

AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 233

Introduced by Senator Hertzberg
(Coauthor: Assembly Member Rendon)

February 13, 2015

An act to amend ~~Section 5993 of the Fish and Game Code, relating to fish and wildlife. Sections 6603, 6604, 6610, 6611, 6612, 6613, 6614, 6615, 6616, and 6618 of the Fish and Game Code, relating to ocean resources.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, Hertzberg. ~~Conduits and screens: fish screen monitoring.~~ *Marine resources and preservation.*

(1) The California Marine Resources Legacy Act establishes a program, administered by the Department of Fish and Wildlife, to allow partial removal of offshore oil structures. The act authorizes the department to approve the partial removal of offshore oil structures, if specified criteria are satisfied. The act requires an applicant, upon conditional approval for removal, to apportion a percentage of the cost-savings funds in accordance with a prescribed schedule to specified entities and funds. The act defines "cost savings" to mean the difference between the estimated cost to the applicant of complete removal of an oil platform, as required by state and federal leases, and the estimated costs to the applicant of partial removal of the oil platform pursuant to the act, and specifically provides for the inclusion of certain costs in cost savings.

The bill would require an applicant, upon conditional approval for partial removal of an offshore oil structure, to transmit a portion of the cost savings to the department, instead of to the specified entities and

funds. The bill would require the department to apportion those cost-savings funds received from the applicant in accordance with a prescribed schedule based on the date the application was submitted to the department. The bill would authorize the applicant to withdraw the application at any time before final approval and would require the department to return specified funds submitted to process the application that have not been expended as of the date of receipt of the notification of withdrawal.

(2) Existing law requires the Natural Resources Agency to serve as the lead agency for the environmental review under the California Environmental Quality Act (CEQA) of a proposed project to partially remove an offshore oil structure pursuant to the California Marine Resources Legacy Act. Upon certification of environmental documents pursuant to CEQA, the California Marine Resources Legacy Act requires the State Lands Commission to determine the cost savings of partial removal compared to full removal of the structure and requires the Ocean Protection Council to determine whether partial removal provides a net environmental benefit to the marine environment compared to the full removal of the structure.

This bill would instead require the department to serve as the lead agency for the environmental review under CEQA, to determine the cost savings of partial removal compared to full removal of the structure, and to determine whether partial removal provides a net environmental benefit to the marine environment compared to the full removal of the structure.

The bill would require the department, in determining whether partial removal of the structure would provide a net benefit to the marine environment compared to full removal of the structure, to take certain adverse impacts to air quality and greenhouse gas emissions into account and to consult with the State Air Resources Board and the Ocean Protection Council, among other entities.

~~Existing law regulates the construction and installation of any screen installed on conduits used in producing, generating, transmitting, delivering, or furnishing electricity for light, heat, or power and conduits with a maximum flow capacity over 250 cubic feet per second of water to prevent fish from passing through the conduit. Existing law requires, before the installation of any screen, the Department of Fish and Wildlife and the owner to enter into an agreement that defines the method of determining the cost of maintenance, repairs, operation, and keeping the screen free of debris.~~

~~This bill would additionally require the agreement to define the method of determining the cost of monitoring the screen's performance.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 6603 of the Fish and Game Code is*
2 *amended to read:*

3 6603. (a) This chapter establishes a program through which
4 an applicant may voluntarily apply to the department to carry out
5 partial removal of the structure.

6 (b) The program established pursuant to this chapter shall be
7 deemed consistent with, and part of, the California Artificial Reef
8 Program pursuant to Article 2 (commencing with Section 6420)
9 of Chapter 5 for purposes of compliance with federal law including
10 the National Fishing Enhancement Act of 1984.

11 (c) ~~Except as specified in Section 6604, the~~ *The* department
12 shall serve as the primary authority for carrying out the program,
13 including review and approval of applications to partially remove
14 an offshore oil structure in state or federal waters and management
15 and operation of decommissioned offshore oil structures in state
16 or federal waters approved pursuant to this chapter.

17 (d) Final approval of an application shall not be granted until
18 the applicant complies with all requirements of the chapter,
19 including the payment of all costs to the state to review and approve
20 the proposed project as required by subdivision (b) of Section 6612
21 and the transmittal of the required portion of cost savings to the
22 endowment and other parties as required by Section 6618.

23 (e) The department may obtain funds for the planning,
24 development, maintenance, and operation of an offshore oil
25 structure transferred to the department pursuant to this chapter and
26 may accept gifts, subventions, grants, rebates, reimbursements,
27 and subsidies from any lawful source.

28 (f) The department may adopt regulations to implement this
29 chapter.

30 *SEC. 2. Section 6604 of the Fish and Game Code is amended*
31 *to read:*

32 6604. (a) A proposed project to partially remove an offshore
33 oil structure pursuant to this chapter is a project as defined in

1 subdivision (c) of Section 21065 of the Public Resources Code
2 and is therefore subject to the California Environmental Quality
3 Act (Division 13 (commencing with Section 21000) of the Public
4 Resources Code) and shall be reviewed pursuant to the time limits
5 established in Section 21100.2 of the Public Resources Code.

6 (b) ~~The Natural Resources Agency~~ department shall serve as
7 the lead agency for the environmental review of any project
8 proposed pursuant to this chapter.

9 *SEC. 3. Section 6610 of the Fish and Game Code is amended*
10 *to read:*

11 6610. (a) An owner or operator, or other party responsible for
12 decommissioning, of an offshore oil structure may apply to the
13 department for approval to partially remove the structure pursuant
14 to the requirements of this chapter.

15 (b) The department shall design and make available to potential
16 applicants an application process that will facilitate review of the
17 application by the department in a timely manner, consistent with
18 Section 6604.

19 (c) Upon receipt of an application pursuant to this section, the
20 department shall transmit a copy of the application to the ~~council,~~
21 ~~the commission, and the endowment, which shall constitute notice~~
22 ~~to these agencies.~~ *endowment.*

23 *SEC. 4. Section 6611 of the Fish and Game Code is amended*
24 *to read:*

25 6611. (a) The application for partial removal shall include, at
26 a minimum, all of the following:

27 (1) The applicant's plan and schedule for partial removal of the
28 offshore oil structure, including removal of any portion of the
29 structure as appropriate to maintain navigational safety.

30 (2) A determination of the estimated cost of partial removal and
31 the estimated cost of full removal.

32 (3) A determination of the environmental impacts and benefits
33 to the marine environment from partial removal and full removal
34 of the structure.

35 (4) Identification of all permits, leases, and approvals required
36 by any governmental agency, including a permit issued by the
37 United States Army Corps of Engineers if required for offshore
38 oil structures, and a lease issued by the commission if the proposed
39 project involves state tidelands and submerged lands, and a

1 proposed schedule for the applicant or the state to receive those
2 permits, leases, and approvals.

3 (b) The department may require the applicant to submit a
4 management plan for the structure following partial removal,
5 including maintenance in a manner consistent with navigational
6 safety, enforcement, and monitoring.

7 (c) The information submitted pursuant to subdivisions (a) and
8 (b) shall be used by the department for advisory purposes only.
9 Final determinations regarding the partial removal and management
10 of the offshore oil structure, net benefit to the marine environment
11 from partial removal, and cost savings from partial removal shall
12 be made solely by the department, ~~council, and commission~~, as
13 specified in this chapter, based on ~~their~~ *its* independent review and
14 judgment.

15 *SEC. 5. Section 6612 of the Fish and Game Code is amended*
16 *to read:*

17 6612. (a) Upon receipt of an application to partially remove
18 an offshore oil structure pursuant to this chapter, the department
19 shall determine whether the application is complete and includes
20 all information needed by the department.

21 (b) (1) Upon a determination that the application is complete,
22 the applicant shall provide surety bonds executed by an admitted
23 surety insurer, irrevocable letters of credit, trust funds, or other
24 forms of financial assurances, determined by the department to be
25 available and adequate, to ensure that the applicant will provide
26 sufficient funds to the ~~department, council, commission,~~
27 *department* and conservancy to carry out all required activities
28 pursuant to this article, including all of the following:

29 (A) Environmental review of the proposed project pursuant to
30 Section 6604.

31 (B) A determination of net environmental benefit pursuant to
32 Section 6613.

33 (C) A determination of cost savings pursuant to Section 6614.

34 (D) Preparation of a management plan for the structure pursuant
35 to Section 6615.

36 (E) Implementation of the management plan and ongoing
37 maintenance of the structure after the department takes title
38 pursuant to Section 6620.

39 (F) Development of an advisory spending plan pursuant to
40 Section 6621.

1 (G) Other activities undertaken to meet the requirements of this
2 article, including the costs of reviewing applications for
3 completeness, and reviewing, approving, and permitting the
4 proposed project, which includes the costs of determining whether
5 the project meets the requirements of all applicable laws and
6 regulations and the costs of environmental assessment and review.

7 (2) The department shall consult with the ~~council, commission,~~
8 ~~and conservancy~~ in determining appropriate funding for activities
9 to be carried out by ~~those agencies.~~ *the conservancy.*

10 (3) The funds provided pursuant to paragraph (1) shall not be
11 considered in the calculation of cost savings pursuant to Section
12 6614 or the apportionment of cost savings pursuant to Section
13 6618.

14 (c) The first person to file an application on and after January
15 1, 2011, to partially remove an offshore oil structure pursuant to
16 this chapter, shall pay, in addition to all costs identified under
17 subdivision (b), the startup costs incurred by the department ~~or the~~
18 ~~commission~~ to implement this chapter, including the costs to
19 develop and adopt regulations pursuant to this chapter. This
20 payment of startup costs shall be reimbursed by the department as
21 provided in paragraph (3) of subdivision (c) of Section 6618.

22 (d) As soon as feasible after ~~reaching the agreement~~ *the*
23 *applicant provides financial assurances* pursuant to subdivision
24 (b), the ~~lead agency~~ *department* shall begin the environmental
25 review of the proposed project as required pursuant to Section
26 6604.

27 (e) *The applicant may withdraw the application at any time*
28 *before final approval. Upon notification that the applicant has*
29 *withdrawn the application, the department shall return to the*
30 *applicant any funds provided under subdivisions (b) and (c) that*
31 *have not been expended as of the date of receipt of notification of*
32 *withdrawal.*

33 *SEC. 6. Section 6613 of the Fish and Game Code is amended*
34 *to read:*

35 6613. (a) The ~~council~~ *department* shall determine whether the
36 partial removal of an offshore oil structure pursuant to this chapter
37 provides a net benefit to the marine environment compared to the
38 full removal of the structure.

39 (b) As a necessary prerequisite to determining net environmental
40 benefit as required in subdivision (a), the ~~council~~ *department* shall,

1 upon receipt of its initial application ~~from the department~~ pursuant
2 to Section 6610, establish appropriate criteria for evaluating the
3 net environmental benefit of full removal and partial removal of
4 offshore oil structures.

5 (1) The criteria shall include, but are not limited to, the depth
6 of the partially removed structure in relation to its value as habitat
7 and the location of the structure, including its proximity to other
8 reefs, both natural and artificial.

9 (2) The criteria shall not include any consideration of the funds
10 to be generated by the partial removal of the structure.

11 (3) In determining the criteria, ~~the council~~ *department* shall
12 consult with appropriate entities, including, but not limited to, the
13 ~~department, council,~~ the commission, *the State Air Resources*
14 *Board*, the California Coastal Commission, and the California
15 Ocean Science Trust.

16 (4) ~~The council~~ *department* shall establish the criteria in time
17 to use them in making its initial determination of net environmental
18 benefit pursuant to this section.

19 (c) Upon certification of environmental documents pursuant to
20 the California Environmental Quality Act, ~~the council~~ *department*
21 shall, based on the criteria developed pursuant to subdivision (b)
22 and other relevant information, determine whether partial removal
23 of the structure would provide a net benefit to the marine
24 environment compared to full removal of the structure. In making
25 the determination, ~~the council~~ *department* shall, at a minimum,
26 take into account the following:

27 (1) The contribution of the proposed structure to protection and
28 productivity of fish and other marine life.

29 (2) Any adverse impacts to biological resources or water quality,
30 *air quality or greenhouse gas emissions*, or any other marine
31 environmental impacts, from the full removal of the facility that
32 would be avoided by partial removal as proposed in the application.

33 (3) Any adverse impacts to biological resources or water quality,
34 *air quality or greenhouse gas emissions*, or any other marine
35 environmental impacts, from partial removal of the structure as
36 proposed in the application.

37 (4) Any benefits to the marine environment that would result
38 from the full removal of the structure or from partial removal as
39 proposed in the application.

1 (5) Any identified management requirements and restrictions
2 of the partially removed structure, including, but not limited to,
3 restrictions on fishing or other activities at the site.

4 (d) Benefits resulting from the contribution of cost savings to
5 the endowment shall not be considered in the determination of net
6 environmental benefit.

7 (e) ~~The council~~ *department* may contract or enter into a
8 memorandum of understanding with any other appropriate
9 governmental or nongovernmental entity to assist in its
10 determination of net environmental benefit.

11 (f) The determination made pursuant to this section ~~and~~
12 ~~submitted to the department by the council~~ shall constitute the
13 final determination and shall not be revised except by the ~~council~~.
14 *department*.

15 (g) ~~The council shall take all feasible steps to complete its~~
16 ~~determination in a timely manner that accommodates the~~
17 ~~department's schedule for consideration of the application.~~

18 *SEC. 7. Section 6614 of the Fish and Game Code is amended*
19 *to read:*

20 6614. (a) Upon certification of the appropriate environmental
21 ~~documents by the lead agency, the commission documents, the~~
22 *department* shall determine, or cause to be determined, the cost
23 savings that will result from the partial removal of an offshore oil
24 structure as proposed in the application compared to full removal
25 of the structure.

26 (b) ~~The commission~~ *department* shall ensure that any cost
27 savings are accurately and reasonably calculated. ~~The commission~~
28 *department* may contract or enter into a memorandum of
29 understanding with any other appropriate governmental agency or
30 other party, including an independent expert, to ensure that cost
31 savings are accurately and reasonably calculated.

32 (c) ~~The commission~~ *department* shall consider any estimates of
33 cost savings made by any governmental agency, including, but not
34 limited to, the Internal Revenue Service, the Franchise Tax Board,
35 and the United States Department of the Interior. ~~The commission~~
36 *department* shall include in its determination a written explanation,
37 which shall be available to the public, of the differences, and the
38 reasons for the differences, between the ~~commission's~~ *department's*
39 determination of cost savings and any other estimates of cost
40 savings the ~~commission~~ *department* considered.

1 (d) The applicant shall provide all necessary documentation, as
2 determined by the ~~commission~~, *department*, to allow the
3 ~~commission~~ *department* to calculate the amount of cost savings.
4 Failure to provide information requested by the ~~commission~~
5 *department* in a timely manner may result in rejection of the
6 application.

7 (e) The determination made pursuant to this section ~~and~~
8 ~~submitted to the department by the commission~~ shall constitute
9 the final determination and shall not be revised except by the
10 ~~commission~~. *department*.

11 (f) ~~The commission shall take all feasible steps to complete its~~
12 ~~determination in a timely manner that accommodates the~~
13 ~~department's schedule for consideration of the application.~~

14 *SEC. 8. Section 6615 of the Fish and Game Code is amended*
15 *to read:*

16 6615. Prior to granting conditional approval of an application
17 for partial removal of an offshore oil structure, the department
18 shall do all of the following:

19 (a) Prepare a plan to manage the offshore oil structure after its
20 partial removal. The plan shall include measures to manage fishery
21 and marine life resources at and around the structure in a manner
22 that will ensure that the net benefits to the marine environment
23 identified pursuant to Section 6613 are maintained or enhanced.
24 Consistent with state and federal law, management measures may
25 include a buffer zone in which fishing or removal of marine life
26 is restricted or prohibited.

27 (b) Provide an opportunity for public comment on the
28 ~~application~~ *environmental document* pursuant to the California
29 Environmental Quality Act.

30 (c) Hold a public hearing *for comment on the environmental*
31 *document pursuant to the California Environmental Quality Act*
32 in the county nearest to the location of the offshore oil structure
33 that is the subject of the application.

34 *SEC. 9. Section 6616 of the Fish and Game Code is amended*
35 *to read:*

36 6616. The department may grant conditional approval of an
37 application for partial removal of an offshore oil structure only if
38 all of the following criteria are satisfied:

39 (a) The partial removal of the offshore oil structure and the
40 planning, development, maintenance, and operation of the structure

1 would be consistent with all applicable state, federal, and
2 international laws, including, but not limited to, all of the
3 following:

4 (1) The federal Magnuson-Stevens Fishery Conservation and
5 Management Act (16 U.S.C. Sec. 1801 et seq.).

6 (2) The federal National Fishing Enhancement Act of 1984 (33
7 U.S.C. Sec. 2101 et seq.).

8 (3) The federal Coastal Zone Management Act (16 U.S.C. Sec.
9 1451 et seq.).

10 (4) The California Coastal Management Program.

11 (5) The Marine Life Management Act (Part 1.7 (commencing
12 with Section 7050)).

13 (6) The Marine Life Protection Act (Chapter 10.5 (commencing
14 with Section 2850) of Division 3).

15 (7) State and federal water quality laws.

16 (8) Navigational safety laws.

17 (b) The partial removal of the offshore oil structure provides a
18 net benefit to the marine environment compared to full removal
19 of the structure, as determined pursuant to Section 6613.

20 (c) The cost savings that would result from the conversion of
21 the offshore oil platform or production facility have been
22 determined pursuant to Section 6614.

23 (d) The applicant has provided sufficient funds consistent with
24 subdivision (b) of Section 6612.

25 (e) The department and the applicant have entered into a
26 contractual agreement whereby the applicant will provide sufficient
27 funds for overall management of the structure by the department,
28 including, but not limited to, ongoing management, operations,
29 maintenance, monitoring, and enforcement as these relate to the
30 structure.

31 (f) The department has entered into an indemnification
32 agreement with the applicant that indemnifies the state and the
33 department, to the extent permitted by law, against any and all
34 liability that may result, including, but not limited to, active
35 negligence, and including defending the state and the department
36 against any claims against the state for any actions the state
37 undertakes pursuant to this article. The agreement may be in the
38 form of an insurance policy, cash settlement, or other mechanism
39 as determined by the department. In adopting indemnification
40 requirements for the agreement, the department shall ensure that

1 the state can defend itself against any liability claims against the
2 state for any actions the state undertakes pursuant to this article
3 and pay any resulting judgments. The department shall consult
4 with and, as necessary, use the resources of the office of the
5 Attorney General in preparing and entering into the indemnification
6 agreement.

7 (g) The applicant has applied for and received all required
8 permits, leases, and approvals issued by any governmental agency,
9 including, but not limited to, a lease issued by the commission if
10 the proposed project involves state tidelands and submerged lands.
11 For structures located in federal waters, all of the following
12 requirements shall be met:

13 (1) The department and the owner or operator of the structure
14 reach an agreement providing for the department to take title to
15 the platform or facility as provided in Section 6620.

16 (2) The department acquires the permit issued by the United
17 States Army Corps of Engineers.

18 (3) The partial removal of the structure is approved by the
19 Bureau of Ocean Energy Management, Regulation and Safety and
20 Environmental Enforcement of the United States Department of
21 the Interior.

22 *SEC. 10. Section 6618 of the Fish and Game Code is amended*
23 *to read:*

24 6618. (a) The cost savings from the partial removal of an
25 offshore oil structure, as determined pursuant to Section 6614,
26 shall be apportioned and transmitted as described in this section.

27 (b) Upon receipt of conditional approval pursuant to Section
28 6617, the ~~owner or operator of the structure~~ *applicant* shall
29 apportion and directly transmit a portion of the total amount of the
30 cost savings to the ~~entities in subdivision (c)~~ *department* as follows:

31 (1) Fifty-five percent, if ~~transmitted~~ *the application was*
32 *submitted* before January 1, ~~2017~~; 2023.

33 (2) Sixty-five percent, if ~~transmitted~~ *the application was*
34 *submitted* on or after January 1, ~~2017~~, 2023, and before January
35 1, ~~2023~~; 2028.

36 (3) Eighty percent, if ~~transmitted~~ *the application was submitted*
37 *on or after* January 1, ~~2023~~; 2028.

38 (c) Of the total amount of the cost savings to be transmitted
39 pursuant to subdivision (b), the ~~applicant~~ *department* shall directly
40 transmit the following amounts to the following entities:

1 (1) Eighty-five percent shall be deposited into the California
2 Endowment for Marine Preservation established pursuant to
3 Division 37 (commencing with Section 71500) of the Public
4 Resources Code.

5 (2) Ten percent shall be deposited into the General Fund.

6 (3) Two percent shall be deposited into the Fish and Game
7 Preservation Fund for expenditure, upon appropriation by the
8 Legislature, by the department to pay any costs imposed by this
9 chapter that are not otherwise provided for pursuant to subdivision
10 (b) of Section 6612 and subdivision (e) of Section 6616. Any
11 moneys remaining in the Fish and Game Preservation Fund, after
12 providing for these costs, shall be used, upon appropriation by the
13 Legislature, first to reimburse the payment of the startup costs
14 described in subdivision (c) of Section 6612, and thereafter to
15 conserve, protect, restore, and enhance the coastal and marine
16 resources of the state consistent with the mission of the department.

17 (4) Two percent shall be deposited into the Coastal Act Services
18 Fund, established pursuant to Section 30620.1 of the Public
19 Resources Code, and shall be allocated to support state agency
20 work involving research, planning, and regulatory review
21 associated with the application and enforcement of coastal
22 management policies in state and federal waters pursuant to state
23 and federal quasi-judicial authority over offshore oil and gas
24 development.

25 (5) One percent shall be deposited with the board of supervisors
26 of the county immediately adjacent to the location of the facility
27 prior to its decommissioning. The amount paid to the county shall
28 be managed pursuant to paragraph (1) of subdivision (d) of Section
29 6817 of the Public Resources Code.

30 ~~SECTION 1. Section 5993 of the Fish and Game Code is~~
31 ~~amended to read:~~

32 ~~5993. Before the installation of any screen under the provisions~~
33 ~~of this article, the department and the owner shall enter into an~~
34 ~~agreement defining the method of determining the cost of~~
35 ~~monitoring screen performance, maintenance, repairs, operation,~~
36 ~~and keeping the screen free of debris, which agreement shall~~
37 ~~provide that, in the event either the department or the owner objects~~

- 1 ~~to the cost, the matter shall be referred to the Director of General~~
- 2 ~~Services for his or her final and conclusive decision.~~

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SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Fran Pavley, Chair
2015 - 2016 Regular

Bill No: SB 233 **Hearing Date:** April 28, 2015
Author: Hertzberg
Version: April 21, 2015
Urgency: No **Fiscal:** Yes
Consultant: Katharine Moore

Subject: Marine resources and preservation

BACKGROUND AND EXISTING LAW

There are 27 oil and gas platforms offshore California. Four of these platforms are in state waters at relatively shallow depths (approximately 200 feet or less). The remaining 23 platforms are over 3 miles from shore at depths reaching nearly 1200 feet. Additionally, there are five more offshore “islands” (which are also platforms) in state waters. The platforms are located off the coasts of Los Angeles, Ventura and Santa Barbara counties. At least five offshore platforms, including one island, off the coast of California have been “decommissioned” and removed.

AB 2503 (Perez, c. 687, Statutes of 2010) established state policy to allow, on a case-by-case basis, the partial decommissioning of offshore oil and gas platforms. Partial decommissioning means removing the top part of the platform while leaving the lower portion behind to act as a subsurface “reef.” Not all platforms may qualify for partial decommissioning, however, as certain conditions must be met. These include, among others, that there be a net environmental benefit from the “reef” and that a portion of the cost savings to the platform owner from partial, as opposed to full, decommissioning be shared with the state and deposited in an endowment whose moneys would be used to the benefit of coastal marine resources. AB 2503’s “rigs-to-reefs” program is voluntary and platforms in both state and federal waters are eligible to participate. AB 2503’s legislative findings included that the costs of the program should be borne by the applicants.

There were at least two unsuccessful attempts prior to AB 2503 to establish a rigs-to-reefs program (SB 241, Alpert, 2000, and SB 1, Alpert, 2001). Additionally, since AB 2503 became law, there have been two unsuccessful attempts to alter its extensively negotiated terms to the benefit of the platform owners (AB 2267, Hall, 2012, and AB 207, Rendon, 2013).

Rigs-to-reefs programs allow the oil industry to avoid the costs of full decommissioning, although full decommissioning was an agreed-upon lease condition. Estimates of the cost savings associated with partial decommissioning vary from tens of millions to hundreds of millions of dollars per platform. AB 2503 provided a financial incentive to the oil industry to submit partial decommissioning applications by providing that a smaller fraction of the cost savings would be shared with the state in the early years of the program (55%) compared to later (80%).

Despite repeated assertions over at least the last 15 years that applications for partial decommissioning were imminent, no applications under AB 2503 have been filed with

the state. It is a fair point that no application has been developed pursuant to AB 2503 (which this bill seeks to address), but it is also staff's understanding that no serious inquiries to the relevant agencies have occurred.

The economic viability of any offshore platform and its oil and gas wells is a function of many factors. High prices for crude oil the last five years – prices of benchmark crudes often exceeded \$100/barrel – compared to approximately \$50/barrel in last several months with muted expectations of a substantial price rise in the short term are likely to have affected the outlook for the offshore California platforms.

Existing federal law requires that “decommissioned” oil and gas platforms be removed at the end of production, and the surrounding marine environment be cleaned up and restored to a natural condition. Existing state and federal offshore oil leases generally require the removal of decommissioned oil platforms after the lease ends. Both federal regulations and provisions in state and federal leases allow the federal government to consider and approve alternative decommissioning methods other than complete removal. “Rigs-to-reefs” programs are widely used in the Gulf of Mexico, and Louisiana, Texas and Mississippi.

That said, as a recent commentary in the Proceedings of the National Academy of Sciences pointed out, circumstances are unique to each particular platform depending on the location, water depth, platform size and other factors. Simple generalizations about rigs-to-reef “working” in some locations with the implication that partial decommissioning will necessarily provide net environmental benefits and cost savings in other locations are inappropriate.

AB 2503 recognized the multi-jurisdictional nature of platform decommissioning and the need for a viable rigs-to-reefs program to utilize the established expertise and authority of different state entities. AB 2503 purposefully split up program responsibilities between different regulators.

AB 2503's rigs-to-reefs program uses the expertise of the following state entities:

- The Department of Fish and Wildlife (department) has the primary authority, as specified, for carrying out the program, including:
 - the development of application materials,
 - the determination of whether an application was complete,
 - the preparation of a plan to manage the reef,
 - providing an opportunity for public comment on the application,
 - holding a public hearing in the county nearest to the proposed reef,
 - the review and conditional and final approval of an application, and
 - the management and operation of approved artificial reefs.
- The Natural Resources Agency serves as lead agency under the California Environmental Quality Act (CEQA).
- The Ocean Protection Council (council) determines whether a net benefit to the marine environment from partial decommissioning exists. This includes establishing appropriate criteria to make this evaluation.

- The State Lands Commission (commission) determines the cost savings.
- The State Coastal Conservancy (conservancy) creates an advisory spending plan for the cost savings deposited in the endowment.
- In addition, the authority of the California Coastal Commission in the coastal zone as well as the authority of local and federal regulatory entities within their respective jurisdictions were explicitly acknowledged and protected.

AB 2503 requires information sharing among different state entities including the department, the council, the commission and the endowment. It repeatedly allows for formal agreements to be developed, as needed, to support the coordination and consultation required between entities.

Focusing on the application, AB 2503 establishes minimum standards for the required materials, including:

- a plan and schedule for partial decommissioning,
- a determination of the estimated costs of partial and full decommissioning,
- a determination of the environmental impacts and benefits to the marine environment from partial and full decommissioning,
- identification of all necessary permits, leases and approvals needed and a schedule to obtain them, and
- in some instances, a management plan for the reef following partial decommissioning.

An AB 2503 application is complete when the applicant provides certain financial assurances that ensures that sufficient funds are available to pay for the cost of processing the application. The first AB 2503 applicant will also be required to pay the program's set-up costs, although those are reimbursable.

AB 2503 provides specific criteria for the department to issue a conditional approval for a partial decommissioning project. These include:

- all applicable laws are followed,
- there is a net benefit to the marine environment,
- there are cost savings,
- there is funding to do the evaluation that is provided by the applicant,
- an agreement has been reached between the applicant and the department to support the overall management of the reef,
- the applicant and the department have entered into an indemnification agreement to protect the state from liability, as specified,
- the applicant has obtained all necessary permits, leases and approvals, and
- the department and owner of the platform have reached an agreement for the department to take title to the reef.

AB 2503 requires the owner or operator of an oil structure, upon receipt of conditional approval for partial removal, to transmit a portion of the total cost savings as follows:

- 55% by January 1, 2017
- 65% between January 1, 2017 – January 1, 2023

- 80% after January 1, 2023

The department shall not grant final approval until the full amount of applicable cost savings has been transmitted.

PROPOSED LAW

This bill would modify the AB 2503 rigs-to-reefs program. It would:

- replace the Natural Resources Agency as CEQA lead with the commission;
- allow the applicant to withdraw its rigs-to-reef application at any time;
- re-set or potentially re-set the financial incentives by replacing the years in the dates with blanks;
- add consultation with the Air Resources Board, as specified, in the calculation of net benefits to the marine environment;
- add air quality or greenhouse gas emissions to the determination of the net benefit to the marine environment;
- add a public meeting to review the environmental documents to the one already required on the application, as specified; and
- make additional technical and clarifying changes.

ARGUMENTS IN SUPPORT

According to the author, “in 2010, the Legislature passed AB 2503 by former Speaker John Perez, which enacted California’s rigs-to-reefs program. We are now nearing the point where the first of California’s offshore oil rigs will be ready for decommissioning in the next few years. It has become apparent through discussions with the Administration, that the permitting process is unworkable, both for practical reasons involving a lack of expertise and fiscal reasons as well. Senate Bill 233 is intended to make the current rigs-to-reefs permitting process more pragmatic without sacrificing any level of environmental review. As the bill moves along, we intend to work closely with a multi-agency group to review the rigs-to-reefs approval process and make recommendations for changes, the chairs of the policy committees, and stakeholders to make sure that we have a consensus approach to the decommissioning process [that] is both workable and protective of the environment.”

The author continues, “[t]he bill adds the impact of greenhouse gas emissions [which] should be considered in weighing the removal options for offshore oil rigs” in the calculation of the net environmental benefit and “has left open for negotiation moving back the various cut-off dates which encourage early retirement of oil rigs to accommodate the five years since the passage of AB 2503.”

“Overall, SB 233 seeks to take a critical look at the rigs-to-reefs program and to work to make the process better. Ultimately, if oil rigs are approved for conversion, a productive marine ecosystem will be saved from destruction and potentially hundreds of millions of dollars will be made available in perpetuity for funding ocean oriented environmental programs.”

Get Wet Scuba notes that “our group frequently dives at oil rigs that are off the coast of Long Beach. It is a vibrant ecosystem and supports enormous amount[s] of marine life. It is one of the most beautiful dives in Southern California.”

ARGUMENTS IN OPPOSITION

The letters opposing this bill were all received prior to the most recent amendments. Those amendments addressed or appear to have addressed some of the specific objections raised against the bill.

In a joint opposition letter, the Environmental Defense Center and others note that the bill “is unnecessary, premature, and would undermine the provisions in existing law that require a balanced, thorough analysis of proposal to leave offshore oil platforms at sea. The bill is unnecessary because the legislature already passed AB 2503 in 2010. That bill followed many years of state-wide debate and was fashioned to include relevant agencies and stakeholders in a process that would address the many issues that will be raised if oil platforms are not removed from the ocean environment. These issues include legacy pollution resulting from residual toxins and contaminated debris left in the ocean, introduction of invasive species, attraction of fish away from productive natural reefs, safety and navigational risks, and increased liability to the state.”

The joint letter continues that the bill is premature because “no platforms are ready for decommissioning. [...] Clearly, there is no need to hasten to amend existing law.” While acknowledging that many of the letter signers did not support AB 2503 because “we believe the oil industry should comply with its original commitments to remove oil platforms at the end of their productive life and to restore the marine environment to a natural condition,” they note that “[e]xisting law is adequate to address the issues raised by proposals to avoid full decommissioning of offshore oil platforms.”

The West Marin Environmental Action Committee identifies several issues in its letter, including, among others, concerns about the length of time considered in the net environmental benefit analysis, the lack of public participation in the development of net environmental benefit criteria, and the proposed reset of the cost saving criteria.

Many of the bill’s opponents express an interest in engaging with the author and other stakeholders on the issue. For example, the Ocean Conservancy writes, “we urge more time to engage and reach a level of mutual understanding and commitment by designated responsible agencies, stakeholders and the affected public to achieve an effective and thorough process to guide the disposition of oil platforms offshore California. We would be pleased to participate in a dialogue with interested parties to that end.”

COMMENTS

This bill is a work-in-progress. Committee staff understand that discussions are active among the author’s office and stakeholders to facilitate implementation of the rigs-to-reefs program. These discussions include providing the upfront resources necessary for implementation. It is likely that further amendments may be proposed by the author at a later date to incorporate the results of these negotiations. The committee may wish to re-hear the bill in that event.

The commission has experience as a CEQA lead agency for platform decommissioning. Even in the event of an application for a rigs-to-reefs conversion in federal waters, it is likely that substantial elements of the decommissioning would be under the commission’s jurisdiction.

Cost sharing and incentives. AB 2503 established state policy to provide financial incentives to platform owners for rigs-to-reef conversions with the proviso that the state share in the cost savings. The incentives to platform owners were front-loaded. The applicants had 6 years from the date AB 2503 became law to obtain the required conditional approval of the rigs-to-reefs conversion in order to qualify for the most cost savings. The AB 2503 incentive structure has been established law for over 4 years, and no platform operators have provided resources to fund AB 2503 implementation or come forward to apply for partial decommissioning. However, under current law, it would be effectively impossible for an applicant to qualify for the maximum savings level now.

Air quality and the net environmental benefit. The consideration of air quality, including greenhouse gas emissions, in decommissioning is a required element of the CEQA environmental analysis. The focus on biological resources and water quality – in other words on the proposed reef and its immediate subsurface environment – in the existing calculation of the net environmental benefit to the marine environment seeks to ensure the reef provides lasting benefits. It is highly likely that there will be a significant difference in total air emissions between partial and full decommissioning to the advantage of partial decommissioning. That said, the direct and indirect impacts from air emissions to the proposed reef and their duration are unclear, and the council will have to determine how to appropriately weigh these impacts in its calculations.

Public participation. The bill adds a public hearing to review the environmental documents to the public hearing on the application held near the proposed reef location. While the CEQA process, as well as the various permitting requirements for a rigs-to-reefs proposal, provide for public participation, this bill provides additional opportunity for public comment to those likely to be most affected by the proposal.

The rigs-to-reef program is voluntary. Circumstances may arise, such as advances in offshore oil production, where the platform owner may wish to keep the platform in operation despite having applied for partial decommissioning. Existing law is clear that the rigs-to-reefs program is voluntary, and the bill makes explicit that the platform owner may withdraw the program application.

AB 2503's division of regulatory effort is appropriate given existing jurisdiction and expertise. Offshore oil platforms operate under the jurisdiction of multiple regulators, as will their eventual partial or full decommissioning. There is substantial existing expertise and experience relevant to decommissioning already extant in state government. Coordination and communication are critical between the relevant entities as they utilize their existing expertise and exercise their independent judgment in processing a rigs-to-reef application. AB 2503 specifically provides for formal agreements to be used to ensure coordination and communication between entities and timely application processing. These have proven successful in many other circumstances.

Recent platform decommissioning. According to the commission, Belmont Island off the coast of Los Angeles County was decommissioned in the early 2000s and was the last offshore oil facility to be removed from California's waters. The commission found that complete removal of the island was the environmentally preferred option because there was no evidence that the island provided unique habitat in the area. Additionally, the

Coast Guard determined, given the shallow depth, that leaving the base of the island behind would create a navigational hazard.

Prior to the Belmont Island decommissioning, the Chevron 4-H platforms off the coast of Carpinteria and Summerland were decommissioned in 1996. The commission acted as CEQA lead. During the platforms' operation, "shell mounds" built up under each one. The mounds are composed of materials from the periodic cleaning of the platform legs of marine life as well as other marine organisms. Additionally drilling fluids and drill cuttings were deposited on the sea floor underneath the platforms prior to this practice being banned. The drilling materials contain contaminants such as PCBs, hydrocarbons and metals. All of these materials are now bonded together in the mounds which were left in place when the platforms were decommissioned. The mounds are 25 – 28 feet high, and 200 – 250 feet in diameter. Decommissioning requirements included the full removal of the shell mounds and all site debris, and that a "trawl test" with standard equipment be performed. According to reports, the site is untrawlable. A decision has been made to leave the mounds in place, but it is unclear if all the necessary permits have been issued.

Most of the offshore platforms are in federal waters and will need federal permits. While close coordination and communication may be able to facilitate the necessary state permits for partial decommissioning, the state cannot compel the relevant federal entities to issue the applicable federal permits in a timely manner.

Do rigs-to-reefs automatically mean there will be more fishing opportunities? Not necessarily. The department is authorized to limit fishing in the vicinity of the reef, if warranted (FGC §6613(c)).

SUPPORT

Coalition for Enhanced Marine Resources (Co-Sponsor)
Sport Fishing Conservancy (Co-Sponsor)
Get Wet Scuba
Hubbs-Sea World Research Institute
Inland Empire Waterkeeper
Orange County Coastkeeper
Professional Association of Diving Instructors
United Anglers
Valley Industry and Commerce Association

OPPOSITION

Citizens Planning Association of Santa Barbara County
Community Environmental Council
Environment California
Environmental Action Committee of West Marin (unless amended)
Environmental Defense Center
Food and Water Watch
Friends of the Sea Otter
Get Oil Out!
International Marine Mammal Project of Earth Island Institute
Ocean Conservancy
Ocean Conservation Research

Pacific Coast Federation of Fishermen's Association
Santa Barbara Channelkeeper
Sierra Club – Los Padres Chapter
Sierra Club California
The Ocean Foundation
Western Alliance for Nature
Wholly H₂O
Two individuals

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