
HOUSE BILL 1186

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Lias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu, and Seaquist

Read first time 01/14/11. Referred to Committee on Environment.

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, and 90.48.366;
3 reenacting and amending RCW 88.46.010; adding new sections to chapter
4 88.46 RCW; creating new sections; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
7 "deepwater horizon" wellhead blowout, explosion, and oil spill in the
8 Gulf of Mexico on May 24, 2010, resulted in the release of two hundred
9 million gallons of crude oil into the environment. Impacts after the
10 spill have included deaths and injuries, extensive damage to the marine
11 environment and wildlife habitats, as well as large socioeconomic
12 damages to local citizens, commercial fishing, tourism, businesses, and
13 recreation. As late as six months after the spill, four thousand two
14 hundred square miles of the Gulf of Mexico were closed to commercial
15 shrimp harvest. The incident in the Gulf of Mexico is a reminder that
16 the threat of major spills to Washington's environment, natural
17 resources, economy, quality of life, and private property is
18 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. These efforts, and
7 other recent studies, have made clear that the state may be
8 underprepared for a large scale oil spill of the magnitude possible by
9 failures of an oil tanker or a tank barge, particularly within the
10 confined waters of Puget Sound.

11 (3) The legislature further finds that a large scale oil spill from
12 an oil tanker or barge could result in the loss of an estimated one
13 hundred sixty-five thousand jobs and result in ten billion eight
14 hundred million dollars in economic impacts. Such a spill could
15 devastate multiple industries in the state, including commercial
16 fishing, tourism, the shellfish industry, and recreation.

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

- 33 (a) Processes that are being developed, or could feasibly be
34 developed, given overall reasonable expenditures on research and
35 development((7))i and
- 36 (b) Processes that are currently in use.

1 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 system" means an oil spill response
31 system that, before a spill occurs, prepares for the utilization of
32 commercial fishing vessels and other nondedicated commercial vessels
33 that are under contract with plan holders to train for spill response
34 incidents, be adequately equipped to respond to a spill, and to assist
35 in spill response.

36 (28) "Volunteer coordination system" means an oil spill response
37 system that, before a spill occurs, prepares for the utilization of
38 local emergency management centers or organizations to implement a

1 system that ensures the efficient and trained use of volunteers to
2 assist with shoreline protection, wildlife recovery, and other aspects
3 of a spill response.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 88.46 RCW
5 to read as follows:

6 (1) By July 1, 2012, the owner or operator of a tank vessel
7 transiting to or from a Washington port shall establish and fund a
8 vessels of opportunity system to supplement the timely and effective
9 response to spills. The vessels of opportunity system must include the
10 maintenance of active contracts with a fleet of eligible vessels that
11 ensures the following:

12 (a) At least six vessels and crew equipped with best available
13 technology for booming, storage, and recovery of oil are included in
14 the system;

15 (b) The equipment to be utilized is appropriate for the expected
16 operating environment, including boom and skimming equipment capable of
17 operating in currents of at least four knots and waves of at least five
18 feet;

19 (c) The vessels are equipped with adequate personal protection
20 gear; and

21 (d) A minimum of four exercises a year are planned and executed to
22 ensure that the vessels of opportunity system is maintained at an
23 appropriate level of readiness.

24 (2) In addition to meeting requirements specified in RCW 88.46.060,
25 contingency plans for tank vessels operating in Washington waters must
26 provide for the organization, contracting, and use of a vessels of
27 opportunity system as required by this section.

28 (3) The requirements of this section may be fulfilled by one or
29 more private organizations or nonprofit corporations providing umbrella
30 coverage under contract to single or multiple tank vessels. Any
31 organization or corporation providing umbrella coverage to satisfy the
32 requirements of this section must ensure that the vessels of
33 opportunity system being provided includes the establishment of a
34 minimum of six distinct regional vessels of opportunity response
35 groups, as is consistent with the planning standards adopted by the
36 department, that individually satisfy the requirements of a vessels of

1 opportunity system as provided in this section and that are located
2 strategically to ensure a timely response in any of Washington's marine
3 waters or the Columbia river.

4 (4) In reviewing and approving contingency plans, the department
5 may determine the adequacy of the vessels of opportunity system through
6 practice drills that test compliance with this section and award credit
7 accordingly. Each successful activation of the vessels of opportunity
8 system may be considered by the department to satisfy a drill covering
9 this portion of the contingency plan.

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

12 (1) By July 1, 2012, the owner or operator of a tank vessel
13 transiting to or from a Washington port shall establish and fund a
14 volunteer coordination system to supplement the timely and effective
15 response to spills.

16 (2) In addition to meeting requirements specified in RCW 88.46.060,
17 contingency plans for tank vessels operating in Washington waters must
18 provide for the organization, contracting, and use of a volunteer
19 coordination system as required by this section.

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

23 (4) An act or omission by any volunteer participating in a spill
24 response or training as part of a volunteer coordination system, while
25 engaged in such activities, does not impose any liability on the
26 department, the associated local emergency management center or
27 organization, or the volunteer for civil damages resulting from the act
28 or omission. However, the immunity provided under this subsection does
29 not apply to an act or omission that constitutes gross negligence or
30 willful or wanton misconduct.

31 (5) In reviewing and approving contingency plans, the department
32 may determine the adequacy of the volunteer coordination system through
33 practice drills that test compliance with this section and award credit
34 accordingly. Each successful activation of the volunteer coordination
35 system may be considered by the department to satisfy a drill covering
36 this portion of the contingency plan.

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

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

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

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

11 (2) In reviewing tank vessel contingency plans to measure
12 compliance with this section, the department shall ensure that, at a
13 minimum, plans are designed to:

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

17 (b) Provide rapid access to technologies that enhance the ability
18 of responders to detect and respond to spills in times of low
19 visibility and at night, including technology that is capable of aerial
20 oil identification and location mapping; and

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

25 (3) All contingency plans for tank vessels must be updated by July
26 1, 2012, to include the requirements of this section and must fully
27 document the state of the available response equipment and compliance
28 with the best available protection standard.

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

31 (1) In addition to the authority to order drills otherwise provided
32 in this chapter, the department is responsible for ordering additional
33 large-scale, multiple plan equipment deployment drills of tank vessels
34 to determine the adequacy of the owner's or operator's compliance with
35 the contingency plan requirements of this chapter. The department must
36 order at least one drill as outlined in this section annually.

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

3 (a) The functional ability for multiple contingency plans to be
4 simultaneously effectively activated;

5 (b) The actual probability of response equipment being available
6 for use in the case of simultaneous spills;

7 (c) The operational readiness during the first six hours of a spill
8 and longer into the days and weeks following a large spill.

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

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

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

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

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

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

32 (e) State the number, training preparedness, and fitness of all
33 dedicated, prepositioned personnel assigned to direct and implement the
34 plan;

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

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

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

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

19 (j) Provide arrangements for the repositioning of spill
20 containment and cleanup equipment and trained personnel at strategic
21 locations from which they can be deployed to the spill site to promptly
22 and properly remove the spilled oil;

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

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

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

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

35 (o) If the department has adopted rules permitting the use of
36 dispersants, the circumstances, if any, and the manner for the
37 application of the dispersants in conformance with the department's
38 rules; and

1 (p) Include any additional elements of contingency plans as
2 required by this chapter.

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

9 ~~(b) Contingency plans for all other covered vessels shall be~~
10 ~~submitted to the department within eighteen months after the department~~
11 ~~has adopted rules under subsection (1) of this section. The department~~
12 ~~may adopt a schedule for submission of plans within the eighteen month~~
13 ~~period)).~~

14 (3)(a) The owner or operator of a tank vessel or of the facilities
15 at which the vessel will be unloading its cargo, or a Washington state
16 nonprofit corporation established for the purpose of oil spill response
17 and contingency plan coverage and of which the owner or operator is a
18 member, shall submit the contingency plan for the tank vessel. Subject
19 to conditions imposed by the department, the owner or operator of a
20 facility may submit a single contingency plan for tank vessels of a
21 particular class that will be unloading cargo at the facility.

22 (b) The contingency plan for a cargo vessel or passenger vessel may
23 be submitted by the owner or operator of the cargo vessel or passenger
24 vessel, by the agent for the vessel resident in this state, or by a
25 Washington state nonprofit corporation established for the purpose of
26 oil spill response and contingency plan coverage and of which the owner
27 or operator is a member. Subject to conditions imposed by the
28 department, the owner, operator, or agent may submit a single
29 contingency plan for cargo vessels or passenger vessels of a particular
30 class.

31 (c) A person who has contracted with a covered vessel to provide
32 containment and cleanup services and who meets the standards
33 established pursuant to RCW 90.56.240, may submit the plan for any
34 covered vessel for which the person is contractually obligated to
35 provide services. Subject to conditions imposed by the department, the
36 person may submit a single plan for more than one covered vessel.

37 (4) A contingency plan prepared for an agency of the federal
38 government or another state that satisfies the requirements of this

1 section and rules adopted by the department may be accepted by the
2 department as a contingency plan under this section. The department
3 shall ensure that to the greatest extent possible, requirements for
4 contingency plans under this section are consistent with the
5 requirements for contingency plans under federal law.

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

8 (a) The adequacy of containment and cleanup equipment, personnel,
9 communications equipment, notification procedures and call down lists,
10 response time, and logistical arrangements for coordination and
11 implementation of response efforts to remove oil spills promptly and
12 properly and to protect the environment;

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

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

17 (d) The existence of navigational hazards within the area covered
18 by the plan;

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

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

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

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

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

33 (7) The approval of the contingency plan shall be valid for five
34 years. Upon approval of a contingency plan, the department shall
35 provide to the person submitting the plan a statement indicating that
36 the plan has been approved, the vessels covered by the plan, and other
37 information the department determines should be included.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **Sec. 9.** RCW 88.46.090 and 2000 c 69 s 9 are each amended to read
33 as follows:

34 (1) Except as provided in subsection (4) of this section, it shall
35 be unlawful for a covered vessel to enter the waters of the state
36 without an approved contingency plan required by ((RCW 88.46.060)) this
37 chapter, a spill prevention plan required by RCW 88.46.040, or

1 financial responsibility in compliance with chapter 88.40 RCW and the
2 federal oil pollution act of 1990. The department may deny entry onto
3 the waters of the state to any covered vessel that does not have a
4 required contingency or spill prevention plan or financial
5 responsibility.

6 (2) Except as provided in subsection (4) of this section, it shall
7 be unlawful for a covered vessel to transfer oil to or from an onshore
8 or offshore facility that does not have an approved contingency plan
9 required under RCW 90.56.210, a spill prevention plan required by RCW
10 90.56.200, or financial responsibility in compliance with chapter 88.40
11 RCW and the federal oil pollution act of 1990.

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

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

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

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

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

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

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

1 considered a violation under the provisions of this subsection and
2 subject to penalty. The penalty amount shall be set in consideration
3 of the previous history of the violator and the severity of the
4 violation's impact on public health and the environment in addition to
5 other relevant factors. The penalty shall be imposed pursuant to the
6 procedures set forth in RCW 43.21B.300.

7 **Sec. 10.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read
8 as follows:

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

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

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

34 (3) Actions taken by the party who spilled oil or any party liable
35 for the spill that: (a) Demonstrate a recognition and affirmative
36 acceptance of responsibility for the spill, such as the immediate
37 removal of oil and the amount of oil removed from the environment; or

1 (b) enhance or impede the detection of the spill, the determination of
2 the quantity of oil spilled, or the extent of damage, including the
3 unauthorized removal of evidence such as injured fish or wildlife.

4 NEW SECTION. **Sec. 11.** Any rules the department of ecology deems
5 necessary for the implementation of this act, if any, must be adopted
6 by January 1, 2012.

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