

ESSB 5344 - H COMM AMD

By Committee on Ecology & Parks

ADOPTED 03/18/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the northern  
4 coast of the Olympic Peninsula and Washington's west coast from Cape  
5 Flattery south to Cape Disappointment:

6 (a) Possess uniquely rich and highly vulnerable biological, marine,  
7 and cultural resources supporting some of the nation's most valuable  
8 commercial, sport, and tribal fisheries;

9 (b) Sustain endangered species and numerous species of vulnerable  
10 marine mammals; and

11 (c) Are internationally recognized through extraordinary  
12 designations including a world heritage site, a national park, a  
13 national marine sanctuary, national wildlife refuges, a maritime area  
14 off-limits to shipping, and tribal lands and fishing areas of federally  
15 recognized coastal Indian tribes.

16 (2) The legislature further finds that these coasts are  
17 periodically beset by severe storms with dangerously high seas and by  
18 strong currents, obscuring fog, and other conditions that imperil  
19 vessels and crews. When vessels suffer damage or founder, the coasts  
20 are likewise imperiled, particularly if oil is spilled into coastal  
21 waters. Oil spills pose great potential risks to treasured resources.

22 (3) The legislature further finds that Washington has maintained an  
23 emergency response tug at Neah Bay since 1999 to protect state waters  
24 from maritime casualties and resulting oil spills. The tug is  
25 necessary because of the peculiarities of local waters that call for  
26 special precautionary measures. The tug has demonstrated its necessity  
27 and capability by responding to forty-two vessels in need of  
28 assistance. State funding for the tug is scheduled to end June 30,  
29 2009.

1 (4) The legislature intends that the maritime industry should  
2 provide and fully fund at least one year-round emergency response tug  
3 at Neah Bay, with necessary logistical and operational support, and  
4 that any tug provided by the maritime industry pursuant to this act  
5 should meet or exceed technical performance requirements specified in  
6 the state's fiscal year 2009 contract for the Neah Bay emergency  
7 response tug.

8 **Sec. 2.** RCW 88.46.130 and 1991 c 200 s 426 are each amended to  
9 read as follows:

10 (1) By July 1, 2010, the owner or operator of a covered vessel  
11 transiting to or from a Washington port through the Strait of Juan de  
12 Fuca, except for transits extending no further west than Race Rocks  
13 light, shall establish and fund an emergency response system ((for the  
14 Strait of Juan de Fuca shall be established by July 1, 1992)) that  
15 provides for an emergency response towing vessel to be stationed at  
16 Neah Bay. ((In establishing the emergency response system, the  
17 administrator shall consider the recommendations of the regional marine  
18 safety committees. The administrator shall also consult with the  
19 province of British Columbia regarding its participation in the  
20 emergency response system.))

21 (2) Any emergency response towing vessel provided under this  
22 section must:

23 (a) Be available to serve vessels in distress in the Strait of Juan  
24 de Fuca and off of the western coast of the state from Cape Flattery  
25 light in Clallam county south to Cape Disappointment light in Pacific  
26 county; and

27 (b) Meet the requirements specified in section 3 of this act.

28 (3) In addition to meeting requirements specified in RCW 88.46.060,  
29 contingency plans for covered vessels operating in the Strait of Juan  
30 de Fuca must provide for the emergency response system required by this  
31 section. Documents describing how compliance with this section will be  
32 achieved must be submitted to the department by December 1, 2009. An  
33 initial contingency plan submitted to the department after December 1,  
34 2009, must be accompanied by documents demonstrating compliance with  
35 this section.

36 (4) The requirements of this section are met if:

1 (a) Owners or operators of covered vessels provide an emergency  
2 response towing vessel that complies with subsection (2) of this  
3 section; or

4 (b) The United States government implements a system of protective  
5 measures that the department determines to be substantially equivalent  
6 to the requirements of this section as long as the emergency response  
7 towing vessel required by this section is stationed at Neah Bay.

8 NEW SECTION. Sec. 3. A new section is added to chapter 88.46 RCW  
9 to read as follows:

10 (1) An emergency response towing vessel that is a part of the  
11 emergency response system required by RCW 88.46.130 must be stationed  
12 at Neah Bay and be available to respond to vessel emergencies. The  
13 towing vessel must be able to satisfy the following minimum planning  
14 standards:

15 (a) Be underway within twenty minutes of a decision to deploy;

16 (b) Be able to deploy at any hour of any day to provide emergency  
17 assistance within the capabilities of the minimum planning standards  
18 and be safely manned to remain underway for at least forty-eight hours;

19 (c) In severe weather conditions, be capable of making up to,  
20 stopping, holding, and towing a drifting or disabled vessel of one  
21 hundred eighty thousand metric dead weight tons;

22 (d) In severe weather conditions, be capable of holding position  
23 within one hundred feet of another vessel;

24 (e) Be equipped with and maneuverable enough to effectively employ  
25 a ship anchor chain recovery hook and line throwing gun;

26 (f) Be capable of a bollard pull of at least seventy short tons;  
27 and

28 (g) Be equipped with appropriate equipment for:

29 (i) Damage control patching;

30 (ii) Vessel dewatering;

31 (iii) Air safety monitoring; and

32 (iv) Digital photography.

33 (2) The requirements of this section may be fulfilled by one or  
34 more private organizations or nonprofit cooperatives providing umbrella  
35 coverage under contract to single or multiple covered vessels.

36 (3)(a) The department must be authorized to contract with the  
37 emergency response towing vessel, at the discretion of the department,

1 in response to a potentially emerging maritime casualty or as a  
2 precautionary measure during severe storms. All instances of use by  
3 the department must be paid for by the department.

4 (b) Covered vessels that are required to provide an emergency  
5 response towing vessel under RCW 88.46.130 may not restrict the  
6 emergency response towing vessel from responding to distressed vessels  
7 that are not covered vessels.

8 (4) Nothing in this section limits the ability of a covered vessel  
9 to contract with an emergency response towing vessel with capabilities  
10 that exceed the minimum capabilities provided for a towing vessel in  
11 this section.

12 (5) The covered vessel owner or operator shall submit a written  
13 report to the department as soon as practicable regarding an emergency  
14 response system deployment, including photographic documentation  
15 determined by the department to be of adequate quality. The report  
16 must provide a detailed description of the incident necessitating a  
17 response and the actions taken to render assistance under the emergency  
18 response system.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW  
20 to read as follows:

21 (1) It is the intent of the legislature to provide the various  
22 components of the maritime industry with the tools necessary to satisfy  
23 the requirements of RCW 88.46.130 in the most cost-effective manner.  
24 In doing, the legislature encourages, but does not mandate, the  
25 maritime industry to unite behind their mutual interests and  
26 responsibilities and identify or form a single umbrella organization  
27 that allows all affected covered vessels to equitably share the costs  
28 inherent in the implementation of RCW 88.46.130.

29 (2) The legislature further finds that, given the broad range of  
30 covered vessel types and sizes, an equitable sharing of the costs of  
31 implementing RCW 88.46.130 will likely mean that not all covered  
32 vessels will be responsible for providing the same amount of funding.  
33 Any umbrella organization that is identified or formed to satisfy the  
34 requirements of this act should consider the multitude of factors that  
35 comprise the risk of vessel emergencies and the likelihood of  
36 initiating a response from the emergency response vessel required by  
37 RCW 88.46.130.

1 (3) The legislature intends to provide the authority for any  
2 operator of a covered vessel that feels as though an umbrella  
3 organization that is identified, formed, or proposed for formation does  
4 not equitably share the costs of compliance with RCW 88.46.130 with the  
5 covered vessel in question, or the class of vessel to which the covered  
6 vessel belongs, to either contract directly with an adequate emergency  
7 response vessel or form or join a discreet umbrella organization  
8 representing the appropriate segment of the maritime industry.  
9 However, if the operator of a covered vessel chooses not to join a  
10 proposed or existing umbrella organization, or finds that negotiations  
11 leading to the formation of an umbrella organization are not  
12 progressing in an adequate manner, the legislature requests, but does  
13 not require, that the vessel operator contact the department and  
14 provide official notice of their concern as to how the umbrella group  
15 in question failed in establishing an equitable cost-share strategy.

16 (4) The department shall collect and maintain all notices received  
17 under this section and shall summarize any reports received by the  
18 operators of covered vessels and report the summation to the  
19 appropriate committees of the legislature upon request by a legislative  
20 committee.

21 NEW SECTION. **Sec. 5.** (1) Designated representatives of the owners  
22 and operators of all classes of covered vessels shall negotiate, given  
23 the intent of section 4 of this act, a system to determine the  
24 equitable apportionment of costs of the emergency response system  
25 required by this act.

26 (2) Participants to the negotiations shall provide interim progress  
27 reports to the appropriate committees of the legislature by October 31,  
28 2009, and again by December 1, 2009, the latter date coinciding with  
29 the deadline for contingency plans for covered vessels operating in the  
30 Strait of Juan de Fuca to provide for the emergency response system  
31 required by RCW 88.46.130. These reports shall provide available  
32 information relating to:

33 (a) The anticipated average annual cost of providing the emergency  
34 response system;

35 (b) The methodology for determining the anticipated average annual  
36 cost for each class of covered vessel, including:

1 (i) A system for crediting enhanced navigational or structural  
2 characteristics;

3 (ii) Appropriate limits on total cost for vessels that frequently  
4 transit the Strait of Juan de Fuca, except for transits extending no  
5 further west than Race Rocks light; and

6 (iii) Consideration of current economic conditions; and

7 (c) Any impediment to equitable apportionment of costs.

8 (3) As used in this section, "class of covered vessel" means:

9 (a) Oil tankers;

10 (b) Tank barges;

11 (c) Tug and oil barge combinations;

12 (d) Cargo vessels;

13 (e) Passenger vessels; and

14 (f) Other covered vessels.

15 (4) If the representatives designated under this section to  
16 participate in negotiations fail to achieve the goals of this section  
17 or otherwise choose not to report the outcomes to the legislature, the  
18 department of ecology shall, by December 1, 2009, deliver the summation  
19 of any reports received under section 4 of this act.

20 (5) This section expires June 30, 2010.

21 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46 RCW  
22 to read as follows:

23 (1) As part of reviewing contingency plans submitted under RCW  
24 88.46.130, the department may determine the adequacy of the emergency  
25 response system required in RCW 88.46.130 through practice drills that  
26 test compliance with the requirements of section 3 of this act.  
27 Practice drills may be conducted without prior notice.

28 (2) Each successful response to a vessel emergency may be  
29 considered by the department to satisfy a drill covering this portion  
30 of a covered vessel's contingency plan.

31 (3) Drills of the emergency response system required in RCW  
32 88.46.130 must emphasize the system's ability to respond to a  
33 potentially worst case vessel emergency scenario.

34 **Sec. 7.** RCW 88.46.010 and 2007 c 347 s 5 are each amended to read  
35 as follows:

1 The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

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

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

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

23 (4) "Bulk" means material that is stored or transported in a loose,  
24 unpackaged liquid, powder, or granular form capable of being conveyed  
25 by a pipe, bucket, chute, or belt system.

26 (5) "Covered vessel" means a tank vessel, cargo vessel, or  
27 passenger vessel.

28 (6) "Department" means the department of ecology.

29 (7) "Director" means the director of the department of ecology.

30 (8) "Discharge" means any spilling, leaking, pumping, pouring,  
31 emitting, emptying, or dumping.

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

37 (b) A facility does not include any: (i) Railroad car, motor  
38 vehicle, or other rolling stock while transporting oil over the

1 highways or rail lines of this state; (ii) retail motor vehicle motor  
2 fuel outlet; (iii) facility that is operated as part of an exempt  
3 agricultural activity as provided in RCW 82.04.330; (iv) underground  
4 storage tank regulated by the department or a local government under  
5 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense  
6 more than three thousand gallons of fuel to a ship that is not a  
7 covered vessel, in a single transaction.

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

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

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

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

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

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



1 operating the facility; and (iii) in the case of an abandoned vessel or  
2 onshore or offshore facility, the person who owned or operated the  
3 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) "Passenger vessel" means a ship of three hundred or more gross  
8 tons with a fuel capacity of at least six thousand gallons carrying  
9 passengers for compensation.

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

13 (18) "Race Rocks light" means the nautical landmark located  
14 southwest of the city of Victoria, British Columbia.

15 (19) "Severe weather conditions" means observed nautical conditions  
16 with sustained winds measured at forty knots and wave heights measured  
17 between twelve and eighteen feet.

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

20 ((+19+)) (21) "Spill" means an unauthorized discharge of oil into  
21 the waters of the state.

22 ((+20+)) (22) "Strait of Juan de Fuca" means waters off the  
23 northern coast of the Olympic Peninsula seaward of a line drawn from  
24 New Dungeness light in Clallam county to Discovery Island light on  
25 Vancouver Island, British Columbia, Canada.

26 (23) "Tank vessel" means a ship that is constructed or adapted to  
27 carry, or that carries, oil in bulk as cargo or cargo residue, and  
28 that:

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

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

32 ((+21+)) (24) "Vessel emergency" means a substantial threat of  
33 pollution originating from a covered vessel, including loss or serious  
34 degradation of propulsion, steering, means of navigation, primary  
35 electrical generating capability, and seakeeping capability.

36 (25) "Waters of the state" includes lakes, rivers, ponds, streams,  
37 inland waters, underground water, salt waters, estuaries, tidal flats,

1 beaches and lands adjoining the seacoast of the state, sewers, and all  
2 other surface waters and watercourses within the jurisdiction of the  
3 state of Washington.

4 ~~((+22))~~ (26) "Worst case spill" means: (a) In the case of a  
5 vessel, a spill of the entire cargo and fuel of the vessel complicated  
6 by adverse weather conditions; and (b) in the case of an onshore or  
7 offshore facility, the largest foreseeable spill in adverse weather  
8 conditions.

9 NEW SECTION. **Sec. 8.** (1) The director of the department of  
10 ecology, or the director's designee, shall initiate discussions with  
11 the director's equivalent position in the government for the Canadian  
12 province of British Columbia to explore options for Washington and  
13 British Columbia to share the marine response assets required under  
14 this act.

15 (2) Any progress or outcomes from the discussions initiated under  
16 this section must be reported to the appropriate committees of the  
17 legislature no later than January 1, 2011.

18 (3) This section expires July 31, 2011.

19 **Sec. 9.** RCW 90.56.500 and 1991 c 200 s 805 are each amended to  
20 read as follows:

21 (1) The state oil spill response account is created in the state  
22 treasury. All receipts from RCW 82.23B.020(1) shall be deposited in  
23 the account. All costs reimbursed to the state by a responsible party  
24 or any other person for responding to a spill of oil shall also be  
25 deposited in the account. Moneys in the account shall be spent only  
26 after appropriation. The account is subject to allotment procedures  
27 under chapter 43.88 RCW.

28 (2) The account shall be used exclusively to pay for:

29 (a) The costs associated with the response to spills of crude oil  
30 or petroleum products into the navigable waters of the state; and

31 (b) The costs associated with the department's use of the emergency  
32 response towing vessel as described in section 3 of this act.

33 (3) Payment of response costs under subsection (2)(a) of this  
34 section shall be limited to spills which the director has determined  
35 are likely to exceed fifty thousand dollars.

1       (4) Before expending moneys from the account, the director shall  
2 make reasonable efforts to obtain funding for response costs under  
3 subsection (2) of this section from the person responsible for the  
4 spill and from other sources, including the federal government.

5       (5) Reimbursement for response costs shall be allowed only for  
6 costs which are not covered by funds appropriated to the agencies  
7 responsible for response activities. Costs associated with the  
8 response to spills of crude oil or petroleum products shall include:

9       ((+1)) (a) Natural resource damage assessment and related  
10 activities;

11       ((+2)) (b) Spill related response, containment, wildlife rescue,  
12 cleanup, disposal, and associated costs;

13       ((+3)) (c) Interagency coordination and public information related  
14 to a response; and

15       ((+4)) (d) Appropriate travel, goods and services, contracts, and  
16 equipment.

17       NEW SECTION.   **Sec. 10.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected."

21       Correct the title.

EFFECT:       Exempts Seattle-to-Victoria vessel traffic from the requirements to provide a response system, replaces a substantive mandate that costs be shared with direction to representatives of covered vessels to negotiate an equitable cost sharing formula, requests that covered vessels and not the department of ecology report to the legislature the results of ongoing negotiations, requires the negotiations to consider economic conditions, creates an ongoing mechanism for covered vessels to report inequitable treatment to the department of ecology, changes the reference to past use of the Neah Bay response tug from forty-one to forty-two and authorizes the oil spill response account to be used to pay for instances of the response tug use initiated by the department of ecology, provides definitions, and adds a severability clause.

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