



Staff Recommendation
September 17, 2020

Resolution Supporting Updates to the National Marine Fisheries Service's California Eelgrass Mitigation Policy

Whitney Berry, Climate Change Program Manager

RECOMMENDED ACTION: Staff recommends that the Ocean Protection Council adopt the proposed resolution on supporting updates to the National Marine Fisheries Service's California Eelgrass Mitigation Policy.

LOCATION: Coastwide

STRATEGIC PLAN OBJECTIVE(S): Goal 3: Enhance Coastal and Marine Biodiversity; Target 3.1.4 "Work with partners to preserve the existing, known 15,000 acres of seagrass beds and create an additional 1,000 acres by 2025." Action, "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."

EXHIBITS:

Exhibit A: Proposed Resolution Supporting Updates to the National Marine Fisheries Service's California Eelgrass Mitigation Policy

FINDINGS AND RESOLUTION:

Staff recommends that the Ocean Protection Council (OPC) adopt the following findings: "Based on the accompanying staff report and attached exhibit(s), OPC hereby finds that:

- 1) The proposed resolution is consistent with the purposes of Division 26.5 of the Public Resources Code, the Ocean Protection Act;

Staff further recommends that OPC adopt the following resolution pursuant to Sections 35500 *et seq.* of the Public Resources Code:

"OPC hereby approves the proposed resolution supporting updates to the National Marine Fisheries Service's California Eelgrass Mitigation Policy."

EXECUTIVE SUMMARY:

The National Marine Fisheries Service's California Eelgrass Mitigation Policy (CEMP) recommends no net loss of eelgrass habitat function in California and provides guidance to California regulatory agencies to implement eelgrass protection and restoration in the state. California regulators have identified key areas in the CEMP related to mitigation ratios, buffer zones, avoidance measures, and the incorporation of emerging science, that would benefit from a substantive update. This update would improve federal policy direction and increase California's success in meeting its ambitious goals for protecting and restoring eelgrass, as identified in the Strategic Plan to Protect California's Coast and Ocean 2020-2025.

BACKGROUND:

Eelgrass grows along California's coast in bays and harbors, as well as in open coast regions, and is known for being one of the most productive ecosystems in the world. Eelgrass provides many biological and ecosystem services, including shelter for juvenile fishes and invertebrates, food for migratory waterfowl and sea turtles, spawning sites, shoreline stabilization, and water quality improvements. Additionally, eelgrass has the capacity to sequester carbon in the underlying sediments and may help offset carbon emissions. Given the significance and diversity of the functions and services provided by seagrasses such as eelgrass, these ecosystems are crucial to maintaining the health of California's marine environment.

Though it is among the most productive of habitats, the low statewide abundance makes eelgrass one of the rarest habitats in California. Collectively just five systems support over 80 percent of the known eelgrass in the state, including: Humboldt Bay, San Francisco Bay, San Diego Bay, Mission Bay, and Tomales Bay. Unfortunately, due to its location throughout California's inshore areas, eelgrass is subject to adverse effects from urban development, pollution, degraded water quality, and destructive vessel activity. Additionally, the narrow depth range within which eelgrass can survive further places this critical habitat at risk in the face of global climate change and sea level rise.

The National Marine Fisheries Service's California Eelgrass Mitigation Policy provides guidance to California regulatory agencies regarding existing federal laws that require no net loss of eelgrass habitat function. Since its adoption in 2014, 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. This update would provide further clarity on implementation of the policy in California leading to improved outcomes in meeting California's ambitious goals for eelgrass.

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

Staff Recommendation - Resolution Supporting Updates to the National Marine Fisheries Service's California Eelgrass Mitigation Policy

during the 5-year review." NMFS is currently collecting data to begin the evaluation in order to determine if the CEMP needs to be updated, so now is a critical time to make a clear case for a substantive update.

In addition to relying on an up-to-date CEMP to meet our Strategic Plan priorities on eelgrass, 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 OPC to provide consistency and efficiency in accomplishing their individual mandates. This resolution, outlining the significant accomplishments of the CEMP to date and making a clear case for a substantive update, provides a strong signal that California is committed to continued progress on its ambitious goals related to eelgrass. OPC's resolution would add support and weight to the current review process at the National Marine Fisheries Service, as well as provide additional capacity to the evaluation by providing specific recommendations for improvements.

California Eelgrass Mitigation Policy updates that would improve outcomes for eelgrass include, but are not limited to:

- Using the best available science to discreetly define mitigation ratios, buffer zones, and avoidance measures to effectively maintain and restore ecosystem function;
- 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;
- Incorporating emerging science on the role eelgrass plays in mitigating climate change impacts (e.g. sea level rise, acidification, hypoxia, carbon flux, wave energy attenuation);
- Requiring baseline assessments to use multi-year surveys to account for inter-annual and seasonal variability.

California has made it a strong priority to increase the protection, conservation, and restoration of eelgrass. OPC's resolution would help ensure the evaluation process continues moving forward at National Marine Fisheries Service and that it results in a substantive update that improves the protection, conservation, and restoration of eelgrass in California.

CONSISTENCY WITH CALIFORNIA OCEAN PROTECTION ACT:

The proposed project is consistent with the Ocean Protection Act, Division 26.5 of the Public Resources Code, because it is consistent with trust-fund allowable projects, defined in Public Resources Code Section 35650(b)(2) as projects which:

Staff Recommendation - Resolution Supporting Updates to the National Marine Fisheries Service's California Eelgrass Mitigation Policy

- (A) Eliminate or reduce threats to coastal and ocean ecosystems, habitats, and species*
- (B) Improve the management of fisheries*
- (C) Foster sustainable fisheries*
- (D) Improve coastal water quality*
- (F) Improve management, conservation, and protection of coastal waters and ocean ecosystems*
- (G) Provide monitoring and scientific data to improve state efforts to protect and conserve ocean resources*
- (H) Protect, conserve, and restore coastal waters and ocean ecosystems*

CONSISTENCY WITH THE OPC'S STRATEGIC PLAN:

These projects implement Goal: 3. Specifically, Target 3.1.4 tasking 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." And identifying the action 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."

COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The proposed project is categorically exempt from review under the California Environmental Quality Act ("CEQA") pursuant to 14 Cal. Code of Regulations Section 15306 because the project involves only data collection, research and resource evaluation activities that will not result in a serious or major disturbance to an environmental resource.