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Partial vs. Complete Removal: The Debate Surrounding California's Implementation of the Rigs-to-Reef Project

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Partial vs. Complete Removal: The Debate Surrounding California’s Implementation of the Rigs- to-Reef Project

By Emily Edwards*

TABLE OF CONTENTS

I.	INTRODUCTION	760
A.	<i>Historical Overview of Offshore Oil Drilling</i>	761
B.	<i>Development of the Rigs-To-Reef Project</i>	767
C.	<i>Implementation of the Rigs-to-Reef Program</i>	769
D.	<i>The Debate Surrounding the Rigs-to-Reef Project</i>	772
E.	<i>Critical Differences Between Implementation of the Rigs-to-Reef Project in the Gulf States and California</i>	781
II.	CALIFORNIA’S INITIAL ATTEMPTS TO IMPLEMENT THE RIGS-TO-REEF PROJECT	784
A.	<i>S.B. 2173</i>	784
B.	<i>Analysis of S.B. 2173</i>	786
C.	<i>S.B. 241/S.B. 1</i>	788
D.	<i>Analysis of S.B. 241/S.B. 1</i>	792
III.	CALIFORNIA’S IMPLEMENTATION OF THE RIGS-TO-REEF PROJECT: A.B. 2503	794
A.	<i>Analysis of A.B. 2503 and its Potential Impact on California</i>	802
IV.	CONCLUSION	808

I. INTRODUCTION

If you walk along practically any beach in Santa Barbara, California, you will likely discover a sticky black substance attached to the bottom of your feet. You will find the source of this substance if you look just offshore—offshore oil and natural gas drilling platforms. The presence of oil and natural gas drilling platforms has long been a familiar sight off the California coast, as California was the first site of offshore oil drilling.¹ However, many of the drilling platforms off of the California coast will stop producing significant amounts of oil or natural gas, and become obsolete in the next twenty years. This raises the question of what will become of these obsolete drilling platforms dotting the California coastline.

Traditionally, these obsolete drilling platforms would be scheduled for decommissioning, and complete removal of the entire platform would be required.² The development of the Rigs-to-Reef Project (“Project”), however, provides another potential option for the decommissioning of offshore oil and gas drilling platforms. The Rigs-to-Reef Project allows for partial, rather than complete, removal of the drilling platforms. The remaining portion of the platform is then donated to the state and turned into an artificial reef.

The Rigs-to-Reef Project, however, remains controversial. The controversy consists of two main concerns. The first main concern is the environmental impact that partial decommissioning will have on the marine environment. The second main concern is the economic benefit provided to oil companies, and the liability and

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¹ See *infra* note 5.

² See *infra* note 49. The federal and state leases provided to oil and gas companies for offshore oil drilling require that once the lease expires, or the drilling platform becomes obsolete, that the oil or gas company completely remove the drilling platform and restore the seabed to its natural state. *Id.*

costs assumed by states that implement the Rigs-to-Reef Project.³ The controversy has caused implementation of the Rigs-to-Reef Project to be slow. This is especially true regarding implementation of the Rigs-to-Reef Project in California. It has taken California over a decade, and three separate legislative attempts, to implement the Rigs-to-Reef Project. In September of 2010, the California Legislature passed A.B. 2503, which finally allows California to implement the Rigs-to-Reef Project.⁴

Considering that it took the California Legislature over a decade to pass a law implementing the Rigs-to-Reef Project, the question exists as to how A.B. 2503 was finally able to generate enough legislative and public support to become law. This Comment will address this question by first examining California's legislative history surrounding the Rigs-to-Reef Project and then by evaluating A.B. 2503. The primary focus in evaluating A.B. 2503 will be to determine whether the law sufficiently addresses the environmental and economic concerns associated with the controversy surrounding the Rigs-to-Reef Project. Finally, the Comment will postulate what future steps remain necessary for the successful implementation of the Rigs-to-Reef Project in California.

A. Historical Overview of Offshore Oil Drilling

In order to properly discuss A.B. 2503, allowing the implementation of the Rigs-to-Reef Project in California, it is first necessary to briefly examine the history of offshore oil drilling in the United States. The exploration of oil and natural gas resources began in the late nineteenth century, with the first oil well being drilled off of the coast of California in 1896.⁵ The existence of oil and natural

³ See *infra* note 85. Oil companies would save billions of dollars on removal costs for each offshore oil and gas platform that they were able to partially rather than completely remove. *Id.*

⁴ California Marine Resources Act, CAL. FISH & GAME CODE § 6601 (West 2010).

⁵ U.S. DEP'T OF THE INTERIOR, MINERALS MGMT. SERV., LEASING OIL AND GAS RESOURCES: OUTER CONTINENTAL SHELF 3 (2005), available at <http://www.boem.gov/search-results.aspx?q=greenbook-leasingdocument.pdf>, (click on "1. GreenBook-LeasingDocument.pdf"). The first offshore oil rig was drilled in Summerland, California thirty-eight years after the first onshore oil rig in Pennsylvania. *Id.* at 2. These early offshore oil rigs did not resemble the modern

gas along the coastline combined with the emergence of oil as America's primary energy resource encouraged further development of offshore oil drilling, including the ability to drill for oil in deep, open water.⁶

America's increasing demand for oil combined with the development of offshore oil drilling further from shore in deeper waters caused tensions between the Federal Government and the state governments over jurisdictional control over the waters.⁷ The states asserted that they could control the lease agreements for drilling in the seabed in the waters off of their coast, while the Federal Government asserted jurisdiction based on the fact that the drilling was being done in the continental shelf.⁸ In 1945, President Truman gave a proclamation in which he recognized the tensions that existed regarding the jurisdiction of the oil and other natural resources being extracted from the continental shelf in the coastal waters of the United States.⁹ In this proclamation, President Truman established that the Federal Government had jurisdiction over the natural resources of the subsoil and seabed of the continental shelf located off of the coast of the United States.¹⁰

floating steel oil rigs that remain in coastal waters today, but the original oil rigs were built on wooden wharfs that extended into the ocean. *Id.* at 3.

⁶ *Id.* at 2–3. With technological developments in the steel industry, the oil industry was able to expand its drilling into “open, unprotected waters” by the late 1930's. *Id.* at 3. By 1947, the first oil well was drilled in open water from a fixed platform, which meant drilling was no longer limited to drills attached to wharfs on shore, but oil drills could be placed further off shore in open water. *Id.*

⁷ Dan Rothbach, *Rigs-to-Reefs: Refocusing the Debate in California*, 17 DUKE ENVTL. L. & POL'Y F. 283, 284 (2007). See also U.S. DEP'T OF THE INTERIOR, MINERALS MGMT. SERV., LEASING OIL AND GAS RESOURCES: OUTER CONTINENTAL SHELF, *supra* note 5, at 5.

⁸ U.S. DEP'T OF THE INTERIOR, MINERALS MGMT. SERV., LEASING OIL AND GAS RESOURCES: OUTER CONTINENTAL SHELF, *supra* note 5, at 5. See also Rothbach, *supra* note 7, at 284.

⁹ Proclamation No. 2667, 10 Fed. Reg. 12303 (Oct. 1, 1945).

¹⁰ *Id.* President Truman outlines the rationale for federal jurisdiction by stating that

concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the

In the late 1940's, in an effort to assert the jurisdictional rights it had established in the 1945 Proclamation, the Federal Government brought suit against California seeking to enjoin California from trespassing on the natural resources of the seabed subject to federal jurisdiction.¹¹ California responded to the claim admitting that it had been issuing leases to individuals and corporations for the extraction of petroleum, but asserted it was acting within its jurisdiction as these leases only allowed extraction of petroleum from land within the three miles subject to state jurisdiction.¹² The Supreme Court recognized states' interests in having jurisdiction over the natural resources of the seabed and continental shelf.¹³ However, the Supreme Court then went on to validate the 1945 Proclamation by upholding the Federal Government's jurisdiction over all oil and other natural resources of the seabed and continental shelf, and refused to limit the Federal Government's jurisdiction to beyond a three mile boundary from the

United States as appertaining to the United States, subject to its jurisdiction and control.

Id. He further specified the federal jurisdiction by specifically declaring that "all sea [bed] natural resources beyond the [three] mile jurisdiction of most coastal states were the property of the United States." *Id.* Thus coastal states had limited jurisdiction over the seabed, which extended up to three miles from shore, but the seabed beyond the three miles was subject to federal jurisdiction. *See* U.S. DEP'T OF THE INTERIOR, MINERALS MGMT. SERV., LEASING OIL AND GAS RESOURCES: OUTER CONTINENTAL SHELF, *supra* note 5, at 5.

¹¹ *United States v. California*, 332 U.S. 19, 23, *supplemented sub nom.* *United States v. California*, 332 U.S. 804 (1947). The United States government alleged that:

California, acting pursuant to state statutes, but without authority from the United States, has negotiated and executed numerous leases with persons and corporations purporting to authorize them to enter upon the described ocean area to take petroleum, gas, and other mineral deposits, and that the lessees have done so, paying to California large sums of money in rents and royalties for the petroleum products taken

Id.

¹² *Id.* at 23–24.

¹³ *Id.*

coastline.¹⁴ When Louisiana and Texas challenged the federal jurisdiction over oil drilling and exploration within their states claiming they were the “sole owners of the offshore seabed adjacent to their coast,” this Supreme Court decision was extended to both states.¹⁵

In response to these Supreme Court decisions, in 1953, Congress passed the Submerged Lands Act, which provided states with jurisdiction over the natural resources and the seabed up to three nautical miles from the states’ coastline.¹⁶ In enacting this legislation, Congress recognized that states should have some control over the management and development of the natural resources and the seabed directly off of their coast.¹⁷ Although the Submerged

¹⁴ *Id.* at 40–41. Thus, the Supreme Court established federal jurisdiction over the entire seabed and continental shelf, without being subject to limitation by state jurisdiction. *See also* Rothbach, *supra* note 7, at 284–85.

¹⁵ *Id.*; *see also* United States v. Louisiana, 339 U.S. 699 (1950), *superseded by statute*, Submerged Lands Act, ch. 65, 67 Stat. 29 (1953); United States v. Texas, 339 U.S. 707 (1950), *superseded by statute*, Submerged Lands Act, ch. 65, 67 Stat. 29 (1953). The coastal states sought to control the oil drilling and natural resources off of their coasts, resented the fact that the Federal Government was leasing oil wells without state permission, and sought control over these lucrative and important natural resources. *See generally* U.S. DEP’T OF THE INTERIOR, MINERALS MGMT. SERV., LEASING OIL AND GAS RESOURCES: OUTER CONTINENTAL SHELF, *supra* note 5, at 5.

¹⁶ 43 U.S.C. §§ 1301–1315 (2002). With the Submerged Lands Act, Congress directly contradicted the previous Supreme Court decisions, which had established federal jurisdiction over all of the natural resources and the seabed. The Supreme Court later upheld the Submerged Lands Act stating that Congress had the power to relinquish, to the states, the federal government’s property rights over the submerged lands without interfering with U.S. national sovereign interests. *See Alabama v. Texas*, 347 U.S. 272, 273–76 (1954).

¹⁷ 43 U.S.C. §§ 1301–1315. Congress specifically stated that:

It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law

Thus Congress, by providing the states with some jurisdictional control over the natural resources and seabed up to three nautical miles from the coastline, sought to

Lands Act clarified federal and state jurisdiction over the natural resources and seabed, it did not include provisions on leasing or development of the submerged lands.¹⁸ Congress enacted the Outer Continental Shelf Lands Act (OCSLA) in 1953 in an effort to establish leasing and development policies and procedures for the submerged lands.¹⁹ Under the OCSLA, the Secretary of the Interior oversees the mineral exploration and development of the outer continental shelf.²⁰ The OCSLA was primarily concerned with encouraging the development of oil exploration, and thus only provided limited regulation of the oil exploration and drilling along the continental shelf.²¹

The state and federal governments both encouraged the development and exploration of offshore oil drilling into the late 1960's.²² This led to the first major environmental disaster related to offshore oil drilling, an oil and natural gas leak that occurred in 1969.²³ Union Oil had received a lease from the Federal Government to conduct offshore oil drilling about five miles off of the coast of

promote the development and exploration of offshore energy resources, especially oil and natural gas. *Id.*

¹⁸ Rothbach, *supra* note 7, at 285; *see also* H.R. REP. NO. 83-413, at 1 (1953), *reprinted in* 1953 U.S.C.C.A.N. 2177, 2177.

¹⁹ *OCS Lands Act History*, BUREAU OF OCEAN ENERGY MGMT., <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Outer-Continental-Shelf/Lands-Act-History/OCSLA-History.aspx>.

²⁰ *Id.* The OCSLA authorizes the Secretary of the Interior to lease land in the outer continental shelf, subject to federal jurisdiction, to the “highest qualified responsible bidder” through a competitive bidding process. *Id.* The OCSLA provides guidelines for the oil and gas exploration and development on the continental shelf, and allows the Secretary to adjust regulations as necessary. *Id.*

²¹ H.R. REP. NO. 83-413, at 4 (1953). The OCSLA’s main provision regulating the leases and oil drilling only required the “exercise of reasonable diligence in the operation of the lease and to conduct [the] operations in a sound and efficient oilfield practice so as to prevent waste therein.” *Id.* Thus, the OCSLA generally refrained from implementing new or changing preexisting safety and environmental regulations for oil drilling, but instead applied the established industry practices to offshore oil drilling on the continental shelf. *Id.*; *see also* Rothbach, *supra* note 7, at 285.

²² Sean B. Hecht, *California’s New Rigs-to-Reefs Law*, UCLA INST. OF THE ENV’T AND SUSTAINABILITY, *available at* <http://www.environment.ucla.edu/reportcard/article.asp?parentid=9389>.

²³ Rothbach, *supra* note 7, at 285–86.

Santa Barbara, California.²⁴ During the drilling process, pressure began to build in the casing surrounding the oil well, causing the casing on the well to split and large cracks to form in the seabed surrounding the well.²⁵ Large amounts of oil and natural gas were released from the well and seabed, causing thirty-five miles of coastline to be covered in oil and eight hundred square miles of ocean to be affected by the oil spill.²⁶ This oil spill resulted in public and political backlash against the oil companies and raised new concerns regarding offshore oil drilling.²⁷ In response to the spill, California exercised its jurisdiction over state waters by refusing to allow the development of new offshore oil drilling sites.²⁸ The Federal Government continued to allow development of new oil drilling sites in federal waters until 1984.²⁹ In 1984, Congress banned the use of federal funds for new oil development off the California coast.³⁰

Also, as a direct result of the oil spill, the Federal Government passed several acts that sought to regulate offshore oil drilling.³¹ These acts include the National Environmental Protection Policy Act and the Coastal Zone Management Act. The National Environmental Protection Policy Act requires a detailed environmental review before any major or controversial federal action can be taken, while the Coastal Zone Management Act requires state review of any federal action that will affect the land and water use of the coastal zone.³² Despite this increased federal regulation, it remained unclear whether environmental reports were

²⁴ K.C. Clarke & Jeffrey J. Hemphill, *The Santa Barbara Oil Spill, A Retrospective*, Y.B. OF THE ASS'N OF PAC. COAST GEOGRAPHERS, at 157–162 (2002), available at <http://www.geog.ucsb.edu/~kclarke/Papers/SBOilSpill1969.pdf>; see also Rothbach, *supra* note 7, at 286.

²⁵ Clarke, *supra* note 24, at 157–58.

²⁶ *Id.* at 160–61.

²⁷ *Id.* at 161.

²⁸ Hecht, *supra* note 22.

²⁹ *Id.*

³⁰ *Id.*

³¹ *OCS Lands Act History*, BUREAU OF OCEAN ENERGY MGMT., *supra* note 19.

³² *Id.*

required for leases associated with oil exploration.³³ This question was answered in 1978, when Congress amended the OCSLA.³⁴ The amendments require an environmental review for all leases that are a major federal action and concern the development and exploration of oil.³⁵ Furthermore, states can review this action and the environmental reports based on the Coastal Zone Management Act.³⁶

In 1982, the Secretary of the Interior created the Minerals Management Service (MMS).³⁷ MMS is the administrative agency that oversees leasing of the submerged outer continental shelf lands and offshore oil drilling operations.³⁸ The MMS analyzes the environmental review statement and ensures that states have notice of and the opportunity to review the leasing proposal.³⁹ Before granting a lease for offshore oil drilling, MMS must consider the alternatives to the leasing proposal, the environmental impact of the drilling, and whether the lease will comply with state regulations.⁴⁰ In the event that the lease expires or the oil rig no longer produces oil, the lease agreement and current law require that the oil rig structure be completely removed, both below and above the water, and that the seabed be returned to its prior natural state.⁴¹

B. Development of the Rigs-To-Reef Project

The Rigs-to-Reef Project was created by the MMS in an attempt to support the National Artificial Reef Plan (NARP) created under the National Fishing Enforcement Act of 1984 (NFEA).⁴²

³³ See Rothbach, *supra* note 7, at 286.

³⁴ *Id.*

³⁵ *Id.*; see also 43 U.S.C. § 1351(f) (2000).

³⁶ 43 U.S.C. § 1351(h)(1) (2000).

³⁷ *OCS Lands Act History*, BUREAU OF OCEAN ENERGY MGMT., *supra* note 19.

³⁸ *Id.*

³⁹ U.S. DEP'T OF THE INTERIOR, MINERALS MGMT. SERV., LEASING OIL AND GAS RESOURCES: OUTER CONTINENTAL SHELF, *supra* note 5, at 17, 21.

⁴⁰ *Id.*

⁴¹ Hecht, *supra* note 22.

⁴² *Rigs-to-Reefs Information: What is Rigs-to-Reefs and how does it relate to the mission of the Minerals Management Service (MMS)?*, BUREAU OF OCEAN ENERGY MGMT., REG. AND ENFORCEMENT,

NFEA sought to prevent fish degradation within the United States coastal waters.⁴³ As part of NFEA, the Federal Government established an artificial reef program under NARP.⁴⁴ NARP sought to “promote and facilitate responsible and effective artificial reef use based on the best scientific information available” in order to sustain and potentially increase the fish and marine life populations in coastal waters.⁴⁵ These artificial reefs were intended to create abundant recreational and commercial fishing areas in coastal waters.⁴⁶ The Act provides that the Secretaries of Commerce and Army Corps of Engineers shall administer, monitor, and encourage the development of the artificial reefs.⁴⁷ Generally, coastal states have been enthusiastic about implementing NARP, and the states are

<http://www.gomr.boemre.gov/homepg/regulate/envIRON/rigs-to-reefs/information.html> (last visited Mar. 18, 2011), [hereinafter *What is Rigs-to-Reefs*].

⁴³ See Rothbach, *supra* note 7, at 287.

⁴⁴ Pub. L. No. 98-623, § 204, 98 Stat. 3395 (1984).

⁴⁵ *National Artificial Reef Plan (as Amended): Guidelines for Siting, Construction, Development, and Assessment of Artificial Reefs*, U.S. DEP’T OF COMMERCE AND NAT’L OCEANIC AND ATMOSPHERIC ADMIN., at 1–2 (2007), available <http://www.nmfs.noaa.gov/sfa/PartnershipsCommunications/NARPwCover3.pdf> [hereinafter *National Artificial Reef Plan*].

⁴⁶ 33 U.S.C.A. § 2102 (2011).

⁴⁷ *National Artificial Reef Plan*, *supra* note 45, at vi. The Secretary of Commerce oversees the Artificial Reef Plan, which provides guidance to states and organizations that want to create artificial reefs in the coastal waters and along the outer continental shelf. *Id.* The Army Corps of Engineers issues the actual permits for the artificial reefs, and thus the Secretary of the Army must

consult with and consider the views of appropriate local, state, and federal agencies and other interested parties; ensure that the provisions for siting, constructing, monitoring, and managing artificial reefs are consistent with established criteria and standards; and ensure that the title to the artificial reef construction material is unambiguous and that responsibility for maintenance and the financial ability to assume liability is clearly established.

Id.

working with the Army Corps of Engineers to meet the requirements of the Plan in order to effectively create the artificial reefs.⁴⁸

C. Implementation of the Rigs-to-Reef Program

The success of NARP encouraged the MMS to adopt the national Rigs-to-Reefs Project.⁴⁹ The Project allows for partial rather than complete removal of oil rig platforms whose leases have expired or that no longer produce oil.⁵⁰ The remaining parts of the platform

⁴⁸ *Id.* Due to the state cooperation and implementation in creating artificial reefs, the National Artificial Reefs Plan is generally considered to be a success. *Id.* at 2.

⁴⁹ *What is Rigs-to-Reefs*, *supra* note 42. In 1993 and again in 1998, the MMS announced its support for the artificial reef program and encouraged the continued development of the Rigs-to-Reef Project. See LES DAUTERIVE, RIGS-TO-REEFS POLICY, PROGRESS, AND PERSPECTIVE OCS REPORT MMS 2000-073, 2 (2000).

The MMS supports and encourages the reuse of obsolete offshore petroleum structures as artificial reefs in U.S. waters. The structure must not pose an unreasonable impediment to future mineral development. The reuse RTR plan must comply with the artificial reef permitting requirements of the U.S. Army Corps of Engineers and the criteria in the National Artificial Reef Plan. The state agency responsible for managing marine fisheries resources must accept liability for the structure before MMS will release the Federal lessee from obligations in the lease instrument.

Id.

⁵⁰ Hecht, *supra* note 22. All federal leases that authorized the oil drilling and exploration required complete removal of the drilling platform and reestablishment of the seabed to its condition prior to drilling. *Id.* In order to return the seabed to its condition prior to drilling, the oil company must completely remove the drilling platform both above and below the water, seal all oil and natural gas wells, and either remove or treat the shell mounds. *Id.* Shell mounds refer to debris that has fallen from the oil rig platform and has been covered by shells and other marine life overtime. *Id.* The shell mounds often contain drilling byproducts such as hydrocarbons or metals; thus, the shell mounds must be removed entirely or treated in order to prevent the byproducts from contaminating the marine environment overtime. *Id.* The Rigs-to-Reef program provides an alternative to complete removal for qualifying offshore oil drilling sites. *Id.*

are then converted into artificial reefs.⁵¹

The MMS allows for three options when an oil-drilling site qualifies for partial, rather than complete, removal.⁵² The first form of removal is the Tow and Place Platform where a cable is attached to the remaining rig structure, and then a boat tows the structure to the designated location where the rig is then submerged.⁵³ The next option for partial removal is the Topple In Place Platform, where the platform remains in the same location as it previously stood at the drilling site and is simply toppled on its side so that the remaining portion of the platform is completely submerged.⁵⁴ The third option is the Partial Removal In Place Platform, which requires the oil company to remove a certain portion of the platform, typically any part of the platform above a certain depth and any portion above water.⁵⁵ The remaining part of the platform is completely submerged and left at the drilling site.⁵⁶ When a site qualifies for partial removal, either the MMS (if the rig was located in federal waters) or the U.S. Army Corps of Engineers (if the rig was located within state waters) will determine which method will comply most with the objectives of NARP.⁵⁷

The MMS recognized that using explosives in the removal process was likely to be detrimental to the marine environment that the Rigs-to-Reef Project was attempting to preserve. Therefore, the MMS created the option for oil companies to allow the well conductors to remain intact up to the same depth that the platform jacket would remain intact.⁵⁸ The MMS provided this option after

⁵¹ DAUTERIVE, *supra* note 49, at 3.

⁵² *Id.*

⁵³ *Id.* at Figure 4.

⁵⁴ *Id.* at Figure 5.

⁵⁵ *Id.* at Figure 6.

⁵⁶ DAUTERIVE, *supra* note 49, at Figure 6.

⁵⁷ *Id.* at 2–3. Both the MMS and the U.S. Army Corps of Engineers are concerned with ensuring that the least damage possible is done to the marine environment when the decommissioning and partial removal takes place; thus, the method of removal must be determined on a case-by-case basis. *See* Hecht, *supra* note 22.

⁵⁸ *Artificial Reefs: Oases for Marine Life in the Gulf*, BUREAU OF OCEAN ENERGY

conducting a study to find the depth at which a well conductor's structural integrity would likely fail.⁵⁹ After determining this depth, the MMS concluded that allowing the retention of the well conductors at the same depth as the platform jacket would not increase the potential for structural failure.⁶⁰ By allowing the well components to remain intact at the specified depth, the MMS eliminated the need for explosives in the removal process, thus minimizing the impact the removal process would have on marine life around the oil drilling site.⁶¹

Not all oil rigs qualify for partial removal under the Rigs-to-Reef Project. To determine eligibility, coastal states must first submit artificial reef development plans to the MMS for approval.⁶² Since coastal states create the initial artificial reef plan, oil and gas companies who want to donate their obsolete oil and gas rigs to the Rigs-to-Reef Project are forced to cooperate with the states in the planning and implementation of the decommissioning process.⁶³

MGMT., REGULATION AND ENFORCEMENT,
<http://www.gomr.boemre.gov/homepg/regulate/envIRON/rigs-to-reefs/artificial-reefs.html> (last visited Mar. 18, 2011).

By allowing the oil companies to leave the well conductors intact at a certain depth, the MMS essentially eliminated the need for the use of explosives during the removal process, as explosives are not necessary to remove the shallower portions of the well conductors or other remaining parts of the oil platforms.

⁵⁹ DAUTERIVE, *supra* note 49, at 4. The study showed that the well conductor would likely fail at -16 feet below the mud line. *Id.*

⁶⁰ *Id.* The MMS requires that the platform jacket be removed up to a depth of -150 feet below the mud line. This depth is much greater than the depth at which the study found structural failure was likely to occur. Thus, allowing the retention of the well components at the same depth as the platform jacket should not create additional environmental concerns associated with partial removal as the structural integrity will not be affected by the toppling of the remaining portions of the oil platform. *Id.*

⁶¹ *Id.*

⁶² *What is Rigs-to-Reefs*, *supra* note 42. The artificial reef plans that coastal states must submit to the MMS if the state wants to participate in the Rigs-to-Reef Project in order to create artificial reefs in its coastal waters must be state-specific and identify offshore areas and specific sites suitable for artificial reefs and the potential decommissioning of oil and gas platforms. *Id.*

⁶³ *Id.* In order to submit the artificial reef plans, state officials must determine whether the state wants to acquire a decommissioned oil or gas drilling structure as part of its artificial reef plan. *Id.* If the state determines that it does

Once the planning process is complete and the structure is donated to the state, the state accepts the title and responsibility for the structure as an artificial reef.⁶⁴

The Rigs-to-Reef Project has experienced only moderate success in terms of state implementation.⁶⁵ Implementation has been limited to decommissioned oil and gas drilling sites in the Gulf of Mexico.⁶⁶ However, even the states that have implemented the Project have limited implementation.⁶⁷ This is largely a result of the controversy surrounding the Project.

D. The Debate Surrounding the Rigs-to-Reef Project

The partial decommissioning of the oil and gas platforms has polarized supporters and opponents of the Project, and created a continuing debate.⁶⁸ The debate concerns the legal, policy, and environmental issues associated with the Rigs-to-Reef Project.⁶⁹

want to acquire the structure, and thus participate in the Rigs-to-Reef Project, the state officials then work with the oil or gas company that owns the structure to meet the permit requirements of the U.S. Army Corps of Engineers who oversee the permitting process allowing for participation in the Rigs-to-Reef project. *Id.* The state officials and oil or gas company agents will then negotiate the terms of the donation of donating the structure to the state. *What is Rigs-to-Reefs, supra* note 42.

⁶⁴ *Id.*

⁶⁵ DAUTERIVE, *supra* note 49, at 3. As of the end of 1999, 1,879 oil and gas platforms were no longer producing gas or oil and were scheduled for decommissioning. *Id.* at 4. Of these platforms 1,728 were completely removed from the coastal waters of the Gulf of Mexico. *Id.* Thus, 151, or less than 1%, of the oil and gas rigs were accepted for and donated to the Rigs-to-Reef Project. *Id.* Of these 151 platforms, Louisiana accepted 94 oil and gas platform donations, and Texas accepted 50 donations. *Id.* at 3, Table 1. Therefore, as of the end of 1999 only two Gulf States have implemented the Rigs-to-Reef Project to a significant extent.

Furthermore as of 2010, state implementation of the Rigs-to-Reef Project had only slightly increased. *See* Hecht, *supra* note 22. By 2010, 3,000 oil and gas drilling platforms had been decommissioned in the Gulf of Mexico; however, only 260 of these platforms had been accepted and donated to the Rigs-to-Reef Project to create artificial reefs. *Id.*

⁶⁶ DAUTERIVE, *supra* note 49, at 3.

⁶⁷ *Id.* at 4.

⁶⁸ Hecht, *supra* note 22; *see also* *What is Rigs-to-Reefs, supra* note 42.

⁶⁹ Hecht, *supra* note 22; *see also* Rothbach, *supra* note 7, at 288.

These concerns have caused various interest groups to adamantly support or oppose the Project and have led to unlikely coalitions between interest groups that usually have divergent viewpoints.⁷⁰ The primary interest groups involved in the debate are oil companies, environmental groups, recreational fishermen, and commercial fishermen.⁷¹ These interest groups are then divided into those who oppose and those who support the Project.⁷² Supporters of the Project, the pro side, generally consist of oil companies, certain environmental groups and advocates, and recreational fishermen.⁷³ The opponents, the con side, generally consist of other environmental groups and advocates as well as commercial fishermen.⁷⁴ Although the pro and con coalitions have created unlikely coalition partnerships,⁷⁵ each interest group within the pro and con coalitions has its own rationale for choosing whether to support or oppose the Project.⁷⁶

The oil and gas companies, as one of the most significantly affected interest groups involved in the Project, support the Project for a variety of reasons.⁷⁷ Prior to the implementation of the Project, federal law required oil and gas companies to completely remove all obsolete drilling platforms.⁷⁸ The removal of these platforms was extremely expensive for oil and gas companies; thus the Project, which allows for partial removal of qualifying oil and gas platforms,

⁷⁰ Rothbach, *supra* note 7, at 288. The debate surrounding the Rigs-to-Reef Project concerns not only state interests with creating the artificial reefs, but also involves the interests of oil companies, environmental groups, and recreational and commercial fishermen. Each of these interest groups has their own concerns regarding the implementation of the Rigs-to-Reef Project, and these interest groups often create coalitions based on their own concerns in an attempt to persuade the state officials to enact the policy most beneficial to their interests. *Id.*

⁷¹ *Id.* at 288–89.

⁷² Hecht, *supra* note 22.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Rothbach, *supra* note 7, at 288–89.

⁷⁶ *Id.* at 289.

⁷⁷ *Id.*

⁷⁸ See *supra* note 50 and accompanying text. The Federal Government requires the complete removal of all oil and gas drilling rig platforms once the platforms become obsolete, and the seabed must be returned to its natural state prior to the drilling. *Id.*

can significantly lower the costs of removal for the oil and gas companies.⁷⁹ Furthermore, the Project provides some flexibility for oil and gas companies in their determination of what to do with an obsolete oil or gas platform.⁸⁰ If an obsolete oil or gas platform qualifies to become an artificial reef under the Project, the owner of the platform can either choose to participate in the Project and donate the platform for an artificial reef or comply with federal regulations and completely remove the rig platform.⁸¹

The flexibility and lower expense of removal raises concerns with opponents of the Rigs-to-Reef Project.⁸² Opponents argue that it is unfair to provide the oil and gas companies with lower removal expenses after they have profited from the oil and gas extracted by the platforms.⁸³ Furthermore, opponents also argue that providing the oil or gas companies with a reduction in the removal costs after

⁷⁹ Rothbach, *supra* note 7, at 289. With the increasing depth of the oil and gas rigs in coastal waters, especially off the California coast, complete removal of the rigs can be extremely expensive. The exact cost depends on a multitude of factors including the method used to remove the structure, the method and location of the disposal or recycling of the structural debris, and whether or not the shell mounds that develop around the submerged portions of the structure have to be decontaminated or removed in addition to the oil or gas rig structure. Hecht, *supra* note 22. Experts have estimated that the cost of removing the twenty-seven oil rigs scheduled for decommissioning off of the California coast will be over one billion dollars. *Id.* The partial removal allowed by the Rigs-to-Reef Project significantly reduces the cost of removal as it allows the oil or gas company to leave the lower portions of the oil or gas well intact, and only requires that the well be sealed and the upper portion of the platform be removed. *Id.* Thus, the oil or gas companies can potentially limit the expense of the removal process depending on whether the decommissioned rig qualifies for the Rigs-to-Reef Project. *Id.*

⁸⁰ Rothbach, *supra* note 7, at 289.

⁸¹ *Id.* The flexibility provided by the Rigs-to-Reef Project allows oil and gas companies more options than were historically available after an oil or gas rig became obsolete. Thus, the companies can determine which choice is most beneficial depending on the specific rig being decommissioned. *Id.*

⁸² *Id.* See also Hecht, *supra* note 22.

⁸³ Hecht, *supra* note 22. The oil and gas rigs often produce large amounts of oil or gas before becoming obsolete as the leases provided for the drilling sights are for significant amounts of time, and only after an oil or gas rig has stopped producing oil or gas does the rig become obsolete and subject to decommissioning and removal. Thus, opponents argue that because the oil or gas companies have significantly profited from the oil or gas rigs, they should not be provided with a reduction in the removal cost. *Id.*

the leases for the drilling site have been signed is inequitable.⁸⁴ Generally the leases for the drilling sites include removal provisions requiring the complete removal of the oil or gas platform.⁸⁵ Thus, oil and gas companies are aware of the removal requirements upon signing the lease and have assumingly budgeted for the expensive removal process.⁸⁶ The cost benefit provided to oil and gas companies associated with removal expenses remains the main concern that opponents to the Rigs-to-Reef Project raise regarding the benefits afforded to oil companies; however, the oil companies are not the only proponents of the Rigs-to-Reef Project.

The Rigs-to-Reef Project has divided environmental groups and advocates, as some remain proponents of the Project while others adamantly oppose it.⁸⁷ Those who support the Rigs-to-Reef Project argue that oil and gas platforms attract marine life, and thus removal of the platforms would disturb the marine environment that has developed around the platform.⁸⁸ Furthermore, studies have shown that complete removal of the oil or gas rig platforms may be more detrimental to the marine mammals, bird populations, and water and air quality, at least in the short term, rather than partial removal.⁸⁹

⁸⁴ Rothbach, *supra* note 7, at 289.

⁸⁵ *Id.*

⁸⁶ *Id.* Opponents of the Rigs-to-Reef Project assert that because the oil and gas companies knew about the removal requirements when they signed the oil or gas drilling leases, it is unnecessary and inequitable to reduce the removal costs after the leases have been signed, and the companies have profited from the rigs. *Id.* at 291.

⁸⁷ *Id.* at 290–91. The scientific research surrounding the Rigs-to-Reef Project is not entirely conclusive as to whether the partial removal benefits or harms the marine environments because the long-term effects of the artificial reefs created by the oil and gas rig platforms are still unknown. Hecht, *supra* note 22. The inconclusiveness of the scientific research is the main cause of the split in the environmental community in regards to opposition or support for the Project. *Id.*

⁸⁸ *Id.* Though the environmental studies are inconclusive, the proponents of the Rigs-to-Reef Project rely on studies showing that the oil and gas platforms in coastal waters have increased fish populations within the surrounding area. Some studies even indicate that the rigs have helped to increase the stock of fish that were previously declining before the rigs were placed in the marine environment. *Id.*

⁸⁹ BROCK B. BERNSTEIN, CALIFORNIA OCEAN SCIENCE TRUST, EVALUATING THE ALTERNATIVES FOR DECOMMISSIONING CALIFORNIA'S OFFSHORE OIL AND GAS PLATFORMS: A TECHNICAL ANALYSIS TO INFORM STATE POLICY, EXECUTIVE SUMMARY 6–8 (2007). The California Natural Resources Agency

The complete removal also has an immediate impact on the marine life surrounding the oil or gas platform.⁹⁰ Furthermore, environmental proponents of the Project point to higher fish densities on the artificial reefs created by the oil and gas platforms than on natural reefs.⁹¹ The proponents then argue that higher fish density indicates that the oil and gas platforms contribute to the growth of the marine environment, and therefore should only be partially removed.⁹² Environmental proponents of the Rigs-to-Reef Project point to these studies and the impact that complete removal has on the marine life and the air and water quality surrounding an oil or gas

partnered with the California Ocean Science Trust in order to conduct a study to investigate the environmental and policy issues surrounding alternatives to the decommissioning of California's twenty-seven oil and gas platforms in California's coastal waters. *Id.* at i. The study compared the environmental and policy consequences associated with complete and partial removal of the oil and gas drilling platforms. *Id.* at 3, 5. The study found that complete removal would likely have a more negative impact on marine mammals, bird populations, and water and air quality in the short term because of the large equipment used to remove the oil and gas platforms. *Id.* at 6. Complete removal of the oil and gas platforms requires the use of diesel Heavy Lift Vessels and other support vessels for extended periods of time. *Id.* at 7. This equipment releases large quantities of emissions that affect both the water and air quality around an oil or gas platform. *Id.* Furthermore, the complete removal of the oil or gas rig is a prolonged process causing disruption to the marine environment for an extended period of time. Thus, at least in the short term, the environmental impacts of complete removal seem greater than those of partial removal. *Id.*

⁹⁰ *Id.* at 7–8. Complete removal requires that all parts of the oil or gas platform must be removed and the seabed returned to the condition it was in before the oil or gas platform was installed. The removal includes all submerged portions of the rig and those parts below the mud line, the line where the water and seabed meet. See DAUTERIVE, *supra* note 49. The complete removal leads to the death of all marine organisms attached to the oil or gas platform itself, and leads to the dispersal of fish from the area surrounding the rig. BERNSTEIN, *supra* note 89, at 7–8. The fish that had previously lived in the artificial reef created by the oil or gas rig, and the organisms that attach themselves to the rig platform, will leave the area to find other undisturbed reefs. *Id.* During the dispersal process there may be a high fish mortality rate as the fish attempt to find new reefs to inhabit. *Id.*

⁹¹ BERNSTEIN, *supra* note 89, at 7–8. The California Ocean Science Trust study found higher density fish communities with larger fish on the artificial reefs created by the oil and gas rigs than on natural reefs. This remained particularly true with rockfish, indicating that the rockfish may be using the artificial reefs created by the oil and gas rigs as nursery areas for their young. *Id.*

⁹² *Id.*

platform, to argue that the complete removal is more detrimental to the marine environment than partial removal.⁹³

However, not all studies support this conclusion drawn by environmental proponents of the Rigs-to-Reef Project. Environmental groups and advocates who oppose the Project concentrate on the uncertainty surrounding the long-term effects that partial removal of oil and gas platforms may have on the marine environment.⁹⁴ Environmental opponents to the Rigs-to-Reef Project argue that even the California Ocean Science Trust study, which the environmental proponents have relied on to assert the benefits of partial removal over complete removal, is inconclusive.⁹⁵ The study openly admits that much of the data and conclusions reported in the study are drawn from estimates rather than quantitative comparisons of various oil or gas platforms.⁹⁶ Moreover, the environmental opponents point to the fact that the study was only intended to be the beginning of a continuing process in order to help state officials understand the environmental and policy consequences of partial

⁹³ Hecht, *supra* note 22; *see also* Rothbach, *supra* note 7, at 291.

⁹⁴ Hecht, *supra* note 22. Environmental opponents argue that no studies have conclusively shown that the increase in fish populations in areas around oil and gas rig platforms will continue over time. The opponents question whether the rigs are contributing to the regional marine habitat or whether the rigs simply attract local marine life to one area. *Id.*

⁹⁵ *Id.* The California Ocean Science Trust Study concluded that partial removal of oil and gas rigs could potentially benefit marine life by causing fewer disturbances of the artificial reefs already developing around the rigs. *See* BERNSTEIN, *supra* note 89, at 7–9. However, this study only evaluated the environmental and policy consequences associated with partial removal down to eighty-five feet below sea level. *Id.* Additionally, the study did not evaluate the ecological benefits or harms associated with partial removal of any particular oil or gas rig platform, but instead reviewed and synthesized previously existing scientific and economic information in order to create the report. Hecht, *supra* note 22.

⁹⁶ *See* BERNSTEIN, *supra* note 89, at 8. The study used data from other surveys that had monitored fish populations at oil and gas platforms rather than generating its own data regarding the fish populations. Moreover, the study specifically states “data gaps prevented quantitative comparisons of platform production to that in other communities and ecosystems in southern California, or any rigorous estimate of the overall contribution of platform communities to the regional ecosystem.” *Id.* Thus, environmentalist opponents to the Rigs-to-Reef Project argue that the study itself recognizes the inconclusiveness of its findings. Hecht, *supra* note 22.

versus complete removal of oil and gas platforms.⁹⁷ Thus, the environmental opponents of the Rigs-to-Reef Project argue that the environmental proponents have misused the study in an attempt to generate support for the Project when in actuality the study admits that its findings are inconclusive.⁹⁸

Environmental proponents and opponents to the Rigs-to-Reef Project agree that continued research is necessary in order to settle the environmental debate surrounding the Rigs-to-Reef Project. Both sides recognize that the environmental impact of complete or partial removal of an oil or gas platform may depend on a case-by-case basis.⁹⁹ Therefore, both opponents and proponents agree that the decisions, regarding what type of decommissioning plan is appropriate for obsolete oil or gas platforms, must be made on an individual basis.¹⁰⁰

There is one more interest group that has divided itself among the pro and con coalitions. The interest group consists of both commercial and recreational fishermen.¹⁰¹ Generally, recreational fishermen tend to be proponents of the Rigs-to-Reef Project, while commercial fishermen tend to oppose the Project.¹⁰² The recreational fishermen are some of the strongest proponents of the Rigs-to-Reef Project as seen by the passage of the National Fishing Enhancement Act (NFEA).¹⁰³ The recreational fishermen tend to view the Rigs-to-Reef Project as a program that will increase the fish populations and create localized fishing areas.¹⁰⁴ They argue that the artificial reefs created by the partial removal allowed by the Rigs-to-Reef Project provide a marine environment where large amounts of fish live, thus forming a popular recreational fishing area.¹⁰⁵ These recreational

⁹⁷ Hecht, *supra* note 22.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Rothbach, *supra* note 7, at 290.

¹⁰² *Id.*

¹⁰³ *Id.* at 290. One of the main objectives of the NFEA was to prevent the degradation of fish populations through the creation of artificial reefs. See Pub. L. No. 98-623, § 204, 98 Stat. 3395 (1984); Rothbach, *supra* note 7; *National Artificial Reef Plan*, *supra* note 45.

¹⁰⁴ Rothbach, *supra* note 7, at 289-90.

¹⁰⁵ *Id.*

fishing areas will generate increased revenue for the state, as interest in the industry will increase if fish populations are abundant and recreational fishing sites are established.¹⁰⁶

Opposing the recreational fishermen and the Rigs-to-Reef Project are the commercial fishermen. Commercial fishermen in California have been particularly opposed to the implementation of the Rigs-to-Reef Project, as the commercial fishing industry in California generally relies on trawlers to catch fish.¹⁰⁷ The trawlers can easily become caught on underwater structures, which can result in damage to fishing equipment.¹⁰⁸ Thus, commercial fishermen see the partial removal of the oil and gas platforms as potentially detrimental to their industry as platforms will become permanent underwater structures that their nets can get caught on, not only ruining that particular haul of fish, but potentially damaging their fishing equipment.¹⁰⁹ Furthermore, the commercial fishermen partner with environmentalists who oppose the Rigs-to-Reef Project and argue that the artificial reefs created by the Rigs-to-Reef Project may become subject to fishing pressure that would reduce fish populations after the oil or gas platform was decommissioned and donated to the Rigs-to-Reef Project.¹¹⁰ The commercial fishermen

¹⁰⁶ *Id.* Recreational fishing generates a significant amount of revenue for states as demonstrated by the estimate that recreational fishing contributed nearly five billion dollars to the California economy in the 1992 fiscal year. *Id.*

¹⁰⁷ *Id.* Trawlers “are nets towed at various depths to catch fish or shellfish. Trawl nets, which can be as large as a football field, are either dragged along the sea floor or midway between the floor and the surface.” *Fishing & Farming Methods: Trawls and dredges*, MONTEREY BAY AQUARIUM SEAFOOD WATCH, http://www.montereybayaquarium.org/cr/cr_seafoodwatch/sfw_gear.aspx#trawling (last visited Dec. 30, 2012).

¹⁰⁸ Rothbach, *supra* note 7, at 290.

¹⁰⁹ *Id.*

¹¹⁰ BERNSTEIN, *supra* note 89, at 8. The commercial fishermen and environmentalist opponents point to the California Ocean Science Trust study which specifically stated that one of the risks of partial removal would be that the artificial reefs created by the platforms would be subject to fishing pressures with little, if any, restrictions. *Id.* The study explains that any restrictions placed on the artificial reefs by the California Department of Fish and Game would only be applicable to state vessels and not international or non-state fishing vessels. Also, any fishing restrictions could be considered contrary to the National Fishing Enactment Act, which helped lead to the development of the Rigs-to-Reefs Project,

are concerned that over fishing of these artificial reefs could negatively impact the commercial fishing industry.¹¹¹

Though each of the interest groups, including the oil companies, environmental groups, and fishermen, has its own concerns and agenda for choosing whether to support or oppose the Rigs-to-Reef Project, certain legal and policy considerations affect all interested parties.¹¹² The conversion of an obsolete oil or gas platform into an artificial reef involves a complicated legal and regulatory process.¹¹³ States must first create legislation that allows them to accept ownership of an artificial reef located in federal waters.¹¹⁴ Even if this legislation is created, questions still exist as to the potential liability associated with assuming responsibility for a decommissioned oil or gas platform as part of the Rigs-to-Reef Project.¹¹⁵ This liability question has been addressed to some extent by requiring oil and gas companies who participate in the Rigs-to-Reef Project to donate half of their removal cost savings, the cost difference between partial and complete removal of the oil or gas platform, to the state that accepts ownership of the artificial reef and decommissioned oil or gas platform.¹¹⁶ In addition to this debate

as one of the primary purposes of NFEA is to create artificial reefs to improve fishing. *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 9–10.

¹¹³ *Id.* at 9.

¹¹⁴ *Id.* at 10. Some states, particularly those located along the Gulf of Mexico have created legislation that allows them to accept ownership of the artificial reefs in federal waters. Thus, California may want to look at the legislative acts of these states, especially Texas and Louisiana, before enacting its own legislation. See DAUTERIVE, *supra* note 49.

¹¹⁵ BERNSTEIN, *supra* note 89, at 10. The Rigs-to-Reef Project has generated some concern over the liability that states are potentially assuming when accepting ownership of the artificial reefs created from decommissioned and partially removed oil and gas platforms. Some opponents to the Rigs-to-Reef plan assert that oil and gas companies are escaping any future liability for leaks or spills that may occur in the future, and passing this liability off to the states. See DAUTERIVE, *supra* note 49, at 4.

¹¹⁶ See DAUTERIVE, *supra* note 49, at 4. The money that the oil companies are required to donate to the state accepting ownership of the decommissioned oil or gas rig platform serves two purposes. The money pays for the upkeep of the artificial reef and provides a fund that will cover at least some of the liability costs

surrounding the Rigs-to-Reef Project and the legal and policy considerations associated with the Project, the oil and gas drilling platforms in California have additional characteristics that cause the implementation of the Rigs-to-Reef Project in California to be more complicated.¹¹⁷

E. Critical Differences Between Implementation of the Rigs-to-Reef Project in the Gulf States and California

There are distinct differences between the California and Gulf Coast marine environments and offshore oil and natural gas drilling sites.¹¹⁸ These differences must be taken into consideration when reviewing the implementation of the Rigs-to-Reef Project in California.¹¹⁹ The first main difference between California and the Gulf States is the topography of the coast and the seabed.¹²⁰ The offshore oil and natural gas platforms in the Gulf Coast are primarily located in the northern portion of the Gulf of Mexico.¹²¹ The seabed of the Gulf Coast, particularly the northern area where the oil and gas platforms are located, is primarily composed of clay, silt, or sand.¹²² With this composition, the Gulf of Mexico has few natural reefs, and the few natural reefs that do exist are located seventy-five or more

associated with ownership of the artificial reefs. *Id.*; see also Rothbach, *supra* note 7, at 293.

¹¹⁷ Hecht, *supra* note 22.

¹¹⁸ ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING OF CALIFORNIA'S OFFSHORE PRODUCTION PLATFORMS, SELECT SCIENTIFIC ADVISORY COMM. ON DECOMMISSIONING UNIV. OF CAL., at 22 (2008), available at www.coastalresearchcenter.ucsb.edu/cmi/files/decommreport.pdf [hereinafter ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING].

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* There are several thousand oil and gas drilling platforms located in the northern portion of the Gulf Coast. Thus, the oil and gas production in the Gulf Coast is highly concentrated to this particular area, whereas the oil and gas production off the California coast is more widespread. *Id.* at 8, 22.

¹²² *Id.* at 22. There are a few natural rock reefs near the shore off of the coast of Louisiana and Texas. However, it has been estimated that only about 1.6% of the Gulf Coast area consists of hard bottom and reef habitats. *Id.*

miles from shore.¹²³ Thus, the topography of the Gulf of Mexico has been a key factor in encouraging the Gulf States to create artificial reefs, especially through the implementation of the Rigs-to-Reef Project.¹²⁴

On the other hand, the topography of the California coast and seabed is largely rocky.¹²⁵ The natural rocky seabed allows for the development of natural reefs that can sustain marine reefs and fish populations.¹²⁶ Furthermore, oil and gas production off the California coast remains more limited than in the Gulf of Mexico.¹²⁷ Rather than the thousands of oil and gas platforms concentrated in the northern part of the Gulf Coast, California only has a total of twenty-seven offshore oil and gas platforms scattered throughout both the federal and state waters.¹²⁸ As California's offshore oil and gas platforms are not concentrated in one area, unlike the Gulf of

¹²³ ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING, *supra* note 118, at 22.

¹²⁴ *Id.* at 23. The numerous oil and gas platforms in the northern part of the Gulf of Mexico provide rock-like structures on which reefs can develop. With the abundance of these structures and the lack of hard bottom and reef habitats, the oil and gas platforms have provided the Gulf States with a means to create artificial reefs in order to increase fish reef populations. *Id.*

¹²⁵ *Id.* at 22. California's coastal seabed is primarily made up of rocky reef habitat with large areas of rocky intertidal and shallow sub tidal habitats. *Id.*

¹²⁶ *Id.* Unlike the Gulf States, California's topography allows for the development of natural reefs on the rocky seabed. Thus, California does not have to depend on the oil and gas platforms to create reefs. *Id.*

¹²⁷ *Id.* at 22. California outlawed offshore oil drilling after the Santa Barbara Oil Spill of 1969. *See* Hecht, *supra* note 22; Clarke, *supra* note 24. Then, in 1984, the Federal Government outlawed new offshore oil drilling platforms off the coast of California. *See* Hecht, *supra* note 22. The combination of the state and federal action essentially outlawing offshore oil drilling off the California coast, prevented oil and gas production from rising to the same level as seen in the Gulf of Mexico. ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING, *supra* note 118, at 22.

¹²⁸ ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING, *supra* note 118, at 23–24. The twenty-seven offshore oil and gas platforms are distributed in state and federal waters across four general regions of the California coastline; the four regions include the northern region by Point Conception, East Santa Barbara Channel, West Santa Barbara Channel, and Orange County. *Id.* at 8.

Mexico, the platform's impact on the marine life and fish populations is more difficult to determine.¹²⁹

In addition to the topography, the Gulf Coast and California also differ in their marine environments. The waters of the Gulf of Mexico are populated by different species of fish than California.¹³⁰ Various environmental studies have indicated that oil and gas platforms have potentially increased the fish populations around the oil and gas platforms in the Gulf of Mexico.¹³¹ However, the results from these studies cannot be considered overly persuasive when used to evaluate the impact that California oil and gas platforms would have on fish populations.¹³² The difference in the fish species that populate the two geographic regions indicates that the environmental impact of implementing the Rigs-to-Reef Project in California may drastically differ from the results of the implementation of the Project in the Gulf of Mexico.¹³³ Moreover, the oil and gas platforms off of the California coast are located in much deeper water than the oil and gas platforms in the Gulf Coast.¹³⁴ Thus many of the oil and gas

¹²⁹ Each of the four regions where California's offshore gas and oil platforms are located is characterized by unique water temperatures, current conditions, and seabed compositions that affect the marine environments of each area. *Id.* For example, the northern region by Point Conception is characterized by colder water, a strong southern flowing current, and a rocky reef seabed, while the southern portion of the Orange County area has warmer water with northern flowing currents and mix of sandy and rocky seabed. *Id.* These varying conditions have "important implications for the kinds of species inhabiting platforms and the degree to which platforms contribute to regional abundance of hard bottom habitat." *Id.* at 8.

¹³⁰ *Id.* at 23.

¹³¹ *Id.* at 7–8.

¹³² *Id.* at 23. Almost every environmental study evaluating the environmental impact of decommissioned oil and gas platforms has been conducted by looking at the fish populations of the Gulf Coast. This is partially due to the fact that the Gulf States have been one of the only areas to allow widespread implementation of the Rigs-to-Reef Project. *Id.*

¹³³ ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING, *supra* note 118, at 23. In determining the impact of the decommissioning of oil and gas platforms on different species of fish, the differences in the fish species' "life history, mobility, longevity, . . . [and] harvesting pressures" associated with the specific geographic region must be considered. *Id.*

¹³⁴ Hecht, *supra* note 22. Many of California's oil and gas platforms are located in water that is over 400 feet deep, with some sitting as deep as 1,000 feet. *See also* ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING, *supra* note 118, at

platforms scheduled for decommissioning off the California coast would be the first deep water platforms to be decommissioned.¹³⁵ Considering these differences between the regions of the Gulf Coast and the California coast, the results of implementing the Rigs-to-Reef Project in the Gulf States may not be representative of the impact of implementing the Project in California.¹³⁶

II. CALIFORNIA'S INITIAL ATTEMPTS TO IMPLEMENT THE RIGS-TO-REEF PROJECT

A.B. 2503 was not the first attempt by the California Legislature to implement the Rigs-to-Reef Project. Over more than a decade, the California Legislature has introduced three separate bills in an attempt to implement the Rigs-to-Reef Project.¹³⁷ Only the third, and most recent bill, A.B. 2503, was successful.¹³⁸

A. S.B. 2173

The first attempt to implement the Rigs-to-Reef Project in California occurred in 1998 with S.B. 2173.¹³⁹ The bill proposed to extend California's artificial reef program in both state and federal

9. Of all the oil and gas platforms that have been decommissioned in the Gulf of Mexico or the North Sea, no fixed platform has been decommissioned that is at a depth of more than 400 feet. Hecht, *supra* note 22.

¹³⁵ Hecht, *supra* note 22.

¹³⁶ *Id.*; see also ECOLOGICAL ISSUES RELATED TO DECOMMISSIONING, *supra* note 118, at 23.

¹³⁷ Hecht, *supra* note 22.

¹³⁸ *Id.* In late August 2010, the California Legislature passed A.B. 2503. On September 30, 2010, Governor Schwarzenegger signed the bill into law. *Id.* Thus, it was finally possible to begin implementing the Rigs-to-Reefs Project in California.

¹³⁹ MICHAEL VINCENT MCGINNIS ET AL., THE POLITICS, ECONOMICS, AND ECOLOGY OF DECOMMISSIONING OFFSHORE OIL AND GAS STRUCTURES, MMS OCS STUDY 2001-006 65 (2001) (*provided by* MMS Cooperative Agreement Number 14-35-0001-30761), *available at* <http://ocpc.msi.ucsb.edu/pdfs/WTPap6/WP6.pdf>. S.B. 2173 did not directly refer to the Rigs-to-Reef Project, but the bill incorporated many of the technical and policy elements of the Project, in essence, indirectly attempting to implement the national Rigs-to-Reef Project in California. *Id.* at 65–66.

waters to the Outer Continental Shelf.¹⁴⁰ The bill originally focused on the impact the artificial reefs would have on the recreational and commercial fishing industries.¹⁴¹ This approach, however, was quickly modified, and S.B. 2173 was amended to focus on the potential environmental benefits that extending the artificial reef program could have on protecting marine environments and increasing fish populations.¹⁴² By amending S.B. 2173, Senator McPherson hoped to gain more support for the bill by incorporating the values of a wider political spectrum.¹⁴³

S.B. 2173 also addressed some of the liability and political concerns associated with extending the artificial reef program.¹⁴⁴ One of the main concerns about the extension of the artificial reef program was that the expansion of the program would be hindered by budget and political constraints.¹⁴⁵ In order to address these concerns, the bill suggested the development of an artificial reef program account, and a supplementary fund to be administered by

¹⁴⁰ *Id.* Senator Bruce McPherson proposed S.B. 2173 after recognizing that a decline in California's marine life was having a detrimental impact on the recreational and commercial fishing industries. Senator McPherson believed that extending the artificial reef program would increase the fish population and limit the impact on the fishing industries. *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* The amended bill did not completely depart from its focus on the impact the expansion of the artificial reef program could have on recreational and commercial fishing; instead, the amended bill discussed the potential for the artificial reefs to protect and increase fish populations, which would in turn benefit the commercial and recreational fishing industries that were vital to the California economy. *Id.*

¹⁴³ *Id.* at 66. The bill was reframed to focus on preserving and promoting the California marine resources. There was still a substantial focus on sustaining fish populations for recreation and commercial fishing; however, by making the main concern the marine resources and environment, Senator McPherson hoped to gain support from other political groups besides commercial and recreational fishing lobbyists. *Id.*

¹⁴⁴ MCGINNIS ET AL., *supra* note 139, at 66.

¹⁴⁵ *Id.* S.B. 2173 called for the extension of California's artificial reef program into federal waters. This extension of the reefs could potentially be very costly to implement and upkeep. Thus, the legislature was extremely concerned about the long-term budgetary impact of the bill. Furthermore, the extension would also require increased supervision of the project, particularly regarding the allocation of funds for the upkeep of the artificial reefs. This need for increased supervision could lead to political constraints on the program. *Id.*

California Endowment for the Preservation of Marine Resources.¹⁴⁶ Furthermore, S.B. 2173 also required that the oil or gas company that owned and operated the offshore drilling platform contribute ten percent of the removal cost savings into the artificial reef account.¹⁴⁷ If the state accepted liability of the oil or natural gas rig, however, the oil or gas company was required to allocate fifty percent of its removal cost savings.¹⁴⁸

B. Analysis of S.B. 2173

Despite its initial amendments to the bill's focus¹⁴⁹ and the additional budget and policy considerations, S.B. 2173 failed to gain support and was tabled early in the 1998 legislative session.¹⁵⁰ One reason for the lack of support may have been the way that the bill was initially proposed. The initial focus on preserving fish populations in order to promote recreational and commercial fishing within California caused the potential benefits to the marine environment to seem like a secondary concern.¹⁵¹ This may have prevented environmental groups and lobbyists from fully supporting the extension of California's artificial reefs program. Thus, without the environmentalists' support, S.B. 2173's only main lobbyists were

¹⁴⁶ *Id.* In 1985, the California Fish and Game Code appropriated \$500,000 to California's artificial reef program. *Id.* Proponents of S.B. 2173 feared that this appropriation would prevent further funding from being allocated to the extension of the artificial reef program. Thus, by creating a separate account specifically for the artificial reef program and establishing an agency, California Endowment for the Preservation of Marine Resources, to oversee the allocation of the funds in this account, the bill sought to alleviate some of the budgetary and political fears surrounding the expansion of the program. *Id.* at 66.

¹⁴⁷ *Id.* at 66. By requiring the oil and gas companies to contribute a portion of their removal cost savings to the state artificial reef program account, the bill provided a means of generating additional income in order to implement the extension and upkeep of the artificial reef program.

¹⁴⁸ *Id.* By requiring the oil and gas companies to allocate an additional fifty percent to the state artificial reef program account if the state assumed liability for the decommissioned oil or natural gas platform, the bill attempted to generate additional funds that would be available if any long-term liability issues arose with the extension of the artificial reef program.

¹⁴⁹ See *supra* note 142–143.

¹⁵⁰ MCGINNIS ET AL., *supra* note 139, at 66.

¹⁵¹ See *supra* note 142–143.

those representing recreational and commercial fishermen. Though these lobby groups remain fairly strong and influential within California's legislature,¹⁵² the support of these groups alone was not sufficient to persuade legislators to extend the artificial reef program considering the potential policy and budgetary ramifications of the extension.

Furthermore, attempting to implement the Rigs-to-Reef Project in California through S.B. 2173 was likely premature. Though the Federal Government created the Rigs-to-Reef Project in 1984,¹⁵³ by 1999, the Project was only beginning to be implemented by the Gulf States.¹⁵⁴ The Gulf States have been significantly more willing to implement the Rigs-to-Reef Project than California. Thus, considering that by 1998 the Rigs-to-Reef Project was only being implemented at a minimal level by the Gulf States, it is not surprising that when S.B. 2173 was introduced in 1998, it was met with skepticism and limited support.¹⁵⁵ Though the bill attempted to account for some of the budget and policy concerns associated with the Rigs-to-Reef Project,¹⁵⁶ these fears were simply too pervasive and the Project too new to receive widespread support from the California Legislature. Therefore, it is not surprising that California's first attempt to implement the Rigs-to-Reef Project failed.¹⁵⁷

¹⁵² See Rothbach, *supra* note 7, at 290. Recreational fisherman remain one of the strongest supporters of the Rigs-to-Reef Project and have been one the most active lobbyist groups to encourage implementation of the Project in California. *Id.*

¹⁵³ See *What is Rigs-to-Reefs*, *supra* note 42.

¹⁵⁴ See *supra* note 65. The Gulf States have been the most willing to implement the Rigs-to-Reef Project; however, even with this willingness, the implementation has been slow. By 1999, less than one percent of the decommissioned oil and natural gas drilling platforms in the Gulf of Mexico had been accepted and donated to the Rigs-to-Reef Project. *Id.*

¹⁵⁵ California, only recently began implementing the Rigs-to-Reef Project with the passage of A.B. 2503; the Gulf States, on the other hand, began implementing the Project as early as 1987. See DAUTERIVE, *supra* note 49, at 3.

¹⁵⁶ See *supra* note 146–148.

¹⁵⁷ Not only did S.B. 2173 fail to become a law, it never even reached the legislative floor; instead S.B. 2173 was tabled while still in its legislative committee. See Hecht, *supra* note 22.

C. S.B. 241/S.B. 1

The California Legislature's next attempt to implement the Rigs-to-Reef Project occurred shortly after S.B. 2173 failed. Senator Dede Alpert originally attempted to revive S.B. 2173, but when this failed, he introduced a new bill, S.B. 241, in 2000.¹⁵⁸ Senator Alpert modeled S.B. 241 after S.B. 2173, and adopted many of its provisions.¹⁵⁹ With S.B. 241, however, Senator Alpert sought to focus more on the technical feasibility, the potential environmental impact, and the budgetary and policy considerations associated with implementing the Rigs-to-Reef Project.¹⁶⁰

With regards to the technical feasibility of implementing the Rigs-to-Reef Project in California, S.B. 241 asserted that implementation of the Project was feasible because implementing the Project had been discussed previously, and California already had an artificial reef program.¹⁶¹ S.B. 241 established the California Department of Fish and Game as the primary state agency responsible for overseeing the implementation and management of the artificial reefs; however, other state agencies would also be involved in the process.¹⁶² The importance S.B. 241 placed on

¹⁵⁸ MCGINNIS ET AL., *supra* note 139, at 66–67. Originally Senator Alpert attempted to revive S.B. 2173 in January of 1999; however, he was once again unable to garner a significant amount of support or interest in S.B. 2173, and thus, the bill was tabled in April of 1999. *Id.* Recognizing that the S.B. 2173 would need to be significantly amended in order to progress any further, Senator Alpert drafted a new bill, modeled after S.B. 2173, which he introduced in January 2000. *Id.*

¹⁵⁹ *Id.* at 67.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* This assertion, that the Rigs-to-Reef Project was feasible because the California Legislature had considered the Project's implementation, previously demonstrates the fact that S.B. 241 was modeled after the failed S.B. 2173.

¹⁶² *Id.* at 67. By giving the primary responsibility of overseeing and managing the implementation of the Rigs-to-Reef Project to the California Department of Fish and Game (CDFG), S.B. 241 provided the CDFG with the authority to implement the Project. At the same time, S.B. 241 also established that other agencies could also assume some of the burdens associated with implementation, including the technical planning and support. *Id.* Furthermore, S.B. 241 incentivized these other state agencies to become involved in the implementation process with the potential for the agencies to share in the management and control of artificial reef program funds. *Id.*

interagency coordination and cooperation of the implementation process was one of the main differences between S.B. 241 and its predecessor, S.B. 2173.¹⁶³ Furthermore, in order to generate additional support for S.B. 241, Senator Alpert reinforced his assertions about the technical feasibility of the implementation of the Rigs-to-Reef Project by asking the California State University system to scientifically evaluate the environmental concerns associated with the Rigs-to-Reef Project.¹⁶⁴ By asking for an outside, independent perspective, Senator Alpert lent credibility to S.B. 241.¹⁶⁵

S.B. 241 also focused on the potential environmental benefits associated with implementing the Rigs-to-Reef Project.¹⁶⁶ The bill sought to bring attention to the concept that the oil and gas platforms already served as artificial reefs.¹⁶⁷ Artificial reefs develop on the platforms; hence, the platforms help to create new marine environments, and do not simply attract fish populations from

¹⁶³ MCGINNIS ET AL., *supra* note 139, at 67. S.B. 241 considered the roles that state agencies such as the State Lands Commission, the California Coastal Commission, and the Bay Conservation and Development Commission would have in the implementation process and addressed how implementation would be affected by state and federal laws, including the California Environmental Quality Act and the federal Clean Water Act. *Id.* Thus, S.B. 241 took a broader and more comprehensive approach to analyzing the technical feasibility of implementing the Rigs-to-Reef Project in California.

¹⁶⁴ *Id.* at 67. Senator Alpert convened a “Blue Ribbon Panel” through which he sought the California State University system’s assistance in determining scientific questions that needed to be resolved, evaluating the existing data about the impact of the Rigs-to-Reef Project on the marine environment and resources, and comparing the partial decommissioning allowed by the Project with other decommissioning alternatives. *Id.*

¹⁶⁵ One of the main reasons that S.B. 2173 failed to garner sufficient support to make it out of its legislative committee was the fact that the bill lacked scientific research about the impact of the Rigs-to-Reef Project. *Id.* This lack of scientific information caused legislators to be skeptical about voting for a bill without having information about the long-term effects.

¹⁶⁶ MCGINNIS ET AL., *supra* note 139, at 67.

¹⁶⁷ *Id.* One of the requirements of the National Fishing Enforcement Act (NFEA), which set some of the parameters for the development of artificial reefs, was that the materials utilized to create artificial reefs had to be approved by the NFEA. Oil and natural gas platforms had already been approved by the NFEA and thus could be used to create artificial reefs without administrative delay or additional approval. *Id.* at 67.

previously existing reefs.¹⁶⁸ Moreover, S.B. 241 required that the artificial reefs created by implementing the Rigs-to-Reef Project be designated as marine reserves.¹⁶⁹ This requirement to designate the artificial reefs as marine reserves emphasized that the focus of S.B. 241 was on the potential environmental benefits associated with implementing the Rigs-to-Reef Project. With the environmental benefits as the focus, S.B. 241 was able to generate a broader support base by appealing to public interests beyond commercial and recreational fishing.¹⁷⁰

Finally, S.B. 241 attempted to directly address some of the budgetary and policy concerns associated with the implementation of the Rigs-to-Reef Project.¹⁷¹ As mentioned above, S.B. 241 advocated interagency cooperation and management of California's artificial reef program.¹⁷² Involving multiple agencies in the implementation of the Rigs-to-Reef Project would increase the validity of the Project and distribute the implementation responsibilities across multiple state agencies.¹⁷³ In regards to the budgetary concerns associated with implementation, S.B. 241 focused on long-term funding for the Project.¹⁷⁴ In order to facilitate this long-term funding, S.B. 241 called for the creation of an Artificial Reef Endowment Fund.¹⁷⁵ The bill then required that a

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 67–68. By designating the artificial reefs developing on the decommissioned oil and gas platforms as marine reserves, California could more closely monitor the growth and development of the marine environment around these artificial reefs, while protecting the developing marine environment from over-fishing.

¹⁷⁰ *Id.* at 68. Another significant difference between S.B. 241 and S.B. 2173 was the fact that S.B. 241 framed implementation of the Rigs-to-Reef Project as having a broader impact than simply affecting fish populations. Thus, a larger segment of the California public was likely to take an interest in the bill, which in turn helped to generate more support for the bill in the California legislature.

¹⁷¹ MCGINNIS ET AL., *supra* note 139, at 68.

¹⁷² See *supra* note 161–163 and accompanying text.

¹⁷³ MCGINNIS ET AL., *supra* note 139, at 66. By involving multiple state agencies in the implementation process, S.B. 241 sought to prevent any one agency from becoming overburdened by the implementation process. *Id.*

¹⁷⁴ *Id.* at 68.

¹⁷⁵ *Id.* The Artificial Reef Endowment Fund (AREF) would be separate from any fund accounts held by the California Department of Fish and Game.

portion of the oil or gas companies' removal cost savings be split between the Artificial Reef Endowment Fund and the California Department of Fish and Game.¹⁷⁶ The depth of the decommissioned oil or natural gas platform would determine the proportion of the removal cost savings that would be required to be allocated to the state agency accounts.¹⁷⁷

Senator Alpert was still in the process of generating support for S.B. 241 when the 1999-2000 California Legislative Session came to a close.¹⁷⁸ Thus, just as with its predecessor S.B. 2173, Senator Alpert was forced to table¹⁷⁹ S.B. 241 until the debate could be renewed in the 2000-2001 legislative session.¹⁸⁰ At the start of the 2000-2001 California legislative Session, Senator Alpert reintroduced S.B. 241 as S.B. 1.¹⁸¹ S.B. 1 incorporated the adjustments that had been made to S.B. 241,¹⁸² and with these

Thus, the funds in the AREF would be solely for upkeep and implementation of the Rigs-to-Reef Project. *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* The proportion of the removal cost savings that the oil and gas companies would be required to donate to the two stage agency funds would be determined based on the depth of the oil or natural gas platform being decommissioned; therefore, the deeper the platform being decommissioned, the greater the proportion of the removal cost savings that would be allocated to the state funds. *Id.* This plan for determining the proportion of removal cost savings by depth was designed to offset some of the liability concerns associated with California assuming responsibility for the decommissioned oil and gas platforms; furthermore, by creating a relationship between the depth of the platform and the proportion of removal cost savings allocated to the state funds, S.B. 241 attempted to account for the increased cost in maintaining deep artificial reefs. *Id.*

¹⁷⁸ MCGINNIS ET AL., *supra* note 139, at 68.

¹⁷⁹ Tabling a bill means that the, "motion is not debatable, and agreement to the motion is equivalent to defeating the question tabled. The motion is used to dispose quickly of questions the Senate does not wish to consider further." See *Senate Glossary, Motion to Table*, UNITED STATES SENATE (Feb. 4, 2012), www.senate.gov/pagelayout/reference/b_three_sections_with_tasers/glossary.htm (last visited Jan. 1, 2012).

¹⁸⁰ MCGINNIS ET AL., *supra* note 139, at 68, 72.

¹⁸¹ *Complete Bill History*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0001-0050/sb_1_bill_20020110_history.html.

¹⁸² See *supra* notes 158, 162-173 and accompanying text. S.B. 1 was essentially the same bill as S.B. 241; however, due to the end of the 1999-2000

adjustments, S.B. 1 was able to garner enough support to be approved by both the California Assembly and Senate.¹⁸³ After passing both houses of the California Legislature, S.B. 1 was submitted to Governor Davis to be signed into law.¹⁸⁴ Despite having the support of both the Assembly and the Senate, S.B. 1 was vetoed by Governor Davis.¹⁸⁵ Therefore, with the veto of S.B. 1, the second attempt to implement the Rigs-to-Reef Project in California failed.¹⁸⁶

D. Analysis of S.B. 241/S.B. 1

Governor Davis explained his veto of S.B. 1 by saying that “[t]here is no conclusive evidence that converted platforms enhance marine species or produce net benefits to the environment.”¹⁸⁷ In this explanation, Governor Davis is eluding to the lack of scientific research that had been done on the impact that implementation of the Rigs-to-Reef Project would have on marine environments. Even though both the California Assembly and the Senate passed S.B. 1, the bill faced strong opposition from various environmental groups and lobbyists.¹⁸⁸ This opposition by some environmentalists relates to the idea that S.B. 1 was attempting to implement the Rigs-to-Reef Project in California before scientific research had been conducted on the long-term effects of the Project on marine environments.

The provisions of S.B. 1 themselves evidence the lack of scientific data regarding the long-term effects on the marine environment. In order to generate support for the bill, Senator Alpert sought the help of the California State University system to evaluate

legislative session, the numbering on the bill was changed when it was reintroduced in the 2000-2001 legislative session.

¹⁸³ See Hecht, *supra* note 22; see also Rothbach, *supra* note 7, at 288.

¹⁸⁴ Rothbach, *supra* note 7, at 288.

¹⁸⁵ See Hecht, *supra* note 22.

¹⁸⁶ See *id.*; see also Rothbach, *supra* note 7, at 288.

¹⁸⁷ Hecht, *supra* note 22 (quoting Governor Davis’s explanation of his decision to veto S.B. 1).

¹⁸⁸ When S.B. 1 was being debated in both the California Assembly and the Senate, the commercial fishermen opposing the bill aligned themselves with environmentalists who also opposed the implementation of the Rigs-to-Reef Project. See Rothbach, *supra* note 7, at 288. See *supra* Part I.D (discussing the various parties involved in the debate surrounding the implementation of the Rigs-to-Reef Project).

the environmental concerns and impact associated with implementing the Rigs-to-Reef Project in California.¹⁸⁹ Though Senator Alpert may have had good intentions in creating this “Blue Ribbon Panel,” the Panel should have been created before S.B. 1 was written and submitted to the Legislature for debate. The fact that the bill itself created the Panel meant that any information provided by the Panel could not be incorporated into S.B. 1 before it underwent legislative debate. S.B. 1 did take the first steps toward encouraging environmental studies of the long-term impact the Rigs-to-Reef Project would have on marine environments. The bill itself, however, did not include any conclusive information showing that converting the decommissioned oil and natural gas platforms into artificial reefs would benefit the existing marine environment in California.

One of the main reasons that S.B. 1 only suggested that environmental studies be conducted rather than presenting actual scientific data about the impact of the Rigs-to-Reef Project on marine environments is that, at the time the bill was proposed, there was practically no scientific data available. S.B. 1 was modeled after S.B. 241, and proposed in the 2000-2001 legislative session.¹⁹⁰ The Rigs-to-Reef Project only became significantly implemented in the Gulf States as of 1999.¹⁹¹ Therefore, the Project had not been implemented long enough for scientific studies to evaluate the long-term effects of the implementation of the Project on the marine environments. Furthermore, the only oil and gas platforms that had been decommissioned as artificial reefs through the Rigs-to-Reef Project were located in the Gulf of Mexico.¹⁹² Any scientific information obtained from these decommissioned platforms that could have been included in S.B. 1 would be addressing the impact

¹⁸⁹ See *supra* note 163–164.

¹⁹⁰ See *supra* note 182.

¹⁹¹ See DAUTERIVE, *supra* note 49. In 1987, the first offshore oil platform was accepted into the Rigs-to-Reef Project in the Gulf of Mexico. *Id.* Even if studies had been done on the impact this decommissioned oil platform had on the marine environment, the study would only be measuring the impact of the Rigs-to-Reef Project over a decade. A decade can hardly be sufficient to allow for a concrete scientific evaluation of the impact of the Project on the marine environment.

¹⁹² See DAUTERIVE, *supra* note 49, at 63.

the Project had on the marine environments of the Gulf of Mexico. Therefore, this scientific data would not be convincing given the vast differences in topography and marine environments of the Gulf of Mexico and California.¹⁹³

With S.B. 1 being vetoed based on the lack of concrete scientific evidence regarding the long-term effects and potential environmental benefits of implementing the Rigs-to-Reef Project in California, legislative attempts to implement the Project in California stalled. It took almost a decade for the next bill addressing the implementation of the Project in California to be proposed in the California Legislature.

III. CALIFORNIA'S IMPLEMENTATION OF THE RIGS-TO-REEF PROJECT: A.B. 2503

In February 2010, Assembly Member John A. Perez proposed a new bill, A.B. 2503, which addressed the implementation of the Rigs-to-Reef Project in California.¹⁹⁴ With this proposal, Assembly Member Perez revived the debate surrounding the implementation of the Rigs-to-Reef Project.¹⁹⁵ A.B. 2503 adopted some of the ideas from the previous two bills that proposed the implementation of the Project. However, Assembly Member Perez also recognized that the two previous bills failed to gain enough support in order to successfully implement the Project.¹⁹⁶ Thus, A.B. 2503 included

¹⁹³ See *supra* Part I.E.

¹⁹⁴ *Assembly Bill No. 2503*, CALIFORNIA LEGISLATIVE INFORMATION, available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100AB2503&search_keywords=#.

¹⁹⁵ The last bill proposing the implementation of the Rigs-to-Reef Project in California failed in 2001. See *supra* notes 181, 186. A.B. 2503 was not introduced until 2010; therefore, the debate surrounding the implementation of Rigs-to-Reef Project in California had received little attention from both legislators and the public for almost a decade. This proposal, however, brought the debate to the forefront. Thus, interested parties once again created alliances and began lobbying for and against the bill. See *supra* note 70 and accompanying text (discussing the development of the coalitions that formed between various supporters and opponents of the Project).

¹⁹⁶ Hecht, *supra* note 22.

additional provisions in order to address many of the concerns that surround the Rigs-to-Reef Project.¹⁹⁷

Like S.B. 1,¹⁹⁸ A.B. 2503 primarily focused on the potential environmental benefits associated with implementing the Rigs-to-Reef Project in California. A.B. 2503 emphasized the importance of preserving the diversity and abundance of the marine life in California's coastal waters.¹⁹⁹ The bill then went further to assert that the state programs dedicated to preserving California's marine resources were subject to inadequate and unstable funding.²⁰⁰ By referencing the lack of funding for the preservation programs, A.B. 2503 insinuated that by implementing the Rigs-to-Reef Project in California, greater funding would be available to help preserve the marine environments.²⁰¹ Focusing on the potential environmental impact of implementing the Project allowed A.B. 2503 to appeal to broader public interests.²⁰² With the greater public interest, Assembly Member Perez increased his chances of generating enough support to get A.B. 2503 passed in the California Legislature.²⁰³

Furthermore, A.B. 2503 also incorporated the case-by-case analysis that had been used in both S.B. 2173 and SB. 1.²⁰⁴ The case-by-case analysis allowed the state agencies assigned to regulate and

¹⁹⁷ *Id.*

¹⁹⁸ As S.B. 1 replaced S.B. 241 and the two were essentially the same bill, S.B. 241 will be referenced as part of S.B. 1 in the following portions of this analysis.

¹⁹⁹ CAL. FISH & GAME CODE § 6601 (West 2012). A.B. 2503 asserted that the diversity of species and ecosystems in California's coastal waters was important for the "public health and well-being, ecological health, and ocean-dependent economic activities." *Id.*

²⁰⁰ *Id.* § 6601(b).

²⁰¹ *Id.* § 6601(g). The portion of the removal cost savings allowing for the partial removal of the decommissioned oil and natural gas platforms could be allocated to the maintenance and enhancement of the artificial reefs created by the implementation of the Rigs-to-Reef Project. *Id.* Thus, A.B. 2503 could provide additional funding for the protection of the marine environments.

²⁰² Assembly Member Perez probably modeled the focus of A.B. 2503 off of S.B. 1 because S.B. 1 was able to garner enough support to pass the California legislature by focusing on the potential environmental benefits of implementing the Rigs-to-Reef Project. *See supra* note 183.

²⁰³ CAL. FISH & GAME CODE § 6601(g).

²⁰⁴ *Id.* § 6603.

implement the Rigs-to-Reef Project in California to determine on an individual basis which oil and natural gas platforms qualified for the partial removal allowed by the Rigs-to-Reef Project.²⁰⁵ This provided the state agencies with greater control over the implementation process.²⁰⁶ In order to facilitate this case-by-case analysis, A.B. 2503 followed S.B. 1's administrative structure, and established an administrative plan that provided for interagency cooperation and management of the Rigs-to-Reef Project.²⁰⁷ A.B. 2503 divided the responsibilities involved in the implementation of the Project between three agencies within the California Natural Resources Agency.²⁰⁸ The three agencies included the California Department of Fish and Game, the California Ocean Protection Council, and the California State Lands Commission.²⁰⁹ Though each of these subsidiary agencies was responsible for a different part of the implementation process, they all reported back to the California Natural Resources Agency.²¹⁰ Therefore, A.B. 2503 established the California Natural Resources Agency as the primary agency in control of the implementation of the Rigs-to-Reef Project in California.²¹¹

Even though the three subsidiary agencies ultimately report to the California Natural Resources Agency, each subsidiary agency plays an important role in the application review process. A.B. 2503 established the California Department of Fish and Game (CDFG) as the agency responsible for accepting or denying the oil and gas companies applications for the Rigs-to-Reef Project.²¹² In determining whether to accept or deny an application, the CDFG evaluates whether or not California should accept ownership of the

²⁰⁵ *Id.* By forcing each oil and natural gas platform to individually qualify for the Rigs-to-Reef Project, A.B. 2503 sought to prevent over implementation of the Rigs-to-Reef Project and ensure that the platforms donated to the Project would potentially provide environmental benefits.

²⁰⁶ *Id.*

²⁰⁷ CAL. PUB. RES. CODE § 71530 (West 2010).

²⁰⁸ Hecht, *supra* note 22.

²⁰⁹ *Id.*; see also CAL. PUB. RES. CODE § 71530 (West 2010).

²¹⁰ Hecht, *supra* note 22.

²¹¹ CAL. FISH & GAME CODE § 6604(b) (West 2012).

²¹² Hecht, *supra* note 22.

oil or natural gas platform.²¹³ The partial decommissioning of the platforms, allowed by the Rigs-to-Reef Project, may only take place after the CDFG has determined that California should take ownership of the platform; thus, the CDFG plays a key role in granting or denying final approval of the implementation process.²¹⁴

Under A.B. 2503, the California Ocean Protection Council (OPC), is allocated one of the most important roles in the implementation process.²¹⁵ The OPC is tasked with evaluating the oil and gas companies' application to the Rigs-to-Reef Project in order to determine whether allowing the partial decommissioning of the oil or natural gas platform will benefit the marine environment.²¹⁶ The bill provides OPC with the authority to conduct scientific research, with the help of the California University and California State University systems,²¹⁷ in order to determine whether the partial removal will benefit the marine environment more than complete removal of the platform.²¹⁸ The OPC must conduct this scientific research for each proposal, and evaluate the environmental impact on a case-by-case basis.²¹⁹ Thus, considering that one of the primary focuses of A.B. 2503 was on potential environmental benefits

²¹³ *Id.* One of the requirements for federal approval of the partial removal of an oil or natural gas platform is that the state has accepted ownership of the platform through accepting the platform as a donation to the Rigs-to-Reef Project. *Id.* However, the CDFG has to be careful when approving the oil and gas companies' applications, as acceptance into the program means that California has accepted ownership of the decommissioned platform. With the ownership comes questions regarding whether the state is also assuming liability for any issues that may arise from the decommissioning and upkeep of the platform.

²¹⁴ CAL. FISH & GAME CODE § 6620 (West 2010); *see also* Hecht, *supra* note 22.

²¹⁵ Hecht, *supra* note 22.

²¹⁶ *Id.* By placing the OPC in charge of determining whether the application for partial removal will benefit the marine environment, A.B. 2503 placed one of the most controversial aspects of the debate surrounding the Rigs-to-Reef Project in the hands of a single state agency. The OPC not only must conduct scientific studies on the environmental impact of the partial decommissioning proposal, but also must determine that the partial removal would provide greater environmental benefits than complete removal. Furthermore, the OPC must conduct this analysis for each application. *Id.*

²¹⁷ CAL. PUB. RES. CODE § 71500(a)(4) (West 2010).

²¹⁸ CAL. FISH & GAME CODE § 6601(g) (West 2010).

²¹⁹ Hecht, *supra* note 22.

associated with implementing the Rigs-to-Reef Project in California,²²⁰ the OPC plays one of the most crucial and demanding roles involved in the implementation process.²²¹

The third agency, the State Lands Commission (SLC), is responsible for the calculation and allocation of the removal cost savings.²²² Under A.B. 2503, oil and gas companies must allocate between 55% to 80% of their removal cost savings to the specified state funds created for the implementation of the Project.²²³ The SLC's main responsibility is to ensure that the oil and gas companies' calculations of removal cost savings are accurate and reasonable.²²⁴ A.B. 2503 provides the SLC with the authority to request information and documentation relating to the oil and gas

²²⁰ See *supra* notes 199, 191–202.

²²¹ Hecht, *supra* note 22. One of the main reasons that A.B. 2503 was able to generate enough support to pass both the Assembly and Senate of the California legislature was its focus on the environmental impact, especially the potential for increasing fish populations and enhancing marine environments, that implementing the Rigs-to-Reef Project could have in California's coastal waters. With this focus, the OPC will be under constant scrutiny from both proponents and opponents of the bill, especially environmental groups. Therefore, the OPC must ensure that each decision it makes regarding whether the partial decommissioning will benefit the marine environment is based on accurate scientific information that will withstand intense scrutiny.

²²² *Id.*

²²³ CAL. FISH & GAME CODE § 6618(c) (West 2010). Instead of basing the percentage of the removal cost savings on the depth of each oil or natural gas platform, as was attempted in S.B. 1, A.B. 2503 establishes that between 55% to 80% of the removal cost savings must be allocated to the state funds; what percentage, within this range, an oil or gas company must allocate depends on when the company's proposal for acceptance to the Rigs-to-Reef Project is approved. *Id.* For example, if an oil or gas company's proposal is approved before January 1, 2017, the company only has to allocate 55% of its removal cost savings to the state funds. However, if the company's proposal is approved on or after January 1, 2023, the company must allocate 80% of its savings to the state. Thus, the allocation percentage increases the longer it takes for a company's proposal to be approved. *Id.*

²²⁴ *Id.* § 6614(b). The implementation of the Rigs-to-Reef Project in California would allow oil and gas companies to partially remove their oil and natural gas platforms, thus saving substantial costs on the removal process. A portion of this removal cost savings must be allocated to various state funds associated with the implementation of the Project. SLC is the agency that ensures the oil and gas companies are providing accurate information about their expected removal cost savings. *Id.*

companies' calculation of their expected removal cost savings in order to ensure the accuracy of the calculation.²²⁵ The bill also provides that SLC's determination in regards to the accuracy of the removal cost savings is final, and may only be revised or amended by the SLC.²²⁶ Therefore, the SLC plays an important role in ensuring that the state has adequate funds to effectively implement the Rigs-to-Reef Project in California.²²⁷

In addition to these provisions, A.B. 2503 also included a number of other requirements that both the state agencies and the oil and gas companies must meet before their application for acceptance into the Project will be approved.²²⁸ The first additional requirement is that all applications for partial removal must comply with the California Environmental Quality Act (CEQA).²²⁹ The CEQA requires that, when making decisions that could affect the environment, California state agencies must consider all potential environmental impacts of a proposed project, including determining whether any viable alternatives exist that might lessen the environmental impact of the Project.²³⁰ By including this requirement in the bill, A.B. 2503 emphasized the importance the bill was placing on the environment by attempting to ensure that all options were evaluated before determining whether or not to allow partial removal of the oil and gas platforms.

The next set of requirements outline additional administrative procedures that the state agencies must comply with when evaluating oil and gas companies' applications.²³¹ A.B. 2503 established that the CDFG must hold public hearings when evaluating the partial

²²⁵ *Id.* § 6614(d). By giving the SLC the authority to compel the oil and gas companies to provide information and documentation of their calculations for their expected removal cost savings, A.B. 2503 discourages oil and gas companies from underestimating their savings in order to avoid having to donate a larger amount to the state funds. Thus, the SLC serves as a check on the oil and gas companies.

²²⁶ *Id.* § 6614(e).

²²⁷ Hecht, *supra* note 22.

²²⁸ *Id.*

²²⁹ CAL. FISH & GAME CODE § 6604 (West 2010); *see also* Hecht, *supra* note 22.

²³⁰ Hecht, *supra* note 22.

²³¹ *Id.*

removal plans.²³² These hearings are a means for the CDFG to inform the public about the partial removal proposals, and provide an opportunity for the public to voice its support for and opposition to the implementation of the Rigs-to-Reef Project. The bill also requires the CDFG to generate a plan outlining the management of the artificial reef and the oil or natural gas platform after partial removal.²³³ By including this provision, A.B. 2503 became the first California bill to force a state agency involved in the implementation process to consider and design a plan addressing the long-term impact of the implementation of the Project.²³⁴

Furthermore, A.B. 2503 requires that the oil and gas companies provide all of the funding necessary for the SLC and the OPC to evaluate the partial removal application.²³⁵ This provision is especially pertinent to the OPC, as under A.B. 2503, the OPC must conduct scientific research evaluating the impact that the partial removal of an oil or natural gas platform will have on the marine environment for each application.²³⁶

Finally, A.B. 2503 requires that the oil and gas companies indemnify the State of California and the California National Resources Agency against “any and all liability” that may result from the partial removal process.²³⁷ The bill provides the California

²³² CAL. FISH & GAME CODE § 6615(c) (West 2010).

²³³ *Id.* § 6611.

²³⁴ Hecht, *supra* note 22.

²³⁵ CAL. FISH & GAME CODE § 6601(h)(4) (West 2010). Any costs associated with the SLC evaluating the accuracy and reasonableness of the oil and gas companies’ calculation of their removal cost savings must be borne by the companies, and not the state. Additionally, the bill requires that the oil and gas companies fund the scientific research performed by the OPC when it considers the environmental impact of the partial removal decommissioning process. *Id.*

²³⁶ See *supra* notes 216, 221. Though the OPC can use the California University and California State University systems to help conduct this scientific research, the research itself has the potential to be very costly, particularly when research must be done to evaluate each application for partial removal. By forcing the oil and gas companies to pay for the research, A.B. 2503 mitigates California’s costs in implementing the Rigs-to-Reef Project.

²³⁷ CAL. FISH & GAME CODE § 6616(f) (West 2010). The indemnification clause specifically states that an application cannot be accepted unless the applicant “indemnifies the state and the department, to the extent permitted by law, against any and all liability that may result, including but not limited to, active negligence,

Natural Resources Agency with the flexibility to establish different indemnification clauses for each application as long as the clause adequately protects California and its state agencies from liability.²³⁸ In relation to the indemnification clause, A.B. 2503 also requires that the oil or gas owner/operator of the oil or natural gas platform retain continuing liability for any “seepage or release of oil” resulting from the approval of a partial removal decommissioning plan.²³⁹ Under the bill, California must accept ownership of any oil or natural gas platform located in federal waters before it can approve a partial decommissioning plan of a platform located in federal water.²⁴⁰ By including this continuing liability clause, the bill attempts to prevent California from facing liability issues normally associated with the ownership of oil and natural gas platforms.²⁴¹

As demonstrated by the inclusion of all of these detailed provisions and requirements, A.B. 2503 sought to address many of the concerns that caused the previous two bills, S.B. 2173 and S.B. 1, to fail. A.B. 2503 generated enough public and legislative support to pass both houses of the California Legislature on September 15, 2010.²⁴² Governor Schwarzenegger signed A.B. 2503 into law on

and including defending the state and the department against any claims against the state for any actions the state undertakes” *Id.*

²³⁸ *Id.* Some of the options that A.B. 2503 suggests in designing the indemnification clause include “an insurance policy, cash settlement, or other mechanism as determined by” the California Natural Resources Agency. *Id.*

In regards to what constitutes adequate protection, the bill is somewhat vague. However, it does suggest that one measure of adequacy is whether California can defend itself against any liability claims associated with the partial removal process. *Id.*

²³⁹ CAL. FISH & GAME CODE at § 6605.

²⁴⁰ Hecht, *supra* note 22.

²⁴¹ CAL. FISH & GAME CODE § 6605 (West 2010). The continuing liability provision, in A.B. 2503, attempts to address two issues California faces with the implementation of the Rigs-to-Reef Project. The first concern is to limit California’s immediate and long-term liability associated with partial decommissioning. The second concern is California’s ability to include oil and natural gas platforms located in federal waters in the Rigs-to-Reef Project. *Id.* By requiring applicants to agree to the continuing liability provision, the bill attempts to eliminate the risk of long-term liability while providing California with a means to incorporate platforms located in federal waters into the Rigs-to-Reef Project.

²⁴² AB-2503 *Ocean Resources: Marine Resources And Preservation*,

September 30, 2010, creating the California Marine Resources Legacy Act.²⁴³ Thus, A.B. 2503 became the first successful bill to garner enough support to implement the Rigs-to-Reef Project in California.²⁴⁴

A. Analysis of A.B. 2503 and its Potential Impact on California

Though A.B. 2503 was passed and signed into law, the bill leaves many questions, regarding the implementation process, unanswered. One main concern associated with the bill is that it constrains the independent evaluative process of the state agencies in charge of managing the implementation of the Project.²⁴⁵ This constraint is particularly evident with the CDFG. Under A.B. 2503, the CDFG is responsible for approving the partial removal applications.²⁴⁶ With this responsibility, it seems logical that A.B. 2503 would also endow the CDFG with the authority to use its discretion in the approval process. The language in A.B. 2503, however, seems to limit the CDFG's discretion by requiring that the CDFG conditionally approve any partial removal plan if the plan complies with the proper process and the SLC determines the plan will benefit the marine environment.²⁴⁷ This language indicates that the CDFG only has minimal discretion in the approval process, and must give deference to the SLC's environmental decisions. Therefore, the CDFG may be forced to approve proposals that it would otherwise have rejected.²⁴⁸ Hence, the CDFG does not appear to play an independent and evaluative role in the implementation process.

Moreover, the CDFG's apparent lack of discretion may lead to conflicts with A.B. 2503's provision requiring that the partial

CALIFORNIA LEGISLATIVE INFORMATION,
<http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml> (click on the
 "HISTORY" tab) (last visited Jan. 1, 2013).

²⁴³ *Id.*

²⁴⁴ See generally Hecht, *supra* note 22.

²⁴⁵ *Id.*

²⁴⁶ See *supra* notes 213–214.

²⁴⁷ Hecht, *supra* note 22.

²⁴⁸ *Id.*

removal applications comply with CEQA.²⁴⁹ The CEQA requires that California state agencies, like the CDFG, evaluate all potential environmental impacts and viable alternatives before approving any proposal that would impact the environment.²⁵⁰ By constraining the CDFG's discretion and forcing the CDFG to approve proposals that the SLC accepts as environmentally beneficial, A.B. 2503 prevents the CDFG from considering any viable alternatives to the proposed partial removal plan. Also, the CEQA requires that the CDFG, as the agency ultimately approving or rejecting a partial removal proposal, must consider the environmental impact of the proposal before making its determination.²⁵¹ A.B. 2503, however, allocates this environmental analysis to the SLC.²⁵² Therefore, the bill's provision, requiring compliance with the CEQA, and the administrative structure created by A.B. 2503 conflict. With this conflict, the California courts may be forced to intervene in order to harmonize these provisions of the CEQA and the newly passed A.B. 2503.²⁵³ The administrative structure established by A.B. 2503 will also likely require the California Legislature to pass additional legislation clarifying the authority of each of the state agencies involved in the management and implementation process. However, in the meantime, the question as to which agency has the ultimate authority to approve or decline an applicant's proposal remains unanswered.

The second main concern associated with A.B. 2503's implementation of the Rigs-to-Reef Project in California is the amount of discretion and control that the bill seems to give to oil and gas companies²⁵⁴ that first becomes evident with the removal cost savings. Under A.B. 2503, the oil and gas companies independently determine their expected removal cost savings.²⁵⁵ The bill does

²⁴⁹ *Id.*

²⁵⁰ See *supra* note 229; see also Hecht, *supra* note 22.

²⁵¹ Hecht, *supra* note 22.

²⁵² See *supra* notes 224–225.

²⁵³ A.B. 2503 became the California Marine Resources Legacy Act when it was signed into law in September of 2010. See Hecht *supra* note 22. With this conflict, the California courts would have to assume a legislative role and resolve the conflicts between the CEQA and the California Marine Resources Legacy Act. *Id.*

²⁵⁴ Hecht, *supra* note 22.

²⁵⁵ See *supra* notes 223–224.

provide the SLC with the authority to evaluate the accuracy and reasonableness of the oil and gas companies estimate.²⁵⁶ However, this evaluation is based on information and documentation provided by the companies.²⁵⁷ The majority of the funds for implementation and management of the Project come from the proportion of removal cost savings allocated to the state's agency funds. Hence, by providing the removal cost savings estimate and the information used to evaluate this estimate, the oil and gas companies essentially control the funding that will be allocated to California's Rigs-to-Reef Project.

Additionally, the oil and gas companies design the partial removal proposals to be approved by the OPC.²⁵⁸ After receiving the application, the OPC compares the environmental impact of the partial removal proposal with the environmental impact that complete removal would have on the marine environment.²⁵⁹ However, A.B. 2503 broadly defines partial removal as an alternative to complete removal.²⁶⁰ Thus, the oil and gas companies will be able to define practically any decommissioning proposal as a partial removal. OPC is then forced to approve these broadly defined partial removal proposals, even if their beneficial impact on the marine environment is only slightly greater than complete removal.²⁶¹ Thus, the broad definition of partial removal forces the OPC to give potentially inappropriate discretion to the oil and gas companies' partial removal proposals.

Furthermore, the oil and gas companies also fund all of the environmental research associated with the approval process.²⁶² Under A.B. 2503, the OPC must conduct scientific research for each partial removal proposal in order to determine whether allowing the partial removal will result in a net benefit to the marine

²⁵⁶ See *supra* note 225.

²⁵⁷ CAL. FISH & GAME CODE § 6614(d) (West 2010).

²⁵⁸ Hecht, *supra* note 22.

²⁵⁹ See *supra* note 216.

²⁶⁰ CAL. FISH & GAME CODE § 6602(m) (West 2010). A.B. 2503 defines partial removal as "an alternative to full removal of an offshore oil structure" *Id.*

²⁶¹ Hecht, *supra* note 22.

²⁶² CAL. FISH & GAME CODE § 6601(h)(4) (West 2010).

environment.²⁶³ The fact that the oil companies fund the OPC's research once again vests control of the implementation process in the companies. The oil and gas companies' control over the funding raises questions regarding whether the scientific data will be truly unbiased or whether the companies will be able to influence the data to reflect the needs and wants of the oil and gas companies.²⁶⁴

The third main concern associated with A.B. 2503 revolves around liability issues and the indemnity clause. Though A.B. 2503 includes a continuing liability clause and an indemnification clause,²⁶⁵ California may still face potential liability problems associated with the implementation of the Rigs-to-Reef Project. The continuing liability clause only addresses liabilities associated with seepage or release of oil or other chemicals; thus, this clause fails to address whether California or the oil and gas companies are responsible for any liabilities associated with the management and ownership of the decommissioned platforms.²⁶⁶ Considering that these potential liabilities are not mentioned in the continuing liability clause, it appears that California would be responsible for any legal claims made in relation to the management and ownership of the platforms.²⁶⁷

²⁶³ See *supra* note 216.

²⁶⁴ Though forcing the oil and gas companies to fund the scientific research saves California state agencies money during the implementation process, it also has the potential of creating deferential relationships between the oil and gas companies and the research institutions. The institutions will want to continue to receive funding in order to conduct their research on the environmental impacts of the implementation of the Project, and thus in order to receive this funding the institutions may present data that is slightly biased towards the oil and gas companies.

²⁶⁵ The continuing liability clause in A.B. 2503 provides that oil and gas companies are to remain liable for any seepage or release of oil or other toxic chemicals from the offshore platforms. See *supra* note 238–241. The indemnification clause requires the oil and gas companies to sign a clause, which provides a means for California to pay for any future liability costs associated with the partial removal of the oil and natural gas platforms before decommissioning can occur. See *supra* notes 237–238.

²⁶⁶ Hecht, *supra* note 22.

²⁶⁷ *Id.* Examples of management and ownership claims that California may be liable for, according to the language of A.B. 2503, are any injuries that occur in relation to the structure, such as injuries suffered by ship owners or divers

Proponents of A.B. 2503 may argue that even if California is liable for claims associated with the management or operation of the platforms, the costs associated with these liabilities are covered by the indemnity funds generated by the indemnification clause. However, in the long-term, these indemnity funds may not be sufficient to cover all costs associated with the partial removal process. A.B. 2503 specifically provides the California Natural Resources Agency with the flexibility to create different types of indemnification clauses for each application.²⁶⁸ The only requirement for these indemnification clauses is that when accepting a clause, the California Natural Resources Agency must ensure that the funds provided by the clause will adequately allow the state to defend itself against any liability claims and pay any resulting judgments if necessary.²⁶⁹

These indemnification clauses, however, are drafted and accepted before the decommissioning process begins.²⁷⁰ Therefore, it remains unclear how the California Natural Resources Agency could possibly know how much funding is necessary to include in the indemnification clauses in order to ensure that the oil and gas companies are paying for the long-term liability costs. A.B. 2503's indemnification clause provision seems too vague and too flexible to ensure that the funds set aside for liability claims will not run, thus forcing California to assume the burden of paying for the liability claims in the long-term.²⁷¹ Finally, even if the indemnification clauses do provide enough funding to meet long-term liability concerns, California may end up having to engage in costly and time-consuming litigation with the oil and gas companies in order to receive the funds promised in the indemnification clauses.²⁷²

The final major concern regarding A.B. 2503's implementation of the Rigs-to-Reef Project in California is the environmental impact the Project will have on California's marine environments. A.B. 2503 attempted to lessen this concern by

who may be engaging in recreational or commercial activities on the artificial reef created by the decommissioned platform. *Id.*

²⁶⁸ See *supra* note 238.

²⁶⁹ CAL. FISH & GAME CODE § 6616(f); see also *supra* note 235.

²⁷⁰ Hecht, *supra* note 22.

²⁷¹ *Id.*

²⁷² *Id.*

requiring the OPC to conduct scientific research on whether the partial removal proposal would result in a net benefit to the marine environment.²⁷³ However, this research does not provide any information about the long-term environmental impact of the partial removal proposal. In an attempt to support its claims that artificial reefs created by partial removal generate new marine environments and increase fish populations, A.B. 2503 relies on the scientific data collected from studies observing the impact that the Rigs-to-Reef Project has had on the marine environments in the Gulf of Mexico.²⁷⁴ With the drastic differences between the coastal environments of the Gulf Coast and those of California,²⁷⁵ A.B. 2503's reliance on this scientific data is questionable.²⁷⁶ Not only is the scientific data regarding the impact of the partial removal on marine environments inconclusive,²⁷⁷ but A.B. 2503 also seems to assume that the Rigs-to-Reef Project will have the same effect on California's marine environments that the Project has had on marine environments in the Gulf States.

In addition to relying on the alleged success of the Rigs-to-Reef Project in the Gulf Coast, A.B. 2503 also emphasizes the findings of the 2007 study conducted by the California Ocean Science Trust (COST).²⁷⁸ The COST study found that based on the results of other studies, partial removal of oil and natural gas platforms could potentially benefit marine environments by limiting the disturbance of already existing artificial reefs developing on the platforms.²⁷⁹ Though this conclusion does encourage implementation of the Rigs-to-Reef Project, A.B. 2503's reliance on the study was premature. The COST study was meant to be an ongoing process, which sought to inform the California Legislature about the potential environmental and economic consequences associated with

²⁷³ See *supra* notes 216–217.

²⁷⁴ See *supra* note 132. Almost all of the studies conducted on the environmental impact of the Rigs-to-Reef Project have focused on the Gulf of Mexico, as this area has been the most willing to implement the Project.

²⁷⁵ See *supra* notes 122–129; see also *supra* Part I.E.

²⁷⁶ See *supra* notes 121–129.

²⁷⁷ See *supra* note 87.

²⁷⁸ Hecht, *supra* note 22.

²⁷⁹ See *supra* note 95.

implementing the Rigs-to-Reef Project.²⁸⁰ The California Natural Resources Agency, which commissioned the COST study, intended the study to produce a report, which the California Legislature could use to help develop an implementation policy that would address the environmental and economic consequences of the Rigs-to-Reef Project.²⁸¹ However, before the first COST report was completed, A.B. 2503 was proposed.²⁸² Thus, A.B. 2503's reliance on the study could not have been as extensive as the bill purports. Instead, A.B. 2503 prematurely proposed the implementation of the Rigs-to-Reef Project in California before the legislature could evaluate the COST study's findings and before further scientific research could be conducted to determine the potential long-term environmental and economic impact of the Project.

IV. CONCLUSION

With the passage of A.B. 2503 in 2010, the Rigs-to-Reef Project was finally implemented in California. Although A.B. 2503 attempted to create a comprehensive plan for the implementation process, the bill failed to address many important details associated with implementing the Rigs-to-Reef Project in California. Primarily, A.B. 2503 provides the oil and gas companies with too much control over the implementation process, which limits the authority of state administrative agencies in charge of the management and approval of the Project. Furthermore, A.B. 2503 exposes California to potential long-term liability costs and lawsuits without ensuring that the oil and gas companies will provide the funds necessary to cover these potential liability costs. Finally, A.B. 2503 relies on inconclusive scientific information by proposing implementation of the Project before studies could be conducted on the long-term effects the partial removal project would have on California's diverse marine environment. The California Legislature, and potentially the California courts, will likely have to enact additional laws in order to supplement the shortcomings of A.B. 2503. Overall, A.B. 2503 was shortsighted and failed to consider the potential long-term

²⁸⁰ See generally BERNSTEIN, *supra* note 89, at i.

²⁸¹ Hecht, *supra* note 22.

²⁸² *Id.*

environmental and economic consequences that may arise from the implementation of the Rigs-to-Reef Project in California.