NATURAL RESOURCES DEFENSE COUNCIL

July 26, 2010

Lester A. Snow,
Secretary for Natural Resources
1330 Broadway, 13th Floor,
Oakland, CA 94612, RE

Re: Oil Platform Decommissioning; Comments on California Ocean Science Trust Report, Evaluating Alternatives for Decommissioning California's Offshore Oil and Gas Platforms

Dear Secretary Snow,

On behalf of the Natural Resources Defense Council ("NRDC"), which has 1.2 million members and activists, 250,000 of whom are Californians, I am writing to offer comments on the technical analysis prepared by the California Ocean Science Trust (CalOST), which is intended to inform state policy and contained in the report entitled, "Evaluating Alternatives for Decommissioning California's Offshore Oil and Gas Platforms" ("Decommissioning Alternatives Report" or "the Report").[1]

We appreciate that a great deal of work has gone into the preparation of the Report; the authors have collected and synthesized important data and information, providing a useful starting point for decision makers to evaluate alternatives to full decommissioning of oil and gas platforms off California's coast. However, we respectfully submit comments identifying a number of problems and concerns -- substantive, procedural, and editorial -- which we hope will be resolved to improve the utility of this Report. We conclude, in short, that these problems indicate that the Report should be considered a draft, and additional work should be performed to bring it to a final stage that is appropriate for its intended use as a policy-informing tool.

On November 21, 2008, NRDC submitted a comment letter to Ocean Protection Council (OPC) members and staff regarding the staff recommendation that OPC funds be used to pay for the Decommissioning Alternatives Report. We acknowledged the need for additional unbiased, scientifically and legally sound information to aid evaluation of alternatives to full removal of oil and gas platforms located in waters off the State of California, once they have reached the end of their useful life. However, we expressed concern that it was both unnecessary and inappropriate to use OPC funds for this study because:

- it was not clear that the proposed allocation satisfied OPC's funding criteria, potentially undermining the credibility of those criteria;

[1] California Ocean Science Trust, Evaluating Alternatives for Decommissioning California's Offshore Oil and Gas Platforms: A Technical Analysis to Inform State Policy, *available at,* http://www.calost.org/reports/Decommissioning_Report_Full.pdf

- despite arguments by proponents of the study that use of OPC funds would ensure its unbiased nature, we argued that this end could be better achieved by having OST oversee all aspects of the Report preparation; and
- it was inappropriate to use scarce funds for a study that may allow oil and gas companies to avoid their long-standing contractual obligations, while other critical state natural resource services are severely under-funded.

Importantly, we also noted that, "*to ensure the study's neutrality, it is more important that it be characterized by transparency and that stakeholders have access to information and the relevant decision-making process.*"[2] As described below, we are disappointed that members of the public were not given the opportunity to review the Report before it was finalized, particularly given that significant information and policy decisions in the Report (i.e. about which decommissioning options to analyze in detail) were based not on scientific or technical criteria, but on the input from other stakeholders, i.e. "state managers".[3]

<u>The Report is Missing Evaluation of Important Alternatives</u>

The Decommissioning Alternatives Report briefly examines a number of possible alternative use and disposal options for the 27 oil and gas platforms rigs off California's coast, but detailed analysis is only conducted for two options, complete rig removal and partial rig removal.[4] Although there appears to be adequate analysis of some rejected alternatives, such as the use of platforms for offshore renewable energy staging sites,[5] there are also important alternatives that were not considered at all. Based on NRDC conversations with scientists, academics, and dive industry personnel there appears to be very strong interest in using these platforms for research, education, and tourism (i.e. scuba diving). If used for these purposes, all or part of the deck and the majority of the above-water components could be removed, but the entire sub-surface structure left in place. Leaving the entire sub-surface structure in place would also preserve the most biologically productive portion of the rig. The only justification provided for not conducting a detailed analysis of the option of partial decommissioning with the full sub-surface structure in place is: "state managers' clear preference that the artificial reef avoid any interference with marine vessel traffic and preclude or reduce the need for surface buoys or other warnings."[6]

Alternative partial rig decommissioning options that remove most of the platform, but leave the sub-surface structure in place should be considered for the following reasons. First, science indicates that the top of the rig may be the most productive portion of the reef and necessary for the overall functioning of the reef as an artificial rig. Current research on the subject indicates that platforms provide an important hard-substrate habitat for economically important rockfish species.[7] They are

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[2] NRDC written comment on Staff Recommendation "California Ocean Science Trust: Building Scientific Capacity" at the CA Ocean Protection Council at the November 20 & 21 Meeting of the Council.
[3] Decommissioning Alternatives Report at 55.
[4] *Id.* at 35.
[5] *Id.* at 61-63.
[6] *Id.* at 55.
[7] Love, M.S., Caselle, J., Snook, L. 1999. Fish assemblages on mussel mounds surrounding seven oil platforms in the Santa Barbara Channel and Santa Maria Basin. Bulletin Marine Science. 65(2): 497-513; Love, M.S., Schroeder, D.M., Lenarz, W., MacCall, A., Bull, A.S., Thorsteinson, L. 2006. Potential use of offshore marine structures in rebuilding an overfished rockfish species, bocaccio (Sebastes paucispinus). Fish Bulletin. 104: 383-390; Love, M.S., York, A. 2005. A comparison of the fish assemblages associated with an oil/gas pipeline and adjacent seafloor in the Santa Barbara Channel, Southern California Bight. J. Marine Science. 77(1): 101-117.

attracted to the shell mounds on the sea floor beneath the platforms; these mounds are composed of invertebrates that are dislodged from the rig structure by waves or currents and create a rocky structure below. Research suggests that mussels, which are dominant in the upper fifteen meters of the water column and are only occasionally present at depths exceeding roughly twenty-four meters, are responsible for forming the bulk of the shell mound.[8] More research is necessary to determine whether there will be sufficient numbers of invertebrates to sustain the shell mound habitat following partial removal of the oil platform.

Additionally, data collected in the Gulf of Mexico suggests that oil platforms also play an important role for birds. Specifically, one study found that rigs act as "stepping stones" by allowing exhausted birds to rest and gather their strength during migration.[9] Partial removal of the oil and gas platforms would be detrimental to bird species depending on these structures for survival.

Second, as the Report describes, deconstructing oil platforms, even partially, requires the use of industrial equipment that will emit large quantities of pollutants into the air and negatively impact both human health and the environment. Decommissioning California's offshore oil platforms will produce pollutants that cause cancer, asthma, reproductive or genetic defects, and other diseases.[10] These emissions also have the potential to damage crops, livestock, and vegetation, and accelerate global warming.[11] Expected air emissions costs are directly correlated with the size and quantity of the platform to be removed; partial removal will result in a reduction of emissions as compared with complete removal, while retaining the entire structure will result in the most significant reduction in air emissions.[12]

Third, opting to leave the entire sub-surface portion of the platform in place, with some of the above-sea platform left for safety marking or alternate use, offers the additional benefit of saving the operators even more money in avoided costs, a windfall that should be divided between the State and the operators appropriately. The project management, engineering, and planning cost is directly related to the size and complexity associated with disassembling and removing the structure. Consequently, this option would be significantly less costly than either the partial or complete removal option.[13] Additionally, both complete and partial removal necessitate a platform preparation process, in which the invertebrate community is dislodged from the structure. Under the complete retention scenario, this task would be unnecessary, resulting in significant avoided cost savings.[14]

Eliminating this option based on the preference of regulators, rather than an evaluation of the environmental, technical, practical, and legal implications of the option was inappropriate, and this option should be reconsidered. Other options for use of partially decommissioned platforms, with the full sub-surface structure left in place, should be considered, including transferring the platforms to research or academic institutions, use as habitat for migrating birds, or use as docking stations for eco-tourists and divers.

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[8] Love, M.S., Caselle, J., Snook, L. 1999. Fish assemblages on mussel mounds surrounding seven oil platforms in the Santa Barbara Channel and Santa Maria Basin. Bulletin Marine Science. 65(2): 497-513.
[9] Decommissioning Alternatives Report at 140.
[10] *Id.* at 105.
[11] *Id.* at 104-106.
[12] *Id.* at 104.
[13] *Id.* at 151.
[14] *Id.* at 152.

Gaps and Errors in Assessment of Legal and Regulatory Framework

There are a number of gaps and errors in legal and regulatory information applicable to the very complicated set of contingencies surrounding offshore oil and gas platform decommissioning. For example, Section 3.1.1. describes the "Core legal authorities" governing decommissioning options, but the Report references the wrong section of federal regulations, 30 CFR subpart K, rather than subpart Q:

> Current leases require operators to continue production as long as it is economic, and MMS and SLC staff must confirm operators' projections and agree with any proposal to end production and move to decommissioning. MMS regulations (30 CFR Part 250 subpart K) structure this process for platforms in the OCS but SLC procedures are less formal; in either case, negotiations between operators and agency staff would result in a draft decommissioning or abandonment plan.[15]

This description of the process by which a lessee and owners of operating rights and all holders of rights of way[16] work with federal and state agencies is overly simplistic and does not provide sufficient information for policy makers or the public to understand the steps that must be undertaken to determine whether a rig can be decommissioned early and partially.[17] For example, what does "as long as it is economic" mean, and who makes this determination? This is one of a number of questions that policy makers, legislators, and regulators need to understand in order to make the best choices for California's environment and our economy.

Other examples of errors are found in Section 6.0, particularly the description of the implications of the transfer of ownership of decommissioned platforms from an operator directly to the state. In one instance, the Report mischaracterizes the process by which new legislation would be drafted -- "drafting legislation is the purview of state agencies" – the legislature, not state agencies, draft and pass new legislation.[18] The Report's description of the state's liability incurred when a partial structure is converted into an artificial reef is also misleading, indicating that the state has only limited liability. Rather, the governing federal regulations require that the state accept "title and liability for the structure".[19] The cases described in the Report do not necessarily prove that a state has limited liability, and without citations to the cases, it is very difficult to know precisely how applicable they are.

Changing Federal Regulatory Framework Adds to Uncertainty and Risk Associated with Decommissioning

There are 27 rigs off California's coast: of these, only four are in state waters, but only one of the state rigs is eligible for partial decommissioning, because water depths are too shallow for the other three to be safely left in place.[20] This means that 23 of the 24 eligible rigs are in federal waters, under the jurisdiction of federal agencies. One of the Report's "Key Concepts" is that:

> The policies, statutes, and regulations that create the legal framework for all potential decommissioning options are well defined, as are the agency roles related to each.[21]

However, in the wake of the Deepwater Horizon oil spill in the Gulf of Mexico, Department of the Interior (DOI) Secretary Salazar announced that the Minerals Management Service (MMS) would be

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[15] Decommissioning Alternatives Report at 22.
[16] *See,* 30 CFR § 250.1701, "Who must meet the decommissioning obligations in this subpart?"
[17] Decommissioning Alternatives Report at 22.
[18] Decommissioning Alternatives Report at 172; this significant mis-statement may reflect a typographical error,
[19] 30 CFR § 250.1730(a); Decommissioning Alternatives Report at 176.
[20] Decommissioning Alternatives Report at xvi, 1
[21] Decommissioning Alternatives Report at 18.

divided into two new bureaus and one new office in an effort to separate conflicting duties that had previously impaired MMS' ability to effectively regulate Outer Continental Shelf (OCS) oil and gas activities.[22] This announcement was only the beginning of the restructuring efforts; both the Obama administration and Congress are in the midst of evaluating a number of regulatory and legislative reforms that would change the powers and duties of the agencies and offices that oversee offshore oil and gas activities, including decommissioning. The legal framework for surrounding decommissioning is therefore not currently well defined, and California policy makers and regulators will need to navigate these changes as they occur.

Procedural and Editorial Concerns

We are concerned that the public and many interested stakeholders were not given adequate opportunity to review and comment on the Report before it was finalized. The option of providing provisional comments was offered only after extensive public complaint during the June 24th-25th meetings.

Additionally, a number of editorial and substantive errors call into question whether the study actually finished. There is a significant lack of thorough citations and proofreading in the document, for example:

- Page 9, second paragraph, "produce" rather than "reduce"
- On page 14, no citations is included to clarify what "MMS regulations for a rigs-to-reefs program" the Report is referring to.
- Page 25 references an important "Government Accountability Office Report (GAO 2010)" that "found that MMS lacks a formal NEPA guidance handbook." The findings of this Report are critical to understanding whether MMS could provide meaningful NEPA oversight, yet without a corresponding report listed in the list of references and a specific title or page number, it is a meaningless citation.
- In Appendix 2 ("Legislation and Related Documents"), six of the eight documents are specific to projects in the Gulf of Mexico, yet key federal statutes and regulations are missing.
- Some citations are present where not necessary, and others are absent where citation would be very useful. Pages 65-66 of the aquaculture overview omit citation to the quote "Despite the presence of a recently developed legal framework for permitting and several attempts to establish aquaculture on both operating and decommissioned platforms," (the citation would be key because the description of frameworks that follow are of bills that have not passed, or regulatory frameworks such as the MMS 2009 regulations, that are not at all detailed or appropriate to deal with the significant issues of concern associated with offshore aquaculture).
- Then, conversely, a specific citation is included to H.R. 4363 (Capps), including a non-functioning link. This inconsistency and lack of clear methodology to document important legal frameworks underlying the issues discussed in the Report is also a significant problem.
- Finally, seemingly conflicting statements, such as those describing the legal and regulatory framework governing offshore aquaculture "Despite the presence of a recently developed legal framework recently developed legal framework"[23] vs. "the absence of definitive federal legislation"[24] serve to undermine the perceived accuracy of the Report.

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[22] Secretarial Order No. 3299, Establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue, May 19, 2010, *available at*, http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=32475

[23] Decommissioning Alternatives Report at 22.

[24] *Id.* at 23.

Conclusion

Given the gaps and errors identified in this brief letter, NRDC respectfully encourages OPC and CalOST to consider this Report to be a draft or a "living" document. Alternatively, this document could be labeled an interim report and updates should be prepared to incorporate important new changes to federal regulations, laws, and agency jurisdiction over platforms, and to address the errors and omissions in this version of the Report.

Sincerely,

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CC:
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