

**ENVIRONMENTAL DEFENSE CENTER * PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS * ENVIRONMENT CALIFORNIA * THE
OTTER PROJECT * GET OIL OUT! * CARPINTERIA VALLEY ASSOCIATION *
CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY *
LOS PADRES SIERRA CLUB * SANTA BARBARA COUNTY ACTION
NETWORK**

July xxx, 2010

Sacramento, CA 95814

Re: AB 2503: California Marine Life Legacy Act (Rigs-to-Reefs) - OPPOSE

Dear Senator xxx,

The undersigned groups urge you to oppose AB 2503, the California Marine Life Legacy Act. AB 2503 would change existing law, which requires complete removal of offshore platforms, and instead allow oil platforms to be abandoned at sea. Many of our organizations opposed prior attempts to create a rigs-to-reefs program in the state. Despite the passage of time, we remain concerned about the lack of information, potential environmental and safety impacts, and economic and legal liability for the state.

Although the bill has been amended to address some of our earlier concerns, we remain opposed to the bill due to the need for more scientific analysis and further evaluation of the safety, management and economic ramifications of a state-sponsored rigs-to-reefs program. Further analysis is required to address these concerns. Fortunately, no platforms are ready for decommissioning, so the state has time to wait until complete information is available.

The Bill is Premature; Information is Lacking

Information regarding environmental impacts, navigational and safety hazards, and cost of state management and liability is still lacking. Section 1 of the bill references the recently released report produced by the Ocean Science Trust (OST) entitled "Evaluating Alternatives for Decommissioning California's Offshore Oil and Gas Platforms," and states that it is the intent of the Legislature that this report shall be taken into account when evaluating a proposal to convert an oil platform into an artificial reef.

The Legislature should strike any reference to the OST report because it is incomplete, misleading, incorrect, and has not been subject to public or peer review. Despite significant financial contribution by the state, the report failed to address

concerns that had been raised by the public and agencies, and leaves many critical unanswered questions. The report itself acknowledges that several essential “data gaps” remain, including but not limited to the following:

- Evaluating the overall effect platform communities have on the regional ecosystem and regional populations of fish.
- Determining habitat value and biological productivity at individual platforms.
- Analyzing the effect on fish assemblages of partially removing platform structures.
- Assessing the impact of allowing fishing at the platforms, as may be required under federal law.
- Analyzing the pollution effects caused by leaving contaminated shell and debris mounds in the ocean.
- Analyzing how a rigs-to-reefs program will affect proposals for new oil and gas development (by reducing costs and liabilities).
- Determining applicant costs of permitting and decommissioning.
- Determining state costs of management, monitoring, maintenance, enforcement, and liability insurance.
- Determining consistency of a rigs-to-reef plan with the state’s existing artificial reef program.

In addition, the report completely misstates federal and state laws that would apply to a rigs-to-reefs program, and fails to disclose the state’s potential liabilities. The extensive scope and nature of the data gaps warrants further consideration and analysis before any changes are made to state law.

Fortunately, there is no time pressure to deal with this issue, as the bill itself notes that the 23 platforms in federal waters are not expected to be ready for decommissioning until sometime between 2015 and 2030. [Fish and Game Code §6425(b)] The law should not be changed until further information and analysis are available.

There is no Scientific Consensus that Oil Platforms function as Fish Habitat

On November 8, 2000, the Select Scientific Advisory Committee on Decommissioning University of California for the University of California Marine Council issued a report in response to rigs-to-reefs legislation (“Ecological Issues Related to Decommissioning of California’s Offshore Production Platforms”). The report concluded that **“there is no clear evidence of biological benefit (in the sense of enhancement of regional stocks) of the platforms in their present configuration. Thus, in light of the lack of strong evidence of benefit and the relatively small contribution of platforms on reef habitat in the region, evaluation of decommissioning alternatives in our opinion should not be based on the assumption that platforms currently enhance marine resources.”** (Emphasis added.)

The bill finds that the new Decommissioning Report and other studies indicate that the partial removal option can result in net environmental benefits and substantial cost savings compared to full removal of an oil platform facility. [Fish and Game Code §6425(d)] However, as noted above, the new Report does not adequately address the environmental issues associated with a rigs-to-reefs program, and critical information and analysis are still lacking. As noted in the Report, only a few platforms have been studied, and there has been no evaluation of the overall effect platform communities have on the regional ecosystem and regional populations of fish. In fact, only 8 of the 27 individual platforms (approximately 30%) have adequate data for modeling biological productivity. Furthermore, the Decommissioning Report relied on only two studies that examine a total of three platforms to make the general claim that juvenile rockfish are larger and have higher densities on platforms than on natural reefs. This generalization is improper and cannot be applied to other platforms that have not been studied. Accordingly, this finding should be deleted from the bill.

Although the bill includes criteria for evaluating the environmental benefit of converting a platform to an artificial reef, there are many remaining concerns. For example, the bill does not require an evaluation as to whether a platform or facility is a source or a sink for fish populations regionally, or whether the facilities may serve to attract fish away from productive natural reefs.¹

Nor is there any specific requirement to evaluate the pollution created by leaving platforms and their associated debris in place. Such debris mounds contain contaminants and may be toxic to the marine environment.²

Another concern we have is that the criteria will not be developed until an application is submitted. At that time, it may be too late to effectively incorporate criteria into the decision-making process. For one, the lead agency under state law will have only 30 days to determine whether the application is complete. If the criteria are not developed in time, the application may not include all the necessary information. In addition, the strict timelines of both the California Environmental Quality Act (CEQA) and the Permit Streamlining Act will apply and may preclude the opportunity for the Council to develop criteria.

The Criteria for Conversion must include compliance with CEQA

Although the bill provides that a proposed project to convert an offshore oil platform or production facility into an artificial reef is subject to the CEQA and the timelines set forth therein [Fish and Game Code §§6426(d), 6427.3(a)(1)], the bill does not list CEQA among the laws that apply to a decision to approve a conversion proposal. CEQA contains substantive as well as procedural mandates that must apply to any project

¹ Carr, et al., *Artificial Reefs: The Importance of Comparisons with Natural Reefs*, Fisheries, vol. 22, no. 4, April 1997.

² California State Lands Commission Shell Mounds Environmental Review.

involving conversion of an offshore oil platform into an artificial reef. Fish and Game Code §6427(a) must therefore include CEQA.

Decommissioned Platforms could be Converted to Magnets for Fishing

In the Gulf of Mexico, platforms are generally removed from their drilling location, and components are added to pre-designated artificial reef sites. These sites become magnets for fishing because of their known locations, and in fact are intended to serve as fishing sites. The same thing is likely to occur offshore California. The decommissioning platforms will be known as artificial reef sites and attract fishers. This occurrence will obviate any potential sheltering benefit provided by the platforms. Although the bill provides that DFG may require a buffer zone around a decommissioned platform in which fishing or removal of marine life is restricted or prohibited [Fish and Game Code §6427.3(a)(2)], the Decommissioning Report states that it may not be legally feasible for the state to protect such areas from fishing due to conflicts with federal laws and regulations.³ For example, the National Fishing Enhancement Act requires access and utilization of artificial reefs by recreational and commercial fishermen.

The Apportionment of Cost Savings Favors the Platform Owner/Operator

The bill requires an applicant to pay 50% of its cost savings to the state. [Fish and Game Code §6427.3(b)] Current law requires platform owners and operators to pay 100% of the cost of decommissioning. We see no reason why that requirement should change. If the owner or operator seeks to avoid its decommissioning obligations, the savings should be paid to the state. Requiring full payment of the cost savings would also help ensure that costs of maintenance, management, monitoring and liability can be covered while still providing other financial benefit to the state.

The Bill Creates a Potential Conflict of Interest for the State Agencies

Prior to the June 21 amendment, the bill created a clear conflict of interest for DFG, which was required to both determine whether an application to convert a platform or facility to an artificial reef should be approved, *and* receive funding to implement the programs set forth in PRC §71552. The amended bill requires the Ocean Protection Council to determine whether a conversion of a platform to an artificial reef provides a net environmental benefit. [Fish and Game Code §§6427(b), 6428] However, to the extent the OPC may receive or allocate funding from this program, the Council would still have a conflict of interest.

The Bill Binds the Future Discretion of DFG

³ See discussion regarding required compliance with the Magnuson-Stevens Fishery Conservation and Management Act, National Fishing Enhancement Act, and regulations of the Pacific Fisheries Management Council. (Decommissioning Report, pp. xxi, 174-175.)

The bill states that DFG “shall” approve an application to convert a platform to an artificial reef if certain criteria are met. [Fish and Game Code §6427.3(a)(5)] This requirement interferes with the discretion of the agency to evaluate a host of legal and regulatory implications, as well as to exercise its full discretion under CEQA.

Liability to the State Remains a Concern

Federal law requires the state to assume title and liability for platforms that are decommissioned at sea.⁴ Despite language in the bill that attempts to require the applicant to indemnify the state [Fish and Game Code §§6427(e), 6427.3(a)(3)], 6427.5(b)] the Legislative Counsel of California has found that similar attempts in prior legislation may be ineffective at protecting the State from liability.⁵ In particular, the Counsel found that indemnification would not apply if the state (1) acts negligently, or fails to perform an act it has agreed to perform, (2) knowingly violates a condition of its federal permit (e.g. fails to adequately maintain the site in a safe manner), or (3) has actual or constructive knowledge of a dangerous condition and fails to protect against the condition. Section 6427.3(a)(3) provides that the state shall be indemnified even in the event of active negligence, which is contrary to existing law.⁶

This fact is especially troubling given the history of decommissioning platforms offshore California. For example, when Chevron was required to decommission the 4H platforms offshore Summerland, massive debris mounds were left on the seafloor and several commercial fishermen filed claims for snagging gear and equipment. This safety concern was enhanced when Chevron’s attempts to mark the sites with buoys were a total failure.⁷ There are currently no buoys or navigational marking delineating the area and these debris mounds continue to be a safety hazard for fisherman. If the state is similarly unable to maintain the decommissioned sites in a safe manner, the state may face liability.

Restrict the Future Use of Platform or Facility

The bill indicates that this law does not promote, encourage or facilitate offshore oil extraction, exploration, and development. [Fish and Game Code §6429.2(b)(4)] And yet, by leaving rigs in place the cost savings provided through this bill could incentivize new or expanded offshore drilling. In addition, there is nothing in the bill to prevent a site from being used in the future for offshore oil production activities.

Conclusion

⁴ 30 CFR § 250.1730.

⁵ See June 18, 2001 Legislative Counsel of California Opinion to Senator Jack O’Connell regarding Decommissioned Oil Platforms (SB 1) - #14137, attached hereto.

⁶ *Id.*

⁷ See “4H Shell Mound Buoy Record,” May 30, 2001.

Despite the effort to address concerns raised during previous attempts to establish a state rigs-to-reefs program, many critical questions remain. Fortunately, no platforms will be ready for decommissioning for several years. We urge the Legislature to refrain from changing existing law without first analyzing all of the potential implications and responding to concerns that have been raised repeatedly over the years.

Thank you for your consideration of these comments.

Sincerely,

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Los Padres Sierra Club

Deborah Braskett, Executive Director
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Atts: Legislative Counsel of California Opinion to Senator Jack O'Connell regarding
Decommissioned Oil Platforms (SB 1) - #14137, June 18, 2001