

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6210**

56th Legislature  
2000 Regular Session

Passed by the Senate March 6, 2000  
YEAS 45 NAYS 0

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**President of the Senate**

Passed by the House March 1, 2000  
YEAS 98 NAYS 0

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**Speaker of the  
House of Representatives**

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6210** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6210**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

**State of Washington                      56th Legislature                      2000 Regular Session**

**By** Senate Committee on Environmental Quality & Water Resources  
(originally sponsored by Senators Fraser, Morton, Eide, Jacobsen,  
Fairley, Prentice, McAuliffe, Winsley, Franklin, Kline, Spanel and  
Kohl-Welles)

Read first time 01/26/00.

1            AN ACT Relating to technical and clarifying amendments relating to  
2 the oil spill prevention and response statutes; amending RCW 88.46.010,  
3 88.46.020, 88.46.030, 88.46.040, 88.46.050, 88.46.060, 88.46.070,  
4 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.160, 88.46.170,  
5 88.46.200, 90.56.010, 90.56.060, 90.56.080, 90.56.100, 90.56.200,  
6 90.56.210, 90.56.370, 90.56.510, 90.56.540, 90.56.560, 82.23B.020,  
7 43.21I.010, 43.21I.030, 43.21I.040, 88.40.011, 88.40.020, 88.40.030,  
8 88.40.040, 90.56.310, and 43.21I.005; creating a new section;  
9 decodifying RCW 43.21I.005, 88.46.150, 88.46.924, 88.46.925, and  
10 88.46.927; and repealing RCW 88.46.140, 90.56.903, and 88.46.922.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

12            **Sec. 1.** RCW 88.46.010 and 1992 c 73 s 18 are each amended to read  
13 as follows:

14            Unless the context clearly requires otherwise, the definitions in  
15 this section apply throughout this chapter.

16            (1) (~~"Administrator" means the administrator of the office of~~  
17 ~~marine safety created in RCW 43.21I.010.~~

18            (2)) "Best achievable protection" means the highest level of  
19 protection that can be achieved through the use of the best achievable

1 technology and those staffing levels, training procedures, and  
2 operational methods that provide the greatest degree of protection  
3 achievable. The (~~administrator's~~) director's determination of best  
4 achievable protection shall be guided by the critical need to protect  
5 the state's natural resources and waters, while considering (a) the  
6 additional protection provided by the measures; (b) the technological  
7 achievability of the measures; and (c) the cost of the measures.

8 (~~(+3)~~) (2) "Best achievable technology" means the technology that  
9 provides the greatest degree of protection taking into consideration  
10 (a) processes that are being developed, or could feasibly be developed,  
11 given overall reasonable expenditures on research and development, and  
12 (b) processes that are currently in use. In determining what is best  
13 achievable technology, the (~~administrator~~) director shall consider  
14 the effectiveness, engineering feasibility, and commercial availability  
15 of the technology.

16 (~~(+4)~~) (3) "Cargo vessel" means a self-propelled ship in commerce,  
17 other than a tank vessel or a passenger vessel, of three hundred or  
18 more gross tons, including but not limited to, commercial fish  
19 processing vessels and freighters.

20 (~~(+5)~~) (4) "Bulk" means material that is stored or transported in  
21 a loose, unpackaged liquid, powder, or granular form capable of being  
22 conveyed by a pipe, bucket, chute, or belt system.

23 (~~(+6)~~) (5) "Covered vessel" means a tank vessel, cargo vessel, or  
24 passenger vessel.

25 (~~(+7)~~) (6) "Department" means the department of ecology.

26 (~~(+8)~~) (7) "Director" means the director of the department of  
27 ecology.

28 (~~(+9)~~) (8) "Discharge" means any spilling, leaking, pumping,  
29 pouring, emitting, emptying, or dumping.

30 (~~(+10)~~) (9)(a) "Facility" means any structure, group of  
31 structures, equipment, pipeline, or device, other than a vessel,  
32 located on or near the navigable waters of the state that transfers oil  
33 in bulk to or from a tank vessel or pipeline, that is used for  
34 producing, storing, handling, transferring, processing, or transporting  
35 oil in bulk.

36 (b) A facility does not include any: (i) Railroad car, motor  
37 vehicle, or other rolling stock while transporting oil over the  
38 highways or rail lines of this state; (ii) retail motor vehicle motor  
39 fuel outlet; (iii) facility that is operated as part of an exempt

1 agricultural activity as provided in RCW 82.04.330; (iv) underground  
2 storage tank regulated by the department or a local government under  
3 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense  
4 more than three thousand gallons of fuel to a ship that is not a  
5 covered vessel, in a single transaction.

6 ~~((11))~~ (10) "Marine facility" means any facility used for tank  
7 vessel wharfage or anchorage, including any equipment used for the  
8 purpose of handling or transferring oil in bulk to or from a tank  
9 vessel.

10 ~~((12))~~ (11) "Navigable waters of the state" means those waters of  
11 the state, and their adjoining shorelines, that are subject to the ebb  
12 and flow of the tide and/or are presently used, have been used in the  
13 past, or may be susceptible for use to transport intrastate,  
14 interstate, or foreign commerce.

15 ~~((13) "Office" means the office of marine safety established by  
16 RCW 43.211.010.~~

17 ~~(14))~~ (12) "Oil" or "oils" means any naturally occurring liquid  
18 hydrocarbons at atmospheric temperature and pressure coming from the  
19 earth, including condensate and natural gasoline, and any fractionation  
20 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
21 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
22 other than dredged spoil. Oil does not include any substance listed in  
23 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
24 section 101(14) of the federal comprehensive environmental response,  
25 compensation, and liability act of 1980, as amended by P.L. 99-499.

26 ~~((15))~~ (13) "Offshore facility" means any facility located in,  
27 on, or under any of the navigable waters of the state, but does not  
28 include a facility any part of which is located in, on, or under any  
29 land of the state, other than submerged land. "Offshore facility" does  
30 not include a marine facility.

31 ~~((16))~~ (14) "Onshore facility" means any facility any part of  
32 which is located in, on, or under any land of the state, other than  
33 submerged land, that because of its location, could reasonably be  
34 expected to cause substantial harm to the environment by discharging  
35 oil into or on the navigable waters of the state or the adjoining  
36 shorelines.

37 ~~((17))~~ (15)(a) "Owner or operator" means (i) in the case of a  
38 vessel, any person owning, operating, or chartering by demise, the  
39 vessel; (ii) in the case of an onshore or offshore facility, any person

1 owning or operating the facility; and (iii) in the case of an abandoned  
2 vessel or onshore or offshore facility, the person who owned or  
3 operated the vessel or facility immediately before its abandonment.

4 (b) "Operator" does not include any person who owns the land  
5 underlying a facility if the person is not involved in the operations  
6 of the facility.

7 ~~((18))~~ (16) "Passenger vessel" means a ship of three hundred or  
8 more gross tons with a fuel capacity of at least six thousand gallons  
9 carrying passengers for compensation.

10 ~~((19))~~ (17) "Person" means any political subdivision, government  
11 agency, municipality, industry, public or private corporation,  
12 copartnership, association, firm, individual, or any other entity  
13 whatsoever.

14 ~~((20))~~ (18) "Ship" means any boat, ship, vessel, barge, or other  
15 floating craft of any kind.

16 ~~((21))~~ (19) "Spill" means an unauthorized discharge of oil into  
17 the waters of the state.

18 ~~((22))~~ (20) "Tank vessel" means a ship that is constructed or  
19 adapted to carry, or that carries, oil in bulk as cargo or cargo  
20 residue, and that:

21 (a) Operates on the waters of the state; or

22 (b) Transfers oil in a port or place subject to the jurisdiction of  
23 this state.

24 ~~((23))~~ (21) "Waters of the state" includes lakes, rivers, ponds,  
25 streams, inland waters, underground water, salt waters, estuaries,  
26 tidal flats, beaches and lands adjoining the seacoast of the state,  
27 sewers, and all other surface waters and watercourses within the  
28 jurisdiction of the state of Washington.

29 ~~((24))~~ (22) "Worst case spill" means: (a) In the case of a  
30 vessel, a spill of the entire cargo and fuel of the vessel complicated  
31 by adverse weather conditions; and (b) in the case of an onshore or  
32 offshore facility, the largest foreseeable spill in adverse weather  
33 conditions.

34 **Sec. 2.** RCW 88.46.020 and 1991 c 200 s 415 are each amended to  
35 read as follows:

36 In carrying out the purposes of this chapter, including the  
37 adoption of rules for contingency plans, the ~~((administrator))~~ director

1 shall to the greatest extent practicable implement this chapter in a  
2 manner consistent with federal law.

3 **Sec. 3.** RCW 88.46.030 and 1991 c 200 s 416 are each amended to  
4 read as follows:

5 (1) All tank vessels entering the navigable waters of the state  
6 shall be subject to inspection to assure that they comply with all  
7 applicable federal and state standards.

8 (2) The ((office)) department shall review the tank vessel  
9 inspection programs conducted by the United States coast guard and  
10 other federal agencies to determine if the programs as actually  
11 operated by those agencies provide the best achievable protection to  
12 the waters of the state. If the ((office)) department determines that  
13 the tank vessel inspection programs conducted by these agencies are not  
14 adequate to protect the state's waters, it shall adopt rules for a  
15 state tank vessel inspection program. The ((office)) department shall  
16 adopt rules providing for a random review of individual tank vessel  
17 inspections conducted by federal agencies. The ((office)) department  
18 may accept a tank vessel inspection report issued by another state if  
19 that state's tank vessel inspection program is determined by the  
20 ((office)) department to be at least as protective of the public health  
21 and the environment as the program adopted by the ((office))  
22 department.

23 (3) The state tank vessel inspection program shall ensure that all  
24 tank vessels entering state waters are inspected at least annually. To  
25 the maximum extent feasible, the state program shall consist of the  
26 monitoring of existing tank vessel inspection programs conducted by the  
27 federal government. The ((office)) department shall consult with the  
28 coast guard regarding the tank vessel inspection program. Any tank  
29 vessel inspection conducted pursuant to this section shall be performed  
30 during the vessel's scheduled stay in port.

31 (4) Any violation of coast guard or other federal regulations  
32 uncovered during a state tank vessel inspection shall be immediately  
33 reported to the appropriate agency.

34 **Sec. 4.** RCW 88.46.040 and 1991 c 200 s 417 are each amended to  
35 read as follows:

36 (1) The owner or operator for each tank vessel shall prepare and  
37 submit to the ((office)) department an oil spill prevention plan in

1 conformance with the requirements of this chapter. The plans shall be  
2 submitted to the ((office)) department in the time and manner directed  
3 by the ((office, but not later than January 1, 1993)) department. The  
4 spill prevention plan may be consolidated with a spill contingency plan  
5 submitted pursuant to RCW 88.46.060. The ((office)) department may  
6 accept plans prepared to comply with other state or federal law as  
7 spill prevention plans to the extent those plans comply with the  
8 requirements of this chapter. The ((office)) department, by rule,  
9 shall establish standards for spill prevention plans. ((The rules  
10 shall be adopted not later than July 1, 1992.))

11 (2) The spill prevention plan for a tank vessel or a fleet of tank  
12 vessels operated by the same operator shall:

13 (a) Establish compliance with the federal oil pollution act of 1990  
14 and state and federal financial responsibility requirements, if  
15 applicable;

16 (b) State all discharges of oil of more than twenty-five barrels  
17 from the vessel within the prior five years and what measures have been  
18 taken to prevent a reoccurrence;

19 (c) Describe all accidents, collisions, groundings, and near miss  
20 incidents in which the vessel has been involved in the prior five  
21 years, analyze the causes, and state the measures that have been taken  
22 to prevent a reoccurrence;

23 (d) Describe the vessel operations with respect to staffing  
24 standards;

25 (e) Describe the vessel inspection program carried out by the owner  
26 or operator of the vessel;

27 (f) Describe the training given to vessel crews with respect to  
28 spill prevention;

29 (g) Establish compliance with federal drug and alcohol programs;

30 (h) Describe all spill prevention technology that has been  
31 incorporated into the vessel;

32 (i) Describe the procedures used by the vessel owner or operator to  
33 ensure English language proficiency of at least one bridge officer  
34 while on duty in waters of the state;

35 (j) Describe relevant prevention measures incorporated in any  
36 applicable regional marine spill safety plan that have not been adopted  
37 and the reasons for that decision; and

1 (k) Include any other information reasonably necessary to carry out  
2 the purposes of this chapter required by rules adopted by the  
3 ((office)) department.

4 (3) The ((office)) department shall only approve a prevention plan  
5 if it provides the best achievable protection from damages caused by  
6 the discharge of oil into the waters of the state and if it determines  
7 that the plan meets the requirements of this section and rules adopted  
8 by the ((office)) department.

9 (4) Upon approval of a prevention plan, the ((office)) department  
10 shall provide to the person submitting the plan a statement indicating  
11 that the plan has been approved, the vessels covered by the plan, and  
12 other information the ((office)) department determines should be  
13 included.

14 (5) The approval of a prevention plan shall be valid for five  
15 years. An owner or operator of a tank vessel shall notify the  
16 ((office)) department in writing immediately of any significant change  
17 of which it is aware affecting its prevention plan, including changes  
18 in any factor set forth in this section or in rules adopted by the  
19 ((office)) department. The ((office)) department may require the owner  
20 or operator to update a prevention plan as a result of these changes.

21 (6) The ((office)) department by rule shall require prevention  
22 plans to be reviewed, updated, if necessary, and resubmitted to the  
23 ((office)) department at least once every five years.

24 (7) Approval of a prevention plan by the ((office)) department does  
25 not constitute an express assurance regarding the adequacy of the plan  
26 nor constitute a defense to liability imposed under this chapter or  
27 other state law.

28 (8) This section does not authorize the ((office)) department to  
29 modify the terms of a collective bargaining agreement.

30 **Sec. 5.** RCW 88.46.050 and 1992 c 73 s 19 are each amended to read  
31 as follows:

32 (1) In order to ensure the safety of marine transportation within  
33 the navigable waters of the state and to protect the state's natural  
34 resources, the ((~~administrator~~)) department shall adopt rules ((~~by July~~  
35 ~~1, 1992,~~)) for determining whether cargo vessels and passenger vessels  
36 entering the navigable waters of the state pose a substantial risk of  
37 harm to the public health and safety and the environment.



1 (2) The rules (~~adopted by the administrator pursuant to this~~  
2 ~~section~~) may include (~~, but are not limited to the following~~):

3 (a) Examining available information sources for evidence that a  
4 cargo or passenger vessel may pose a substantial risk to safe marine  
5 transportation or the state's natural resources. Information sources  
6 may include: Vessel casualty lists, United States coast guard casualty  
7 reports, maritime insurance ratings, the index of contingency plans  
8 compiled by the department of ecology, other data gathered by the  
9 (~~office or the~~) maritime commission, or any other resources;

10 (b) Requesting the United States coast guard to deny a cargo vessel  
11 or passenger vessel entry into the navigable waters of the state, if  
12 the vessel poses a substantial environmental risk;

13 (c) Notifying the state's spill response system that a cargo or  
14 passenger vessel entering the state's navigable waters poses a  
15 substantial environmental risk;

16 (d) Inspecting a cargo or passenger vessel that may pose a  
17 substantial environmental risk, to determine whether the vessel  
18 complies with applicable state or federal laws. Any vessel inspection  
19 conducted pursuant to this section shall be performed during the  
20 vessel's scheduled stay in port; and

21 (e) Enforcement actions.

22 **Sec. 6.** RCW 88.46.060 and 1995 c 148 s 3 are each amended to read  
23 as follows:

24 (1) Each covered vessel shall have a contingency plan for the  
25 containment and cleanup of oil spills from the covered vessel into the  
26 waters of the state and for the protection of fisheries and wildlife,  
27 natural resources, and public and private property from such spills.  
28 The (~~office~~) department shall by rule adopt and periodically revise  
29 standards for the preparation of contingency plans. The (~~office~~)  
30 department shall require contingency plans, at a minimum, to meet the  
31 following standards:

32 (a) Include full details of the method of response to spills of  
33 various sizes from any vessel which is covered by the plan;

34 (b) Be designed to be capable in terms of personnel, materials, and  
35 equipment, of promptly and properly, to the maximum extent practicable,  
36 as defined by the (~~office~~) department, removing oil and minimizing  
37 any damage to the environment resulting from a worst case spill;

1 (c) Provide a clear, precise, and detailed description of how the  
2 plan relates to and is integrated into relevant contingency plans which  
3 have been prepared by cooperatives, ports, regional entities, the  
4 state, and the federal government;

5 (d) Provide procedures for early detection of spills and timely  
6 notification of such spills to appropriate federal, state, and local  
7 authorities under applicable state and federal law;

8 (e) State the number, training preparedness, and fitness of all  
9 dedicated, prepositioned personnel assigned to direct and implement the  
10 plan;

11 (f) Incorporate periodic training and drill programs to evaluate  
12 whether personnel and equipment provided under the plan are in a state  
13 of operational readiness at all times;

14 (g) Describe important features of the surrounding environment,  
15 including fish and wildlife habitat, environmentally and  
16 archaeologically sensitive areas, and public facilities. The  
17 departments of ecology, fish and wildlife, and natural resources, and  
18 the office of archaeology and historic preservation, upon request,  
19 shall provide information that they have available to assist in  
20 preparing this description. If the office (~~has~~) of marine safety  
21 adopted rules for contingency plans prior to July 1, 1992, the  
22 description of archaeologically sensitive areas shall only be required  
23 when the (~~office~~) department revises the rules for contingency plans  
24 after July 1, 1992. The description of archaeologically sensitive  
25 areas shall not be required to be included in a contingency plan until  
26 it is reviewed and updated pursuant to subsection (9) of this section;

27 (h) State the means of protecting and mitigating effects on the  
28 environment, including fish, marine mammals, and other wildlife, and  
29 ensure that implementation of the plan does not pose unacceptable risks  
30 to the public or the environment;

31 (i) Establish guidelines for the use of equipment by the crew of a  
32 vessel to minimize vessel damage, stop or reduce any spilling from the  
33 vessel, and, only when appropriate and only when vessel safety is  
34 assured, contain and clean up the spilled oil;

35 (j) Provide arrangements for the prepositioning of spill  
36 containment and cleanup equipment and trained personnel at strategic  
37 locations from which they can be deployed to the spill site to promptly  
38 and properly remove the spilled oil;

1 (k) Provide arrangements for enlisting the use of qualified and  
2 trained cleanup personnel to implement the plan;

3 (l) Provide for disposal of recovered spilled oil in accordance  
4 with local, state, and federal laws;

5 (m) Until a spill prevention plan has been submitted pursuant to  
6 RCW 88.46.040, state the measures that have been taken to reduce the  
7 likelihood that a spill will occur, including but not limited to,  
8 design and operation of a vessel, training of personnel, number of  
9 personnel, and backup systems designed to prevent a spill;

10 (n) State the amount and type of equipment available to respond to  
11 a spill, where the equipment is located, and the extent to which other  
12 contingency plans rely on the same equipment; and

13 (o) If the department (~~(of ecology)~~) has adopted rules permitting  
14 the use of dispersants, the circumstances, if any, and the manner for  
15 the application of the dispersants in conformance with the department's  
16 rules.

17 (2)(a) The owner or operator of a tank vessel of three thousand  
18 gross tons or more shall submit a contingency plan to the (~~(office)~~)  
19 department within six months after the (~~(office)~~) department adopts  
20 rules establishing standards for contingency plans under subsection (1)  
21 of this section.

22 (b) Contingency plans for all other covered vessels shall be  
23 submitted to the (~~(office)~~) department within eighteen months after the  
24 (~~(office)~~) department has adopted rules under subsection (1) of this  
25 section. The (~~(office)~~) department may adopt a schedule for submission  
26 of plans within the eighteen-month period.

27 (3)(a) The owner or operator of a tank vessel or of the facilities  
28 at which the vessel will be unloading its cargo, or a Washington state  
29 nonprofit corporation established for the purpose of oil spill response  
30 and contingency plan coverage and of which the owner or operator is a  
31 member, shall submit the contingency plan for the tank vessel. Subject  
32 to conditions imposed by the (~~(office)~~) department, the owner or  
33 operator of a facility may submit a single contingency plan for tank  
34 vessels of a particular class that will be unloading cargo at the  
35 facility.

36 (b) The contingency plan for a cargo vessel or passenger vessel may  
37 be submitted by the owner or operator of the cargo vessel or passenger  
38 vessel, by the agent for the vessel resident in this state, or by a  
39 Washington state nonprofit corporation established for the purpose of

1 oil spill response and contingency plan coverage and of which the owner  
2 or operator is a member. Subject to conditions imposed by the  
3 ((office)) department, the owner, operator, or agent may submit a  
4 single contingency plan for cargo vessels or passenger vessels of a  
5 particular class.

6 (c) A person who has contracted with a covered vessel to provide  
7 containment and cleanup services and who meets the standards  
8 established pursuant to RCW 90.56.240, may submit the plan for any  
9 covered vessel for which the person is contractually obligated to  
10 provide services. Subject to conditions imposed by the ((office))  
11 department, the person may submit a single plan for more than one  
12 covered vessel.

13 (4) A contingency plan prepared for an agency of the federal  
14 government or another state that satisfies the requirements of this  
15 section and rules adopted by the ((office)) department may be accepted  
16 by the ((office)) department as a contingency plan under this section.  
17 The ((office)) department shall assure that to the greatest extent  
18 possible, requirements for contingency plans under this section are  
19 consistent with the requirements for contingency plans under federal  
20 law.

21 (5) In reviewing the contingency plans required by this section,  
22 the ((office)) department shall consider at least the following  
23 factors:

24 (a) The adequacy of containment and cleanup equipment, personnel,  
25 communications equipment, notification procedures and call down lists,  
26 response time, and logistical arrangements for coordination and  
27 implementation of response efforts to remove oil spills promptly and  
28 properly and to protect the environment;

29 (b) The nature and amount of vessel traffic within the area covered  
30 by the plan;

31 (c) The volume and type of oil being transported within the area  
32 covered by the plan;

33 (d) The existence of navigational hazards within the area covered  
34 by the plan;

35 (e) The history and circumstances surrounding prior spills of oil  
36 within the area covered by the plan;

37 (f) The sensitivity of fisheries and wildlife and other natural  
38 resources within the area covered by the plan;

1 (g) Relevant information on previous spills contained in on-scene  
2 coordinator reports prepared by the director; and

3 (h) The extent to which reasonable, cost-effective measures to  
4 prevent a likelihood that a spill will occur have been incorporated  
5 into the plan.

6 (6) The ((office)) department shall approve a contingency plan only  
7 if it determines that the plan meets the requirements of this section  
8 and that, if implemented, the plan is capable, in terms of personnel,  
9 materials, and equipment, of removing oil promptly and properly and  
10 minimizing any damage to the environment.

11 (7) The approval of the contingency plan shall be valid for five  
12 years. Upon approval of a contingency plan, the ((office)) department  
13 shall provide to the person submitting the plan a statement indicating  
14 that the plan has been approved, the vessels covered by the plan, and  
15 other information the ((office)) department determines should be  
16 included.

17 (8) An owner or operator of a covered vessel shall notify the  
18 ((office)) department in writing immediately of any significant change  
19 of which it is aware affecting its contingency plan, including changes  
20 in any factor set forth in this section or in rules adopted by the  
21 ((office)) department. The ((office)) department may require the owner  
22 or operator to update a contingency plan as a result of these changes.

23 (9) The ((office)) department by rule shall require contingency  
24 plans to be reviewed, updated, if necessary, and resubmitted to the  
25 ((office)) department at least once every five years.

26 (10) Approval of a contingency plan by the ((office)) department  
27 does not constitute an express assurance regarding the adequacy of the  
28 plan nor constitute a defense to liability imposed under this chapter  
29 or other state law.

30 **Sec. 7.** RCW 88.46.070 and 1992 c 73 s 21 are each amended to read  
31 as follows:

32 (1) The provisions of prevention plans and contingency plans  
33 approved by the ((office)) department pursuant to this chapter shall be  
34 legally binding on those persons submitting them to the ((office))  
35 department and on their successors, assigns, agents, and employees.  
36 The superior court shall have jurisdiction to restrain a violation of,  
37 compel specific performance of, or otherwise to enforce such plans upon  
38 application by the ((office)) department. The ((office)) department

1 may issue an order pursuant to chapter 34.05 RCW requiring compliance  
2 with a contingency plan or a prevention plan and may impose  
3 administrative penalties for failure to comply with a plan.

4 (2) If the (~~administrator~~) director believes a person has  
5 violated or is violating or creates a substantial potential to violate  
6 the provisions of this chapter, the (~~administrator~~) director shall  
7 notify the person of the (~~administrator's~~) director's determination  
8 by registered mail. The determination shall not constitute an order or  
9 directive under RCW 43.21B.310. Within thirty days from the receipt of  
10 notice of the determination, the person shall file with the  
11 (~~administrator~~) director a full report stating what steps have been  
12 and are being taken to comply with the determination of the  
13 (~~administrator~~) director. The (~~administrator~~) director shall issue  
14 an order or directive, as the (~~administrator~~) director deems  
15 appropriate under the circumstances, and shall notify the person by  
16 registered mail.

17 (3) If the (~~administrator~~) director believes immediate action is  
18 necessary to accomplish the purposes of this chapter, the  
19 (~~administrator~~) director may issue an order or directive, as  
20 appropriate under the circumstances, without first issuing a notice or  
21 determination pursuant to subsection (2) of this section. An order or  
22 directive issued pursuant to this subsection shall be served by  
23 registered mail or personally upon any person to whom it is directed.

24 **Sec. 8.** RCW 88.46.080 and 1992 c 73 s 22 are each amended to read  
25 as follows:

26 (1) Except as provided in subsection (2) of this section, it shall  
27 be unlawful for the owner or operator to knowingly and intentionally  
28 operate in this state or on the waters of this state a covered vessel  
29 without an approved contingency plan or an approved prevention plan as  
30 required by this chapter, or financial responsibility in compliance  
31 with chapter 88.40 RCW and the federal oil pollution act of 1990. The  
32 first conviction under this section shall be a gross misdemeanor under  
33 chapter 9A.20 RCW. A second or subsequent conviction shall be a class  
34 C felony under chapter 9A.20 RCW.

35 (2) It shall not be unlawful for the owner or operator to operate  
36 a covered vessel if:

37 (a) The covered vessel is not required to have a contingency plan,  
38 spill prevention plan, or financial responsibility;

1 (b) All required plans have been submitted to the ((office))  
2 department as required by this chapter and rules adopted by the  
3 ((office)) department and the ((office)) department is reviewing the  
4 plan and has not denied approval; or

5 (c) The covered vessel has entered state waters after the United  
6 States coast guard has determined that the vessel is in distress.

7 (3) A person may rely on a copy of the statement issued by the  
8 ((office)) department pursuant to RCW 88.46.060 as evidence that a  
9 vessel has an approved contingency plan and the statement issued  
10 pursuant to RCW 88.46.040 that a vessel has an approved prevention  
11 plan.

12 (4) Any person found guilty of willfully violating any of the  
13 provisions of this chapter, or any final written orders or directive of  
14 the ((administrator)) director or a court in pursuance thereof shall be  
15 deemed guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW,  
16 and upon conviction thereof shall be punished by a fine of up to ten  
17 thousand dollars and costs of prosecution, or by imprisonment in the  
18 county jail for not more than one year, or by both such fine and  
19 imprisonment in the discretion of the court. Each day upon which a  
20 willful violation of the provisions of this chapter occurs may be  
21 deemed a separate and additional violation.

22 **Sec. 9.** RCW 88.46.090 and 1992 c 73 s 23 are each amended to read  
23 as follows:

24 (1) Except as provided in subsection (4) of this section, it shall  
25 be unlawful for a covered vessel to enter the waters of the state  
26 without an approved contingency plan required by RCW 88.46.060, a spill  
27 prevention plan required by RCW 88.46.040, or financial responsibility  
28 in compliance with chapter 88.40 RCW and the federal oil pollution act  
29 of 1990. The ((office)) department may deny entry onto the waters of  
30 the state to any covered vessel that does not have a required  
31 contingency or spill prevention plan or financial responsibility.

32 (2) Except as provided in subsection (4) of this section, it shall  
33 be unlawful for a covered vessel to transfer oil to or from an onshore  
34 or offshore facility that does not have an approved contingency plan  
35 required under RCW 90.56.210, a spill prevention plan required by RCW  
36 90.56.200, or financial responsibility in compliance with chapter 88.40  
37 RCW and the federal oil pollution act of 1990.

1 (3) The ((~~administrator~~)) director may assess a civil penalty of up  
2 to one hundred thousand dollars against the owner or operator of a  
3 vessel who is in violation of subsection (1) or (2) of this section.  
4 Each day that the owner or operator of a covered vessel is in violation  
5 of this section shall be considered a separate violation.

6 (4) It shall not be unlawful for a covered vessel to operate on the  
7 waters of the state if:

8 (a) A contingency plan, a prevention plan, or financial  
9 responsibility is not required for the covered vessel;

10 (b) A contingency plan and prevention plan has been submitted to  
11 the ((~~office~~)) department as required by this chapter and rules adopted  
12 by the ((~~office~~)) department and the ((~~office~~)) department is reviewing  
13 the plan and has not denied approval; or

14 (c) The covered vessel has entered state waters after the United  
15 States coast guard has determined that the vessel is in distress.

16 (5) Any person may rely on a copy of the statement issued by the  
17 ((~~office~~)) department to RCW 88.46.060 as evidence that the vessel has  
18 an approved contingency plan and the statement issued pursuant to RCW  
19 88.46.040 as evidence that the vessel has an approved spill prevention  
20 plan.

21 (6) Except for violations of subsection (1) or (2) of this section,  
22 any person who violates the provisions of this chapter or rules or  
23 orders adopted or issued pursuant thereto, shall incur, in addition to  
24 any other penalty as provided by law, a penalty in an amount of up to  
25 ten thousand dollars a day for each violation. Each violation is a  
26 separate offense, and in case of a continuing violation, every day's  
27 continuance is a separate violation. Every act of commission or  
28 omission which procures, aids, or abets in the violation shall be  
29 considered a violation under the provisions of this subsection and  
30 subject to penalty. The penalty amount shall be set in consideration  
31 of the previous history of the violator and the severity of the  
32 violation's impact on public health and the environment in addition to  
33 other relevant factors. The penalty shall be imposed pursuant to the  
34 procedures set forth in RCW 43.21B.300.

35 **Sec. 10.** RCW 88.46.100 and 1995 c 391 s 9 are each amended to read  
36 as follows:

37 (1) In order to assist the state in identifying areas of the  
38 navigable waters of the state needing special attention, the owner or



1 operator of a covered vessel shall notify the coast guard within one  
2 hour:

3 (a) Of the disability of the covered vessel if the disabled vessel  
4 is within twelve miles of the shore of the state; and

5 (b) Of a collision or a near miss incident within twelve miles of  
6 the shore of the state.

7 (2) The state military department and the ((office)) department  
8 shall request the coast guard to notify the state military department  
9 as soon as possible after the coast guard receives notice of a disabled  
10 covered vessel or of a collision or near miss incident within twelve  
11 miles of the shore of the state. The ((office)) department shall  
12 negotiate an agreement with the coast guard governing procedures for  
13 coast guard notification to the state regarding disabled covered  
14 vessels and collisions and near miss incidents.

15 (3) The ((office)) department shall prepare a summary of the  
16 information collected under this section and provide the summary to the  
17 regional marine safety committees, the coast guard, and others in order  
18 to identify problems with the marine transportation system.

19 (4) For the purposes of this section:

20 (a) A tank vessel or cargo vessel is considered disabled if any of  
21 the following occur:

22 (i) Any accidental or intentional grounding;

23 (ii) The total or partial failure of the main propulsion or primary  
24 steering or any component or control system that causes a reduction in  
25 the maneuvering capabilities of the vessel;

26 (iii) An occurrence materially and adversely affecting the vessel's  
27 seaworthiness or fitness for service, including but not limited to,  
28 fire, flooding, or collision with another vessel;

29 (iv) Any other occurrence that creates the serious possibility of  
30 an oil spill or an occurrence that may result in such a spill.

31 (b) A barge is considered disabled if any of the following occur:

32 (i) The towing mechanism becomes disabled;

33 (ii) The towboat towing the barge becomes disabled through  
34 occurrences defined in (a) of this subsection.

35 (c) A near miss incident is an incident that requires the pilot or  
36 master of a covered vessel to take evasive actions or make significant  
37 course corrections in order to avoid a collision with another ship or  
38 to avoid a grounding as required by the international rules of the  
39 road.

1 (5) Failure of any person to make a report under this section shall  
2 not be used as the basis for the imposition of any fine or penalty.

3 **Sec. 11.** RCW 88.46.120 and 1991 c 200 s 425 are each amended to  
4 read as follows:

5 The ((office)) department may adopt rules including but not limited  
6 to standards for spill response equipment to be maintained on tank  
7 vessels. The standards adopted under this section shall be consistent  
8 with spill response equipment standards adopted by the United States  
9 coast guard.

10 **Sec. 12.** RCW 88.46.160 and 1991 c 200 s 438 are each amended to  
11 read as follows:

12 Any person or facility conducting ship refueling and bunkering  
13 operations, or the lightering of petroleum products, and any person or  
14 facility transferring oil between an onshore or offshore facility and  
15 a tank vessel shall have containment and recovery equipment readily  
16 available for deployment in the event of the discharge of oil into the  
17 waters of the state and shall deploy the containment and recovery  
18 equipment in accordance with standards adopted by the ((office))  
19 department. All persons conducting refueling, bunkering, or lightering  
20 operations, or oil transfer operations shall be trained in the use and  
21 deployment of oil spill containment and recovery equipment. The  
22 ((office)) department shall adopt rules as necessary to carry out the  
23 provisions of this section. The rules shall include standards for the  
24 circumstances under which containment equipment should be deployed. An  
25 onshore or offshore facility shall include the procedures used to  
26 contain and recover discharges in the facility's contingency plan. It  
27 is the responsibility of the person providing bunkering, refueling, or  
28 lightering services to provide any containment or recovery equipment  
29 required under this section. This section does not apply to a person  
30 operating a ship for personal pleasure or for recreational purposes.

31 **Sec. 13.** RCW 88.46.170 and 1993 c 162 s 1 are each amended to read  
32 as follows:

33 (1) The ((office)) department shall establish a field operations  
34 program to enforce the provisions of this chapter. The field  
35 operations program shall include, but is not limited to, the following  
36 elements:

- 1 (a) Education and public outreach;
- 2 (b) Review of lightering and bunkering operations to prevent oil  
3 spills;
- 4 (c) Evaluation and boarding of tank vessels for compliance with  
5 prevention plans prepared pursuant to this chapter;
- 6 (d) Evaluation and boarding of covered vessels that may pose a  
7 substantial risk to the public health, safety, and the environment;
- 8 (e) Evaluation and boarding of covered vessels for compliance with  
9 rules adopted by the ((office)) department to implement recommendations  
10 of regional marine safety committees; and
- 11 (f) Collection of vessel information to assist in identifying  
12 vessels which pose a substantial risk to the public health, safety, and  
13 the environment.

14 (2) The ((office)) department shall coordinate the field operations  
15 program with similar activities of the United States coast guard. To  
16 the extent feasible, the ((office)) department shall coordinate its  
17 boarding schedules with those of the United States coast guard to  
18 reduce the impact of boardings on vessel operators, to more efficiently  
19 use state and federal resources, and to avoid duplication of United  
20 States coast guard inspection operations.

21 (3) In developing and implementing the field operations program,  
22 the ((office)) department shall give priority to activities designed to  
23 identify those vessels which pose the greatest risk to the waters of  
24 the state. The ((office)) department shall consult with the marine  
25 transportation industry, individuals concerned with the marine  
26 environment, other state and federal agencies, and the public in  
27 developing and implementing the program required by this section.

28 **Sec. 14.** RCW 88.46.200 and 1994 sp.s. c 9 s 854 are each amended  
29 to read as follows:

30 The ((~~administrator~~)) director may appoint ad hoc, advisory marine  
31 safety committees to solicit recommendations and technical advice  
32 concerning vessel traffic safety. The ((office)) department may  
33 implement recommendations made in regional marine safety plans that are  
34 approved by the ((office)) department and over which the ((office))  
35 department has authority. If federal authority or action is required  
36 to implement the recommendations, the ((office)) department may  
37 petition the appropriate agency or the congress.

1       **Sec. 15.** RCW 90.56.010 and 1992 c 73 s 31 are each amended to read  
2 as follows:

3       For purposes of this chapter, the following definitions shall apply  
4 unless the context indicates otherwise:

5       (1) (~~("Administrator" means the administrator of the office of~~  
6 ~~marine safety created in RCW 43.211.010.~~

7       ~~(2))~~ "Best achievable protection" means the highest level of  
8 protection that can be achieved through the use of the best achievable  
9 technology and those staffing levels, training procedures, and  
10 operational methods that provide the greatest degree of protection  
11 achievable. The director's determination of best achievable protection  
12 shall be guided by the critical need to protect the state's natural  
13 resources and waters, while considering (a) the additional protection  
14 provided by the measures; (b) the technological achievability of the  
15 measures; and (c) the cost of the measures.

16       (~~(3))~~ (2) "Best achievable technology" means the technology that  
17 provides the greatest degree of protection taking into consideration  
18 (a) processes that are being developed, or could feasibly be developed,  
19 given overall reasonable expenditures on research and development, and  
20 (b) processes that are currently in use. In determining what is best  
21 achievable technology, the director shall consider the effectiveness,  
22 engineering feasibility, and commercial availability of the technology.

23       (~~(4))~~ (3) "Board" means the pollution control hearings board.

24       (~~(5))~~ (4) "Cargo vessel" means a self-propelled ship in commerce,  
25 other than a tank vessel or a passenger vessel, three hundred or more  
26 gross tons, including but not limited to, commercial fish processing  
27 vessels and freighters.

28       (~~(6))~~ (5) "Bulk" means material that is stored or transported in  
29 a loose, unpackaged liquid, powder, or granular form capable of being  
30 conveyed by a pipe, bucket, chute, or belt system.

31       (~~(7))~~ (6) "Committee" means the preassessment screening committee  
32 established under RCW 90.48.368.

33       (~~(8))~~ (7) "Covered vessel" means a tank vessel, cargo vessel, or  
34 passenger vessel.

35       (~~(9))~~ (8) "Department" means the department of ecology.

36       (~~(10))~~ (9) "Director" means the director of the department of  
37 ecology.

38       (~~(11))~~ (10) "Discharge" means any spilling, leaking, pumping,  
39 pouring, emitting, emptying, or dumping.

1       (~~(12)~~) (11)(a) "Facility" means any structure, group of  
2 structures, equipment, pipeline, or device, other than a vessel,  
3 located on or near the navigable waters of the state that transfers oil  
4 in bulk to or from a tank vessel or pipeline, that is used for  
5 producing, storing, handling, transferring, processing, or transporting  
6 oil in bulk.

7       (b) A facility does not include any: (i) Railroad car, motor  
8 vehicle, or other rolling stock while transporting oil over the  
9 highways or rail lines of this state; (ii) underground storage tank  
10 regulated by the department or a local government under chapter 90.76  
11 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is  
12 operated as part of an exempt agricultural activity as provided in RCW  
13 82.04.330; or (v) marine fuel outlet that does not dispense more than  
14 three thousand gallons of fuel to a ship that is not a covered vessel,  
15 in a single transaction.

16       (~~(13)~~) (12) "Fund" means the state coastal protection fund as  
17 provided in RCW 90.48.390 and 90.48.400.

18       (~~(14)~~) (13) "Having control over oil" shall include but not be  
19 limited to any person using, storing, or transporting oil immediately  
20 prior to entry of such oil into the waters of the state, and shall  
21 specifically include carriers and bailees of such oil.

22       (~~(15)~~) (14) "Marine facility" means any facility used for tank  
23 vessel wharfage or anchorage, including any equipment used for the  
24 purpose of handling or transferring oil in bulk to or from a tank  
25 vessel.

26       (~~(16)~~) (15) "Navigable waters of the state" means those waters of  
27 the state, and their adjoining shorelines, that are subject to the ebb  
28 and flow of the tide and/or are presently used, have been used in the  
29 past, or may be susceptible for use to transport intrastate,  
30 interstate, or foreign commerce.

31       (~~(17)~~) (16) "Necessary expenses" means the expenses incurred by  
32 the department and assisting state agencies for (a) investigating the  
33 source of the discharge; (b) investigating the extent of the  
34 environmental damage caused by the discharge; (c) conducting actions  
35 necessary to clean up the discharge; (d) conducting predamage and  
36 damage assessment studies; and (e) enforcing the provisions of this  
37 chapter and collecting for damages caused by a discharge.

38       (~~(18)~~) (17) "Oil" or "oils" means naturally occurring liquid  
39 hydrocarbons at atmospheric temperature and pressure coming from the

1 earth, including condensate and natural gasoline, and any fractionation  
2 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
3 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
4 other than dredged spoil. Oil does not include any substance listed in  
5 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
6 section 101(14) of the federal comprehensive environmental response,  
7 compensation, and liability act of 1980, as amended by P.L. 99-499.

8 ~~((+19+))~~ (18) "Offshore facility" means any facility located in,  
9 on, or under any of the navigable waters of the state, but does not  
10 include a facility any part of which is located in, on, or under any  
11 land of the state, other than submerged land.

12 ~~((+20+))~~ (19) "Onshore facility" means any facility any part of  
13 which is located in, on, or under any land of the state, other than  
14 submerged land, that because of its location, could reasonably be  
15 expected to cause substantial harm to the environment by discharging  
16 oil into or on the navigable waters of the state or the adjoining  
17 shorelines.

18 ~~((+21+))~~ (20)(a) "Owner or operator" means (i) in the case of a  
19 vessel, any person owning, operating, or chartering by demise, the  
20 vessel; (ii) in the case of an onshore or offshore facility, any person  
21 owning or operating the facility; and (iii) in the case of an abandoned  
22 vessel or onshore or offshore facility, the person who owned or  
23 operated the vessel or facility immediately before its abandonment.

24 (b) "Operator" does not include any person who owns the land  
25 underlying a facility if the person is not involved in the operations  
26 of the facility.

27 ~~((+22+))~~ (21) "Passenger vessel" means a ship of three hundred or  
28 more gross tons with a fuel capacity of at least six thousand gallons  
29 carrying passengers for compensation.

30 ~~((+23+))~~ (22) "Person" means any political subdivision, government  
31 agency, municipality, industry, public or private corporation,  
32 copartnership, association, firm, individual, or any other entity  
33 whatsoever.

34 ~~((+24+))~~ (23) "Ship" means any boat, ship, vessel, barge, or other  
35 floating craft of any kind.

36 ~~((+25+))~~ (24) "Spill" means an unauthorized discharge of oil or  
37 hazardous substances into the waters of the state.

1       (~~(26)~~) (25) "Tank vessel" means a ship that is constructed or  
2 adapted to carry, or that carries, oil in bulk as cargo or cargo  
3 residue, and that:

4       (a) Operates on the waters of the state; or

5       (b) Transfers oil in a port or place subject to the jurisdiction of  
6 this state.

7       (~~(27)~~) (26) "Waters of the state" includes lakes, rivers, ponds,  
8 streams, inland waters, underground water, salt waters, estuaries,  
9 tidal flats, beaches and lands adjoining the seacoast of the state,  
10 sewers, and all other surface waters and watercourses within the  
11 jurisdiction of the state of Washington.

12       (~~(28)~~) (27) "Worst case spill" means: (a) In the case of a  
13 vessel, a spill of the entire cargo and fuel of the vessel complicated  
14 by adverse weather conditions; and (b) in the case of an onshore or  
15 offshore facility, the largest foreseeable spill in adverse weather  
16 conditions.

17       **Sec. 16.** RCW 90.56.060 and 1991 c 200 s 107 are each amended to  
18 read as follows:

19       (1) The department shall prepare and annually update a state-wide  
20 master oil and hazardous substance spill prevention and contingency  
21 plan. In preparing the plan, the department shall consult with an  
22 advisory committee representing diverse interests concerned with oil  
23 and hazardous substance spills, including (~~the office of marine~~  
24 ~~safety,~~) the United States coast guard, the federal environmental  
25 protection agency, state agencies, local governments, port districts,  
26 private facilities, environmental organizations, oil companies,  
27 shipping companies, containment and cleanup contractors, tow companies,  
28 and hazardous substance manufacturers.

29       (2) The state master plan prepared under this section shall at a  
30 minimum:

31       (a) Take into consideration the elements of oil spill prevention  
32 and contingency plans approved or submitted for approval pursuant to  
33 this chapter and chapter 88.46 RCW and oil and hazardous substance  
34 spill contingency plans prepared pursuant to other state or federal law  
35 or prepared by federal agencies and regional entities;

36       (b) State the respective responsibilities as established by  
37 relevant statutes and rules of each of the following in the prevention  
38 of and the assessment, containment, and cleanup of a worst case spill

1 of oil or hazardous substances into the environment of the state: (i)  
2 State agencies; (ii) local governments; (iii) appropriate federal  
3 agencies; (iv) facility operators; (v) property owners whose land or  
4 other property may be affected by the oil or hazardous substance spill;  
5 and (vi) other parties identified by the department as having an  
6 interest in or the resources to assist in the containment and cleanup  
7 of an oil or hazardous substance spill;

8 (c) State the respective responsibilities of the parties identified  
9 in (b) of this subsection in an emergency response;

10 (d) Identify actions necessary to reduce the likelihood of spills  
11 of oil and hazardous substances;

12 (e) Identify and obtain mapping of environmentally sensitive areas  
13 at particular risk to oil and hazardous substance spills; and

14 (f) Establish an incident command system for responding to oil and  
15 hazardous substances spills.

16 (3) In preparing and updating the state master plan, the department  
17 shall:

18 (a) Consult with federal, provincial, municipal, and community  
19 officials, other state agencies, the state of Oregon, and with  
20 representatives of affected regional organizations;

21 (b) Submit the draft plan to the public for review and comment;

22 (c) Submit to the appropriate standing committees of the  
23 legislature for review, not later than November 1 of each year, the  
24 plan and any annual revision of the plan; and

25 (d) Require or schedule unannounced oil spill drills as required by  
26 RCW 90.56.260 to test the sufficiency of oil spill contingency plans  
27 approved under RCW 90.56.210.

28 **Sec. 17.** RCW 90.56.080 and 1991 c 200 s 109 are each amended to  
29 read as follows:

30 (~~Not later than twelve months after May 15, 1991,~~) The division  
31 of fire protection services shall establish and manage the Washington  
32 oil and hazardous substances incident response training and education  
33 program to provide approved classes in hazardous substance response,  
34 taught by trained instructors. To carry out this program, the division  
35 of fire protection services shall:

36 (1) Adopt rules necessary to implement the program;



1 (2) Establish a training and education program by developing the  
2 curriculum to be used in the program in colleges, academies, and other  
3 educational institutions;

4 (3) Provide training to local oil and hazardous materials emergency  
5 response personnel; and

6 (4) Establish and collect admission fees and other fees that may be  
7 necessary to the program.

8 **Sec. 18.** RCW 90.56.100 and 1998 c 245 s 175 are each amended to  
9 read as follows:

10 (1) The Washington wildlife rescue coalition (~~shall be~~) is  
11 established for the purpose of coordinating the rescue and  
12 rehabilitation of wildlife injured or endangered by oil spills or the  
13 release of other hazardous substances into the environment.

14 (2) The Washington wildlife rescue coalition shall be composed of:

15 (a) A representative of the department of fish and wildlife  
16 designated by the director of fish and wildlife. The department of  
17 fish and wildlife shall be designated as lead agency in the operations  
18 of the coalition. The coalition shall be chaired by the representative  
19 from the department of fish and wildlife;

20 (b) A representative of the department of ecology designated by the  
21 director;

22 (c) A representative of the (~~department of community, trade, and~~  
23 ~~economic development~~) Washington military department emergency  
24 management (~~program~~) division, designated by the director of  
25 (~~community, trade, and economic development~~) the Washington military  
26 department;

27 (d) A licensed veterinarian, with experience and training in  
28 wildlife rehabilitation, appointed by the veterinary board of  
29 governors;

30 (~~The director of the Washington conservation corps;~~

31 ~~f))~~) A lay person, with training and experience in the rescue and  
32 rehabilitation of wildlife appointed by the department; and

33 (~~g))~~) f) A person designated by the legislative authority of the  
34 county where oil spills or spills of other hazardous substances may  
35 occur. This member of the coalition shall serve on the coalition until  
36 wildlife rescue and rehabilitation is completed in that county. The  
37 completion of any rescue or rehabilitation project shall be determined  
38 by the director of fish and wildlife.

1 (3) The duties of the Washington wildlife rescue coalition ((shall  
2 be)) are to:

3 (a) Develop an emergency mobilization plan to rescue and  
4 rehabilitate waterfowl and other wildlife that are injured or  
5 endangered by an oil spill or the release of other hazardous substances  
6 into the environment;

7 (b) Develop and maintain a resource directory of persons,  
8 governmental agencies, and private organizations that may provide  
9 assistance in an emergency rescue effort;

10 (c) Provide advance training and instruction to volunteers in  
11 rescuing and rehabilitating waterfowl and wildlife injured or  
12 endangered by oil spills or the release of other hazardous substances  
13 into the environment. The training may be provided through grants to  
14 community colleges or to groups that conduct programs for training  
15 volunteers. The coalition representatives from the agencies described  
16 in subsection (2) of this section shall coordinate their training  
17 efforts ((with the director of the Washington conservation corps)) and  
18 work to provide training opportunities for young citizens;

19 (d) Obtain and maintain equipment and supplies used in emergency  
20 rescue efforts.

21 (4)(a) Expenses for the coalition may be provided by the coastal  
22 protection fund administered according to RCW 90.48.400.

23 (b) The coalition is encouraged to seek grants, gifts, or donations  
24 from private sources in order to carry out the provisions of this  
25 section and RCW 90.56.110. Any private funds donated to the commission  
26 shall be deposited into the wildlife rescue account hereby created  
27 within the wildlife fund as authorized under Title 77 RCW.

28 **Sec. 19.** RCW 90.56.200 and 1991 c 200 s 201 are each amended to  
29 read as follows:

30 (1) The owner or operator for each onshore and offshore facility  
31 shall prepare and submit to the department an oil spill prevention plan  
32 in conformance with the requirements of this chapter. The plans shall  
33 be submitted to the department in the time and manner directed by the  
34 department((, but not later than January 1, 1993)). The spill  
35 prevention plan may be consolidated with a spill contingency plan  
36 submitted pursuant to RCW 90.56.210. The department may accept plans  
37 prepared to comply with other state or federal law as spill prevention  
38 plans to the extent those plans comply with the requirements of this

1 chapter. The department, by rule, shall establish standards for spill  
2 prevention plans. (~~The rules shall be adopted not later than July 1,~~  
3 ~~1992.~~)

4 (2) The spill prevention plan for an onshore or offshore facility  
5 shall:

6 (a) Establish compliance with the federal oil pollution act of  
7 1990, if applicable, and financial responsibility requirements under  
8 federal and state law;

9 (b) Certify that supervisory and other key personnel in charge of  
10 transfer, storage, and handling of oil have received certification  
11 pursuant to RCW 90.56.220;

12 (c) Certify that the facility has an operations manual required by  
13 RCW 90.56.230;

14 (d) Certify the implementation of alcohol and drug use awareness  
15 programs;

16 (e) Describe the facility's maintenance and inspection program and  
17 contain a current maintenance and inspection record of the storage and  
18 transfer facilities and related equipment;

19 (f) Describe the facility's alcohol and drug treatment programs;

20 (g) Describe spill prevention technology that has been installed,  
21 including overflow alarms, automatic overflow cut-off switches,  
22 secondary containment facilities, and storm water retention, treatment,  
23 and discharge systems;

24 (h) Describe any discharges of oil to the land or the water of more  
25 than twenty-five barrels in the prior five years and the measures taken  
26 to prevent a reoccurrence;

27 (i) Describe the procedures followed by the facility to contain and  
28 recover any oil that spills during the transfer of oil to or from the  
29 facility;

30 (j) Provide for the incorporation into the facility during the  
31 period covered by the plan of those measures that will provide the best  
32 achievable protection for the public health and the environment; and

33 (k) Include any other information reasonably necessary to carry out  
34 the purposes of this chapter required by rules adopted by the  
35 department.

36 (3) The department shall only approve a prevention plan if it  
37 provides the best achievable protection from damages caused by the  
38 discharge of oil into the waters of the state and if it determines that

1 the plan meets the requirements of this section and rules adopted by  
2 the department.

3 (4) Upon approval of a prevention plan, the department shall  
4 provide to the person submitting the plan a statement indicating that  
5 the plan has been approved, the facilities covered by the plan, and  
6 other information the department determines should be included.

7 (5) The approval of a prevention plan shall be valid for five  
8 years. An owner or operator of a facility shall notify the department  
9 in writing immediately of any significant change of which it is aware  
10 affecting its prevention plan, including changes in any factor set  
11 forth in this section or in rules adopted by the department. The  
12 department may require the owner or operator to update a prevention  
13 plan as a result of these changes.

14 (6) The department by rule shall require prevention plans to be  
15 reviewed, updated, if necessary, and resubmitted to the department at  
16 least once every five years.

17 (7) Approval of a prevention plan by the department does not  
18 constitute an express assurance regarding the adequacy of the plan nor  
19 constitute a defense to liability imposed under this chapter or other  
20 state law.

21 (8) This section does not authorize the department to modify the  
22 terms of a collective bargaining agreement.

23 **Sec. 20.** RCW 90.56.210 and 1992 c 73 s 33 are each amended to read  
24 as follows:

25 (1) Each onshore and offshore facility shall have a contingency  
26 plan for the containment and cleanup of oil spills from the facility  
27 into the waters of the state and for the protection of fisheries and  
28 wildlife, natural resources, and public and private property from such  
29 spills. The department shall by rule adopt and periodically revise  
30 standards for the preparation of contingency plans. The department  
31 shall require contingency plans, at a minimum, to meet the following  
32 standards:

33 (a) Include full details of the method of response to spills of  
34 various sizes from any facility which is covered by the plan;

35 (b) Be designed to be capable in terms of personnel, materials, and  
36 equipment, of promptly and properly, to the maximum extent practicable,  
37 as defined by the department removing oil and minimizing any damage to  
38 the environment resulting from a worst case spill;

1 (c) Provide a clear, precise, and detailed description of how the  
2 plan relates to and is integrated into relevant contingency plans which  
3 have been prepared by cooperatives, ports, regional entities, the  
4 state, and the federal government;

5 (d) Provide procedures for early detection of oil spills and timely  
6 notification of such spills to appropriate federal, state, and local  
7 authorities under applicable state and federal law;

8 (e) State the number, training preparedness, and fitness of all  
9 dedicated, prepositioned personnel assigned to direct and implement the  
10 plan;

11 (f) Incorporate periodic training and drill programs to evaluate  
12 whether personnel and equipment provided under the plan are in a state  
13 of operational readiness at all times;

14 (g) Describe important features of the surrounding environment,  
15 including fish and wildlife habitat, environmentally and  
16 archaeologically sensitive areas, and public facilities. The  
17 departments of ecology, (~~(fisheries, wildlife)~~) fish and wildlife, and  
18 natural resources, and the office of archaeology and historic  
19 preservation, upon request, shall provide information that they have  
20 available to assist in preparing this description. (~~(If the department~~  
21 ~~has adopted rules for contingency plans prior to July 1, 1992, the~~  
22 ~~description of archaeologically sensitive areas shall only be required~~  
23 ~~when the department revises the rules for contingency plans after July~~  
24 ~~1, 1992.)) The description of archaeologically sensitive areas shall  
25 not be required to be included in a contingency plan until it is  
26 reviewed and updated pursuant to subsection (9) of this section;~~

27 (h) State the means of protecting and mitigating effects on the  
28 environment, including fish, marine mammals, and other wildlife, and  
29 ensure that implementation of the plan does not pose unacceptable risks  
30 to the public or the environment;

31 (i) Provide arrangements for the prepositioning of oil spill  
32 containment and cleanup equipment and trained personnel at strategic  
33 locations from which they can be deployed to the spill site to promptly  
34 and properly remove the spilled oil;

35 (j) Provide arrangements for enlisting the use of qualified and  
36 trained cleanup personnel to implement the plan;

37 (k) Provide for disposal of recovered spilled oil in accordance  
38 with local, state, and federal laws;

1 (l) Until a spill prevention plan has been submitted pursuant to  
2 RCW 90.56.200, state the measures that have been taken to reduce the  
3 likelihood that a spill will occur, including but not limited to,  
4 design and operation of a facility, training of personnel, number of  
5 personnel, and backup systems designed to prevent a spill;

6 (m) State the amount and type of equipment available to respond to  
7 a spill, where the equipment is located, and the extent to which other  
8 contingency plans rely on the same equipment; and

9 (n) If the department has adopted rules permitting the use of  
10 dispersants, the circumstances, if any, and the manner for the  
11 application of the dispersants in conformance with the department's  
12 rules.

13 (2)(a) The following shall submit contingency plans to the  
14 department within six months after the department adopts rules  
15 establishing standards for contingency plans under subsection (1) of  
16 this section:

17 (i) Onshore facilities capable of storing one million gallons or  
18 more of oil; and

19 (ii) Offshore facilities.

20 (b) Contingency plans for all other onshore and offshore facilities  
21 shall be submitted to the department within eighteen months after the  
22 department has adopted rules under subsection (1) of this section. The  
23 department may adopt a schedule for submission of plans within the  
24 eighteen-month period.

25 (3)(a) The owner or operator of a facility shall submit the  
26 contingency plan for the facility.

27 (b) A person who has contracted with a facility to provide  
28 containment and cleanup services and who meets the standards  
29 established pursuant to RCW 90.56.240, may submit the plan for any  
30 facility for which the person is contractually obligated to provide  
31 services. Subject to conditions imposed by the department, the person  
32 may submit a single plan for more than one facility.

33 (4) A contingency plan prepared for an agency of the federal  
34 government or another state that satisfies the requirements of this  
35 section and rules adopted by the department may be accepted by the  
36 department as a contingency plan under this section. The department  
37 shall assure that to the greatest extent possible, requirements for  
38 contingency plans under this section are consistent with the  
39 requirements for contingency plans under federal law.

1 (5) In reviewing the contingency plans required by this section,  
2 the department shall consider at least the following factors:

3 (a) The adequacy of containment and cleanup equipment, personnel,  
4 communications equipment, notification procedures and call down lists,  
5 response time, and logistical arrangements for coordination and  
6 implementation of response efforts to remove oil spills promptly and  
7 properly and to protect the environment;

8 (b) The nature and amount of vessel traffic within the area covered  
9 by the plan;

10 (c) The volume and type of oil being transported within the area  
11 covered by the plan;

12 (d) The existence of navigational hazards within the area covered  
13 by the plan;

14 (e) The history and circumstances surrounding prior spills of oil  
15 within the area covered by the plan;

16 (f) The sensitivity of fisheries and wildlife and other natural  
17 resources within the area covered by the plan;

18 (g) Relevant information on previous spills contained in on-scene  
19 coordinator reports prepared by the department; and

20 (h) The extent to which reasonable, cost-effective measures to  
21 prevent a likelihood that a spill will occur have been incorporated  
22 into the plan.

23 (6) The department shall approve a contingency plan only if it  
24 determines that the plan meets the requirements of this section and  
25 that, if implemented, the plan is capable, in terms of personnel,  
26 materials, and equipment, of removing oil promptly and properly and  
27 minimizing any damage to the environment.

28 (7) The approval of the contingency plan shall be valid for five  
29 years. Upon approval of a contingency plan, the department shall  
30 provide to the person submitting the plan a statement indicating that  
31 the plan has been approved, the facilities or vessels covered by the  
32 plan, and other information the department determines should be  
33 included.

34 (8) An owner or operator of a facility shall notify the department  
35 in writing immediately of any significant change of which it is aware  
36 affecting its contingency plan, including changes in any factor set  
37 forth in this section or in rules adopted by the department. The  
38 department may require the owner or operator to update a contingency  
39 plan as a result of these changes.

1 (9) The department by rule shall require contingency plans to be  
2 reviewed, updated, if necessary, and resubmitted to the department at  
3 least once every five years.

4 (10) Approval of a contingency plan by the department does not  
5 constitute an express assurance regarding the adequacy of the plan nor  
6 constitute a defense to liability imposed under this chapter or other  
7 state law.

8 **Sec. 21.** RCW 90.56.370 and 1990 c 116 s 18 are each amended to  
9 read as follows:

10 (1) Any person owning oil or having control over oil that enters  
11 the waters of the state in violation of RCW 90.56.320 shall be strictly  
12 liable, without regard to fault, for the damages to persons or  
13 property, public or private, caused by such entry.

14 (2) In any action to recover damages resulting from the discharge  
15 of oil in violation of RCW 90.56.320, the owner or person having  
16 control over the oil shall be relieved from strict liability, without  
17 regard to fault, if that person can prove that the discharge was caused  
18 solely by:

19 (a) An act of war or sabotage;

20 (b) An act of God;

21 (c) Negligence on the part of the United States government; or

22 (d) Negligence on the part of the state of Washington.

23 (3) The liability established in this section shall in no way  
24 affect the rights which: (a) The owner or other person having control  
25 over the oil may have against any person whose acts may in any way have  
26 caused or contributed to the discharge of oil, or (b) the state of  
27 Washington may have against any person whose actions may have caused or  
28 contributed to the discharge of oil.

29 ~~((4) The chapter 116, Laws of 1990 changes to subsection (2) of~~  
30 ~~this section requiring the defenses in that subsection to be the sole~~  
31 ~~causes of the discharge, and the text of subsection (2)(b) of this~~  
32 ~~section shall apply prospectively and not retroactively after June 7,~~  
33 ~~1990.))~~

34 **Sec. 22.** RCW 90.56.510 and 1999 sp.s. c 7 s 2 are each amended to  
35 read as follows:

36 (1) The oil spill ~~((administration))~~ prevention account is created  
37 in the state treasury. All receipts from RCW 82.23B.020(2) shall be



1 deposited in the account. Moneys from the account may be spent only  
2 after appropriation. The account is subject to allotment procedures  
3 under chapter 43.88 RCW. If, on the first day of any calendar month,  
4 the balance of the oil spill response account is greater than nine  
5 million dollars and the balance of the oil spill ((~~administration~~)  
6 prevention account exceeds the unexpended appropriation for the current  
7 biennium, then the tax under RCW 82.23B.020(2) shall be suspended on  
8 the first day of the next calendar month until the beginning of the  
9 following biennium, provided that the tax shall not be suspended during  
10 the last six months of the biennium. If the tax imposed under RCW  
11 82.23B.020(2) is suspended during two consecutive biennia, the  
12 department shall by November 1st after the end of the second biennium,  
13 recommend to the appropriate standing committees an adjustment in the  
14 tax rate. For the biennium ending June 30, 1999, and the biennium  
15 ending June 30, 2001, the state treasurer may transfer a total of up to  
16 one million dollars from the oil spill response account to the oil  
17 spill ((~~administration~~) prevention account to support appropriations  
18 made from the oil spill ((~~administration~~) prevention account in the  
19 omnibus appropriations act adopted not later than June 30, 1999.

20 (2) Expenditures from the oil spill ((~~administration~~) prevention  
21 account shall be used exclusively for the administrative costs related  
22 to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46  
23 RCW. Starting with the 1995-1997 biennium, the legislature shall give  
24 activities of state agencies related to prevention of oil spills  
25 priority in funding from the oil spill ((~~administration~~) prevention  
26 account. Costs of ((~~administration~~) prevention include the costs of:

- 27 (a) Routine responses not covered under RCW 90.56.500;  
28 (b) Management and staff development activities;  
29 (c) Development of rules and policies and the state-wide plan  
30 provided for in RCW 90.56.060;  
31 (d) Facility and vessel plan review and approval, drills,  
32 inspections, investigations, enforcement, and litigation;  
33 (e) Interagency coordination and public outreach and education;  
34 (f) Collection and administration of the tax provided for in  
35 chapter 82.23B RCW; and  
36 (g) Appropriate travel, goods and services, contracts, and  
37 equipment.

1       **Sec. 23.** RCW 90.56.540 and 1991 c 200 s 605 are each amended to  
2 read as follows:

3       (1) A person is guilty of operating a vessel while under the  
4 influence of intoxicating liquor or drugs if the person operates a  
5 covered vessel within this state while:

6       (a) The person has 0.06 grams or more of alcohol per two hundred  
7 ten liters of breath, as shown by analysis of the person's breath made  
8 under RCW ((88.16.230)) 90.56.550; or

9       (b) The person has 0.06 percent or more by weight of alcohol in the  
10 person's blood as shown by analysis of the person's blood made under  
11 RCW ((88.16.230)) 90.56.550; or

12       (c) The person is under the influence of or affected by  
13 intoxicating liquor or drugs; or

14       (d) The person is under the combined influence of or affected by  
15 intoxicating liquor or drugs.

16       (2) The fact that any person charged with a violation of this  
17 section is or has been entitled to use such drug under the laws of this  
18 state shall not constitute a defense against any charge of violating  
19 this section.

20       (3) Operating a vessel while intoxicated is a class C felony under  
21 chapter 9A.20 RCW.

22       **Sec. 24.** RCW 90.56.560 and 1991 c 200 s 607 are each amended to  
23 read as follows:

24       No physician, registered nurse, qualified technician, or hospital,  
25 or duly licensed clinical laboratory employing or using services of the  
26 physician, registered nurse, or qualified technician, may incur any  
27 civil or criminal liability as a result of the act of withdrawing blood  
28 from any person when directed by a law enforcement officer to do so for  
29 the purpose of a blood test under RCW ((88.16.230)) 90.56.550. This  
30 section shall not relieve any physician, registered nurse, qualified  
31 technician, or hospital or duly licensed clinical laboratory from civil  
32 liability arising from the use of improper procedures or failing to  
33 exercise the required standard of care.

34       **Sec. 25.** RCW 82.23B.020 and 1999 sp.s. c 7 s 1 are each amended to  
35 read as follows:

36       (1) An oil spill response tax is imposed on the privilege of  
37 receiving crude oil or petroleum products at a marine terminal within

1 this state from a waterborne vessel or barge operating on the navigable  
2 waters of this state. The tax imposed in this section is levied upon  
3 the owner of the crude oil or petroleum products immediately after  
4 receipt of the same into the storage tanks of a marine terminal from a  
5 waterborne vessel or barge at the rate of one cent per barrel of crude  
6 oil or petroleum product received.

7 (2) In addition to the tax imposed in subsection (1) of this  
8 section, an oil spill administration tax is imposed on the privilege of  
9 receiving crude oil or petroleum products at a marine terminal within  
10 this state from a waterborne vessel or barge operating on the navigable  
11 waters of this state. The tax imposed in this section is levied upon  
12 the owner of the crude oil or petroleum products immediately after  
13 receipt of the same into the storage tanks of a marine terminal from a  
14 waterborne vessel or barge at the rate of four cents per barrel of  
15 crude oil or petroleum product.

16 (3) The taxes imposed by this chapter shall be collected by the  
17 marine terminal operator from the taxpayer. If any person charged with  
18 collecting the taxes fails to bill the taxpayer for the taxes, or in  
19 the alternative has not notified the taxpayer in writing of the  
20 imposition of the taxes, or having collected the taxes, fails to pay  
21 them to the department in the manner prescribed by this chapter,  
22 whether such failure is the result of the person's own acts or the  
23 result of acts or conditions beyond the person's control, he or she  
24 shall, nevertheless, be personally liable to the state for the amount  
25 of the taxes. Payment of the taxes by the owner to a marine terminal  
26 operator shall relieve the owner from further liability for the taxes.

27 (4) Taxes collected under this chapter shall be held in trust until  
28 paid to the department. Any person collecting the taxes who  
29 appropriates or converts the taxes collected shall be guilty of a gross  
30 misdemeanor if the money required to be collected is not available for  
31 payment on the date payment is due. The taxes required by this chapter  
32 to be collected shall be stated separately from other charges made by  
33 the marine terminal operator in any invoice or other statement of  
34 account provided to the taxpayer.

35 (5) If a taxpayer fails to pay the taxes imposed by this chapter to  
36 the person charged with collection of the taxes and the person charged  
37 with collection fails to pay the taxes to the department, the  
38 department may, in its discretion, proceed directly against the  
39 taxpayer for collection of the taxes.

1 (6) The taxes shall be due from the marine terminal operator, along  
2 with reports and returns on forms prescribed by the department, within  
3 twenty-five days after the end of the month in which the taxable  
4 activity occurs.

5 (7) The amount of taxes, until paid by the taxpayer to the marine  
6 terminal operator or to the department, shall constitute a debt from  
7 the taxpayer to the marine terminal operator. Any person required to  
8 collect the taxes under this chapter who, with intent to violate the  
9 provisions of this chapter, fails or refuses to do so as required and  
10 any taxpayer who refuses to pay any taxes due under this chapter, shall  
11 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

12 (8) Upon prior approval of the department, the taxpayer may pay the  
13 taxes imposed by this chapter directly to the department. The  
14 department shall give its approval for direct payment under this  
15 section whenever it appears, in the department's judgment, that direct  
16 payment will enhance the administration of the taxes imposed under this  
17 chapter. The department shall provide by rule for the issuance of a  
18 direct payment certificate to any taxpayer qualifying for direct  
19 payment of the taxes. Good faith acceptance of a direct payment  
20 certificate by a terminal operator shall relieve the marine terminal  
21 operator from any liability for the collection or payment of the taxes  
22 imposed under this chapter.

23 (9) All receipts from the tax imposed in subsection (1) of this  
24 section shall be deposited into the state oil spill response account.  
25 All receipts from the tax imposed in subsection (2) of this section  
26 shall be deposited into the oil spill (~~administration~~) prevention  
27 account.

28 (10) Within forty-five days after the end of each calendar quarter,  
29 the office of financial management shall determine the balance of the  
30 oil spill response account as of the last day of that calendar quarter.  
31 Balance determinations by the office of financial management under this  
32 section are final and shall not be used to challenge the validity of  
33 any tax imposed under this chapter. The office of financial management  
34 shall promptly notify the departments of revenue and ecology of the  
35 account balance once a determination is made. For each subsequent  
36 calendar quarter, the tax imposed by subsection (1) of this section  
37 shall be imposed during the entire calendar quarter unless:

1 (a) Tax was imposed under subsection (1) of this section during the  
2 immediately preceding calendar quarter, and the most recent quarterly  
3 balance is more than nine million dollars; or

4 (b) Tax was not imposed under subsection (1) of this section during  
5 the immediately preceding calendar quarter, and the most recent  
6 quarterly balance is more than eight million dollars.

7 NEW SECTION. **Sec. 26.** The section 18(2), chapter 116, Laws of  
8 1990 changes requiring the defenses in that subsection to be the sole  
9 causes of the discharge, and the text of section 18(2)(b), chapter 116,  
10 Laws of 1990 shall apply prospectively and not retroactively after June  
11 7, 1990.

12 **Sec. 27.** RCW 43.21I.010 and 1992 c 73 s 4 are each amended to read  
13 as follows:

14 (1) There is hereby created (~~(an agency of state government to be~~  
15 ~~known as the office of marine safety. The office)~~) within the  
16 department of ecology an oil spill prevention program. For the  
17 program, the department shall be vested with all powers and duties  
18 transferred to it from the office of marine safety and such other  
19 powers and duties as may be authorized by law. The main administrative  
20 office (~~(of)~~) for the (~~(office)~~) program shall be located in the city  
21 of Olympia. The (~~(administrator)~~) director may establish  
22 administrative facilities in other locations, if deemed necessary for  
23 the efficient operation of the (~~(office)~~) program, and if consistent  
24 with the principles set forth in subsection (2) of this section.

25 (2) The (~~(office of marine safety)~~) oil spill prevention program  
26 shall be organized consistent with the goals of providing state  
27 government with a focus in marine transportation and serving the people  
28 of this state. The legislature recognizes that the (~~(administrator)~~)  
29 director needs sufficient organizational flexibility to carry out the  
30 (~~(office's)~~) program's various duties. To the extent practical, the  
31 (~~(administrator)~~) director shall consider the following organizational  
32 principles:

33 (a) Clear lines of authority which avoid functional duplication  
34 within and between subelements of the (~~(office)~~) program;

35 (b) A clear and simplified organizational design promoting  
36 accessibility, responsiveness, and accountability to the legislature,  
37 the consumer, and the general public; and

1 (c) Maximum span of control without jeopardizing adequate  
2 supervision.

3 (3) The ((office)) department, through the program, shall provide  
4 leadership and coordination in identifying and resolving threats to the  
5 safety of marine transportation and the impact of marine transportation  
6 on the environment:

7 (a) Working with other state agencies and local governments to  
8 strengthen the state and local governmental partnership in providing  
9 public protection;

10 (b) Providing expert advice to the executive and legislative  
11 branches of state government;

12 (c) Providing active and fair enforcement of rules;

13 (d) Working with other federal, state, and local agencies and  
14 facilitating their involvement in planning and implementing marine  
15 safety measures;

16 (e) Providing information to the public; and

17 (f) Carrying out such other related actions as may be appropriate  
18 to this purpose.

19 (4) In accordance with the administrative procedure act, chapter  
20 34.05 RCW, the ((office)) department shall ensure an opportunity for  
21 consultation, review, and comment before the adoption of standards,  
22 guidelines, and rules.

23 (5) Consistent with the principles set forth in subsection (2) of  
24 this section, the ((administrator)) director may create such  
25 administrative divisions, offices, bureaus, and programs within the  
26 ((office)) program as the ((administrator)) director deems necessary.  
27 The ((administrator)) director shall have complete charge of and  
28 supervisory powers over the ((office)) program, except where the  
29 ((administrator's)) director's authority is specifically limited by  
30 law.

31 (6) The ((administrator)) director shall appoint such personnel as  
32 are necessary to carry out the duties of the ((office)) program. In  
33 addition to exemptions set forth in RCW 41.06.070((-28),—the  
34 ~~administrator, the administrator's confidential secretary, and~~), up to  
35 four professional staff members shall be exempt from the provisions of  
36 chapter 41.06 RCW. All other employees of the ((office)) program shall  
37 be subject to the provisions of chapter 41.06 RCW.

38 (7) The definitions in this section apply throughout this chapter.

39 (a) "Department" means the department of ecology.

1        (b) "Director" means the director of the department.

2        **Sec. 28.** RCW 43.21I.030 and 1992 c 73 s 11 are each amended to  
3 read as follows:

4        In addition to any other powers granted the ~~((administrator))~~  
5 director, the ~~((administrator))~~ director may:

6        (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to  
7 carry out the provisions of this chapter and chapter 88.46 RCW;

8        (2) Appoint such advisory committees as may be necessary to carry  
9 out the provisions of this chapter and chapter 88.46 RCW. Members of  
10 such advisory committees are authorized to receive travel expenses in  
11 accordance with RCW 43.03.050 and 43.03.060. The ~~((administrator))~~  
12 director shall review each advisory committee within the jurisdiction  
13 of the ~~((office))~~ program and each statutory advisory committee on a  
14 biennial basis to determine if such advisory committee is needed. The  
15 criteria specified in RCW 43.131.070 shall be used to determine whether  
16 or not each advisory committee shall be continued;

17        (3) Undertake studies, research, and analysis necessary to carry  
18 out the provisions of this chapter and chapter 88.46 RCW;

19        (4) Delegate powers, duties, and functions of the ~~((office))~~  
20 program to employees of the ~~((office))~~ department as the  
21 ~~((administrator))~~ director deems necessary to carry out the provisions  
22 of this chapter and chapter 88.46 RCW;

23        (5) Enter into contracts on behalf of the ~~((office))~~ department to  
24 carry out the purposes of this chapter and chapter 88.46 RCW;

25        (6) Act for the state in the initiation of, or the participation  
26 in, any intergovernmental program for the purposes of this chapter and  
27 chapter 88.46 RCW; or

28        (7) Accept gifts, grants, or other funds.

29        **Sec. 29.** RCW 43.21I.040 and 1991 c 200 s 407 are each amended to  
30 read as follows:

31        (1) The ~~((administrator))~~ director shall have full authority to  
32 administer oaths and take testimony thereunder, to issue subpoenas  
33 requiring the attendance of witnesses before the ~~((administrator))~~  
34 director together with all books, memoranda, papers, and other  
35 documents, articles or instruments, and to compel the disclosure by  
36 such witnesses of all facts known to them relative to the matters under  
37 investigation.

1 (2) Subpoenas issued in adjudicative proceedings shall be governed  
2 by chapter 34.05 RCW.

3 (3) Subpoenas issued in the conduct of investigations required or  
4 authorized by other statutory provisions or necessary in the  
5 enforcement of other statutory provisions shall be governed by chapter  
6 34.05 RCW.

7 **Sec. 30.** RCW 88.40.011 and 1992 c 73 s 12 are each amended to read  
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (~~(1)~~) (~~("Administrator" means the administrator of the office of~~  
12 ~~marine safety created in RCW 43.211.010.~~

13 ~~(2)~~) "Cargo vessel" means a self-propelled ship in commerce, other  
14 than a tank vessel or a passenger vessel, of three hundred or more  
15 gross tons, including but not limited to, commercial fish processing  
16 vessels and freighters.

17 (~~(3)~~) (2) "Bulk" means material that is stored or transported in  
18 a loose, unpackaged liquid, powder, or granular form capable of being  
19 conveyed by a pipe, bucket, chute, or belt system.

20 (~~(4)~~) (3) "Covered vessel" means a tank vessel, cargo vessel, or  
21 passenger vessel.

22 (~~(5)~~) (4) "Department" means the department of ecology.

23 (~~(6)~~) (5) "Director" means the director of the department of  
24 ecology.

25 (~~(7)~~) (6)(a) "Facility" means any structure, group of structures,  
26 equipment, pipeline, or device, other than a vessel, located on or near  
27 the navigable waters of the state that transfers oil in bulk to or from  
28 a tank vessel or pipeline, that is used for producing, storing,  
29 handling, transferring, processing, or transporting oil in bulk.

30 (b) A facility does not include any: (i) Railroad car, motor  
31 vehicle, or other rolling stock while transporting oil over the  
32 highways or rail lines of this state; (ii) retail motor vehicle motor  
33 fuel outlet; (iii) facility that is operated as part of an exempt  
34 agricultural activity as provided in RCW 82.04.330; (iv) underground  
35 storage tank regulated by the department or a local government under  
36 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense  
37 more than three thousand gallons of fuel to a ship that is not a  
38 covered vessel, in a single transaction.



1       ~~((8))~~ (7) "Hazardous substances" means any substance listed in  
2 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
3 section 101(14) of the federal comprehensive environmental response,  
4 compensation, and liability act of 1980, as amended by P.L. 99-499.  
5 The following are not hazardous substances for purposes of this  
6 chapter:

7       (a) Wastes listed as F001 through F028 in Table 302.4; and

8       (b) Wastes listed as K001 through K136 in Table 302.4.

9       ~~((9))~~ (8) "Inland barge" means any barge operating on the waters  
10 of the state and certified by the coast guard as an inland barge.

11       ~~((10))~~ (9) "Navigable waters of the state" means those waters of  
12 the state, and their adjoining shorelines, that are subject to the ebb  
13 and flow of the tide and/or are presently used, have been used in the  
14 past, or may be susceptible for use to transport intrastate,  
15 interstate, or foreign commerce.

16       ~~((11) "Office" means the office of marine safety established by  
17 RCW 43.211.010.~~

18       ~~(12))~~ (10) "Oil" or "oils" means any naturally occurring liquid  
19 hydrocarbons at atmospheric temperature and pressure coming from the  
20 earth, including condensate and natural gasoline, and any fractionation  
21 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
22 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
23 other than dredged spoil. Oil does not include any substance listed in  
24 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
25 section 101(14) of the federal comprehensive environmental response,  
26 compensation, and liability act of 1980, as amended by P.L. 99-499.

27       ~~((13))~~ (11) "Offshore facility" means any facility located in,  
28 on, or under any of the navigable waters of the state, but does not  
29 include a facility any part of which is located in, on, or under any  
30 land of the state, other than submerged land.

31       ~~((14))~~ (12) "Onshore facility" means any facility any part of  
32 which is located in, on, or under any land of the state, other than  
33 submerged land, that because of its location, could reasonably be  
34 expected to cause substantial harm to the environment by discharging  
35 oil into or on the navigable waters of the state or the adjoining  
36 shorelines.

37       ~~((15))~~ (13)(a) "Owner or operator" means (i) in the case of a  
38 vessel, any person owning, operating, or chartering by demise, the  
39 vessel; (ii) in the case of an onshore or offshore facility, any person

1 owning or operating the facility; and (iii) in the case of an abandoned  
2 vessel or onshore or offshore facility, the person who owned or  
3 operated the vessel or facility immediately before its abandonment.

4 (b) "Operator" does not include any person who owns the land  
5 underlying a facility if the person is not involved in the operations  
6 of the facility.

7 (~~(16)~~) (14) "Passenger vessel" means a ship of three hundred or  
8 more gross tons with a fuel capacity of at least six thousand gallons  
9 carrying passengers for compensation.

10 (~~(17)~~) (15) "Ship" means any boat, ship, vessel, barge, or other  
11 floating craft of any kind.

12 (~~(18)~~) (16) "Spill" means an unauthorized discharge of oil into  
13 the waters of the state.

14 (~~(19)~~) (17) "Tank vessel" means a ship that is constructed or  
15 adapted to carry, or that carries, oil in bulk as cargo or cargo  
16 residue, and that:

17 (a) Operates on the waters of the state; or

18 (b) Transfers oil in a port or place subject to the jurisdiction of  
19 this state.

20 (~~(20)~~) (18) "Waters of the state" includes lakes, rivers, ponds,  
21 streams, inland waters, underground water, salt waters, estuaries,  
22 tidal flats, beaches and lands adjoining the seacoast of the state,  
23 sewers, and all other surface waters and watercourses within the  
24 jurisdiction of the state of Washington.

25 **Sec. 31.** RCW 88.40.020 and 1992 c 73 s 13 are each amended to read  
26 as follows:

27 (1) Any inland barge that transports hazardous substances in bulk  
28 as cargo, using any port or place in the state of Washington or the  
29 navigable waters of the state shall establish evidence of financial  
30 responsibility in the amount of the greater of one million dollars, or  
31 one hundred fifty dollars per gross ton of such vessel.

32 (2)(a) Except as provided in (c) of this subsection, a tank vessel  
33 that carries oil as cargo in bulk shall demonstrate financial  
34 responsibility to pay at least five hundred million dollars.

35 (b) The (~~administrator~~) director by rule may establish a lesser  
36 standard of financial responsibility for barges of three hundred gross  
37 tons or less. The standard shall set the level of financial  
38 responsibility based on the quantity of cargo the barge is capable of

1 carrying. The ((administrator)) director shall not set the standard  
2 for barges of three hundred gross tons or less below that required  
3 under federal law.

4 (c) The owner or operator of a tank vessel who is a member of an  
5 international protection and indemnity mutual organization and is  
6 covered for oil pollution risks up to the amounts required under this  
7 section is not required to demonstrate financial responsibility under  
8 this chapter. The ((administrator)) director may require the owner or  
9 operator of a tank vessel to prove membership in such an organization.

10 (3) A cargo vessel or passenger vessel that carries oil as fuel  
11 shall demonstrate financial responsibility to pay the greater of at  
12 least six hundred dollars per gross ton or five hundred thousand  
13 dollars.

14 (4) The documentation of financial responsibility shall demonstrate  
15 the ability of the document holder to meet state and federal financial  
16 liability requirements for the actual costs for removal of oil spills,  
17 for natural resource damages, and necessary expenses.

18 (5) The ((office)) department may by rule set a lesser amount of  
19 financial responsibility for a tank vessel that meets standards for  
20 construction, propulsion, equipment, and personnel established by the  
21 ((office)) department. The ((office)) department shall require as a  
22 minimum level of financial responsibility under this subsection the  
23 same level of financial responsibility required under federal law.

24 (6) This section shall not apply to a covered vessel owned or  
25 operated by the federal government or by a state or local government.

26 **Sec. 32.** RCW 88.40.030 and 1991 c 200 s 705 are each amended to  
27 read as follows:

28 Financial responsibility required by this chapter may be  
29 established by any one of, or a combination of, the following methods  
30 acceptable to the ~~((office of marine safety or the))~~ department of  
31 ecology: (1) Evidence of insurance; (2) surety bonds; (3)  
32 qualification as a self-insurer; or (4) other evidence of financial  
33 responsibility. Any bond filed shall be issued by a bonding company  
34 authorized to do business in the United States. Documentation of such  
35 financial responsibility shall be kept on any covered vessel and filed  
36 with the ((office)) department at least twenty-four hours before entry  
37 of the vessel into the navigable waters of the state. A covered vessel  
38 is not required to file documentation of financial responsibility

1 twenty-four hours before entry of the vessel into the navigable waters  
2 of the state, if the vessel has filed documentation of financial  
3 responsibility with the federal government, and the level of financial  
4 responsibility required by the federal government is the same as or  
5 exceeds state requirements. The owner or operator of the vessel may  
6 file with the ((office)) department a certificate evidencing compliance  
7 with the requirements of another state's or federal financial  
8 responsibility requirements if the state or federal government requires  
9 a level of financial responsibility the same as or greater than that  
10 required under this chapter.

11 **Sec. 33.** RCW 88.40.040 and 1992 c 73 s 14 are each amended to read  
12 as follows:

13 (1) The ((office)) department shall deny entry to the waters of the  
14 state to any vessel that does not meet the financial responsibility  
15 requirements of this chapter. Any vessel owner or operator that does  
16 not meet the financial responsibility requirements of this chapter and  
17 any rules prescribed thereunder or the federal oil pollution act of  
18 1990 shall be reported by the ((office)) department to the United  
19 States coast guard.

20 (2) The ((office)) department shall enforce section 1016 of the  
21 federal oil pollution act of 1990 as authorized by section 1019 of the  
22 federal act.

23 **Sec. 34.** RCW 90.56.310 and 1992 c 73 s 35 are each amended to read  
24 as follows:

25 (1) Except as provided in subsection (3) of this section, it shall  
26 be unlawful:

27 (a) For the owner or operator to operate an onshore or offshore  
28 facility without an approved contingency plan as required under RCW  
29 90.56.210, a spill prevention plan required by RCW 90.56.200, or  
30 financial responsibility in compliance with chapter 88.40 RCW and the  
31 federal oil pollution act of 1990; or

32 (b) For the owner or operator of an onshore or offshore facility to  
33 transfer cargo or passengers to or from a covered vessel that does not  
34 have an approved contingency plan or an approved prevention plan  
35 required under chapter 88.46 RCW or financial responsibility in  
36 compliance with chapter 88.40 RCW and the federal oil pollution act of  
37 1990.

1 (2) The department may assess a civil penalty under RCW 43.21B.300  
2 of up to one hundred thousand dollars against any person who is in  
3 violation of this section. Each day that a facility or person is in  
4 violation of this section shall be considered a separate violation.

5 (3) It shall not be unlawful for a facility or other person to  
6 operate or accept cargo or passengers from a covered vessel if:

7 (a) A contingency plan, a prevention plan, or financial  
8 responsibility is not required for the facility; or

9 (b) A contingency and prevention plan has been submitted to the  
10 department as required by this chapter and rules adopted by the  
11 department and the department is reviewing the plan and has not denied  
12 approval.

13 (4) Any person may rely on a copy of the statement issued by the  
14 department pursuant to RCW 90.56.210(7) as evidence that the facility  
15 has an approved contingency plan and the statement issued pursuant to  
16 RCW 90.56.200(4) as evidence that the facility has an approved spill  
17 prevention plan. Any person may rely on a copy of the statement issued  
18 by the office of marine safety, or its successor agency, the  
19 department, pursuant to RCW 88.46.060 as evidence that the vessel has  
20 an approved contingency plan and the statement issued pursuant to RCW  
21 88.46.040 as evidence that the vessel has an approved prevention plan.

22 **Sec. 35.** RCW 43.21I.005 and 1997 c 449 s 1 are each amended to  
23 read as follows:

24 (1) The legislature declares that Washington's waters have  
25 irreplaceable value for the citizens of the state. These waters are  
26 vital habitat for numerous and diverse marine life and wildlife and the  
27 source of recreation, aesthetic pleasure, and pride for Washington's  
28 citizens. These waters are also vital for much of Washington's  
29 economic vitality.

30 The legislature finds that the transportation of oil on these  
31 waters creates a great potential hazard to these important natural  
32 resources. The legislature also finds that there is no state agency  
33 responsible for maritime safety to ensure this state's interest in  
34 preserving these resources.

35 ~~((The legislature therefore finds that in order to protect these  
36 waters it is necessary to establish an office of marine safety which  
37 will have the responsibility to promote the safety of marine  
38 transportation in Washington.))~~

1 (2) The legislature finds that adequate funding is necessary for  
2 the state to continue its priority focus on the prevention of oil  
3 spills, as well as maintain a strong oil spill response, planning, and  
4 environmental restoration capability. The legislature further finds  
5 that (~~{the}~~) the long-term environmental health of the state's waters  
6 depends upon the strength and vitality of its oil spill prevention and  
7 response program that fosters planning, coordination, and incident  
8 command. To that end, the merger of the office of marine safety with  
9 the department of ecology shall: Ensure coordination via streamlining  
10 the marine safety functions of two agencies into one; provide a focused  
11 prevention and response program under a single administration; generate  
12 efficient incident command response capability and continue to meet the  
13 challenges threatening marine safety and the environment; and increase  
14 accountability to the public, the executive branch, and the  
15 legislature.

16 (3) It is the intent of the legislature that the state's oil spill  
17 prevention, response, planning, and environmental restoration  
18 activities be sufficiently funded to maintain a strong prevention and  
19 response program. It is further the intent of the legislature that the  
20 merger of the office of marine safety with the department of ecology be  
21 accomplished in an organizational manner that maintains a priority  
22 focus and position for the oil spill prevention and response program.  
23 The merger shall allow for ready identification of the program by the  
24 public and ensure no diminution in the state's commitment to marine  
25 safety and environmental protection as follows:

26 (a) The director of the department of ecology shall consolidate all  
27 of the agency's oil spill prevention, planning, and response programs  
28 and personnel into a division or equivalent unit of organization within  
29 the department. The division shall be managed by a single  
30 administrator who is an assistant director or person of equivalent  
31 status in the department's organization. The administrator shall  
32 report directly to the director.

33 (b) The consolidated oil spill program unit within the department  
34 shall maintain prevention of oil spills as a specific program.

35 (c) The department shall identify and participate in resolving  
36 threats to safety of marine transportation and the impact of marine  
37 transportation on the environment.

1        NEW SECTION.    **Sec. 36.**    The following acts or parts of acts are  
2 each decodified:

3        (1) RCW 43.21I.005 (Findings--Consolidation of oil spill programs--  
4 Administrator of consolidated oil spill program);

5        (2) RCW 88.46.150 (Tow boat standards--Study);

6        (3) RCW 88.46.924 (Continuation of rules, pending business, and  
7 obligations);

8        (4) RCW 88.46.925 (Prior acts valid); and

9        (5) RCW 88.46.927 (Collective bargaining agreements not altered).

10       NEW SECTION.    **Sec. 37.**    The following acts or parts of acts are  
11 each repealed:

12       (1) RCW 88.46.140 (Unified and consistent planning) and 1991 c 200  
13 s 428;

14       (2) RCW 90.56.903 (Report on implementation) and 1991 c 200 s 1109;  
15 and

16       (3) RCW 88.46.922 (Transfer of property and appropriations) and  
17 1991 c 200 s 431.

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