



Marine Region
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Governor's Office of Planning & Research

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Mr. Chris Cannon, Director
Los Angeles Harbor Department
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STATE CLEARINGHOUSE

Berths 191-194 (Ecocem) Low Carbon Cement Processing Facility Project (Project), Notice of Preparation/Initial Study (NOP/IS) of a Draft Environmental Impact Report (Draft EIR), SCH# 2022030294

Dear Mr. Cannon:

The California Department of Fish and Wildlife (Department) received a Notice of Preparation/Initial Study (NOP/IS) for a Draft Environmental Impact Report (Draft EIR) from the City of Los Angeles Harbor Department (City) for Berths 191-194 (Ecocem) Low Carbon Cement Processing Facility Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide biological impact and mitigation comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, Section 1802.) Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts,

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Orcem Americas, Inc.

Objective: The primary objective of the proposed Project is to supply the Southern California construction industry with the lowest-carbon binder, which is an alternative to the higher carbon cement products used in Portland Cement. Ecocem's technologies will help the State of California meet its net-zero emissions target for the cement industry by 2045.

Construction Elements: Most Project construction would be land-based. However, the Project would include construction of vessel berthing fenders at Berth 191, which may or may not require minor in water modifications to Berth 191. Berth 191 modifications described in the NOP/IS may include an unspecified number of pilings driven along the wharf face to support berth fenders. Landside construction elements would include:

- The construction of minor site clearance and ground improvements;
- The construction of buildings and storage facilities;
- The construction of ancillary buildings;
- The construction of fire hydrants, stormwater management improvements, and truck loading equipment.

Vessel Operations: Vessels would dock at Berth 191. Each vessel would be escorted by one or two tugboats to help the ship maneuver within the harbor. Once at berth, each vessel would typically spend approximately five days unloading its cargo.

Location: 100 Yacht Street., Wilmington, Port of Los Angeles (Port), Los Angeles County, California.

Timeframe: Eighteen months is estimated to complete the Project

Marine Biological Significance

The Los Angeles Harbor (Harbor) waters support many resident and migratory fish and special status wildlife such as seabirds, marine mammals, and sea turtles. Important marine plants such as eelgrass (*Zostera marina*) support those fish and wildlife species and are common throughout shallow areas and along shorelines of the Harbor.

Eelgrass is important as fish nursery habitat throughout the Harbor and supports juvenile and adult fish. Harbor waters also support commercially and recreationally important fish and invertebrate species such as California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and the important forage fish Northern anchovy (*Engraulis mordax*).

COMMENTS AND RECOMMENDATIONS

The Department offers comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

I. Project Level Impacts and Other Considerations

Pile Driving and Pulling Impacts and Sound Criteria:

Comment: The Project may include in water pile driving and pile pulling activities which may generate underwater sound pressure waves. Sound pressure waves may cause temporary or permanent impacts to fish and invertebrates. Fish and invertebrate impacts may include a startled response resulting in temporary movement out of the Project area to avoid the underwater construction noise. In some situations, pile driving or pile pulling sound pressure waves can cause fish barotrauma injury or mortality. For assessing pile pulling and driving pressure wave impacts to fish, the Department relies on guidance from the Fisheries Hydroacoustic Working Group to set safe sound pressure level (SPL) criteria. The criteria include a peak level of 206 dB (peak) and a cumulative sound exposure (SEL) level of 187 dB (SEL) for fish 2 grams and heavier or a cumulative SEL of 183 dB (SEL) for fish lighter than 2 grams. Additional information on in water sound level criteria can be found at:

<https://dot.ca.gov/programs/environmental-analysis/biology/hydroacoustics>.

Recommendations:

The Department recommends that the Draft EIR include an analysis of anticipated in water SPLs and SELs for pile driving and pile pulling. It should also include the recommended Interim Criteria for Injury to Fish. (Interim Criteria 2008). The Department also recommends the Draft EIR specify what type of equipment will be used for pile driving. The Department recommends a vibratory hammer be used to the extent feasible to reduce underwater noise levels.

Mitigation Measures:

Should modeled sound levels exceed the 2008 Interim Criteria, the Department recommends the Draft EIR include the following mitigation measure:

- In water sound level monitoring should be conducted during pile driving and pulling, and if SPLs and SELs exceed agreed upon levels as per the Interim Criteria for Injury to Fish additional steps should be taken to reduce the underwater sound to acceptable levels.
- To reduce underwater noise levels during pile driving, a vibratory hammer should be used to the maximum extent feasible with impact hammers used only if required for final pile driving.
- To reduce underwater noise during timber pile extractions, direct pull and vibratory methods should be used
- To reduce underwater noise levels, the Draft EIR should include feasible

underwater noise dampening mitigation measures for all pile driving such as a noise dampening wooden block, air bubble curtains and/or coffer dam methodologies as applicable.

Water and Sediment Contamination:

Comment: Incomplete removal of old creosote treated timber piles may result in broken piles and pile stub at or above the mud line. A creosote timber pile stub that is left at the mudline may potentially continue to leach contaminants into the Harbor waters and benthic sediments.

Mitigation Measure: To reduce creosote contaminant exposure to Harbor waters and sediments, the Draft EIR should include cutting creosote timber piles at least 2 feet below the mud line if they break off or cannot be directly pulled.

Native Eelgrass Impacts:

Comment: The NOP/IS has identified Eelgrass (*Zoster marina*) as a species that may be found within the Berth 191 Project area where pile driving impacts may occur. Native eelgrass Spp. create large beds beneficial for fish habitat and have been identified as a special aquatic site and given protections by the Clean Water Act. The Magnuson–Stevens Fishery Conservation and Management Act (MSA) identifies eelgrass as a Habitat Area of Special Concern. Additionally, the importance of eelgrass protection and restoration, as well as the marine ecological benefits of eelgrass, is identified in the California Public Resources Code (PRC §35630). The Department uses the California Eelgrass Mitigation Policy (CEMP) (NOAA 2014), developed by the National Marine Fisheries Service (NMFS), for guidance on identifying eelgrass impacts, eelgrass mitigation measures and compensation, and for identifying appropriate eelgrass mitigation and donor sites.

Recommendations:

Potential impacts to eelgrass should be identified with updated preliminary eelgrass surveys. Should eelgrass beds or patches be identified within or adjacent to the Project area, plans should be developed to avoid and minimize potential impacts to the maximum extent feasible. If eelgrass habitat is identified in the Project area, comprehensive pre-and post-construction surveys for eelgrass beds or patches should be conducted consistent with the CEMP. If any unavoidable eelgrass impacts occur, these impacts should be compensated using guidance as provided by the CEMP.

The Department recommends the Draft EIR include a native eelgrass species impacts analysis of all proposed in water and over water Project design and timing elements. Proposed in water Project designs should accommodate ways to avoid and minimize direct impacts to eelgrass. Indirect eelgrass impacts such as overwater shading from new piles or updating the berth should also be avoided. Pile location and time of year for pile driving should be considered to avoid eelgrass and other fish and wildlife impacts generated by pile driving.

If expected eelgrass losses are unavoidable, the City should use guidance from the CEMP to compensate for the losses. Final eelgrass losses should be determined after construction and eelgrass impact monitoring surveys are complete. Draft pre-construction eelgrass Mitigation, Monitoring and Reporting Plans (Plan) should be developed in consultation with the Department and other permitting and resources agencies. Minimum Plan elements should include:

- Prior to construction, a draft mitigation Plan should be developed based on updated eelgrass surveys. The Plan should be finalized along with the final eelgrass impacts analysis once post-construction and impacts monitoring surveys are completed.
- The Plan should include a summary, or a table, of eelgrass habitat impacts. The summary should include conservation measures for eelgrass avoidance, minimization, and eelgrass compensatory mitigation if necessary.
- If compensatory mitigation is required for eelgrass impacts, mitigation ratios should be determined in accordance with the CEMP, and as recommended by the Department and other agencies.
- The Plan should identify the Department as an agency to receive and review draft and final eelgrass mitigation and monitoring reports, surveys, and plans.
- If eelgrass harvesting and transplanting is proposed, healthy eelgrass donor sites should be identified during preliminary eelgrass impact surveys or during separate pre-harvest eelgrass donor site surveys.

If eelgrass harvest and transplanting is required for mitigation, a Scientific Collecting Permit (SCP) from the Department will be required prior to harvest and transplanting activities. The SCP may include permit conditions such as donor eelgrass surveys, submittal of an eelgrass harvest and transplant plan, limits on number of turions collected, methods for collection and transplanting, notification of activities, and reporting requirements. Please visit the Department's SCP webpage for more information: <https://wildlife.ca.gov/Licensing/Scientific-Collecting>.

Mitigation Measures:

The proposed Project should avoid and minimize disturbance and damage or losses to eelgrass beds from pile pulling, pile driving, and from associated barges and vessels to the maximum extent feasible. Impacts to avoid and minimize may include, at a minimum, barge shading and anchoring within eelgrass habitat, pile driving and pile pulling bottom disturbances, and demolition and construction turbidity, sedimentation, and falling debris. The Draft EIR should include, at a minimum, the following eelgrass mitigation measures:

- To avoid direct eelgrass impacts, locate pile driver barges and vessels and all barge anchoring outside of eelgrass habitat.
- To avoid scouring of eelgrass and potential eelgrass habitat, anchor chain designs, and locations of barge and vessel moorings should avoid eelgrass habitat impacts.
- To avoid and minimize eelgrass impacts from demolition and construction debris,

the City should use Best Management Practices (BMPs) such as perimeter debris booms. If debris is observed falling into Harbor water, retrieve debris as soon as possible.

- To minimize eelgrass impacts from water turbidity and sedimentation, install silt curtains around pile driving or demolition areas if applicable. Restrict the turbidity plumes to the smallest possible area during all phases of in water construction.

Invasive Species Impacts:

Comment: Disturbance of the bottom sediments from potential pile construction or anchoring may redistribute non-native species that compete with native species. This could cause widespread adverse impacts to eelgrass and the marine ecology. The invasive alga *Caulerpa taxifolia* is listed as a federal noxious weed under the U.S. Plant Protection Act and while deemed eradicated in 2006 is monitored for potential future emergence. Another invasive alga species found recently in Newport Bay is *Caulerpa prolifera*, which is also a potential threat to growth and expansion of native eelgrass beds and other native algae.

Recommendation: The Department recommends including a pre-construction *Caulerpa Spp.* survey to identify potential existence of invasive *Caulerpa Spp.* as described in the Caulerpa Control Protocol <https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf> (October 2021). Any sightings of *Caulerpa Spp.* should be reported within 24 hours to the Department at 415-740-9869 (Caulerpa@wildlife.ca.gov), and NMFS at 562-980-4037 (nmfs.wcr.caulerpa@noaa.gov).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). Information on submitting data to the CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by Department. Payment of the fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

Conclusion

The Department appreciates the opportunity to comment on the NOP/IS for Berths 191-194 (Ecocem) Low Carbon Cement Processing Facility Project. If you have any questions or comments, please contact Loni Adams, Environmental Scientist, at 858-204-1051 or loni.adams@wildlife.ca.gov.

Sincerely,



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References

NOAA (National Oceanic and Atmospheric Administration) Fisheries, West Coast Region. 2014. California Eelgrass Mitigation Policy and Implementing Guidelines.

Fisheries Hydroacoustic Working Group. 2008. Interim Criteria for Injury of Fish Exposed to Pile Driving Operations: Memorandum. Washington: Federal Highway Administration.