFWS Programmatic Biological Opinions for restoration projects
- Potential RGP for living shoreline projects.

Updates 2022: The USFWS' Programmatic Biological and Conference Opinion on the California Statewide Programmatic Restoration Effort (Restoration PBO) was completed. State Water Board State-Wide Restoration General Order (SRGO; August 2022)

Updates 2023: The USFWS appended the Palo Alto Horizontal Levee Pilot Project to the Restoration PBO.

Identify projects that are on the BRRIT list and also part of larger statewide efforts Restoration PBO, SRGO, CDFW Cutting the Green Tape's Restoration Management Permit, etc). Evaluate how those state-wide initiatives interact with the BRRIT process in general.

NMFS is planning to initiate a restoration programmatic for SF Bay in 2023.

Further discussion needed?

POLICY ISSUE: Elevation and Resolution of Issues	
Date initiated: 2019	Status: Completed 2020
Agency and/or Legislative Fix? Agency	
POC: N/A	Status: ACCOMPLISHED
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.	

TOPICS FOR FUTURE DISCUSSION	
Outreach to tribal communities and environmental justice communities for BRRIT projects	
Restoring Watershed to Bay Connection to Improve Sediment Supply to Baylands	
Advanced Mitigation for Restoration Projects and Shoreline Planning	