


California Fish and Wildlife Strategic Vision Project
BRCC-SAG Statutes and Regulations Discussion Notes and Worksheet

Revised January 11, 2012

KEY:  DFG Recommendation (Jan. 5, 2012)

 Potential Action from BRCC/SAG Survey (Dec. 2011); high/low priority responses in parentheses

BRCC = California Fish and Wildlife Strategic Vision Blue Ribbon Citizen Commission

SAG = California Fish and Wildlife Strategic Vision Stakeholder Advisory Group

DFG = California Department of Fish and Game

F&GC = California Fish and Game Commission

General Discussion

Suggestion that the compliance discussion topic be renamed permitting and compliance.

Need to be specific about which permits are being discussed and how to change them.

There is a difference between process as opposed to changing regulations or statutes.

Administrative Procedure Act has tremendous impact on staff work load. DFG does not have any staff dedicated to preparing regulations; instead they are prepped by biologists and other staff who could be doing other work.

The California Environmental Quality Act (CEQA) is a limiting factor – time, cost and litigation comes with the process which drives what DFG can accomplish. CEQA load can be enormous, which limits what DFG and F&GC are willing to attempt.

A-8, B-24, C-13, E-13, E-18, E-19, F-8, F-17, F-20, G-2, G-13, H-9, H-11, H-29 are all really related to training, communication or governance issues, rather than regulatory or statutory.

A-3, A-9, F-13, F-15, F-18, G-14, H-4, I-13 also perhaps not regulatory or statutory in nature; also move to governance?

Programmatic 1600 does not exist in regulation or statute.

When we hear from fishermen that they don't fish a stream because the regulations are too complicated to understand without concern about being in violation, that is an indication that something needs to change.

What is the obstacle that needs to be addressed?

The Law Revision Commission (LRC) is very good at what it does, but it does not have subject matter expertise and must rely on department staff to help identify issues. In addition, the LRC only has five staff statewide at this time, so insufficient capacity to do the work needed for DFG and F&GC. Perhaps have DFG and F&GC staff work with stakeholders to develop a plan for how to approach Title 14 and statutes, before bringing in the LRC. The head of that organization is a BRCC member.

The extent of stakeholder participation in, and expectations of, regulatory processes has increased exponentially. There are process and capacity issues to preparing regulations. Complications are often due to extensive public participation. What does “simple regulations” look like?

Different regulations have different potential “fixes” and need to make conversations specific. In developing regulations seems like catering to public requests as opposed to focusing on the desired end product; need to address internally. Science should be the basis for how regulations are established, yet cannot ignore enforceability. Example of making regulations simpler may be things like reducing the number of fishing days rather than a complex set of cans and can'ts.

Establish a unit that focuses on developing regulations. Suggest those staff also participate in bill analyses.

There is a process whereby DFG can develop legislative proposals, but then there is an entire process of finding a sponsor, etc. to see it through to completion.

Casual users don't seem to fish as much any more because the rules are so complicated. Simplification could encourage more general fishers.

California Endangered Species Act (CESA), CEQA, 1600 permits have most opportunity for simplification? Other successes we can build upon? What path to take? Legislative, regulatory, internal?

Expense for restoration projects too great; cannot maintain the funding and staffing to cover costs in timing necessary to achieve permits. Expense, timeliness for restoration.

Regulations – some need clarification/simplification to match statutes. Example of pests – allowed take changes depending on circumstances. Regulations can be more specific, but cannot be broader than the statutory authority.

Sometimes it's just too difficult to understand what someone can do, when and where.

Another topic, DFG policies need to be more transparent; put in writing what are the internal policies so public can know and understand.

Semantics/nomenclature is important; need to be more specific about what we mean when we say “simplify” or “streamline” etc.

When asking for clarity, consistency, etc., it points to the need for greater attention to the text of regulations.

Part of the problem is communication. For example, regulations book, in order to make smaller, leaves out some of the important background and clarifying information.

One solution to the communication problem related to regulations, is to create a GIS-based system so folks just click on map to know which regulations apply to that geography.

Don't want to forget about core capacity issues; a product may not be what it could be due to insufficient capacity.

CESA does not provide sufficient time for the process; need revisions to the various deadlines. The need for peer review has been reiterated in SAG conversations, but there is not sufficient time under CESA.

Concern about taking lots of time to develop a package of proposed statutory changes and then it goes nowhere without support.

Need to be explicitly clear; regulations are often not understandable by the average person. Improving communication is often expensive and hefty (i.e., fishing regulations books).

Potentially create a centralized, user-friendly format for accessing Title 14 and California Fish and Game Code.

Suggestion that perhaps don't create print documents any longer and just put information online. This is a challenge of making information accessible. Perhaps put a group together to discuss how to deliver regulatory and statutory information.

Programs that create enthusiasm for a particular activity can also be used to help educate the public about related regulations.

Simplifying does not necessarily affect opportunity. Complex regulations do, however, have an impact in court. In some cases complexity is the result of trying to provide flexibility.

G-21 about arbitration in CESA. There is a cost involved with arbitration. Under the 1600 process arbitration is not common. Incidental take permits, once issued, come from DFG as an organization, not an individual staff member within the organization. Without written policy there is not confidence by the public that the staff member is following policy; different application in different regions.

Arbitration has become to some degree "litigation light." If the concern is about a particular person's decision, perhaps the solution is an internal process for appeals (similar to what some local governments use).

Habitat Conservation Supervisors Group – Group meets in person two to three times a year and by conference call every month. Discuss permitting actions to help ensure statewide consistency. Internal to DFG. Perhaps CESA application? More "mysterious" to the average person, but an application, templates or something similar would help the public better understand. Most commonly applicants don't understand the mitigation ratios. Permit requirements should be completed up front (pre-project planning).

Homework Recommendations

Simplification: Develop work group made up of staff and stakeholders to review Title 14, improved website access and easy of searching for information online, ensuring written department policies and accessible to the public, work group of staff and stakeholders to review how information about regulations are presented to the public (including map-based options, regionally-based documents, accessibility, etc.)

CESA: Listing and delisting process/regulations and coordination with federal ESA.

Fully-protected species: Abolish, amend, allow incidental take for recovery and restoration activities. Include G-18.

Regulations unit: Create a unit with DFG and F&GC staff to develop regulations

Programmatic 1600: Potential fee structure change?

Statutory CEQA exemption for small-scale restoration projects (there is an existing categorical exemption but there are triggers)

Permit communication: A-9, G-14, H-4, H-6

Homework Volunteers: Brenda Berman, Noelle Cremers, Dennis DeAnda, Curtis Knight, Sonke Mastrup, Julie Oltmann, April Wakeman, Marci Yaremko

TOPIC	POTENTIAL RECOMMENDATION(S) TO ACHIEVE GOAL(S)	GOAL AND OBJECTIVE
Improved Coordination and Effectiveness	<p>(Number 5, bullet 3) Create a dedicated joint department and FGC Commission Regulation and Policy Support unit that will provide a centralized, consistent and compliant operation that focuses on the regulatory process and improves the quality and effectiveness of regulatory and policy interactions between the Department and the Commission.</p> <p>(Number 8B, bullet 2) Provide positions that focus only on compliance monitoring once permits are issued.</p> <p>(No. 5 – bullet 4) Seek authority to sponsor or support legislation for a statutory CEQA exemption for small scale restoration projects and for DFG / WCB actions to “pass through” bond or federal funding for such</p>	<p>Goal 3. An Effective Organization</p> <p>Objective 1: Coordinate resource</p>

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	<p style="text-align: center;">projects.</p> <p>(No. 5 – bullet 5) Seek authority to sponsor legislation that would allow incidental take under certain circumstances of “fully protected” species related to management activities (e.g. fold into the California Endangered Species Act (CESA) or mirror CESA take authority.)</p> <p>8A: 8. Implement an online permit tracking system so that an applicant can follow an application from beginning to end (10-0)</p> <p>8B: 24. Simplify the permitting system for habitat restoration projects to expand partnership with private landowners (9-0)</p> <p>8C: 13. Improve implementation timelines and local participation in Natural Communities Conservation Planning Program (6-0)</p> <p>8E: 18. Work jointly with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to improve the processes for issuing permits under the federal Endangered Species Act and the California Endangered Species Act (8-1)</p> <p>8E: 19. Work jointly with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to coordinate and partner on enhancement/recovery activities for listed species (6-0)</p> <p>8F: 8. Increase permitting coordination with U.S. Fish and Wildlife Service and other state and federal agencies (to provide more consistency to permit applicants and improve ease of compliance)</p> <p>8F: 17. Develop a programmatic 1600 streambed alteration permitting process for restoration, enhancement and rehabilitation projects (e.g., Marin Resource Conservation District) (5-0)</p> <p>8F: 21. Use the Fish and Wildlife Coordination Act (federal project related to water development) as model for better permit coordination (0-1)</p> <p>8F: 20. Have DFG develop a clear list of what an applicant needs to provide during a permit process (3-0)</p> <p>8G: 2. Review criteria for categorical California Environmental Quality Act exemptions for small-scale restoration projects and explore National Environmental Protection Act criteria (Fisheries Restoration Program is an example to use)</p> <p>8G: 7. Identify necessary reforms to statutes or regulations that would facilitate greater public and private use of key regulatory programs that provide broad public and private benefits (i.e., Natural Communities Conservation Planning</p>	<p>planning, policies, practices, processes and regulations with other agencies and organizations (permitting, planning, etc.)</p> <p>Goal 4: An Efficient Organization</p> <p>Objective 2: Develop simple, clear and consistent governance and permitting practices and processes</p>

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	<p>Program, streambed alteration permitting, landowner incentive programs, timber harvest plan review process) (2-0)</p> <p>8G: 13. Develop a list of all permits issued by DFG and permits issued by other agencies/ organizations that necessitate coordination with DFG (1-2)</p> <p>8G: 18. Review the fully-protected species statute with California Endangered Species Act listing process and consider which species should be taken off the fully-protected list and/or moved to a California Endangered Species Act listing (2-0)</p> <p>8H: 9. Offer an online permit tracking system so that an applicant can follow an application from beginning to end (3-0)</p> <p>8H: 10. Allow for arbitration or mediation over permit standards (draft permit stage – before final) (1-1)</p> <p>8H: 11. Educate other law enforcement agencies about fish and game code and regulations (1-0)</p> <p>8H: 29. Educate district attorneys and judicial branch about fish and game laws and regulations (1-0)</p>	
Streamlining	<p>(Number 4, bullet 2) Request a thorough review and revision to the Fish and Game Code towards more readily understood and enforceable fishing and hunting regulations.</p> <p>8A: 7. Simplify regulations (makes it easier to communicate them more effectively) (10-0)</p> <p>8E: 2. Review the California Fish and Game Code and Title 14 Code of Regulations, and coordinate them with the mandates of other fish and game resource management entities (8-0)</p> <p>8F: 12. Review delegation of authority and place similar authorities in the legislature or F&GC, but not both (i.e., fees, fishing regulations) (4-1)</p> <p>8F: 19. Simplify/streamline the scientific collecting permitting process (2-2)</p> <p>8G: 5. Request that the California Law Revision Commission “clean up” the California Fish and Game Code and Title 14 fish and game regulations (“clean up” meaning to eliminate redundancies, eliminate no longer applicable statutes and regulations, and simplify statutes and regulations where possible) (17-0)</p> <p>8G: 8. Identify and reduce gaps and overlaps in regulatory processes (1-0)</p> <p>8G: 6. Make more clear and concise the regulatory language used to implement statutes (0-0)</p> <p>8G: 11. Set regulations for ecological issues (i.e., reserves) with DFG (professional staff) rather than F&GC (1-4)</p>	<p>Goal 3. An Effective Organization</p> <p>Objective 3: Develop, align and inform clear fish and wildlife statutes , regulations and governance</p>

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	<p>8G: 12. Move California Endangered Species Act listing decisions from F&GC to DFG (consistent with making decisions based on objective, scientific expertise) (3-3)</p> <p>8G: 15. Coordinate permitting regulations with other agencies (1-1)</p> <p>8G: 16. Allow incidental take of fully-protected species under any circumstance (1-8)</p> <p>8G: 19. Abolish the fully protected species status and only list species under the California Endangered Species Act (0-2)</p> <p>8G: 20. Allow federal Endangered Species Act requirements to be sufficient for meeting California Endangered Species Act requirements (3-1)</p> <p>8G: 21. Allow an arbitration process under the California Endangered Species Act that would allow DFG and an applicant to mediate any dispute on permit conditions and related matters (see Section 1602 Lake and Streambed Alteration Program) (1-2)</p> <p>8G: 23. Utilize technology to enhance regulatory programs and reduce costs (i.e., electronic monitoring of permitted activities to ensure goals are achieved) (0-0)</p>	
<p>Internal Efficiency and Effectiveness</p>	<p>(Number 8B, bullet 1) Provide permit issuance training for DFG headquarters and regional staff.</p> <p>8A: 3. Provide information on regulations and events online and by phone -- with limited written materials (3-1)</p> <p>8A: 9. Offer more workshops to help in preparing permit applications (2-2)</p> <p>8F: 15. Remove barriers to restoration related to permits—see Barriers of Restoration Report, Resources Agency 2003 (7-0)</p> <p>8F: 13. Improve consistency of permitting by project type and between regions and offices, while recognizing local differences (6-0)</p> <p>8B: 21. Ensure internal capacity to manage cooperative agreements and contracts (positive example is the Condor Program) (0-0)</p> <p>8F: 18. Develop a smart permitting system (e.g., the system should know the difference between a highway project and a restoration project) (4-0)</p> <p>8F: 14. Internally track the amount of time required to process a permit application; review findings to determine if the</p>	<p>Goal 4: An Efficient Organization</p> <p>Objective 1: Align internal governance practices, processes and structures (permitting, planning, organizational structure, etc.)</p>

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	<p>timing is acceptable, if timing differs among regions, and if any parts of the program need refining (2-2)</p> <p>8G: 14. Ensure the general public is provided with a permitting process that is transparent, consistent, efficient, and accessible (4-0)</p> <p>8H: 4. Provide automated information on regulations, permits, etc. online and by phone (4-0)</p> <p>8H: 6. Dedicate staff time to working with project applicants on pre-project planning (i.e., workshops to help prepare permit applications) (4-2)</p> <p>8I: 13. Offer California Endangered Species Act and California Environmental Quality Act training to all staff (2-1)</p>	