Date of Hearing: June 25, 2018

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Al Muratsuchi, Acting Chair
SB 588 (Hertzberg) – As Amended May 7, 2018

SENATE VOTE: 30-4

SUBJECT: Marine resources and preservation

SUMMARY: Substantially revises the California Marine Resources Legacy Act (CMRLA) to allow for partial removal, instead of full removal, of oil and gas platforms offshore at a depth of 100 feet or more in state or federal waters.

EXISTING LAW:

1) Federal law requires the complete removal of all platforms and other facilities within one year after the lease terminates. Authorizes the regional supervisor of Bureau of Safety and Environmental Enforcement (BSEE) within the United States Department of the Interior (DOI) to approve partial structure removal or toppling in place for conversion to an artificial reef if the following conditions are met:

    a) The structures become part of a state artificial reef program, and the responsible state agency acquires a permit from the U.S. Army Corps of Engineers and accepts title and liability for the structure; and,

    b) U.S. Coast Guard navigational requirements are satisfied.

2) Federal law requires each permit for an artificial reef to specify the terms and conditions for the construction, operation, maintenance, monitoring, and managing the use of the artificial reef to ensure the protection of the environment and human safety and property.

3) Under the CMRLA, establishes a program to allow partial removal of decommissioned offshore oil structures as an alternative to full removal if specified conditions are met. Provides primary authority to the Department of Fish and Wildlife (DFW) to approve partial removal if specified conditions are met.

4) Provides that a partial removal of an offshore oil and gas platform:

    a) Is a project for purposes of the California Environmental Quality Act (CEQA), and the Natural Resources Agency (NRA) is the lead agency for the environmental review;

    b) Will be a net benefit to the marine environment as compared to a full removal, as determined through appropriate criteria by the Ocean Protection Council (OPC);

    c) If specified prerequisite conditions are met, requires the State Lands Commission (SLC) to determine an accurate and reasonable cost savings that would result from partial removal. If there is an approved partial removal, requires cost savings to be split between the state and the platform owner, according to a specified formula. Further specifies how the state's share of funds shall be distributed, what uses it is eligible for, and requires the

State Coastal Conservancy (Conservancy) to create an advisory spending plan for specific funds;

d) Requires DFW to develop and implement, through a public process, a management plan that will ensure that the net benefits to the marine environment are maintained and enhanced; and,

e) Prohibits the DFW from taking title or responsibility for management of a partially removed structure until final approval has been granted and the state is indemnified from liability associated with the structure.

5) Requires the first person to file an application for partial removal of an offshore oil structure to pay the startup costs incurred by the DFW or the SLC to implement the process, including the costs of developing and adopting regulations. Requires the DFW to reimburse the payment of startup costs from cost savings subsequently deposited into the Fish and Game Preservation Fund from future applicants.

THIS BILL:

1) Defines terms for the purposes of the program:

a) "offshore oil and gas platform" to be a platform used for oil and gas exploration, development, production, process, or storage and to be exclusive of shell mounds and drilling muds.

b) "transferor" to be the owner, operator, or legal entity responsible for the offshore oil and gas platform.

2) Revises the existing process for the partial removal of an oil and gas platform. Establishes a new process for the transfer of the title of an eligible artificial reef converted from an oil and gas platform. Specifies that partial removal of an offshore oil and gas platform is a project under CEQA. Designates SLC, instead of NRA, as the lead agency for all environmental reviews of any project proposed under this program for purposes of CEQA.

3) Specifies that nothing in the process is intended, or to be construed, to limit or affect the authority or duties of any state or local agency, including, DFW, the SLC, the OPC, and the California Coastal Commission (CCC). Specifies that nothing in the bill relieves the owner of an offshore oil platform from specified continuing liability for the offshore oil platform, and, among other things, clarifies that the bill does not relieve an owner of requirements of the federal Comprehensive Environmental Response, Compensation, and Liability Act.

4) Specifies requirements for, and processes through which, an offer to transfer an artificial reef converted from a decommissioned oil and gas platform for incorporation into the California Artificial Reef Program must occur. Requires a transfer to include, among other things, all of the following:

a) The transferor has provided funding for the following evaluations:

i) The OPC to make and submit a determination for inclusion in environmental documentation, based on credible science, whether partial removal of the platform would provide a net benefit to the marine environment compared to full removal of the platform. Specifies factors the OPC must consider when making the net benefit determination, including adverse impacts to air quality and greenhouse gas emissions that would result from full removal of the platform compared to partial removal.

ii) The transferor in consultation with the DFW, with public comment, to prepare and adopt a management plan for the artificial reef.

iii) The SLC to make a final determination of the estimated cost savings from the partial removal. Requires the SLC to ensure that any cost savings are accurately and reasonably calculated and allows the SLC to obtain assistance from governmental, nongovernmental, or private entities and experts to do so.

b) Requires the transferor to enter into an indemnification agreement with the DFW that indemnifies the state and the DFW, to the extent permitted by law, against any and all liability. Specifies the indemnification agreement can be in the form of an insurance policy, cash settlement, or other mechanism as determined by the DFW.

c) The CEQA process has been completed and any judicial process has been fully exhausted.

5) Outlines a declining schedule of benefits (share of decommissioning cost savings) to the platform owner, based on application date, and specifies how funds must be transferred to the state as follows:

a) 55% of cost savings if the application is transmitted before January 1, 2017;

b) 65% of cost savings if the application is transmitted between January 1, 2017 and January 1, 2023; and,

c) 80% of cost savings if the application is transmitted after January 1, 2023.

6) Allows an entity that provides startup funding to designate one platform to receive 45% of the share of the decommissioning cost savings after January 1, 2017.

7) Specifies that the DFW must return funds if approval required for the partial removal of the offshore oil platform is permanently enjoined, vacated, invalidated, rejected, or rescinded by a court or governmental agency as the result of litigation challenging the acceptance.

8) Outlines allocation of the state's share of the cost savings transmitted under the program as follows:

a) 85% to the California Endowment for Marine Preservation;

b) 10% to the General Fund;

c) 2% to the Fish and Game Preservation Fund, to be spent as specified;

d) 2% to the Coastal Act Services Fund; and,

e) 1% to the board of supervisors of the county immediately adjacent to the location of the facility prior to its decommissioning.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill will result in unknown state costs in the mid to high millions per year, as outlined below, and an unknown amount of revenue from the program, potentially in the hundreds of millions, over time. Costs include the following:

1) Approximately $1.5 million annually (Special Deposit Fund) to the CDFW for staffing.

2) Approximately $440,000 in year 1, and ongoing cost of $540,000 (special fund), to the OPC for staffing and contracting costs.

3) Approximately $3 million to $3.75 million (Fee-for-Service) to prepare the first Platform-specific Decommissioning Environmental Impact Report (EIR), and up to $2.25 million to prepare the programmatic EIR for all remaining structures.

4) Unknown, likely in the low hundreds of thousands annually (special fund), costs to the CCC for permitting.

5) Unknown, likely minor, costs to the Air Resources Board.

COMMENTS:

1) **Author's Statement:**

> The California coast is home to over two-dozen oil platforms that have been extracting fossil fuels for more than fifty years. During that time, the structures have become habitat used by a wide variety of marine life, including many species of fish, sea mammals, and invertebrates – some of which are at-risk species. CMRLA – "rigs-to-reefs" – allows the DFW to issue a permit for the *partial removal* of offshore oil structures, leaving in place the steel frame that supports the existing marine life. Total removal of an oil rig would both destroy that habitat and lead to other environmental damage, such as emissions associated with shipping the steel overseas for recycling. Partial decommissioning also provides cost-savings, relative to full removal, and under the CMRLA cost-savings are shared with the state for conservation programs. Under this bill, the oil companies will be responsible for funding the rigs-to-reef permitting program, and the OPC will decide whether partial decommissioning provides a net benefit to the marine environment.

2) **Background:** ***Oil and Gas Platforms.*** There are 27 oil and gas platforms offshore California. Four of these platforms are in state waters at relatively shallow depths. The remaining 23 platforms are over 3 miles from shore in federal waters known as the Outer Continental Shelf (OCS), at depths ranging to nearly 1,200 feet. Additionally, there are five

more offshore "islands" (which are also platforms) in state waters. Platforms are located off the coasts of Los Angeles, Ventura, and Santa Barbara counties. The oldest of the offshore platforms was installed in the early 1960s and the newest in the late 1980s.

At least five offshore platforms, including one island, off the coast of California have been decommissioned and removed. In at least one instance, hazardous and accumulated materials in the remaining shell mounds surrounding the legs of a decommissioned platform have presented an ongoing issue that remains unresolved over 20 years post-decommissioning.

Partial decommissioning or "rigs-to-reefs" programs are widely used in the Gulf of Mexico, Louisiana, Texas, and Mississippi. Partial decommissioning, generally, is an alternative to complete rig removal in which the owner of the platform chooses to modify a platform so that, in part, it can continue to support marine life as an artificial reef. Partial removal typically entails removing the top 80 to 90 feet of the platform by towing, toppling in place, or removing, while leaving the lower portion behind to act as a subsurface "reef." In 2014, a study commissioned for BSEE estimated the decommissioning costs for the federal platforms off the coast of California at $1.4 billion. The most expensive platform to decommission identified in the study would be platform Harmony, which is estimated to cost $184.7 million. Harmony's platform is at nearly 1,200 feet which is the greatest depth of any platform off the California coast. No fixed platform at a depth of more than 500 feet has ever been fully decommissioned.

AB 2503 (Pérez), Chapter 687, Statutes of 2010, established the California Artificial Reefs Program ("rigs to reefs"), that allowed, on a case-by-case basis, the partial decommissioning of offshore oil and gas platforms. Since the program has gone into effect, no rigs-to-reefs applications under its auspices have been filed with the state, but interested platform owners had no state-developed application materials with which to apply and NRA was not equipped to conduct the CEQA analyses. This bill has SLC serve as lead agency and allows start-up costs to develop the program to be provided by platform owners in return for a more generous cost sharing agreement for the platform owner. The bill also modifies when SLC must complete determination of the cost savings of partial decommissioning from upon certification of the appropriate environmental documents in a timely manner. The cost savings must be determined before DFW accepts the remaining platform. It is unclear whether SLC will wait until the platform is partially decommissioned to know the actual costs of partial decommissioning. Decommissioning costs vary significantly based on the planning and strategy for the decommissioning, selection of contractors, standards for removal, and number of platforms being done at the same time. It may be difficult and speculative to determine the full cost of complete removal for a platform that is never fully removed. Disagreements over the cost savings may arise. The bill also excludes drilling muds and shell mounds from the definition of offshore oil and gas platform. Cleaning up drilling muds and shell mounds is a major part of full removal and should be included in the cost savings calculation.

3) **Offshore Oil**. In 1994, the California Coastal Sanctuary (CCSA) removed all state lands underlying the Pacific Ocean from the SLC's oil and gas general leasing authority. The CCSA contains two limited exceptions that allow the SLC to approve new offshore oil and gas production in state waters. One exception is if the SLC determines that state oil or gas deposits are being drained by means of producing wells upon adjacent federal lands and a new oil and gas lease is in the best interests of the state. The other exception allows the

Commission to adjust the boundaries of an existing offshore oil and gas lease to encompass all of an oil and gas field partially contained in the lease.

Since 2001, the SLC adopted several resolutions opposing the resumption or expansion of federal offshore oil and gas lease sales in the OCS. The foundation for each resolution was the same: that the danger of an oil spill like the 1969 Santa Barbara oil spill was too high and that oil development and potential spills would adversely affect fishing, tourism, and environmental, recreational, economic, scenic, and other values. The resolutions are also based on and expressive of the state's policy and practice of not issuing new offshore leases. The Obama Administration prohibited offshore drilling in the Pacific OCS until 2022. In January 2018, the Trump Administration announced its plan to lift the moratorium put in place by President Obama, opening 90% of federal waters, including off the California's coast, to new drilling leases. In a tweet, United States Secretary of the Interior Ryan Zinke (Secretary Zinke) indicated that Florida could be exempted from new leases due to concerns about impacts on the tourism industry, but this decision has not been reflected in the Bureau Of Ocean Energy Management's (BOEM) proposed OCS oil and gas leasing plan. Secretary Zinke also testified at a U.S. Senate Energy Committee that he doubts oil and gas explorations would occur in the Pacific region and indicated that would be reflected in the next draft of BOEM's proposed OCS oil and gas leasing plan. The next draft has not yet been released. If new leases are allowed in the Pacific OCS, this bill may make new oil and gas development in the Pacific OCS more attractive by reducing decommissioning costs by potentially tens of millions of dollars.

The bill states it is the intent of the Legislature to end drilling off the coast of California. This might not be an accurate statement considering past bills SB 1096 (Jackson, 2014) and SB 788 (McGuire, 2015), which would have removed SLC authority to issue new oil and gas leases in state waters failed to pass the Legislature. This bill also states it is the intent of the Legislature that nothing in the CMRLA encourages additional oil and gas leases. However, there is nothing in the bill prohibiting a platform accessing a new oil and gas lease from pursuing partial decommissioning to reduce their decommissioning costs. Therefore, this bill does provide an option to make new oil and leases more financially attractive by allowing platforms associated with those new leases to be partially decommissioned.

The sponsor claims that without a viable rigs to reefs program platform operators will continue to delay decommissioning, and entire platforms will be left in place for much longer than if they could be partially decommissioned. However, nothing in CMRLA requires a platform owner to apply for partial decommissioning and future legislation could be pursued to reduce operator decommissioning costs even further.

4) ***Net benefit to the marine environment.*** The overall habitat value or detriment of an offshore oil and gas platform is unique to each platform, especially because the depth of each platform varies so greatly. The U.S. Coast Guard navigational rules require between 80 and 90 feet of the platform to be removed. Therefore, some platforms may have 100 feet of platform remaining after partial decommissioning, others may have over 1,000. A crucial question in determining net benefit of a rig-to-reef is the impact it can have on species' population in the region. Science suggests there may be some species, such as certain rockfish, that could benefit from leaving the platform in place. Research published in 2014, indicated that the subsurface platform structures in California may be some of the most productive habitat for marine life in the world, but there is variation from platform to platform on the extent of

marine life productivity. There are also questions about the impact of a platform habitat has on the surrounding natural habitat either through additional invasive species or luring some species from their natural habitat. In addition, it is unclear whether increased fishing after partial decommissioning would eliminate additional species' populations. Full and even partial removal of steel or concrete fixed platforms that weigh thousands of tons has a significant, although short-term and localized, negative impact on the marine environment.

This bill requires OPC to determine whether partial removal provides a net benefit to the marine environment. This includes affects to fish, biological resources, and other marine life and impacts on water quality. However, this bill requires OPC to weigh the adverse impacts of air quality and greenhouse gases. These impacts are inconsistent with the rest of the factors OPC is being required to review. It may be difficult for OPC to decide which impact is more important. In addition, it is unclear whether OPC staff or the Council itself will make the determination that there is a net marine benefit to partial removal.

5) **Platform Holly.** On April 17, 2017, the SLC received documents from Venoco quitclaiming its interests in the South Ellwood Field leases, including Platform Holly and the Ellwood Beach pier leases offshore the City of Goleta. SLC is now responsible for decommissioning Platform Holly. SLC will ensure that the 32 offshore wells and facilities are secured and maintained while it develops a plan, in coordination with local and state regulatory agencies, to efficiently and safely address the disposition of the wells, platform, and piers. The process for decommissioning the facilities and plugging and abandoning the approximately 32 wells on state property will be expensive, complex, and lengthy. SB 840 (Mitchell, 2018) appropriates $108,500,000 from the General Fund over three years to cover a portion of the costs to permanently secure, plug and abandon, and decommission both Rincon Island Limited Partnership and Platform Holly. SLC is negotiating with Exxon Mobil, the prior owner of the lease, on what level they will be responsible for the decommissioning costs for Platform Holly. The state could be responsible for a portion of the cost of decommissioning, and Platform Holly may be particularly costly because it will be the only platform removed by the state. If the state could cooperate with other decommissioning efforts to reduce contracting costs and the cost of securing equipment, including a barge, it could provide a major cost savings.

6) **Prior Legislation:**

AB 2503 (Perez), Statutes of 2010, Chapter 687, established a program to allow for the partial removal of existing offshore oil platforms. Any cost savings realized from partial removal would be split between the state and the platform owner. This bill specified that any state proceeds would largely be provided to a new endowment and to be used for various ocean-related purposes.

AB 2267 (Hall 2012), would have added air quality and greenhouse gas emissions to the net environmental benefit calculations and revised the calculation and sharing of cost savings from partial decommissioning. Held in Senate Appropriations Committee.

AB 207 (Rendon, 2013), would have added air quality and greenhouse gas emissions to the net environmental benefit calculations, among other things. Held in Assembly Appropriations Committee.

SB 233 (Hertzberg, 2015), would have modified the California Marine Resources Legacy Act regarding applications to allow the partial removal of an offshore oil structure. Held in Assembly Appropriations Committee.

7) **Double Referral.** This bill was also referred to the Assembly Water, Parks, and Wildlife Committee and passed out of that committee on a 12-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Amigos del Aire Libre
Coalition for Enhanced Marine Resources
Deep Blue Scuba & Swim Center
Hubbs-SeaWorld Research Institute
Ocean Conservancy
San Diego County Wildlife Federation
Sportfishing Conservancy of California
State Building and Construction Trades Council, AFL-CIO
United Anglers

Opposition

5 Gyres Institute, The
350 Conejo / San Fernando Valley
350 South Bay Los Angeles
California Coastal Protection Network
Californians for Western Wilderness
Center for Oceanic Awareness, The
Citizens Planning Association
Clean Water Action
Congressman Salud Carbajal, 24th Congressional District, California
Defenders of Wildlife
Environment California
Environmental Caucus, California Democratic Party
Environmental Defense Center
Environmental Protection Information Center
Friends of the Earth
Fund for Santa Barbara
Great Old Broads for Wilderness
Hands Across the Sand
Heal the Bay
Heal the Ocean
Inland Ocean Coalition
Klamath Forest Alliance
Ocean Conservation Research
Ocean Foundation, The
Ocean Protection Coalition
Pacific Coast Federation of Fishermen's Associations
Plastic Pollution Coalition

Redwood Coast Watersheds Alliance
Safe Energy Now
SanDiego350
San Francisco Baykeeper
Santa Barbara Channelkeeper
Santa Barbara County Action Network
Santa Barbara County Board of Supervisors
Sierra Club California
Seventh Generation Advisors
SoCal 350 Climate Action
Surfrider Foundation
Western Alliance for Nature
Wildcoast

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