

Updating the California Eelgrass Mitigation Policy (CEMP)

Key messages

- An updated CEMP would better position California to meet its ambitious goals for eelgrass protection, conservation, and restoration.
- The CEMP update process falls within the National Marine Fisheries Service's (NMFS) long-range work plan. In its 2014 Initial Notice, NMFS intended for the CEMP to be reviewed every 5 years to "improve our understanding of eelgrass habitat function, impacts, assessment techniques, and mitigation efficacy."¹
- Emerging science has amplified the need to protect eelgrass to mitigate climate impacts including sea level rise, ocean acidification,² and harmful algae.³
- Healthy and abundant eelgrass beds support California's coastal economy and can be an important part of the state's economic recovery.

Policy options

- Adopt a resolution at the Ocean Protection Council (OPC) supporting a substantive update of the CEMP by NMFS.
- Project applicants and regulatory agencies can better plan and streamline permitting activities related to eelgrass if the CEMP is updated to provide more clarity.
- An updated CEMP provides increased certainty to project applicants for dredging, aquaculture, construction, and other projects.

Executive Summary

The California Eelgrass Mitigation Policy provides guidance to California regulatory agencies related to existing federal laws that require no net loss of eelgrass habitat function.⁴ The CEMP is specifically cited by the OPC in its 2020 - 2025 Strategic Plan and Target 3.1.4 directs the OPC to "Work with partners to preserve the existing, known 15,000 acres of seagrass beds and create an additional 1,000 acres by 2025." California has ambitious goals for eelgrass protection, conservation, and restoration. In addition to the OPC, all California regulatory agencies with coastal jurisdiction have also identified eelgrass as a priority in their strategic plans. After six years of implementation, California regulators have identified key areas in the CEMP that would benefit from a substantive update. The update would provide further clarity (Box 1) when implementing the policy in California leading to improved outcomes in meeting California's goals for eelgrass.

¹ https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/eel_grass_cemp_faq_112014.pdf

² <https://www.oceansciencetrust.org/wp-content/uploads/2018/01/OA-SAV-emerging-findings-report-1.30.18.pdf>

³ <https://peeri.com/articles/8869/>

⁴ https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf

BOX 1**California Eelgrass Mitigation Policy updates that would improve outcomes for eelgrass**

- Incorporate emerging science on the role eelgrass plays in mitigating climate change impacts (e.g. sea level rise, acidification, hypoxia).
- Ensure that mitigation ratios, buffer zones, and avoidance measures are discretely defined using the best science available to effectively achieve ecosystem function replacement.
- Increase the focus on the protection and restoration of degraded and historical eelgrass beds that are designated as Essential Fish Habitat.
- Ensure that avoidance of impacts is more clearly prioritized above minimization and mitigation.
- Address adverse impacts to suitable eelgrass habitat and provide a mechanism for ensuring there will be places for eelgrass to migrate with sea level rise.
- Require baseline assessments to use multi-year surveys to account for inter-annual and seasonal variability.

What is the California Eelgrass Mitigation Policy and process for updates?

The California Eelgrass Mitigation Policy (CEMP) provides guidance to state regulatory agencies related to federal laws that require no net loss of eelgrass habitat function. Due to its importance to species managed under the Magnuson Stevens Fishery Conservation and Management Act and its classification as a special aquatic site under the 404(b)(1) guidelines of the Clean Water Act (40 C.F.R. § 230.43), eelgrass requires strong protections. The CEMP states that “approximately every 5 years, the National Marine Fisheries Service (NMFS) intends to evaluate monitoring and survey data collected by federal agencies and action proponents per the recommendations of these guidelines. NMFS managers will determine if updates to these guidelines are appropriate based on information evaluated during the 5-year review.” Currently NMFS is collecting data to begin the evaluation to determine if the CEMP needs to be updated. There is currently no specific timeline or deadline associated with this process.

How do California’s goals for eelgrass intersect with the CEMP?

There are multiple links between existing California ocean and coastal law and policies to the CEMP. California has made it a strong priority, across departments and agencies, to increase the protection, conservation, and restoration of eelgrass. The *Ocean Acidification and Hypoxia Reduction Program* (SB-1363), passed in 2016, calls out the multiple co-benefits of eelgrass and directs the Ocean Protection Council to prioritize protection and restoration of eelgrass. The Coastal Conservancy, Coastal Commission, State Lands and Water Resources Boards Strategic Plans all include prioritizing the protection and restoration of eelgrass and/or eelgrass habitat such as coastal bays, estuaries, and wetlands statewide.

The *Safeguarding California Plan: 2018 Update* prioritizes natural infrastructure solutions, like eelgrass, that build climate preparedness, reduce greenhouse gas emissions, and produce other multiple benefits. The Ocean Protection Council’s “*Strategic Plan to Protect California’s Coast and Ocean 2020 - 2025*” Section 3.1.4 directs the OPC to “Work with partners to preserve the existing, known 15,000 acres of seagrass beds and create an additional 1,000 acres by 2025”. This will require

bold sustained action to achieve this ambitious goal. The primary action related to this goal is to “support projects that protect existing and potential eelgrass habitats as identified in habitat suitability mapping, consistent with the National Marine Fisheries Service’s California Eelgrass Mitigation Policy as key policy and technical guidance for protecting and restoring eelgrass.”

The Coastal Commission, State Lands Commission and the State Water Resources Control Board as well as other state agencies use the CEMP to guide their processes related to permitting. Permitting for coastal development, aquaculture, mariculture and any activities that may impact the public trust natural resources, all use the CEMP to guide actions related to avoidance of impacts to eelgrass. When impacts cannot be avoided, the CEMP provides specific replacement ratios, mitigation planning and monitoring requirements. Due to its regional-scale mitigation requirements, an updated CEMP will also help support a key goal of the Legislative Analyst Office’s recommendation to “Foster Regional Scale Adaptation” in its 2019 report, “*Preparing for Rising Seas: How the State Can Help Support Local Adaptation Efforts*”.⁵

Why does the CEMP need to be updated?

The implementation of the CEMP in 2014 was an improvement to the piece-meal approach to addressing conservation of eelgrass in project reviews previously used across the state. Since that time, emerging science and experience by regulators implementing the CEMP on-the-ground have resulted in a clearer understanding of what sections in the CEMP would benefit from updates and additional clarity. CEMP updates that would improve outcomes for eelgrass include:

- incorporating emerging science on the role eelgrass plays in mitigating climate change impacts (e.g. sea level rise, acidification, hypoxia);
- using the best science available to discretely define mitigation ratios, buffer zones, and avoidance measures to effectively achieve ecosystem function replacement;
- increasing the focus on the protection and restoration of degraded and historical eelgrass beds that are designated as Essential Fish Habitat;
- more clearly prioritizing avoidance of impacts above minimization and mitigation;
- better defining adverse impacts to suitable eelgrass habitat and providing a mechanism for ensuring there will be places for eelgrass to migrate with sea level rise;
- requiring baseline assessments to use multi-year surveys to account for inter-annual and seasonal variability.

Why might the OPC want to adopt a resolution supporting an update of the CEMP?

The OPC serves as the unifying policy lead for coast and ocean policy in California. The leaders of the regulatory agencies nested within the California Natural Resources Agency look for direction from the Secretary for Natural Resources and the OPC to provide consistency and efficiency in accomplishing their individual mandates. A resolution outlining the significant accomplishments of the CEMP to date and making a clear case for a substantive update would provide a strong signal that California is committed to continued progress on its ambitious goals related to eelgrass. An OPC resolution would add support and weight to the current review process at NMFS, as well as provide additional capacity to that evaluation by providing specific recommendations for improvements. A substantive CEMP update also has a clear nexus with Secretary Crowfoot’s “*Cutting the Green Tape*” initiative, and a resolution would be an opportunity to further highlight

⁵ <https://lao.ca.gov/reports/2019/4121/coastal-adaptation-121019.pdf>

this important effort. Most importantly, a resolution would help ensure the evaluation process continues moving forward at NMFS and will result in a substantive update that improves the protection, conservation, and restoration of eelgrass in California.

Who supports updating the CEMP?

A broad and growing coalition of non-governmental organizations and stakeholders are advocating for NMFS to undertake a substantive update of the CEMP to improve California regulatory agencies' ability to protect, conserve and restore eelgrass. Selected supporters include:



Conclusion

The CEMP has been instrumental in creating a successful collaboration between state and federal partners to achieve the shared goal of no net loss of eelgrass habitat function. The CEMP has been implemented in California for six years and there are data available related to the performance of projects undertaken using the CEMP guidelines. In addition to the data about the projects themselves, California regulators have identified areas in the document that could benefit from additional clarity. An influential group of NGOs and stakeholders are partnering with state regulators to develop a focused list of components in the CEMP that would benefit from a substantive update. Advances in our understanding of eelgrass ecosystem services as they relate to climate change impacts, drone and other remote sensing technologies and our ability to plan for sea level rise impacts all warrant a substantive update of the CEMP. In addition, further clarity on the requirements and priorities in the CEMP would improve California regulators and project proponent's ability to effectively and efficiently plan for and implement the requirements of the policy.