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**SECOND SUBSTITUTE HOUSE BILL 1186**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House General Government Appropriations & Oversight (originally sponsored by Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Liiias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu, and Seaquist)

READ FIRST TIME 02/22/11.

1       AN ACT Relating to requirements under the state's oil spill  
2 program; amending RCW 88.46.060, 88.46.100, 88.46.090, 90.48.366, and  
3 90.56.370; reenacting and amending RCW 88.46.010; adding new sections  
4 to chapter 88.46 RCW; creating new sections; prescribing penalties; and  
5 providing expiration dates.

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

7       NEW SECTION.     **Sec. 1.**     (1) The legislature finds that the  
8 "deepwater horizon" wellhead blowout, explosion, and oil spill in the  
9 Gulf of Mexico on April 20, 2010, resulted in the release of two  
10 hundred million gallons of crude oil into the environment. Impacts  
11 after the spill have included deaths and injuries, extensive damage to  
12 the marine environment and wildlife habitats, as well as large  
13 socioeconomic damages to local citizens, commercial fishing, tourism,  
14 businesses, and recreation. As late as six months after the spill,  
15 four thousand two hundred square miles of the Gulf of Mexico were  
16 closed to commercial shrimp harvest. The incident in the Gulf of  
17 Mexico is a reminder that the threat of major spills to Washington's  
18 environment, natural resources, economy, quality of life, and private  
19 property is significant.

1 (2) The legislature further finds that during the fall of 2010 the  
2 department of ecology compiled lessons learned from the Gulf of Mexico  
3 spill and the Puget Sound partnership convened an oil spill work group  
4 in an effort to ensure there is a rapid and aggressive response to a  
5 large scale spill in Washington and that oversight of spills is well  
6 coordinated among different levels of government and industry. The  
7 legislature intends to build upon these efforts, and other recent  
8 studies, to improve Washington's prevention and response capabilities.  
9 While current oil spill contingency plans are required to address worst  
10 case spills, it is also clear that the state may be underprepared for  
11 a large scale oil spill of the magnitude possible by failures of an oil  
12 tanker or a tank barge, particularly within the confined waters of  
13 Puget Sound. Lessons learned from the 2010 deepwater horizon incident  
14 demonstrate that improvements to Washington's existing oil spill  
15 prevention, preparedness, and response capabilities are both necessary  
16 and possible.

17 **Sec. 2.** RCW 88.46.010 and 2009 c 11 s 7 are each reenacted and  
18 amended to read as follows:

19 The definitions in this section apply throughout this chapter  
20 unless the context clearly requires otherwise.

21 (1) "Best achievable protection" means the highest level of  
22 protection that can be achieved through the use of the best achievable  
23 technology and those staffing levels, training procedures, and  
24 operational methods that provide the greatest degree of protection  
25 achievable. The director's determination of best achievable protection  
26 shall be guided by the critical need to protect the state's natural  
27 resources and waters, while considering:

- 28 (a) The additional protection provided by the measures;
- 29 (b) The technological achievability of the measures; and
- 30 (c) The cost of the measures.

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

- 33 ~~((a))~~ (i) Processes that are being developed, or could feasibly  
34 be developed, given overall reasonable expenditures on research and  
35 development~~((r))~~i and
- 36 ~~((b))~~ (ii) Processes that are currently in use.

1       **(b)** In determining what is best achievable technology, the director  
2 shall consider the effectiveness, engineering feasibility, and  
3 commercial availability of the technology.

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

7       (4) "Cargo vessel" means a self-propelled ship in commerce, other  
8 than a tank vessel or a passenger vessel, of three hundred or more  
9 gross tons, including but not limited to, commercial fish processing  
10 vessels and freighters.

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

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

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

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

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

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

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

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

1 (12) "Offshore facility" means any facility located in, on, or  
2 under any of the navigable waters of the state, but does not include a  
3 facility any part of which is located in, on, or under any land of the  
4 state, other than submerged land. "Offshore facility" does not include  
5 a marine facility.

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

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

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

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

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

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

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

37 (19) "Severe weather conditions" means observed nautical conditions

1 with sustained winds measured at forty knots and wave heights measured  
2 between twelve and eighteen feet.

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

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

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

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

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

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

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

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

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

30 (27) "Vessels of opportunity response system" means a fleet of  
31 nondedicated commercial vessels and crew, including commercial fishing  
32 vessels, other commercial vessels, publicly owned vessels, and other  
33 appropriate nonrecreational vessels, that are under contract with, and  
34 equipped by, contingency plan holders to respond to a spill.

35 (28) "Regional vessels of opportunity response group" means a fleet  
36 of vessels participating in a vessels of opportunity response system  
37 and directed and positioned to respond to spills in a defined  
38 geographic area.

1       (29) "Volunteer coordination system" means an oil spill response  
2 system that, before a spill occurs, prepares for the utilization of an  
3 adequate number of local emergency management organizations to  
4 implement a system that ensures the emergency management organization  
5 has access to trained volunteers to assist with oil spill response  
6 activities, which may include shoreline protection, wildlife recovery,  
7 and other aspects of a spill response.

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

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

13       (1)(a) The owner or operator of a tank vessel transiting to or from  
14 a Washington marine facility shall establish or fund a vessels of  
15 opportunity response system to supplement the timely and effective  
16 response to spills in the vessel's area of operation.

17       (b) The vessels of opportunity response system must be composed of  
18 an adequate number of regional vessels of opportunity response groups  
19 so as to be prepared to respond to a spill anywhere within the tank  
20 vessel's area of operation within twelve hours after notification of a  
21 spill event, to the extent that a twelve-hour spill response is  
22 determined to be safe and effective.

23       (c) Each regional vessels of opportunity response group must be  
24 composed of a sufficient number of participating vessels to achieve a  
25 goal of deploying a minimum of six capable vessels at any one time  
26 during a spill response incident.

27       (2) A vessels of opportunity response system must include the  
28 maintenance of active contracts with an adequate sized fleet of  
29 capable, nondedicated vessels that ensures the following:

30       (a) Participating vessels can be rapidly equipped with dedicated  
31 response equipment that represents the best available technology for  
32 the booming, storage, and recovery of oil;

33       (b) The response equipment to be utilized is readily available for  
34 use for the expected operating environment. The equipment must include  
35 containment boom and oil recovery systems capable of operating in  
36 currents of at least four knots and waves of at least five feet, unless

1 a different provision of the applicable contingency plan for the tank  
2 vessel or vessels in question contains provisions for equipment that  
3 meets or exceeds this standard; and

4 (c) Crews of the participating vessels are properly trained to  
5 utilize response equipment and are equipped with adequate personal  
6 protection gear.

7 (3) In addition to meeting requirements specified in RCW 88.46.060,  
8 contingency plans for tank vessels operating in Washington waters must  
9 provide for the organization, contracting, and use of the vessels of  
10 opportunity response system to participate in a vessels of opportunity  
11 response system as required by this section.

12 (4) The requirements of this section may be fulfilled by one or  
13 more private organizations or nonprofit corporations providing umbrella  
14 coverage under contract to single or multiple tank vessels. Any  
15 organization or corporation providing coverage to satisfy the  
16 requirements of this section must ensure that the vessels of  
17 opportunity response system being provided includes the establishment  
18 of a minimum of six distinct regional vessels of opportunity response  
19 groups, as is consistent with the planning standards adopted by the  
20 department, that are located strategically to ensure a timely response  
21 in any of Washington's marine waters or the Columbia river.

22 (5) Each regional vessel of opportunity response group must undergo  
23 a minimum of two drills a year to ensure that the overall vessels of  
24 opportunity response system is maintained at an appropriate level of  
25 readiness and that the actual number of participating vessels is  
26 sufficient to meet the goal of deploying a minimum of six capable  
27 vessels at any one time during a spill response incident. The  
28 department may award credit to the plan holder for practice drills  
29 accordingly. Each successful activation of the vessels of opportunity  
30 response system may be considered by the department to satisfy a drill  
31 covering this portion of the contingency plan.

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

34 (1) The owner or operator of a tank vessel transiting to or from a  
35 Washington marine facility shall partner with local emergency  
36 management organizations to fund a volunteer coordination system, to be

1 implemented by the local emergency management organization in  
2 coordination with the department, to supplement the timely and  
3 effective response to spills.

4 (2) In addition to meeting requirements specified in RCW 88.46.060,  
5 contingency plans for tank vessels operating in Washington waters must  
6 provide for the contracting with a local emergency management  
7 organization, or the department, to fund the organization's  
8 establishment, coordination, and use of a volunteer coordination system  
9 as required by this section.

10 (3) The requirements of this section may be fulfilled by one or  
11 more private organizations or nonprofit corporations providing umbrella  
12 coverage under contract to single or multiple tank vessels.

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

21 (5) In reviewing and approving contingency plans, the department  
22 may determine the adequacy of the volunteer coordination system through  
23 practice drills that test compliance with this section and award credit  
24 to the plan holder accordingly. Each successful activation of the  
25 volunteer coordination system may be considered by the department to  
26 satisfy a drill covering this portion of the contingency plan.

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

29 (1) In addition to meeting the requirements specified in this  
30 chapter applicable to all covered vessels, contingency plans for tank  
31 vessels must provide for:

32 (a) Rapid access to equipment located within the state that  
33 reflects the best available protection; and

34 (b) Continuous operation of oil spill response activities without  
35 regard to operating environment to the maximum extent practicable and  
36 without unreasonably jeopardizing crew safety.



1 (2) In reviewing tank vessel contingency plans to measure  
2 compliance with this section, the department shall ensure that, at a  
3 minimum, plans:

4 (a) Achieve oil recovery, to the maximum extent practicable and  
5 without unreasonably jeopardizing crew safety, in areas that routinely  
6 experience high currents up to four knots and waves up to five feet;

7 (b) Include a technical analysis of best achievable technology and  
8 best achievable protection, and incorporate best achievable protection;  
9 and

10 (c) Provide adequate capacity for storage or proper disposal of the  
11 volume and type of oil considered by the contingency plan so as to  
12 achieve continuous operation of oil recovery to the maximum extent  
13 practicable.

14 (3) Contingency plans for tank vessels must also provide for  
15 multispectrum scanning technologies that enhance the ability of  
16 responders to detect and respond to oil spills in times of low  
17 visibility and at night, including technology that is capable of aerial  
18 oil identification, location mapping, and downloading of the  
19 information in real time to response vessels and the command post.  
20 This technology must be operational at the site of the incident within  
21 four hours of plan activation.

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

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

29 (2) The tank vessel equipment deployment drills must focus on, at  
30 a minimum, the following:

31 (a) The functional ability for multiple contingency plans to be  
32 simultaneously effectively activated; and

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

36 (3) Joint drills ordered under this section may be incorporated

1 into other drill requirements under this chapter when deemed beneficial  
2 by the department for enabling larger scale drills within the overall  
3 drill management framework.

4 (4) Each successful large-scale, multiple plan equipment deployment  
5 drill conducted under this section may be considered by the department  
6 as a drill of the underlying contingency plan and credit may be awarded  
7 to the plan holder accordingly.

8 (5) The department shall, when practicable, coordinate with  
9 applicable federal agencies, the state of Oregon, and the province of  
10 British Columbia to establish an incident command and to help ensure  
11 that lessons learned from the drills are evaluated with the goal of  
12 improving the underlying contingency plans.

13 **Sec. 7.** RCW 88.46.060 and 2005 c 78 s 2 are each amended to read  
14 as follows:

15 (1) Each covered vessel shall have a contingency plan for the  
16 containment and cleanup of oil spills from the covered vessel into the  
17 waters of the state and for the protection of fisheries and wildlife,  
18 shellfish beds, natural resources, and public and private property from  
19 such spills. The department shall by rule adopt and periodically  
20 revise standards for the preparation of contingency plans. The  
21 department shall require contingency plans, at a minimum, to meet the  
22 following standards:

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

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

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

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

36 (e) State the number, training preparedness, and fitness of all

1 dedicated, prepositioned personnel assigned to direct and implement the  
2 plan;

3 (f) Incorporate periodic training and drill programs consistent  
4 with this chapter to evaluate whether personnel and equipment provided  
5 under the plan are in a state of operational readiness at all times;

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

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

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

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

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

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

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

37 (n) State the amount and type of equipment available to respond to

1 a spill, where the equipment is located, and the extent to which other  
2 contingency plans rely on the same equipment; ~~((and))~~

3 (o) If the department has adopted rules permitting the use of  
4 dispersants, the circumstances, if any, and the manner for the  
5 application of the dispersants in conformance with the department's  
6 rules;

7 (p) Compliance with section 8 of this act if the contingency plan  
8 is submitted by an umbrella plan holder; and

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

11 (2)~~((a))~~ The owner or operator of a ~~((tank))~~ covered vessel ~~((of~~  
12 ~~three thousand gross tons or more shall))~~ must submit ~~((a))~~ any  
13 required contingency plan updates to the department within ~~((six months~~  
14 ~~after))~~ the timelines established by rule by the department ~~((adopts~~  
15 ~~rules establishing standards for contingency plans under subsection (1)~~  
16 ~~of this section.~~

17 ~~(b) Contingency plans for all other covered vessels shall be~~  
18 ~~submitted to the department within eighteen months after the department~~  
19 ~~has adopted rules under subsection (1) of this section. The department~~  
20 ~~may adopt a schedule for submission of plans within the eighteen month~~  
21 ~~period)).~~

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

30 (b) The contingency plan for a cargo vessel or passenger vessel may  
31 be submitted by the owner or operator of the cargo vessel or passenger  
32 vessel, by the agent for the vessel resident in this state, or by a  
33 Washington state nonprofit corporation established for the purpose of  
34 oil spill response and contingency plan coverage and of which the owner  
35 or operator is a member. Subject to conditions imposed by the  
36 department, the owner, operator, or agent may submit a single  
37 contingency plan for cargo vessels or passenger vessels of a particular  
38 class.

1 (c) A person who has contracted with a covered vessel to provide  
2 containment and cleanup services and who meets the standards  
3 established pursuant to RCW 90.56.240, may submit the plan for any  
4 covered vessel for which the person is contractually obligated to  
5 provide services. Subject to conditions imposed by the department, the  
6 person may submit a single plan for more than one covered vessel.

7 (4) A contingency plan prepared for an agency of the federal  
8 government or another state that satisfies the requirements of this  
9 section and rules adopted by the department may be accepted by the  
10 department as a contingency plan under this section. The department  
11 shall ensure that to the greatest extent possible, requirements for  
12 contingency plans under this section are consistent with the  
13 requirements for contingency plans under federal law.

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

16 (a) The adequacy of containment and cleanup equipment, personnel,  
17 communications equipment, notification procedures and call down lists,  
18 response time, and logistical arrangements for coordination and  
19 implementation of response efforts to remove oil spills promptly and  
20 properly and to protect the environment;

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

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

25 (d) The existence of navigational hazards within the area covered  
26 by the plan;

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

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

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

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

36 (6)(a) The department shall approve a contingency plan only if it  
37 determines that the plan meets the requirements of this section and

1 that, if implemented, the plan is capable, in terms of personnel,  
2 materials, and equipment, of removing oil promptly and properly and  
3 minimizing any damage to the environment.

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

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

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

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

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

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

30 (1) When submitting a contingency plan to the department under RCW  
31 88.46.060, any umbrella plan holders that enroll both tank vessels and  
32 covered vessels that are not tank vessels must, in addition to  
33 satisfying the other requirements of this chapter, specify:

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

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

3 (2) Tank vessel owners or operators that are enrolled with an  
4 umbrella plan holder that have worse case discharge volumes larger than  
5 the maximum volume covered by the contingency plan of the umbrella plan  
6 holder must demonstrate to the department that the owner or operator of  
7 the tank vessel has access to the necessary additional response  
8 capabilities.

9 **Sec. 9.** RCW 88.46.100 and 2000 c 69 s 10 are each amended to read  
10 as follows:

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

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

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

20 ~~(2) The state military department and the department shall request~~  
21 ~~the coast guard to notify the state military department as soon as~~  
22 ~~possible after the coast guard receives notice of a disabled covered~~  
23 ~~vessel or of a collision or near miss incident within twelve miles of~~  
24 ~~the shore of the state. The department shall negotiate an agreement~~  
25 ~~with the coast guard governing procedures for coast guard notification~~  
26 ~~to the state regarding disabled covered vessels and collisions and near~~  
27 ~~miss incidents.~~

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

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

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

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

36 ~~(ii) The total or partial failure of the main propulsion or primary~~

1 ~~steering or any component or control system that causes a reduction in~~  
2 ~~the maneuvering capabilities of the vessel;~~

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

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

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

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

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

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

17 ~~(5) Failure of any person to make a report under this section shall~~  
18 ~~not be used as the basis for the imposition of any fine or penalty))~~  
19 regarding a vessel emergency, the owner or operator of a covered vessel  
20 must notify the state of any vessel emergency that results in the  
21 discharge or substantial threat of discharge of oil to state waters or  
22 that may affect the natural resources of the state. The purpose of  
23 this notification is to enable the department to coordinate with the  
24 vessel operator, contingency plan holder, and the United States coast  
25 guard to protect the public health, welfare, and natural resources of  
26 the state and to ensure all reasonable spill preparedness and response  
27 measures are in place prior to a spill occurring.

28 **Sec. 10.** RCW 88.46.090 and 2000 c 69 s 9 are each amended to read  
29 as follows:

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



1 required contingency or spill prevention plan or financial  
2 responsibility.

3 (2) Except as provided in subsection (4) of this section, it shall  
4 be unlawful for a covered vessel to transfer oil to or from an onshore  
5 or offshore facility that does not have an approved contingency plan  
6 required under RCW 90.56.210, a spill prevention plan required by RCW  
7 90.56.200, or financial responsibility in compliance with chapter 88.40  
8 RCW and the federal oil pollution act of 1990.

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

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

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

18 (b) A contingency plan and prevention plan has been submitted to  
19 the department as required by this chapter and rules adopted by the  
20 department and the department is reviewing the plan and has not denied  
21 approval; or

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

24 (5) Any person may rely on a copy of the statement issued by the  
25 department to RCW 88.46.060 as evidence that the vessel has an approved  
26 contingency plan and the statement issued pursuant to RCW 88.46.040 as  
27 evidence that the vessel has an approved spill prevention plan.

28 (6) Except for violations of subsection (1) or (2) of this section,  
29 any person who violates the provisions of this chapter or rules or  
30 orders adopted or issued pursuant thereto, shall incur, in addition to  
31 any other penalty as provided by law, a penalty in an amount of up to  
32 ten thousand dollars a day for each violation. Each violation is a  
33 separate offense, and in case of a continuing violation, every day's  
34 continuance is a separate violation. Every act of commission or  
35 omission which procures, aids, or abets in the violation shall be  
36 considered a violation under the provisions of this subsection and  
37 subject to penalty. The penalty amount shall be set in consideration  
38 of the previous history of the violator and the severity of the

1 violation's impact on public health and the environment in addition to  
2 other relevant factors. The penalty shall be imposed pursuant to the  
3 procedures set forth in RCW 43.21B.300.

4 **Sec. 11.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read  
5 as follows:

6 The department, in consultation with the departments of fish and  
7 wildlife and natural resources, and the parks and recreation  
8 commission, shall adopt rules establishing a compensation schedule for  
9 the discharge of oil in violation of this chapter and chapter 90.56  
10 RCW. The amount of compensation assessed under this schedule shall be  
11 no less than (~~one dollar~~) three dollars per gallon of oil spilled and  
12 no greater than (~~one~~) three hundred dollars per gallon of oil  
13 spilled. The compensation schedule shall reflect adequate compensation  
14 for unquantifiable damages or for damages not quantifiable at  
15 reasonable cost for any adverse environmental, recreational, aesthetic,  
16 or other effects caused by the spill and shall take into account:

17 (1) Characteristics of any oil spilled, such as toxicity,  
18 dispersibility, solubility, and persistence, that may affect the  
19 severity of the effects on the receiving environment, living organisms,  
20 and recreational and aesthetic resources;

21 (2) The sensitivity of the affected area as determined by such  
22 factors as: (a) The location of the spill; (b) habitat and living  
23 resource sensitivity; (c) seasonal distribution or sensitivity of  
24 living resources; (d) areas of recreational use or aesthetic  
25 importance; (e) the proximity of the spill to important habitats for  
26 birds, aquatic mammals, fish, or to species listed as threatened or  
27 endangered under state or federal law; (f) significant archaeological  
28 resources as determined by the department of archaeology and historic  
29 preservation; and (g) other areas of special ecological or recreational  
30 importance, as determined by the department; and

31 (3) Actions taken by the party who spilled oil or any party liable  
32 for the spill that: (a) Demonstrate a recognition and affirmative  
33 acceptance of responsibility for the spill, such as the immediate  
34 removal of oil and the amount of oil removed from the environment; or  
35 (b) enhance or impede the detection of the spill, the determination of  
36 the quantity of oil spilled, or the extent of damage, including the  
37 unauthorized removal of evidence such as injured fish or wildlife.

1           **Sec. 12.** RCW 90.56.370 and 2000 c 69 s 21 are each amended to read  
2 as follows:

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

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

11           (3) Damages for which responsible parties are liable under this  
12 section include damages provided in subsections (1) and (2) of this  
13 section resulting from any action conducted in response to a violation  
14 of RCW 90.56.320, including actions to collect, investigate, perform  
15 surveillance over, remove, contain, treat, or disperse oil discharged  
16 into waters of the state.

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

- 22           (a) An act of war or sabotage;
- 23           (b) An act of God;
- 24           (c) Negligence on the part of the United States government; or
- 25           (d) Negligence on the part of the state of Washington.

26           (~~(3)~~) (5) The liability established in this section shall in no  
27 way affect the rights which: (a) The owner or other person having  
28 control over the oil may have against any person whose acts may in any  
29 way have caused or contributed to the discharge of oil, or (b) the  
30 state of Washington may have against any person whose actions may have  
31 caused or contributed to the discharge of oil.

32           NEW SECTION.   **Sec. 13.** (1) The director of the department of  
33 ecology must formally request that the federal government contribute to  
34 the establishment of regional oil spill response equipment caches in  
35 Washington to ensure adequate response capabilities during a multiple  
36 spill event.

37           (2) This section expires December 31, 2014.

1        NEW SECTION.    **Sec. 14.**    (1) The department of ecology shall prepare  
2 a report to the legislature, consistent with RCW 43.01.036, that  
3 identifies the lessons learned through the implementation of sections  
4 3 through 6 of this act and presents any recommendations for changes in  
5 the state oil spill preparation and response policies gleaned from the  
6 lessons learned.

7        (2) In preparing the report required in this section, the  
8 department of ecology shall consult with the Puget Sound partnership  
9 and a diverse selection of appropriate stakeholders interested in tank  
10 vessel oil spill preparedness and response to be invited to participate  
11 by the director of the department of ecology. Any recommendations must  
12 identify any relevant perspectives of the invited stakeholders on the  
13 cost-benefit and cost-effectiveness of alternative approaches.

14        (3) The report required by this section must be delivered by  
15 January 3, 2015.

16        (4) This section expires July 31, 2015.

17        NEW SECTION.    **Sec. 15.**    (1) The requirements of this act must be  
18 met according to the compliance schedule provided in this subsection.  
19 The owners or operators of all affected vessels must either have new  
20 contingency plans approved by the department of ecology or updates to  
21 existing contingency plans approved by the department of ecology for  
22 the following plan components by the following dates:

23        (a) Compliance with section 3 of this act, relating to vessels of  
24 opportunity response systems, by July 1, 2012;

25        (b) Compliance with section 5(3) of this act, relating to  
26 multispectrum scanning technologies, by July 1, 2012;

27        (c) With the exception of section 5(3) of this act, compliance with  
28 the remainder of section 5 of this act, relating to enhanced  
29 contingency plan requirements for tank vessels, by January 1, 2013;

30        (d) Compliance with section 4 of this act, relating to volunteer  
31 coordination systems, by July 1, 2014; and

32        (e) Other than sections 4, 13, and 14 of this act and RCW 88.46.090  
33 and 90.48.366, which become enforceable on the effective date of this  
34 section, all other sections of this act must be complied with by  
35 October 1, 2011.

36        (2) In the initial implementation of sections 3 through 8 of this  
37 act, the department of ecology shall consult with appropriate

1 stakeholders interested in tank vessel oil spill preparedness and  
2 response, as invited to participate by the director of the department  
3 of ecology. However, nothing in this subsection limits the ability of  
4 the department of ecology to implement this act in the manner deemed  
5 most appropriate by the department of ecology.

6 (3) Any rules the department of ecology deems necessary for the  
7 implementation of this act must be adopted according to the compliance  
8 schedule in subsection (1) of this section.

9 (4) This section expires July 31, 2014.

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