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SENATE BILL 5439

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Ranker, Rockefeller, Nelson, Regala, Hargrove, Hobbs, Fraser, White, Conway, and Kline

Read first time 01/25/11. Referred to Committee on Natural Resources & Marine Waters.

1 AN ACT Relating to oil spills; amending RCW 88.46.060, 88.46.100,  
2 88.46.090, 90.48.366, and 90.56.370; reenacting and amending RCW  
3 88.46.010; adding new sections to chapter 88.46 RCW; creating new  
4 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 (4) The legislature therefore finds that:

18 (a) Washington's oil spill prevention, preparedness, response, and  
19 restoration laws should be enhanced to more effectively protect  
20 Washington waters from the potentially calamitous consequences of oil  
21 spills; and

22 (b) Those responsible for oil spills should provide just  
23 compensation to property owners and other persons suffering losses  
24 caused by oil spills.

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

27 The definitions in this section apply throughout this chapter  
28 unless the context clearly requires otherwise.

29 (1) "Best achievable protection" means the highest level of  
30 protection that can be achieved through the use of the best achievable  
31 technology and those staffing levels, training procedures, and  
32 operational methods that provide the greatest degree of protection  
33 achievable. The director's determination of best achievable protection  
34 shall be guided by the critical need to protect the state's natural  
35 resources and waters, while considering:

36 (a) The additional protection provided by the measures;

37 (b) The technological achievability of the measures; and

1 (c) The cost of the measures.

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

4 (a) Processes that are being developed, or could feasibly be  
5 developed, given overall reasonable expenditures on research and  
6 development((7)); and

7 (b) Processes that are currently in use.

8 In determining what is best achievable technology, the director  
9 shall consider the effectiveness, engineering feasibility, and  
10 commercial availability of the technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (15)(a) "Owner or operator" means (i) in the case of a vessel, any  
29 person owning, operating, or chartering by demise, the vessel; (ii) in  
30 the case of an onshore or offshore facility, any person owning or  
31 operating the facility; and (iii) in the case of an abandoned vessel or  
32 onshore or offshore facility, the person who owned or operated the  
33 vessel or facility immediately before its abandonment.

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

37 (16) "Passenger vessel" means a ship of three hundred or more gross

1 tons with a fuel capacity of at least six thousand gallons carrying  
2 passengers for compensation.

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

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

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

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

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

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

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

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

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

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

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

34 (26) "Worst case spill" means:

35 (a) In the case of a vessel, a spill of the entire cargo and fuel  
36 of the vessel complicated by adverse weather conditions; and

37 (b) In the case of an onshore or offshore facility, the largest  
38 foreseeable spill in adverse weather conditions.

1       (27) "Vessels of opportunity system" means an oil spill response  
2 system that, before a spill occurs, prepares for the utilization of  
3 commercial fishing vessels and other nondedicated commercial vessels  
4 that are under contract with plan holders to train for spill response  
5 incidents, be adequately equipped to respond to a spill, and to assist  
6 in spill response.

7       (28) "Volunteer coordination system" means an oil spill response  
8 system that, before a spill occurs, prepares for the utilization of  
9 local emergency management centers or organizations to implement a  
10 system that ensures the efficient and trained use of volunteers to  
11 assist with shoreline protection, wildlife recovery, and other aspects  
12 of a spill response.

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

15       (1) By July 1, 2012, the owner or operator of a tank vessel  
16 transiting to or from a Washington port shall establish and fund a  
17 vessels of opportunity system to supplement the timely and effective  
18 response to spills. The vessels of opportunity system must include the  
19 maintenance of active contracts with a fleet of eligible vessels that  
20 ensures the following:

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

24       (b) The equipment to be utilized is appropriate for the expected  
25 operating environment, including boom and skimming equipment capable of  
26 operating in currents of at least four knots and waves of at least nine  
27 feet;

28       (c) The vessels are equipped with adequate personal protection  
29 gear; and

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

33       (2) In addition to meeting requirements specified in this chapter,  
34 contingency plans for tank vessels operating in Washington waters must  
35 provide for the organization, contracting, and use of a vessels of  
36 opportunity system as required by this section. All contingency plans

1 for tank vessels approved by the department prior to the effective date  
2 of this section must be updated by July 1, 2012, to meet the  
3 requirements of this section.

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

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

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

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

28 (2) In addition to meeting requirements specified in this chapter,  
29 contingency plans for tank vessels operating in Washington waters must  
30 provide for the organization, contracting, and use of a volunteer  
31 coordination system as required by this section. All contingency plans  
32 for tank vessels approved by the department prior to the effective date  
33 of this section must be updated by July 1, 2012, to meet the  
34 requirements of this section.

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

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

9 (5) In reviewing and approving contingency plans, the department  
10 may determine the adequacy of the volunteer coordination system through  
11 practice drills that test compliance with this section and award credit  
12 accordingly. Each successful activation of the volunteer coordination  
13 system may be considered by the department to satisfy a drill covering  
14 this portion of the contingency plan.

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

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

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

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

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

28 (a) Achieve oil recovery, to the maximum extent practicable and  
29 without unreasonably jeopardizing crew safety, in areas that routinely  
30 experience high currents up to four knots and waves up to nine feet;

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

35 (c) Provide adequate capacity for storage or proper disposal of the  
36 volume and type of oil considered by the contingency plan so as to



1 achieve continuous operation of oil recovery to the maximum extent  
2 practicable.

3 (3) All contingency plans for tank vessels approved by the  
4 department prior to the effective date of this section must be updated  
5 by July 1, 2012, to include the requirements of this section and must  
6 fully document the state of the available response equipment and  
7 compliance with the best available protection standard.

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

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

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

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

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

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

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

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

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

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

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

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

12 (e) State the number, training preparedness, and fitness of all  
13 dedicated, prepositioned personnel assigned to direct and implement the  
14 plan;

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

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

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

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

36 (j) Provide arrangements for the prepositioning of spill  
37 containment and cleanup equipment and trained personnel at strategic

1 locations from which they can be deployed to the spill site to promptly  
2 and properly remove the spilled oil;

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

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

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

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

15 (o) If the department has adopted rules permitting the use of  
16 dispersants, the circumstances, if any, and the manner for the  
17 application of the dispersants in conformance with the department's  
18 rules; and

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

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

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

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

1 facility may submit a single contingency plan for tank vessels of a  
2 particular class that will be unloading cargo at the facility.

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

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

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

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

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

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

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

36 (d) The existence of navigational hazards within the area covered  
37 by the plan;

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

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

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

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

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

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

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

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

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

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

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

1 ~~operator of a covered vessel shall notify the~~) addition to any  
2 notifications that the owner or operator of a covered vessel must  
3 provide to the United States coast guard ((within one hour:

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

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

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

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

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

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

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

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

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

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

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

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

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

36 ~~(c) A near miss incident is an incident that requires the pilot or~~  
37 ~~master of a covered vessel to take evasive actions or make significant~~

1 ~~course corrections in order to avoid a collision with another ship or~~  
2 ~~to avoid a grounding as required by the international rules of the~~  
3 ~~road.~~

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

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

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

26 (2) Except as provided in subsection (4) of this section, it shall  
27 be unlawful for a covered vessel to transfer oil to or from an onshore  
28 or offshore facility that does not have an approved contingency plan  
29 required under RCW 90.56.210, a spill prevention plan required by RCW  
30 90.56.200, or financial responsibility in compliance with chapter 88.40  
31 RCW and the federal oil pollution act of 1990.

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

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

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

5 (b) A contingency plan and prevention plan has been submitted to  
6 the department as required by this chapter and rules adopted by the  
7 department and the department is reviewing the plan and has not denied  
8 approval; or

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

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

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

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

31 The department, in consultation with the departments of fish and  
32 wildlife and natural resources, and the parks and recreation  
33 commission, shall adopt rules establishing a compensation schedule for  
34 the discharge of oil in violation of this chapter and chapter 90.56  
35 RCW. The amount of compensation assessed under this schedule shall be  
36 no less than (~~one dollar~~) three dollars per gallon of oil spilled and  
37 no greater than (~~one~~) three hundred dollars per gallon of oil



1 spilled. The compensation schedule shall reflect adequate compensation  
2 for unquantifiable damages or for damages not quantifiable at  
3 reasonable cost for any adverse environmental, recreational, aesthetic,  
4 or other effects caused by the spill and shall take into account:

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

9 (2) The sensitivity of the affected area as determined by such  
10 factors as: (a) The location of the spill; (b) habitat and living  
11 resource sensitivity; (c) seasonal distribution or sensitivity of  
12 living resources; (d) areas of recreational use or aesthetic  
13 importance; (e) the proximity of the spill to important habitats for  
14 birds, aquatic mammals, fish, or to species listed as threatened or  
15 endangered under state or federal law; (f) significant archaeological  
16 resources as determined by the department of archaeology and historic  
17 preservation; and (g) other areas of special ecological or recreational  
18 importance, as determined by the department; and

19 (3) Actions taken by the party who spilled oil or any party liable  
20 for the spill that: (a) Demonstrate a recognition and affirmative  
21 acceptance of responsibility for the spill, such as the immediate  
22 removal of oil and the amount of oil removed from the environment; or  
23 (b) enhance or impede the detection of the spill, the determination of  
24 the quantity of oil spilled, or the extent of damage, including the  
25 unauthorized removal of evidence such as injured fish or wildlife.

26 **Sec. 11.** RCW 90.56.370 and 2000 c 69 s 21 are each amended to read  
27 as follows:

28 (1) Any person owning oil or having control over oil that enters  
29 the waters of the state in violation of RCW 90.56.320 shall be strictly  
30 liable, without regard to fault, for the damages to persons or  
31 property, public or private, or natural resources, caused by such  
32 entry.

33 (2) Damages for which responsible parties are liable under this  
34 section include, but are not limited to:

35 (a) Injury to, or economic loss resulting from destruction of or  
36 injury to, real or personal property, which shall be recoverable by any  
37 claimant who has an ownership or leasehold interest in the property;

1       (b) Loss of subsistence use of natural resources, which is  
2 recoverable by any claimant who so uses natural resources that have  
3 been injured, destroyed, or lost;

4       (c) Loss of taxes, royalties, rents, or net profit shares caused by  
5 injury, destruction, loss, or impairment of use of real or personal  
6 property, or natural resources; and

7       (d) Loss of profits or impairment of earning capacity due to the  
8 injury, destruction, or loss of real or personal property, or natural  
9 resources, which shall be recoverable by a claimant who derives at  
10 least twenty-five percent of his or her earnings from use of the  
11 property or natural resources, or, if that use is seasonal in nature,  
12 twenty-five percent of his or her earnings during the applicable  
13 season.

14       (3) Damages for which responsible parties are liable under this  
15 section include, but are not limited to, damages provided in  
16 subsections (1) and (2) of this section resulting from any action  
17 conducted in response to a violation of RCW 90.56.320, including  
18 actions to collect, investigate, perform surveillance over, remove,  
19 contain, treat, or disperse oil discharged into waters of the state.

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

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

29       ~~((+3))~~ (5) The liability established in this section shall in no  
30 way affect the rights which:

31       (a) The owner or other person having control over the oil may have  
32 against any person whose acts may in any way have caused or contributed  
33 to the discharge of oil(~~(7)~~); or

34       (b) The state of Washington may have against any person whose  
35 actions may have caused or contributed to the discharge of oil.

36       NEW SECTION. Sec. 12. The department of ecology must adopt any

1 rules it deems necessary for the implementation of this act by January  
2 1, 2012.

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