

Regulatory and Permitting Notes

August 31, 2011 @ 9 a.m.

Spatial planning in the ocean environment – potential impacts of development – will need to be addressed in the permitting process.

Part of problem is conflicting code – one section may conflict with another that should be addressed. F&GC Code very old. Stakeholders may protect certain sections and new sections do not always synchronize.

Fully protected species question – can we address in this process? Especially when activity is restoration or protection based. Abolish fully protected status? Focus instead on CESA? Should lead to an improvement in resource protection – not change for change's sake.

Clearer guidance to landowners on what to expect and how best to move forward/participate. Seems to be inconsistency between different staff and regions in applying regulations. For example, would like to see more consistency in application of CESA.

Smaller scale NCCP-type planning? Tulare Basin example.

Challenging to obtain the permits necessary for habitat restoration or improvement. Impression the DFG looks at such projects in a negative light. At the end of the day creating more habitat, but DFG seems to view as development project. “Stand in the way.” Ultimately support because end goal is positive, but super challenging to process. Other agencies tend to move along a bit faster.

“Removing Barriers to Restoration” report from Mary Nichols administration. Has some good suggestions. How can we remove barriers to allow good things to happen?

Consolidation of some of the permit efforts, including commercial? Integrated permits? DFG role to lead effort?

When does DFG defer to the FESA process? Seems like there should be deference when having already gone through the FESA. Better direction in this area?

Contracts Division within DFG does not coordinate well with the project folks on the ground. Creates delays due to lack of synchronicity.

As we move to the next stage, let’s pick the big issues that lead to some of the individual problems. How to prioritize? If we keep talking in this way, will end up with list of problems without any solutions.

Kathy has volunteered to look at the CALFED MSCP process and why it didn’t work. Quick analysis that will further contribute to the conversation.

Lack of communication among the various state and federal agencies. Improved collaboration among the various departments in their permitting processes. “We have different mission and mandate.” Federal agencies have arduous permitting processes, which serves as deterrent to also participating in an arduous state process. Why the duplication between federal and state processes?

Website that provides list of what kinds of info required by different state and federal agencies? Would be helpful in improving understanding. Many agencies generally trying to do the same thing –

increase efficiencies by collaborating and working closer with local landowners (private, agency, and NGO landowners).

Analysis of how federal and state programs are same/different (i.e., FESA and CESA). For CESA and FESA, the state has some requirements that cannot be required by the feds, so it is necessary for the state to conduct its own review/requirements. Example, FESA requires mitigating to the “maximum extent practicable” while CESA requires “fully mitigate impacts.” Sometimes different opinions between state/fed on what is adequate. Recommend amending state law to be more consistent with federal law? Would likely be tough sell. Noelle will look to see if she has a comparison document but will also check on a broader comparison.

Perhaps work with DFG first to meet higher standard, which might help streamline federal process. Landowners seem to most want to know what bar needs to be met, which requires early coordination. Sometime challenging to bring everyone together for early coordination. Applicants often don’t know what to anticipate, and sometimes varies from one DFG region to another. Negotiation is generally project-by-project. Ability to predict requirements is desire of landowners; lessen surprises and unpredictability. Predictability, consistency critical.

Baseline of information and data that can be used/allowed with the different permitting agencies? Ability to use programmatic agreements would be helpful, for both federal and state incidental take.

F&GC does not have the scientific experience, expertise or staffing to be making certain decisions (i.e., listing process). Not why they were originally appointed and such responsibilities should be shifted to DFG.

However, need some greater accountability and transparency with DFG to make that transition. List process is especially problematic. Seems impossible for F&GC to make a listing decision that would withstand a legal challenge. Petitions are increasing, process will simply continue to bounce among F&GC, DFG and courts until some reform. Move to DFG and take out of hands of F&GC. Change statutes?

Real impact of listing the species? Potential harm by listing at state level because of the way feds manage the species (more beneficial than CESA). Example given of tiger salamander and stock ponds – under FESA were helpful but under CESA no longer an option.

Change in culture of how F&GC members are selected – spoil system currently? Should not be a status position. Should be willing to take time and energy to read and learn about issues.

Hesitant to take management of reserves out of hands of F&GC – not sufficient coordination between DFG and other state agencies (such as State Parks). Clarification that this is applicable to the marine side while previous comment applicable to freshwater side.

Wildlife areas are primarily designated for recreational purposes while ecological reserves are primarily designated for protection purposes. For both types, primary purpose is conservation.

Legislature continues to give DFG new responsibilities without adequate resources. DFG needs to prioritize resource allocation to address. Sometimes appears that DFG takes on more responsibilities when not necessary. Broad mandate that takes a lot to manage

Changing interpretations – safe harbor funding/endowment example. Creates road blocks.

We need to keep in mind when making recommendations that what works for one area of California may not work in another area.

DFG needs authority to enter into and make more fluid (contracts, for \$ or people) partnerships. Right now difficult. Cannot be binding. Specific rules that can help facilitate these relationships/partnerships.

Feds have a program called the “Partners for Fish and Wildlife.” State programs for duck stamps, farmlands, etc. as potential examples.

Three types of unfunded or partially/underfunded mandates: “Shall” statutes, functional “may” mandates (permissive statutory or regulatory language with strong stakeholder or control agency support), MOUs and other agreements that require resources. Which should stay and which should go? Can this group help identify which is which? DFG has a list of unfunded mandates. Many fees are not adequate to cover true costs of programs.

Making game wardens part of CHP – is that a possibility or just a rumor? Wardens currently reside within DFG – is that most effective?

Making game code easier to read/use? Local government can help by having F&G advisory groups review and provide comments/suggestions.

Creating greater transparency and accountability in permitting in general – perhaps see other permits issued in an area or for a project, provide feedback on projects, etc. Check on status of permit request.

Ask that DFG staff adhere to the law and not bend to political pressure or allow emotions to get in the way. How to remove undue political

pressure on DFG staff and management? A buffer of some sort?
Pressure can interfere with the quality of work and products.