November 2014

NOAA FISHERIES

WEST COAST REGION

California Eelgrass Mitigation Policy and Implementing Guidelines Frequently Asked Questions

What is the purpose of the California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP)?

The purpose of CEMP is to promote consistent eelgrass management in California based on the best available science to achieve no net loss in eelgrass habitat function. The CEMP will serve as guidance for National Marine Fisheries Service (NMFS) biologists and managers for developing recommendations concerning eelgrass impacts through Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Fish and Wildlife Coordination Act (FWCA) consultations and National Environmental Policy Act (NEPA) reviews throughout California. This policy will also inform NMFS's position on eelgrass issues for California in other roles as a responsible, advisory, or funding agency or trustee.

Is the CEMP a new review layer for project permitting?

The CEMP supports but does not expand upon existing NMFS authorities under MSA, FWCA and NEPA. A primary objective of the CEMP is to ensure that NMFS provides clear and consistent recommendations for avoidance, minimization, and effective mitigation of unavoidable losses to eelgrass function when implementing our existing authorities.

How does CEMP relate to the Southern California Eelgrass Mitigation Policy (SCEMP)?

In southern and central California, eelgrass mitigation has been addressed in accordance with the SCEMP applied by NMFS, US Fish & Wildlife Service, California Department of Fish and Wildlife, California Coastal Commission, US Army Corps of Engineers, and other resource and regulatory agencies since 1991. Given the success of the SCEMP over its 20-year history, the CEMP reflects an expansion of the application of the Southern California policy with minor modifications to ensure a high standard of statewide eelgrass management and protection. The CEMP supersedes the SCEMP for all areas of California.

How will other Federal and state agencies implement CEMP?

NMFS developed the CEMP as internal guidance for staff implementing existing NMFS authorities under MSA, FWCA and NEPA. NMFS sought and received input from other federal and state agencies during development of CEMP and intends to collaborate with relevant federal, state, and local agencies to achieve consistency in approach to actions affecting eelgrass. The CEMP does not direct other agencies in their management of eelgrass, and NMFS has no control over how other agencies may (or may not) apply CEMP during their permitting or review processes.

How does the CEMP define eelgrass habitat?

The CEMP defines eelgrass habitat as areas of vegetated eelgrass cover (any eelgrass within 1 m^2 quadrat and within 1 m of another shoot) bounded by a 5 m wide perimeter of unvegetated area . Unvegetated areas may have eelgrass shoots a distance greater than 1 m from another shoot, and may be internal as well as external to areas of vegetated cover. For isolated patches and on a case-by-case basis, it may be acceptable to include an unvegetated area boundary less than or greater than 5 m wide. The definition excludes areas of unsuitable environmental conditions such as hard bottom substrates, shaded locations, or areas that extend to depths below those supporting eelgrass.

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Why are there different recommended mitigation ratios for different parts of the California?

The CEMP Implementing Guidelines utilizes a ratio calculator that was developed by NOAA's habitat program for the purpose of identifying mitigation ratios to achieve no net loss. The calculator includes a number of metrics to determine appropriate ratios that focus on comparisons of quality and quantity of function of the mitigation relative to the site of impact to ensure full compensation of lost function. For example, the calculator incorporates the time it takes for a mitigation site to provide full replacement of eelgrass services lost at the impact site. A standard 1:1 ratio does not incorporate diminished services during the 3-5 years that a newly created eelgrass bed is developing. The calculator also accounts for the likelihood of mitigation success based on past experience and mitigation complexity. Specifically, with a low likelihood of mitigation success, a higher mitigation ratio will prescribe a mitigation area larger than the impact area, such that with lowered success over part of the mitigation area, mitigation still provides full replacement of services lost at the impact area.

For all areas of the state, the recommended mitigation ratio is 1.2:1, which provides full replacement of eelgrass services, including temporal losses. However, given variable degrees of success across regions and potential for delays and mitigation failure, higher starting mitigation ratios are recommended for some regions of the state. Regardless of starting mitigation ratio, eelgrass mitigation in California should be considered successful, if it meets eelgrass habitat coverage over an area that is 1.2 times the impact area with comparable eelgrass density as impacted habitat.

How will NMFS apply the CEMP for shellfish aquaculture?

NMFS will implement the CEMP when undertaking existing NMFS regulatory authorities (e.g., MSA, FWCA, NEPA) regarding federal actions for aquaculture activities. For example, the US Army Corps of Engineers may initiate EFH consultation with NMFS regarding a proposal to expand existing aquaculture operations. In this case, NMFS will follow CEMP when providing technical assistance or EFH conservation recommendations regarding avoidance, minimization or compensation of potential impacts to eelgrass.

We acknowledge that some aquaculture activities may be beneficial or neutral with respect to eelgrass. Activities that empirically demonstrate wholly neutral or beneficial impacts to eelgrass habitat should not be subject to compensatory mitigation for eelgrass.

How does the CEMP treat projects with minor impacts to eelgrass habitat?

The CEMP provides for reduced mitigation ratios or out-of-kind mitigation options for projects resulting in localized temporary or localized, permanent impacts to eelgrass, depending on the circumstance of each individual project. For example, mitigation for a single pipeline or cable, or aquaculture longlines that do not result in measurable net loss of eelgrass habitat in the project area may not be necessary.

How does the CEMP apply to projects that result in beneficial effects to eelgrass habitat or ecosystems?

The CEMP addresses avoidance, minimization, and mitigation for adverse impacts to eelgrass habitat function. Projects that empirically demonstrate wholly neutral or beneficial impacts to eelgrass habitat should not be subject to compensatory mitigation for eelgrass. Further, on a case-by-case basis, beneficial impacts of a proposed action may offset adverse impacts of that same project, therefore decreasing the amount of compensatory mitigation recommended for that action.

Beneficial effects can also be contemplated in comprehensive or baywide eelgrass management plans, another tool that provides flexibility within the CEMP.

How will new information be incorporated into the CEMP?

NMFS will continue to explore the science of eelgrass habitat and improve our understanding of eelgrass habitat function, impacts, assessment techniques, and mitigation efficacy. Approximately every 5 years, 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. Updates to these guidelines and supporting technical information will be available on the NMFS website.