

E2SHB 1186 - S COMM AMD  
By Committee on Ways & Means

ADOPTED AND ENGROSSED 4/5/11

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

3 "Sec. 1. RCW 88.46.010 and 2009 c 11 s 7 are each reenacted and  
4 amended to read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "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:

- 14 (a) The additional protection provided by the measures;  
15 (b) The technological achievability of the measures; and  
16 (c) The cost of the measures.

17 (2)(a) "Best achievable technology" means the technology that  
18 provides the greatest degree of protection taking into consideration:

19 (~~(a)~~) (i) Processes that are being developed, or could feasibly  
20 be developed, given overall reasonable expenditures on research and  
21 development(~~(7)~~); and

22 (~~(b)~~) (ii) Processes that are currently in use.

23 (b) In determining what is best achievable technology, the director  
24 shall consider the effectiveness, engineering feasibility, and  
25 commercial availability of the technology.

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

29 (4) "Cargo vessel" means a self-propelled ship in commerce, other

1 than a tank vessel or a passenger vessel, of three hundred or more  
2 gross tons, including but not limited to, commercial fish processing  
3 vessels and freighters.

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

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

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

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

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

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

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

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

32 (12) "Offshore facility" means any facility located in, on, or  
33 under any of the navigable waters of the state, but does not include a  
34 facility any part of which is located in, on, or under any land of the  
35 state, other than submerged land. "Offshore facility" does not include  
36 a marine facility.

37 (13) "Oil" or "oils" means oil of any kind that is liquid at  
38 atmospheric temperature and any fractionation thereof, including, but

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

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

13 (15)(a) "Owner or operator" means (i) in the case of a vessel, any  
14 person owning, operating, or chartering by demise, the vessel; (ii) in  
15 the case of an onshore or offshore facility, any person owning or  
16 operating the facility; and (iii) in the case of an abandoned vessel or  
17 onshore or offshore facility, the person who owned or operated the  
18 vessel or facility immediately before its abandonment.

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

22 (16) "Passenger vessel" means a ship of three hundred or more gross  
23 tons with a fuel capacity of at least six thousand gallons carrying  
24 passengers for compensation.

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

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

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

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

35 (21) "Spill" means an unauthorized discharge of oil into the waters  
36 of the state.

37 (22) "Strait of Juan de Fuca" means waters off the northern coast

1 of the Olympic Peninsula seaward of a line drawn from New Dungeness  
2 light in Clallam county to Discovery Island light on Vancouver Island,  
3 British Columbia, Canada.

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

- 7 (a) Operates on the waters of the state; or
- 8 (b) Transfers oil in a port or place subject to the jurisdiction of  
9 this state.

10 (24) "Vessel emergency" means a substantial threat of pollution  
11 originating from a covered vessel, including loss or serious  
12 degradation of propulsion, steering, means of navigation, primary  
13 electrical generating capability, and seakeeping capability.

14 (25) "Waters of the state" includes lakes, rivers, ponds, streams,  
15 inland waters, underground water, salt waters, estuaries, tidal flats,  
16 beaches and lands adjoining the seacoast of the state, sewers, and all  
17 other surface waters and watercourses within the jurisdiction of the  
18 state of Washington.

19 (26) "Worst case spill" means: (a) In the case of a vessel, a  
20 spill of the entire cargo and fuel of the vessel complicated by adverse  
21 weather conditions; and (b) in the case of an onshore or offshore  
22 facility, the largest foreseeable spill in adverse weather conditions.

23 (27) "Vessels of opportunity response system" means nondedicated  
24 boats and operators, including fishing and other vessels, that are  
25 under contract with and equipped by contingency plan holders to assist  
26 with oil spill response activities, including on-water oil recovery in  
27 the near shore environment and the placement of oil spill containment  
28 booms to protect sensitive habitats.

29 (28) "Regional vessels of opportunity response group" means a group  
30 of nondedicated vessels participating in a vessels of opportunity  
31 response system to respond when needed and available to spills in a  
32 defined geographic area.

33 (29) "Volunteer coordination system" means an oil spill response  
34 system that, before a spill occurs, prepares for the coordination of  
35 volunteers to assist with appropriate oil spill response activities,  
36 which may include shoreline protection and cleanup, wildlife recovery,  
37 field observation, light construction, facility maintenance, donations  
38 management, clerical support, and other aspects of a spill response.

1        (30) "Umbrella plan holder" means a nonprofit corporation  
2 established consistent with this chapter for the purposes of providing  
3 oil spill response and contingency plan coverage.

4        NEW SECTION. Sec. 2. A new section is added to chapter 88.46 RCW  
5 to read as follows:

6        (1) The department shall evaluate and update planning standards for  
7 oil spill response equipment required under contingency plans required  
8 by this chapter, including aerial surveillance, in order to ensure  
9 access in the state to equipment that represents the best achievable  
10 protection to respond to a worst case spill and provide for continuous  
11 operation of oil spill response activities to the maximum extent  
12 practicable and without jeopardizing crew safety, as determined by the  
13 incident commander or the unified command.

14        (2) The department shall by rule update the planning standards at  
15 five-year intervals to ensure the maintenance of best available  
16 protection over time. Rule updates to covered nontank vessels shall  
17 minimize potential impacts to discretionary cargo moved through the  
18 state.

19        (3) The department shall evaluate and update planning standards for  
20 tank vessels by December 31, 2012.

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

23        By December 31, 2012, the department shall complete rule making for  
24 purposes of improving the effectiveness of the vessels of opportunity  
25 system to participate in spill response.

26        NEW SECTION. Sec. 4. A new section is added to chapter 88.46 RCW  
27 to read as follows:

28        (1) The department shall establish a volunteer coordination system.  
29 The volunteer coordination system may be included as a part of the  
30 state's overall oil spill response strategy, and may be implemented by  
31 local emergency management organizations, in coordination with any  
32 analogous federal efforts, to supplement the state's timely and  
33 effective response to spills.

34        (2) The department should consider how the volunteer coordination  
35 system will:

1 (a) Coordinate with the incident commander or unified command of an  
2 oil spill and any affected local governments to receive, screen, and  
3 register volunteers who are not affiliated with the emergency  
4 management organization or a local nongovernmental organization;

5 (b) Coordinate the management of volunteers with local  
6 nongovernmental organizations and their affiliated volunteers;

7 (c) Coordinate appropriate response operations with different  
8 classes of volunteers, including pretrained volunteers and convergent  
9 volunteers, to fulfill requests by the department or an oil spill  
10 incident commander or unified command;

11 (d) Coordinate public outreach regarding the need for and use of  
12 volunteers;

13 (e) Determine minimum participation criteria for volunteers; and

14 (f) Identify volunteer training requirements and, if applicable,  
15 provide training opportunities for volunteers prior to an oil spill  
16 response incident.

17 (3) An act or omission by any volunteer participating in a spill  
18 response or training as part of a volunteer coordination system, while  
19 engaged in such activities, does not impose any liability on any state  
20 agency, any participating local emergency management organization, or  
21 the volunteer for civil damages resulting from the act or omission.  
22 However, the immunity provided under this subsection does not apply to  
23 an act or omission that constitutes gross negligence or willful or  
24 wanton misconduct.

25 (4) The decisions to utilize volunteers in an oil spill response,  
26 which volunteers to utilize, and to determine which response activities  
27 are appropriate for volunteer participation in any given response are  
28 the sole responsibilities of the designated incident commander or  
29 unified command.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46 RCW  
31 to read as follows:

32 (1) The department is responsible for requiring joint large-scale,  
33 multiple plan equipment deployment drills of tank vessels to determine  
34 the adequacy of the owner's or operator's compliance with the  
35 contingency plan requirements of this chapter. The department must  
36 order at least one drill as outlined in this section every three years.

1 (2) Drills required under this section must focus on, at a minimum,  
2 the following:

3 (a) The functional ability for multiple contingency plans to be  
4 simultaneously activated with the purpose of testing the ability for  
5 dedicated equipment and trained personnel cited in multiple contingency  
6 plans to be activated in a large scale spill; and

7 (b) The operational readiness during both the first six hours of a  
8 spill and, at the department's discretion, over multiple operational  
9 periods of response.

10 (3) Drills required under this section may be incorporated into  
11 other drill requirements under this chapter to avoid increasing the  
12 number of drills and equipment deployments otherwise required.

13 (4) Each successful drill conducted under this section may be  
14 considered by the department as a drill of the underlying contingency  
15 plan and credit may be awarded to the plan holder accordingly.

16 (5) The department shall, when practicable, coordinate with  
17 applicable federal agencies, the state of Oregon, and the province of  
18 British Columbia to establish a drill incident command and to help  
19 ensure that lessons learned from the drills are evaluated with the goal  
20 of improving the underlying contingency plans.

21 **Sec. 6.** RCW 88.46.060 and 2005 c 78 s 2 are each amended to read  
22 as follows:

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

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

33 (b) Be designed to be capable in terms of personnel, materials, and  
34 equipment, of promptly and properly, to the maximum extent practicable,  
35 as defined by the department, removing oil and minimizing any damage to  
36 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 consistent  
12 with this chapter to evaluate whether personnel and equipment provided  
13 under the plan are in a state of operational readiness at all times;

14 (g) Describe important features of the surrounding environment,  
15 including fish and wildlife habitat, shellfish beds, environmentally  
16 and archaeologically sensitive areas, and public facilities. The  
17 departments of ecology, fish and wildlife, (~~and~~) natural resources,  
18 and (~~the office of~~) archaeology and historic preservation, upon  
19 request, shall provide information that they have available to assist  
20 in preparing this description. The description of archaeologically  
21 sensitive areas shall not be required to be included in a contingency  
22 plan until it is reviewed and updated pursuant to subsection (9) of  
23 this section;

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

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

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

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



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

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

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

11 (o) If the department has adopted rules permitting the use of  
12 dispersants, the circumstances, if any, and the manner for the  
13 application of the dispersants in conformance with the department's  
14 rules;

15 (p) Compliance with section 7 of this act if the contingency plan  
16 is submitted by an umbrella plan holder; and

17 (q) Include any additional elements of contingency plans as  
18 required by this chapter.

19 ~~((+a))~~ The owner or operator of a ~~((tank))~~ covered vessel ~~((of~~  
20 ~~three-thousand-gross-tons-or-more-shall))~~ must submit ~~((a))~~ any  
21 required contingency plan updates to the department within ~~((six-months~~  
22 ~~after))~~ the timelines established by the department ~~((adopts-rules~~  
23 ~~establishing-standards-for-contingency-plans-under-subsection-(1)-of~~  
24 ~~this-section.~~

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

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

1 (b) The contingency plan for a cargo vessel or passenger vessel may  
2 be submitted by the owner or operator of the cargo vessel or passenger  
3 vessel, by the agent for the vessel resident in this state, or by a  
4 (~~Washington state~~) nonprofit corporation established for the purpose  
5 of oil spill response and contingency plan coverage and of which the  
6 owner or operator is a member. Subject to conditions imposed by the  
7 department, the owner, operator, or agent may submit a single  
8 contingency plan for cargo vessels or passenger vessels of a particular  
9 class.

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

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

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

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

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

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

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

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

1 (f) The sensitivity of fisheries and wildlife, shellfish beds, and  
2 other natural resources within the area covered by the plan;

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

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

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

13 (b) The department must notify the plan holder in writing within  
14 sixty-five days of an initial or amended plan's submittal to the  
15 department as to whether the plan is disapproved, approved, or  
16 conditionally approved. If a plan is conditionally approved, the  
17 department must clearly describe each condition and specify a schedule  
18 for plan holders to submit required updates.

19 (7) The approval of the contingency plan shall be valid for five  
20 years. Upon approval of a contingency plan, the department shall  
21 provide to the person submitting the plan a statement indicating that  
22 the plan has been approved, the vessels covered by the plan, and other  
23 information the department determines should be included.

24 (8) An owner or operator of a covered vessel shall notify the  
25 department in writing immediately of any significant change of which it  
26 is aware affecting its contingency plan, including changes in any  
27 factor set forth in this section or in rules adopted by the department.  
28 The department may require the owner or operator to update a  
29 contingency plan as a result of these changes.

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

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

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 88.46 RCW  
2 to read as follows:

3        (1) When submitting a contingency plan to the department under RCW  
4 88.46.060, any umbrella plan holder that enrolls both tank vessels and  
5 covered vessels that are not tank vessels must, in addition to  
6 satisfying the other requirements of this chapter, specify:

7        (a) The maximum worst case discharge volume from covered vessels  
8 that are not tank vessels to be covered by the umbrella plan holder's  
9 contingency plan; and

10       (b) The maximum worst case discharge volume from tank vessels to be  
11 covered by the umbrella plan holder's contingency plan.

12       (2) Any owner or operator of a covered vessel having a worst case  
13 discharge volume that exceeds the maximum volume covered by an approved  
14 umbrella plan holder may enroll with the umbrella plan holder if the  
15 owner or operator of the covered vessel maintains an agreement with  
16 another entity to provide supplemental equipment sufficient to meet the  
17 requirements of this chapter.

18       (3) The department must approve an umbrella plan holder that covers  
19 vessels having a worst case discharge volume that exceeds the maximum  
20 volume if:

21       (a) The department determines that the umbrella plan holder should  
22 be approved for a lower discharge volume;

23       (b) The vessel owner or operator provides documentation to the  
24 umbrella plan holder authorizing the umbrella plan holder to activate  
25 additional resources sufficient to meet the worst case discharge volume  
26 of the vessel; and

27       (c) The department has previously approved a plan that provides  
28 access to the same resources identified in (3)(b) to meet the  
29 requirements of this chapter for worst case discharge volumes equal to  
30 or greater than the worst case discharge volume of the vessel.

31       (4) The umbrella plan holder must describe in the plan how the  
32 activation of additional resources will be implemented and provide the  
33 department the ability to review and inspect any documentation that the  
34 umbrella plan holder relies on to enroll a vessel with a worst case  
35 discharge that exceeds the plan's maximum volume.

36       **Sec. 8.**    RCW 88.46.100 and 2000 c 69 s 10 are each amended to read  
37 as follows:

1       ~~((1))~~ In ~~((order to assist the state in identifying areas of the~~  
2 ~~navigable waters of the state needing special attention, the owner or~~  
3 ~~operator of a covered vessel shall notify the))~~ addition to any  
4 notifications that the owner or operator of a covered vessel must  
5 provide to the United States coast guard ~~((within one hour:~~

6       ~~(a) Of the disability of the covered vessel if the disabled vessel~~  
7 ~~is within twelve miles of the shore of the state; and~~

8       ~~(b) Of a collision or a near miss incident within twelve miles of~~  
9 ~~the shore of the state.~~

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

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

22       ~~(4) For the purposes of this section:~~

23       ~~(a) A tank vessel or cargo vessel is considered disabled if any of~~  
24 ~~the following occur:~~

25       ~~(i) Any accidental or intentional grounding;~~

26       ~~(ii) The total or partial failure of the main propulsion or primary~~  
27 ~~steering or any component or control system that causes a reduction in~~  
28 ~~the maneuvering capabilities of the vessel;~~

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

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

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

35       ~~(i) The towing mechanism becomes disabled;~~

36       ~~(ii) The towboat towing the barge becomes disabled through~~  
37 ~~occurrences defined in (a) of this subsection.~~

1       ~~(c) A near miss incident is an incident that requires the pilot or~~  
2 ~~master of a covered vessel to take evasive actions or make significant~~  
3 ~~course corrections in order to avoid a collision with another ship or~~  
4 ~~to avoid a grounding as required by the international rules of the~~  
5 ~~road.~~

6       ~~(5) Failure of any person to make a report under this section shall~~  
7 ~~not be used as the basis for the imposition of any fine or penalty))~~  
8 regarding a vessel emergency, the owner or operator of a covered vessel  
9 must notify the state of any vessel emergency that results in the  
10 discharge or substantial threat of discharge of oil to state waters or  
11 that may affect the natural resources of the state within one hour of  
12 the onset of that emergency. The purpose of this notification is to  
13 enable the department to coordinate with the vessel operator,  
14 contingency plan holder, and the United States coast guard to protect  
15 the public health, welfare, and natural resources of the state and to  
16 ensure all reasonable spill preparedness and response measures are in  
17 place prior to a spill occurring.

18       **Sec. 9.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read  
19 as follows:

20       (1) The department, in consultation with the departments of fish  
21 and wildlife and natural resources, and the parks and recreation  
22 commission, shall adopt rules establishing a compensation schedule for  
23 the discharge of oil in violation of this chapter and chapter 90.56  
24 RCW. The amount of compensation assessed under this schedule shall be:

25       (a) For spills totaling one thousand gallons or more in any one  
26 event, no less than ((one-dollar)) three dollars per gallon of oil  
27 spilled and no greater than ((one)) three hundred dollars per gallon of  
28 oil spilled; and

29       (b) For spills totaling less than one thousand gallons in any one  
30 event, no less than one dollar per gallon of oil spilled and no greater  
31 than one hundred dollars per gallon of oil spilled.

32       (2) Persistent oil recovered from the surface of the water within  
33 forty-eight hours of a discharge must be deducted from the total spill  
34 volume for purposes of determining the amount of compensation assessed  
35 under the compensation schedule.

36       (3) The compensation schedule adopted under this section shall  
37 reflect adequate compensation for unquantifiable damages or for damages

1 not quantifiable at reasonable cost for any adverse environmental,  
2 recreational, aesthetic, or other effects caused by the spill and shall  
3 take into account:

4 ~~((1))~~ (a) Characteristics of any oil spilled, such as toxicity,  
5 dispersibility, solubility, and persistence, that may affect the  
6 severity of the effects on the receiving environment, living organisms,  
7 and recreational and aesthetic resources;

8 ~~((2))~~ (b) The sensitivity of the affected area as determined by  
9 such factors as:

10 ~~((a))~~ (i) The location of the spill;

11 ~~((b))~~ (ii) Habitat and living resource sensitivity;

12 ~~((c))~~ (iii) Seasonal distribution or sensitivity of living  
13 resources;

14 ~~((d))~~ (iv) Areas of recreational use or aesthetic importance;

15 ~~((e))~~ (v) The proximity of the spill to important habitats for  
16 birds, aquatic mammals, fish, or to species listed as threatened or  
17 endangered under state or federal law;

18 ~~((f))~~ (vi) Significant archaeological resources as determined by  
19 the department of archaeology and historic preservation; and

20 ~~((g))~~ (vii) Other areas of special ecological or recreational  
21 importance, as determined by the department; and

22 ~~((3))~~ (c) Actions taken by the party who spilled oil or any party  
23 liable for the spill that:

24 ~~((a))~~ (i) Demonstrate a recognition and affirmative acceptance of  
25 responsibility for the spill, such as the immediate removal of oil and  
26 the amount of oil removed from the environment; or

27 ~~((b))~~ (ii) Enhance or impede the detection of the spill, the  
28 determination of the quantity of oil spilled, or the extent of damage,  
29 including the unauthorized removal of evidence such as injured fish or  
30 wildlife.

31 **Sec. 10.** RCW 90.56.370 and 2000 c 69 s 21 are each amended to read  
32 as follows:

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

1       (2) Damages for which responsible parties are liable under this  
2 section include loss of income, net revenue, the means of producing  
3 income or revenue, or an economic benefit resulting from an injury to  
4 or loss of real or personal property or natural resources.

5       (3) Damages for which responsible parties are liable under this  
6 section include damages provided in subsections (1) and (2) of this  
7 section resulting from the use and deployment of chemical dispersants  
8 or from in situ burning in response to a violation of RCW 90.56.320.

9       (4) In any action to recover damages resulting from the discharge  
10 of oil in violation of RCW 90.56.320, the owner or person having  
11 control over the oil shall be relieved from strict liability, without  
12 regard to fault, if that person can prove that the discharge was caused  
13 solely by:

- 14       (a) An act of war or sabotage;
- 15       (b) An act of God;
- 16       (c) Negligence on the part of the United States government; or
- 17       (d) Negligence on the part of the state of Washington.

18       (~~(3)~~) (5) The liability established in this section shall in no  
19 way affect the rights which: (a) The owner or other person having  
20 control over the oil may have against any person whose acts may in any  
21 way have caused or contributed to the discharge of oil, or (b) the  
22 state of Washington may have against any person whose actions may have  
23 caused or contributed to the discharge of oil.

24       NEW SECTION. Sec. 11. (1) The director of the department of  
25 ecology must formally request that the federal government contribute to  
26 the establishment of regional oil spill response equipment caches in  
27 Washington to ensure adequate response capabilities during a multiple  
28 spill event.

29       (2) This section expires December 31, 2014."



**ADOPTED AND ENGROSSED 4/5/11**

1        On page 1, line 2 of the title, after "program;" strike the  
2 remainder of the title and insert "amending RCW 88.46.060, 88.46.100,  
3 90.48.366, and 90.56.370; reenacting and amending RCW 88.46.010; adding  
4 new sections to chapter 88.46 RCW; creating a new section; prescribing  
5 penalties; and providing an expiration date."

**--- END ---**