

Salmonid Restoration Federation
Restoration Permitting Workshop (Mendocino)
November 12-14, 2003

Permit Coordination Programs

“Permit Coordination for the North Coast”

Nov. 13, 1:00 PM

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See PowerPoint

Introduction

I want to share a process that is going to make our jobs more effective and easier. There is a lot of money coming into this area-- a lot of money coming in through the federal Farm Bill. My organization's fear is that we can't find a way around some of these barriers, and that money gets tied up and doesn't get spent. Congress thinks that if we don't spend the money we don't need it or want it. If we lose this money it's not going to come back.

I want to share a program that we've developed in partnership with the USDA's Natural Resources Conservation Service (NRCS), California's Resources Conservation Districts, and local, state and federal regulatory agencies that really coordinates a process of getting the restoration permits, and makes it all much easier. The program ends up being a real encouragement for the landowner that restoration project managers serve.

I think that a lot of the progress that we want to make in restoration over the future is going to happen on and around private land. It's going to have to be voluntary. To effectively do this we can't put a bunch of barriers in their way.

This program really is a partnership. We can't do this all by ourselves. There is a role for all of us in this.

Sustainable Conservation is a private 501c(3) nonprofit. Our mission is to partner with businesses, private landowners and get them to engage in proactive, voluntary conservation. The way that we do our work is to take a look at what the incentives and disincentives actually are.

We take a collaborative problem solving approach. We want to end up with things on the ground that are meaningful. We realize that leveraging relationships and partnerships is a great way to do business. We have the private sector (the landowners) involved, the public sector (the regulatory agencies), and the NGO-nonprofit sector. Pooling our resources together is how we

are going to find solutions to some of the complex problems that we are facing. (*Sustainable Conservation* receives its funding from these three sectors, as well.)

The permitting agencies have a hard time dealing with the *Endangered Species Act*. Their hands are tied. We have to work together to come up with solutions.

Erosion, sedimentation, habitat loss... a lot of it is coming off private lands; a lot of it is coming off farming, ranching, timber... We know the problems and we know their solutions. But why isn't more being done?

Basically, to motivate landowners to do the work are the *incentives* and *disincentives*. Most landowners want to do the right thing. They just have a hard time figuring out what that is. What motivates a private landowner? If a farmer or rancher or timber producer is uncertain about how management practices are going to affect their bottom line, that is a disincentive. Not only are they concerned about using BMPs (best management practices), but what does it cost to maintain them? How much work is going to take?

What we have found is that when you have all the incentives in place, the disincentives outweigh them. The regulatory review process is one of the biggest disincentives for private landowners to actually do restoration projects. There are good projects but they can't make their way through the permitting process. There isn't a guidebook. I hear from farmers, "I want to do the right thing, but it's against the law."

The regulators are overworked and understaffed, and their staff is going to be cut more and more. They are constrained by the same laws they are in charge of implementing. The *Endangered Species Act* doesn't give a lot of leeway. As people doing the restoration work, it is our responsibility to understand their side. Sometimes restorationists ask for things that these agency personnel just can't legally give. What happens when CDFG, NOAA Fisheries/NMFS, or US Fish & Wildlife Service fudges and they do some things to help a restoration project along, and they get sued? There are all these third-party law suits going on. These agencies are not rewarded for doing the right thing. We have to understand this if we want to work together and move forward.

This is a really hard process that can take a lot of time and cost a lot of money. It is impeding our ability to get this restoration work on the ground.

We got our start in developing a solution to this regulatory situation down in Elkhorn Slough, Monterey county. It is about 48,000 acres. It is an important stop on the Pacific Flyway, an important wetland area, a beautiful place, great for kayaking. It is surrounded by really intensive agriculture-- strawberry farming, mostly. The soils are really sandy, and erosive. There are three or four crop rotations a year. So, there is a constant sediment input that is destroying the slough system. All this Ag land just drains right into the slough.

There are ways to deal with it. The NRCS, the RCD, and the Elkhorn Slough Foundation are doing a lot of outreach to the farming community. The technical assistance was there and providing cost-sharing upwards of 75 to 90 percent could be matched by labor. They were doing demonstration projects on BMP implementation. They were doing the whole nine yards. And they were going out there 5 months later, and nothing was done. When they asked the farmers why wasn't anything getting done, the farmers said, "We couldn't pull the permits for it." The farmers didn't have the time or expertise, and no one to guide them through. It just wasn't worth it. Even with all that work being done for them.

The regulators want the same thing that the non-profits and the landowners want. Over time, we developed a strategy that has been replicated in Morro Bay, and the Navarro Watershed in Mendocino county. We are going in the Salinas River, into Marin, Santa Cruz, and the year after probably into Alameda county, and hopefully in Humboldt county, as well.

The basic strategy for solving the problem is first creating a partnership. Getting the folks like the NRCS, the RCD (those that are trying to support the landowner), and figuring out what is it that you want to do, what are the resource concerns, and what are the activities you want to do. Once, this is in mind we try to get all the regulators in the same room at the same time, all the agencies, the field and the management staff as well. Once we get their general support there, then we arrange some tours and show the folks the kind of work people were doing. Then we worked with the agencies to develop “protection measures.”

If you want to do a particular activity (like a streambed restoration project), what is it that you are going to have to do to protect the resources? You build those into the program on the front end of things. We went to all the agencies and said, “Let’s just assume that all the endangered species are actively present on a site. If the site has fish and red-legged frogs, it had a willow flycatcher, a salamander... How is it that we generally have to design this streambed protection project? What are the protection measures? We included all of these so all of the projects that are done under the program will automatically have these “protection measures.”

Then the agencies threw in a couple more protection measures into the program. We said we wanted a specific set of activities to happen in the watershed sometime over the next five years. We don’t know exactly where they are going to happen because we don’t have the landowners onboard yet. But when this does happen, we want to do the projects and we want to do them right. To get this type of approval we had to agree to limit the projects by saying they could only happen, for example, between June and October 15th; the project couldn’t be any bigger than “X”; if there was a specific type of habitat, then you did “Y.”

Once we got all of these worked out ahead of time with the agencies, then we put together what we call our “requests for programmatic approvals”. This is the core of this program. At a watershed level, for these activities we want to do— filter strips and sediment basins, and fish habitat improvement— we have to get away from this review of each project one by one. We need a “programmatic approach” to do it. An example of this is, working with NOAA Fisheries/NMFS we have gotten programmatic Biological Opinions for the projects, or programmatic ways of “concurrence” (e.g. if you do the practices in this way, then they are going to fly through our process). With Army Corps we have used “regional general permits” (e.g., these are the practices, these are the conditions, as long as they are done in this manner, then you are covered by this regional general permit.) In other words, all this work is done up front so that the landowners and organizations that are doing this work can get the individual projects through faster.

Naturally, things do not always go as smooth as we would like. When we put in our request for a programmatic approval, there is a series of revisions, and revisions, and more revisions. Hopefully, by the time you are done with each of these programmatic approvals that: A) You come away with what you started with, and; B) They were not tweaked so much by the different agencies that they don’t match.

This is *Sustainable Conversation's* job— working with the different regulatory agencies and partners to try to keep these programmatic approvals all aligned and going in the same direction. Making sure that when it's done that it not only meets the agencies' and the environment's needs, but it is actually a tool that can be used by the NRCS and RCD, and the landowners. If we condition these programmatic approvals too narrowly, they may be too cumbersome, and we have wasted a lot of time.

The way it has worked in the past, once the programmatic approvals have been issued, is the programmatic approvals are either permits, or memorandums of agreement or understanding. These are issued to the NRCS and the RCD. If the landowners want to participate in the program, they essentially have to go through these agencies. They have to sign an agreement that they are going to follow the rules that have been established in the program.

Once the permit coordination program is on the ground, it is not a blanket for landowners to just go out and do these activities wholesale without doing any kind of notification. This is a really important point. All the different projects that happen each year are required to do pre-notification before the project is implemented. For example, in Morro Bay we have one project pre-notification form that goes to all the federal agencies. In return from the agencies for giving them all the information they want, in the way they want it, and at the right depth, we usually have a turn around time of 30 to 45 days on the pre-notifications. The NRCS takes on an additional role of making sure that these projects function as they were designed over time. For five years, they go out and do annual monitoring and documentation, making sure that the aspects of the project are still holding up (e.g., that the willows are growing, the sediment abatement is still functioning...). Every year they give an annual report to the agencies that describes where the projects happened, what the new projects are this year, what the benefits are, and what the past years' projects look like.

Now what we have is that a landowner can come into NRCS and the RCD in March saying, "I have a sediment problem," and by the end of June, they could have the project designed. By the end of July, they could have the pre-notifications completed, and approvals. By the end of August, they could be out there fixing the problem.

This approach is not going to complete restoration of seven elements of a fish stream, but a lot of it is projects that need to happen on every single agriculture property in this state. Road erosion and livestock BMPs are typical projects that we can get covered under this program. Environmental protection measures are added to the standard BMPs. This program has to result in a net environmental benefit.

The NRCS plays a key role in our permit programs. This entity provides a federal nexus for an *Endangered Species Act*, Section 7 consultation. This is critical in terms of getting the program agreements from NOAA Fisheries/NMFS and US Fish and Wildlife. The NRCS also has a conservation planning process. A lot of the regulators need accountability and credibility. NRCS has the technical expertise on these kinds of projects. This entity really has its act together in most places in California. It has the capacity (e.g., dedicated staff) to administer the program once the approvals are in place. It can do the reporting, and can communicate with the agencies if something is not going well for whatever reason.

This process saves a lot of time. It is an awesome amount of work to write a biological opinion each and every time a project is proposed. Cross-training of different agency staff occurs in the pre-notification. They are getting the right information. The information they need for the analysis.

Sustainable Conservation got a 319h grant from Regional Water Quality, Region 1 to get this permit coordination program going in Humboldt county. It looks like Coastal Conservancy is going to come through with funding. Humboldt county is a priority area for restoration efforts. The regulatory review process is really impeding this from happening. We have a real opportunity to modify the permit coordination model to cover multiple watersheds. For the first time, we are going to try to extend this process beyond our NRCS and RCD partners. We are getting together the first part of December. There's a lot of groups like RCAA, and the Mattole River Restoration Council, and others that are performing the same kind of role as that of the NRCS. If we are successful in doing this, it could provide a model for other parts of the state, and for other states as well.

The regulators are more and more trying to take this programmatic approach because it leads to conservation and better quality projects.

Question: Have you done any work with the big timber companies? Are they on coming onboard, or do they think they have already got it though funding from CDFG and its programmatic funding.

BN: We have not dealt with any large commercial operations because NRCS has been our partner, and it doesn't typically work with the larger commercial interests. The focus is on the smaller landowner. PALCO, or another big operation will just go out and hire a consultant to get the permitting work done. It's faster, and therefore more cost effective for them.

Question: One county agency was finding that landowners would not cooperate with its restoration focus because they feared that it would bring endangered species on to their property and they would have to deal with more restrictions or regulations. They didn't want a culvert barrier to be replaced because it kept the salmon off their property.

BN: You have to take a step back and ask why don't these landowners want the endangered species on their property? The reason is that they are afraid they are not going to be able to feed their family, if it is an agricultural operation. Or, if it is a business, that they are not going to be able to conduct business to make a profit. A lot of times, this fear is misplaced. But it doesn't matter if it is misplaced or not. It is real for the person that holds it. You have to go out and build a relationship in order to explain that this is not the case, or to find ways to protect them. It can be done.

At the county level, we have gotten exemptions from grading ordinances. From CDFG, we have done something really innovative recently. In CDFG Region 3, with Rob Florey's group, we have a Regional MOA for the program. It has a process for bringing new watersheds in. We are starting to work on a MOU between NRCS and the RCDs and NOAA Fisheries/NMFS. We are looking a programmatic Biological Opinion on an activity. We are drafting an MOU between the Army Corps and the NRCS statewide for setting up a process for doing regional general permits.

TIP: You don't have to wait for *Sustainable Conservation* to come to your neighborhood. You can do a programmatic agreement yourself. If you have fifty-seven projects identified in a road survey, don't try to get fifty-seven 1603 permits. Call it one project with fifty-seven "action

areas.” Federal agencies would much rather do one Biological Opinion on that big project with all those action areas than do fifty-seven of them. The agencies really respect this in terms of cumulative impacts and cumulative benefits. You’ll save yourself a lot of money.

Comment: I was told that National Fisheries can do a Biological Opinion for a watershed, for ready projects, and for projects that are in the concept stage.

BN: That’s right!

Dick Butler (National Fisheries/NMFS): In working on the Navarro, it didn’t take that much extra effort and it has really paid off for us and the landowners.

Question: Is there a document or permit?

BN: That’s a good question. The program is a group of individual programmatic agreements that we pulled together into a program, in a process for conservation project design and implementation.

On the Navarro, we did not need a *grading permit* because there isn’t a grading ordinance in place for Mendocino county; For CDFG there is a *Region 3 MOA*, and it has a “*template 1603*”; the Navarro avoided the coastal zone, so the Coastal Commission *regulatory process* was avoided. The Regional Water Quality Control Board was the *CEQA lead*, and it issued a *401 permit* under the *Porter-Cologne Act*, so that covered the water quality issues. We are using the Army Corps’ *NationWide 27*, because all of the activities fit under *NationWide 27*. We got a *programmatic concurrence* with US Fish and Wildlife-- the activities weren’t going to impact any of the US Fish and Wildlife listed species. With NOAA Fisheries/NMFS we got a *programmatic letter of concurrence* because we avoided the listed species altogether by say saying that they are present and by avoiding them by staying out of the water. Those projects that would be in the water would go through the normal permitting.

On Morro Bay, we the endemic endangered species are much greater than Navarro, the county had an existing *grading exemption* for NRCS/RCD projects that had an additional state permits; the Coastal Commission did a “*federal consistency review*” because the federal NRCS agency administered the program; The Regional Board issued a *programmatic 401 Certification*; we used CDFG’s *Region 3 MOA* and a different *template 1603* that fit the activities in Morro Bay and the watershed conditions; an *MOU* from the Army Corps in Ventura that said how we would use the *NationWide permits with agreement* that Army Corps would turn these around in 30 days; we have a *programmatic biologic consultation* from NOAA Fisheries/NMFS and a *tiered Biological Opinion* for the “wet” projects; and a *programmatic biological opinion* from US Fish & Wildlife Service. We also constructed how the reporting would happen.

The agreements *Sustainable Conservation* developed are not on its Web site but we are happy to send them to those interested. We are moving to train watershed groups to play our role. I encourage anyone to use these agreements as a starting point for setting up programs with your agencies and regulators. But if you can’t think like a regulator to start with, you are not going to be successful.

Question: What is Army Corps NationWide Permit Number 27?

BN: If you do a project in an approved or certified NRCS plan then NationWide 27 covers this. You have to be careful. There isn't anyw here in California w here you don't get taken to "reporting status" because of endangered species or sensitive wetlands. "Nationw ides" are all "reporting" and the Corps has to consult w ith the other federal w ildlife and fish agencies. If they don't have the right information, or if their office is understaffed all the time, they just can't move these permits and reports around fast enough. That's w hy the "programmatic biological opinion" is really important.

You should think about using NRCS. It has a lot of money coming in through EQIP and the new Farm Bill program. You should think about cost share w ith it. They are looking for w ays to spend their money. At the federal level, just like at the state level, funding is going to larger contracts. If you are w orking w ith local landow ners and consistently request funding for a smaller project, they respond to the request of NRCS.

We are having a training program at the end of 2004. Give Carolyn Redw ick in our office a call.

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