

FISH AND GAME CODE - FGC

DIVISION 6. FISH [5500 - 9101]

(Division 6 enacted by Stats. 1957, Ch. 456.)

PART 1. GENERALLY [5500 - 6956]

(Part 1 enacted by Stats. 1957, Ch. 456.)

CHAPTER 5.5. California Marine Resources Legacy Act [6600 - 6621]

(Chapter 5.5 added by Stats. 2010, Ch. 687, Sec. 1.)

ARTICLE 1. General Provisions [6600 - 6605]

(Article 1 added by Stats. 2010, Ch. 687, Sec. 1.)

6600.

This act shall be known, and may be cited, as the California Marine Resources Legacy Act.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6601.

The Legislature finds and declares all of the following:

- (a) California's extraordinary marine biological diversity is a vital asset to the state and nation. The diversity of species and ecosystems found in the ocean waters off the state is important to public health and well-being, ecological health, and ocean-dependent economic activities.
- (b) Although the state maintains various programs to protect, restore, and enhance California's marine resources, the effect of these programs is limited by inadequate and unstable funding.
- (c) There is an existing permitting process for decommissioning and fully removing offshore oil platforms or production facilities. Owners and operators are currently responsible for the full cost of decommissioning and remediating those facilities.
- (d) According to the United States Department of the Interior, the 23 oil and gas platforms in federal waters off the California coast are expected to reach the end of their useful production lifetimes and be decommissioned between 2015 and 2030.
- (e) The California Ocean Science Trust in its June 2010 study, titled "Evaluating Alternatives for Decommissioning California's Offshore Oil and Gas Platforms: A Technical Analysis to Inform State Policy," analyzed a number of decommissioning alternatives to full rig removal and determined that the most likely alternative is to remove the upper portion of the rig and leave the remainder of the structure in place.
- (f) The California Ocean Science Trust report and other studies indicate that the partial removal option can result in a net benefit to the marine environment and substantial cost savings compared to full removal of an oil platform or production facility.

(g) Provided that partial removal of an oil rig would result in a net benefit to the marine environment compared to full removal, it is in the interest of the state that a portion of the cost savings that result from partial removal should be shared with the citizens of this state to protect and enhance the state's marine resources.

(h) It is also in the interest of the state that any program to allow partial removal of oil platforms meet all of the following criteria:

(1) Partial removal shall result in a net benefit to the marine environment compared to full removal.

(2) The determination of whether partial removal would result in a net benefit to the marine environment should be made only after scientific study and evaluation.

(3) Because the location and depth of an oil platform, as well as other ecological factors, create a unique environment, each oil platform shall be subject to scientific study and evaluation before partial removal is allowed.

(4) The costs of the scientific study and evaluation should be borne by the applicant.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6602.

For purposes of this chapter, the following terms have the following meanings:

(a) "Applicant" means the owner or operator of an offshore oil structure in state or federal waters or another party responsible for decommissioning an offshore oil structure in state or federal waters who applies pursuant to this chapter to carry out partial removal of the structure.

(b) "Commission" means the State Lands Commission.

(c) "Conservancy" means the State Coastal Conservancy.

(d) "Cost savings" means the difference between the estimated cost to the applicant of complete removal of an oil platform as required by state and federal leases and the estimated costs to the applicant of partial removal of the oil platform pursuant to this chapter.

(e) "Council" means the Ocean Protection Council.

(f) "Endowment" means the California Endowment for Marine Preservation established in Division 37 (commencing with Section 71500) of the Public Resources Code.

(g) "Exclusive economic zone (EEZ)" means the zone as measured from the mean high tide line seaward to 200 nautical miles, as set forth in Presidential Proclamation 5030 of March 10, 1983, in which the United States proclaimed jurisdiction over the resources of the ocean within 200 miles of the coastline.

(h) "National Fishing Enhancement Act of 1984" means Title II of Public Law 98-623.

(i) "Offshore oil structure" means platforms, piers, and artificial islands located seaward of mean lower low water, used for oil and gas exploration, development, production, processing, or storage.

(j) "Oil" means any kind of petroleum, liquid hydrocarbons, natural gas, or petroleum products or any fraction or residues therefrom.

(k) "Open coastal marine resources" means those marine resources that use open coastal waters as their habitat.

(l) "Open coastal waters" means the area composed of the submerged lands of the state that are below the mean lower low water, extending seaward to the boundaries of the exclusive economic zone.

(m) "Partial removal" means an alternative to full removal of an offshore oil structure, in compliance with all requirements of this chapter.

(n) "State waters" means waters within the seaward boundary of the state as identified in Section 2 of Article III of the California Constitution.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6603.

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

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

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

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

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

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6604.

(a) A proposed project to partially remove an offshore oil structure pursuant to this chapter is a project as defined in subdivision (c) of Section 21065 of the Public Resources Code and is therefore subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and

shall be reviewed pursuant to the time limits established in Section 21100.2 of the Public Resources Code.

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6605.

(a) Nothing in this chapter is intended, and it shall not be construed, to limit or affect the authority or duties of any state or local agency, including, but not limited to, the commission, the council, and the California Coastal Commission.

(b) Nothing in this chapter shall be construed to do any of the following:

(1) Relieve the applicant or prior owner or operator of an offshore oil structure from any continuing liability under any of the following, if the liability is associated with seepage or release of oil from an offshore oil structure that was decommissioned pursuant to an order of, or any action taken by, and in accordance with, any applicable rule or regulation of, any federal or state agency:

(A) Any state statute or regulation regarding liability for the spilling of oil.

(B) The federal Oil Pollution Act of 1990 (33 U.S.C. Sec. 2701 et seq.).

(C) Any other provision of law.

(2) Establish any new liability on the part of the state.

(3) Require any agency with jurisdiction to approve the partial removal of an offshore oil structure.

(4) Promote, encourage, or facilitate offshore oil exploration, development, and production within California's open coastal waters.

(5) Require the United States Department of the Interior or the commission to modify, amend, or alter an existing oil and gas lease to approve partial removal of an offshore oil structure.

(6) Alter any existing law or applicable rule or regulation of any federal or state agency that establishes liability for damages arising with respect to artificial reefs or reef materials, including, but not limited to, components of decommissioned oil structures.

(7) Alter any existing law or policy that protects natural reefs.

(8) Approve any particular method of abandonment.

(c) Any partial removal of an offshore oil structure pursuant to this chapter shall not be used or counted as mitigation for any environmental impacts or natural resource damages.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

ARTICLE 2. Partial Removal of Offshore Oil Structures [6610 - 6621]

(Article 2 added by Stats. 2010, Ch. 687, Sec. 1.)

6610.

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

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

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6611.

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

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

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

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

(4) Identification of all permits, leases, and approvals required by any governmental agency, including a permit issued by the United States Army Corps of Engineers if required for offshore oil structures, and a lease issued by the commission if the proposed project involves state tidelands and submerged lands, and a proposed schedule for the applicant or the state to receive those permits, leases, and approvals.

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

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6612.

- (a) Upon receipt of an application to partially remove an offshore oil structure pursuant to this chapter, the department shall determine whether the application is complete and includes all information needed by the department.
- (b) (1) Upon a determination that the application is complete, the applicant shall provide surety bonds executed by an admitted surety insurer, irrevocable letters of credit, trust funds, or other forms of financial assurances, determined by the department to be available and adequate, to ensure that the applicant will provide sufficient funds to the department, council, commission, and conservancy to carry out all required activities pursuant to this article, including all of the following:
- (A) Environmental review of the proposed project pursuant to Section 6604.
 - (B) A determination of net environmental benefit pursuant to Section 6613.
 - (C) A determination of cost savings pursuant to Section 6614.
 - (D) Preparation of a management plan for the structure pursuant to Section 6615.
 - (E) Implementation of the management plan and ongoing maintenance of the structure after the department takes title pursuant to Section 6620.
 - (F) Development of an advisory spending plan pursuant to Section 6621.
 - (G) Other activities undertaken to meet the requirements of this article, including the costs of reviewing applications for completeness, and reviewing, approving, and permitting the proposed project, which includes the costs of determining whether the project meets the requirements of all applicable laws and regulations and the costs of environmental assessment and review.
- (2) The department shall consult with the council, commission, and conservancy in determining appropriate funding for activities to be carried out by those agencies.
- (3) The funds provided pursuant to paragraph (1) shall not be considered in the calculation of cost savings pursuant to Section 6614 or the apportionment of cost savings pursuant to Section 6618.
- (c) The first person to file an application on and after January 1, 2011, to partially remove an offshore oil structure pursuant to this chapter, shall pay, in addition to all costs identified under subdivision (b), the startup costs incurred by the department or the commission to implement this chapter, including the costs to develop and adopt regulations pursuant to this chapter. This payment of startup costs shall be reimbursed by the department as provided in paragraph (3) of subdivision (c) of Section 6618.
- (d) As soon as feasible after reaching the agreement pursuant to subdivision (b), the lead agency shall begin the environmental review of the proposed project as required pursuant to Section 6604.

(Amended by Stats. 2011, Ch. 296, Sec. 103. Effective January 1, 2012.)

6613.

- (a) The council shall determine whether the partial removal of an offshore oil structure pursuant to this chapter provides a net benefit to the marine environment compared to the full removal of the structure.

(b) As a necessary prerequisite to determining net environmental benefit as required in subdivision (a), the council shall, upon receipt of its initial application from the department pursuant to Section 6610, establish appropriate criteria for evaluating the net environmental benefit of full removal and partial removal of offshore oil structures.

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

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

(3) In determining the criteria, the council shall consult with appropriate entities, including, but not limited to, the department, the commission, the California Coastal Commission, and the California Ocean Science Trust.

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

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

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

(2) Any adverse impacts to biological resources or water quality, or any other marine environmental impacts, from the full removal of the facility that would be avoided by partial removal as proposed in the application.

(3) Any adverse impacts to biological resources or water quality, or any other marine environmental impacts, from partial removal of the structure as proposed in the application.

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

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

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

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

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

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6614.

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

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

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

(d) The applicant shall provide all necessary documentation, as determined by the commission, to allow the commission to calculate the amount of cost savings. Failure to provide information requested by the commission in a timely manner may result in rejection of the application.

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

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6615.

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

(a) Prepare a plan to manage the offshore oil structure after its partial removal. The plan shall include measures to manage fishery and marine life resources at and around the structure in a manner that will ensure that the net benefits to the marine

environment identified pursuant to Section 6613 are maintained or enhanced. Consistent with state and federal law, management measures may include a buffer zone in which fishing or removal of marine life is restricted or prohibited.

(b) Provide an opportunity for public comment on the application pursuant to the California Environmental Quality Act.

(c) Hold a public hearing in the county nearest to the location of the offshore oil structure that is the subject of the application.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6616.

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

(a) The partial removal of the offshore oil structure and the planning, development, maintenance, and operation of the structure would be consistent with all applicable state, federal, and international laws, including, but not limited to, all of the following:

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

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

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

(4) The California Coastal Management Program.

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

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

(7) State and federal water quality laws.

(8) Navigational safety laws.

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

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

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

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

(f) The department has entered into an indemnification agreement with the applicant that 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, and including defending the state and the department against any claims

against the state for any actions the state undertakes pursuant to this article. The agreement may be in the form of an insurance policy, cash settlement, or other mechanism as determined by the department. In adopting indemnification requirements for the agreement, the department shall ensure that the state can defend itself against any liability claims against the state for any actions the state undertakes pursuant to this article and pay any resulting judgments. The department shall consult with and, as necessary, use the resources of the office of the Attorney General in preparing and entering into the indemnification agreement.

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

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

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

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6617.

Upon a finding that all the requirements of Sections 6615 and 6616 have been met, the department shall grant conditional approval to an application for partial removal of an offshore oil structure.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6618.

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

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

(1) Fifty-five percent, if transmitted before January 1, 2017.

(2) Sixty-five percent, if transmitted on or after January 1, 2017, and before January 1, 2023.

(3) Eighty percent, if transmitted on or after January 1, 2023.

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

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

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

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

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

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

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6619.

Upon a determination by the department that the full amount of cost savings has been transmitted pursuant to Section 6618, the department shall grant final approval of the application for partial removal of an offshore oil structure.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6620.

The department shall not take title to a decommissioned offshore oil structure in open coastal waters or take responsibility for management of the structure pursuant to this article until decommissioning and partial removal of the structure have been completed and both of the following requirements are met:

(a) The partial removal of the structure has been granted final approval by the department.

(b) The state is indemnified, as required in subdivision (f) of Section 6616, from any liability that may result from approving the partial removal of an offshore oil structure or any liability that may result from the ownership of the structure.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)

6621.

Upon the department's final approval of the first application for partial removal of an offshore oil structure pursuant to Section 6619, the conservancy shall create an advisory spending plan for cost savings deposited in the endowment, to provide the Board of Directors of the California Endowment for Marine Preservation with guidance on spending those funds. The conservancy shall update the spending plan no less than once every five years, except the conservancy shall also update the spending plan when each additional application for partial removal is approved. The conservancy shall submit a copy of the spending plan and all updates to the plan to the Legislature, in accordance with Section 9795 of the Government Code, and to the Board of Directors of the California Endowment for Marine Preservation.

(Added by Stats. 2010, Ch. 687, Sec. 1. Effective January 1, 2011.)