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**SUBSTITUTE HOUSE BILL 2389**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

**By** House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Valle, Pruitt, Bray, J. Kohl, Brekke, D. Sommers and Jones)

Read first time 01/21/92.

1       AN ACT Relating to revisions in existing oil spill prevention and  
2 clean-up statutes; amending RCW 43.21I.010, 43.21I.020, 82.23B.010,  
3 82.23B.020, 43.21I.030, 88.40.011, 88.40.020, 88.40.040, 88.44.010,  
4 88.44.100, 88.44.110, 88.46.010, 88.46.050, 88.46.060, 88.46.090,  
5 88.46.110, 90.48.366, 90.48.368, 90.48.400, 90.56.010, 90.56.100,  
6 90.56.210, 90.56.300, 90.56.310, 90.56.330, 90.56.380, 90.56.390,  
7 90.56.400, 90.56.450, 90.56.510, and 90.56.520; creating a new section;  
8 and declaring an emergency.

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

10       **Sec. 1.** RCW 43.21I.010 and 1991 c 200 s 402 are each amended to  
11 read as follows:

12       (1) There is hereby created an agency of state government to be  
13 known as the office of marine safety. The office shall be vested with  
14 all powers and duties transferred to it and such other powers and

1 duties as may be authorized by law. The main administrative office of  
2 the office shall be located in the city of Olympia. The administrator  
3 may establish administrative facilities in other locations, if deemed  
4 necessary for the efficient operation of the office, and if consistent  
5 with the principles set forth in subsection (2) of this section.

6 (2) The office of marine safety shall be organized consistent with  
7 the goals of providing state government with a focus in marine  
8 transportation and serving the people of this state. The legislature  
9 recognizes that the administrator needs sufficient organizational  
10 flexibility to carry out the office's various duties. To the extent  
11 practical, the administrator shall consider the following  
12 organizational principles:

13 (a) Clear lines of authority which avoid functional duplication  
14 within and between subelements of the office;

15 (b) A clear and simplified organizational design promoting  
16 accessibility, responsiveness, and accountability to the legislature,  
17 the consumer, and the general public; and

18 (c) Maximum span of control without jeopardizing adequate  
19 supervision.

20 (3) The office shall provide leadership and coordination in  
21 identifying and resolving threats to the safety of marine  
22 transportation and the impact of marine transportation on the  
23 environment:

24 (a) Working with other state agencies and local governments to  
25 strengthen the state and local governmental partnership in providing  
26 public protection;

27 (b) Providing expert advice to the executive and legislative  
28 branches of state government;

29 (c) Providing active and fair enforcement of rules;

1 (d) Working with other federal, state, and local agencies and  
2 facilitating their involvement in planning and implementing marine  
3 safety measures;

4 (e) Providing information to the public; and

5 (f) Carrying out such other related actions as may be appropriate  
6 to this purpose.

7 (4) In accordance with the administrative procedure act, chapter  
8 34.05 RCW, the office shall ensure an opportunity for consultation,  
9 review, and comment before the adoption of standards, guidelines, and  
10 rules.

11 (5) Consistent with the principles set forth in subsection (2) of  
12 this section, the administrator may create such administrative  
13 divisions, offices, bureaus, and programs within the office as the  
14 administrator deems necessary. The administrator shall have complete  
15 charge of and supervisory powers over the office, except where the  
16 administrator's authority is specifically limited by law.

17 (6) The administrator shall appoint such personnel as are necessary  
18 to carry out the duties of the office in accordance with chapter 41.06  
19 RCW. In addition to exemptions set forth in RCW 41.06.070, the  
20 administrator may also appoint and fix the salaries of up to six  
21 employees who are exempt from chapter 41.06 RCW. Any exempt staff  
22 positions authorized by the state personnel board under RCW  
23 41.06.070(28) before February 1, 1992, shall be included in the six  
24 exempt staff authorized by this subsection. Nothing in this subsection  
25 shall be deemed to prohibit the state personnel board from authorizing  
26 on or after February 1, 1992, additional exempt staff under the  
27 provisions of RCW 41.06.070(28).

28 **Sec. 2.** RCW 43.21I.020 and 1991 c 200 s 403 are each amended to  
29 read as follows:

1       The executive head and appointing authority of the office shall be  
2 the administrator of marine safety. The administrator shall be  
3 appointed by, and serve at the pleasure of, the governor (~~in~~  
4 ~~accordance with RCW 43.17.020~~). The administrator shall be paid a  
5 salary to be fixed by the governor in accordance with RCW 43.03.040.

6       **Sec. 3.** RCW 82.23B.010 and 1991 c 200 s 801 are each amended to  
7 read as follows:

8       Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10       (1) "Barrel" means a unit of measurement of volume equal to forty-  
11 two United States gallons of crude oil or petroleum product.

12       (2) "Crude oil" means any naturally occurring liquid hydrocarbons  
13 at atmospheric temperature and pressure coming from the earth,  
14 including condensate and natural gasoline.

15       (3) "Department" means the department of revenue.

16       (4) "Marine terminal" means a facility of any kind, other than a  
17 waterborne vessel, that is used for transferring crude oil or petroleum  
18 products to or from a waterborne vessel or barge.

19       (5) "Navigable waters" means those waters of the state and their  
20 adjoining shorelines that are subject to the ebb and flow of the tide,  
21 including the Columbia and Snake rivers.

22       (6) "Person" has the meaning provided in RCW 82.04.030.

23       (7) "Petroleum product" means any liquid hydrocarbons at  
24 atmospheric temperature and pressure that are the product of the  
25 fractionation, distillation, or other refining or processing of crude  
26 oil, and that are used as, useable as, or may be refined as a fuel or  
27 fuel blendstock, including but not limited to, gasoline, diesel fuel,  
28 aviation fuel, bunker fuel, and fuels containing a blend of alcohol and  
29 petroleum. Petroleum product does not include any substance listed in

1 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
2 section 101(14) of the federal comprehensive environmental response,  
3 compensation, and liability act of 1980, as amended by P.L. 99-499.

4 (8) "Taxpayer" means the person owning crude oil or petroleum  
5 products immediately before the same are off-loaded at a marine  
6 terminal in this state and who is liable for the taxes imposed by this  
7 chapter.

8 (9) "Waterborne vessel or barge" means any ship, barge, or other  
9 watercraft capable of travelling on the navigable waters of this state  
10 and capable of transporting any crude oil or petroleum product in  
11 quantities of ten thousand gallons or more for purposes other than  
12 providing fuel for its motor or engine.

13 **Sec. 4.** RCW 82.23B.020 and 1991 c 200 s 802 are each amended to  
14 read as follows:

15 (1) An oil spill response tax is imposed on the privilege of off-  
16 loading crude oil or petroleum products at a marine terminal within  
17 this state from a waterborne vessel or barge operating on the navigable  
18 waters of this state. The tax imposed in this section is levied upon  
19 the owner of the crude oil or petroleum products immediately before  
20 off-loading begins at the rate of two cents per barrel of crude oil or  
21 petroleum product off-loaded.

22 (2) In addition to the tax imposed in subsection (1) of this  
23 section, an oil spill administration tax is imposed on the privilege of  
24 off-loading crude oil or petroleum products at a marine terminal within  
25 this state from a waterborne vessel or barge operating on the navigable  
26 waters of this state. The tax imposed in this section is levied upon  
27 the owner of the crude oil or petroleum products immediately before  
28 off-loading begins at the rate of three cents per barrel of crude oil  
29 or petroleum product off-loaded.

1       (3) The taxes imposed by this chapter shall be collected by the  
2 marine terminal operator from the owner of the crude oil or petroleum  
3 products off-loaded at the marine terminal. If any person charged with  
4 collecting the taxes fails to (~~bill the taxpayer for the taxes, or in~~  
5 ~~the alternative has not notified the taxpayer in writing of the~~  
6 ~~imposition of~~) collect the taxes, or having collected the taxes, fails  
7 to pay them to the department in the manner prescribed by this chapter,  
8 whether such failure is the result of the person's own acts or the  
9 result of acts or conditions beyond the person's control, he or she  
10 shall, nevertheless, be personally liable to the state for the amount  
11 of the taxes. Payment of the taxes by the owner to a marine terminal  
12 operator shall relieve the owner from further liability for the taxes.

13       (4) Taxes collected under this chapter shall be held in trust until  
14 paid to the department. Any person collecting the taxes who  
15 appropriates or converts the taxes collected shall be guilty of a gross  
16 misdemeanor if the money required to be collected is not available for  
17 payment on the date payment is due. The taxes required by this chapter  
18 to be collected shall be stated separately from other charges made by  
19 the marine terminal operator in any invoice or other statement of  
20 account provided to the taxpayer.

21       (5) If a taxpayer fails to pay the taxes imposed by this chapter to  
22 the person charged with collection of the taxes and the person charged  
23 with collection fails to pay the taxes to the department, the  
24 department may, in its discretion, proceed directly against the  
25 taxpayer for collection of the taxes.

26       (6) The taxes shall be due from the marine terminal operator, along  
27 with reports and returns on forms prescribed by the department, within  
28 twenty-five days after the end of the month in which the taxable  
29 activity occurs.

1 (7) The amount of taxes, until paid by the taxpayer to the marine  
2 terminal operator or to the department, shall constitute a debt from  
3 the taxpayer to the marine terminal operator. Any person required to  
4 collect the taxes under this chapter who, with intent to violate the  
5 provisions of this chapter, fails or refuses to do so as required and  
6 any taxpayer who refuses to pay any taxes due under this chapter, shall  
7 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

8 (8) Upon prior approval of the department, the owner of crude oil  
9 or petroleum products off-loaded in this state may pay the taxes  
10 imposed by this chapter directly to the department. The department  
11 shall give its approval for direct payment under this section whenever  
12 it appears, in the department's judgment, that direct payment will  
13 enhance the administration of the taxes imposed under this chapter.  
14 The department shall provide by rule for the issuance of a direct  
15 payment certificate to any taxpayer qualifying for direct payment of  
16 the taxes. Good faith acceptance of a direct payment certificate by a  
17 terminal operator shall relieve the marine terminal operator from any  
18 liability for the collection or payment of the taxes imposed under this  
19 chapter.

20 (9) All receipts from the tax imposed in subsection (1) of this  
21 section shall be deposited into the state oil spill response account.  
22 All receipts from the tax imposed in subsection (2) of this section  
23 shall be deposited into the state oil spill administration account.

24 (10) Within forty-five days after the end of each calendar quarter,  
25 the office of financial management shall determine the balance of the  
26 oil spill response account as of the last day of that calendar quarter.  
27 Balance determinations by the office of financial management under this  
28 section are final and shall not be used to challenge the validity of  
29 any tax imposed under this chapter. The office of financial management  
30 shall promptly notify the departments of revenue and ecology of the

1 account balance once a determination is made. For each subsequent  
2 calendar quarter, the tax imposed by subsection (1) of this section  
3 shall be imposed during the entire calendar quarter unless:

4 (a) Tax was imposed under subsection (1) of this section during the  
5 immediately preceding calendar quarter, and the most recent quarterly  
6 balance is more than twenty-five million dollars; or

7 (b) Tax was not imposed under subsection (1) of this section during  
8 the immediately preceding calendar quarter, and the most recent  
9 quarterly balance is more than fifteen million dollars.

10 (11) The office of marine safety, the department of revenue, and  
11 the department of trade and economic development shall study tax  
12 credits for taxpayers employing vessels with the best achievable  
13 technology and the best available protection to reduce the risk of oil  
14 spills to the navigable waters of the state and submit the study to the  
15 appropriate standing committees of the legislature by December 1, 1992.

16 **Sec. 5.** RCW 43.21I.030 and 1991 c 200 s 405 are each amended to  
17 read as follows:

18 In addition to any other powers granted the administrator, the  
19 administrator may:

20 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to  
21 carry out the provisions of this chapter and chapter 88.46 RCW;

22 (2) Appoint such advisory committees as may be necessary to carry  
23 out the provisions of this chapter and chapter 88.46 RCW. Members of  
24 such advisory committees are authorized to receive travel expenses in  
25 accordance with RCW 43.03.050 and 43.03.060. The administrator shall  
26 review each advisory committee within the jurisdiction of the office  
27 and each statutory advisory committee on a biennial basis to determine  
28 if such advisory committee is needed. The criteria specified in RCW

1 43.131.070 shall be used to determine whether or not each advisory  
2 committee shall be continued;

3 (3) Undertake studies, research, and analysis necessary to carry  
4 out the provisions of this chapter and chapter 88.46 RCW;

5 (4) Delegate powers, duties, and functions of the ((department))  
6 office to employees of the ((department)) office as the ((secretary))  
7 administrator deems necessary to carry out the provisions of this  
8 chapter and chapter 88.46 RCW;

9 (5) Enter into contracts on behalf of the ((department)) office to  
10 carry out the purposes of this chapter and chapter 88.46 RCW;

11 (6) Act for the state in the initiation of, or the participation  
12 in, any intergovernmental program for the purposes of this chapter and  
13 chapter 88.46 RCW; or

14 (7) Accept gifts, grants, or other funds.

15 **Sec. 6.** RCW 88.40.011 and 1991 c 200 s 702 are each amended to  
16 read as follows:

17 Unless the context clearly requires otherwise, the definitions in  
18 this section apply throughout this chapter.

19 (1) "Administrator" means the administrator of the office of marine  
20 safety created in RCW 43.21I.010.

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

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

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

1 (5) "Department" means the department of ecology.

2 (6) "Director" means the director of the department of ecology.

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

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

17 (8) "Hazardous substances" means any substance listed in Table  
18 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section  
19 101(14) of the federal comprehensive environmental response,  
20 compensation, and liability act of 1980, as amended by P.L. 99-499.  
21 The following are not hazardous substances for purposes of this  
22 chapter:

23 (a) Wastes listed as F001 through F028 in Table 302.4; and

24 (b) Wastes listed as K001 through K136 in Table 302.4.

25 (9) "Inland barge" means any barge operating on the waters of the  
26 state and certified by the coast guard as an inland barge.

27 (10) "Navigable waters of the state" means those waters of the  
28 state, and their adjoining shorelines, that are subject to the ebb and  
29 flow of the tide and/or are presently used, have been used in the past,

1 or may be susceptible for use to transport intrastate, interstate, or  
2 foreign commerce.

3 (11) "Office" means the office of marine safety established by RCW  
4 43.21I.010.

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

14 (13) "Offshore facility" means any facility(~~(, as defined in~~  
15 ~~subsection (7) of this section,~~) located in, on, or under any of the  
16 navigable waters of the state, but does not include a facility any part  
17 of which is located in, on, or under any land of the state, other than  
18 submerged land.

19 (14) "Onshore facility" means any facility(~~(, as defined in~~  
20 ~~subsection (7) of this section,~~) any part of which is located in, on,  
21 or under any land of the state, other than submerged land, that because  
22 of its location, could reasonably be expected to cause substantial harm  
23 to the environment by discharging oil into or on the navigable waters  
24 of the state or the adjoining shorelines.

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

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

4 (16) "Passenger vessel" means a ship of (~~greater than~~) three  
5 hundred or more gross tons (~~or five hundred or more international~~  
6 ~~gross tons~~) with a fuel capacity of at least five thousand gallons  
7 carrying passengers for compensation.

8 (17) "Ship" means any boat, ship, vessel, barge, or other floating  
9 craft of any kind.

10 (18) "Spill" means an unauthorized discharge of oil into the waters  
11 of the state.

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

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

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

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

23 **Sec. 7.** RCW 88.40.020 and 1991 c 200 s 703 are each amended to  
24 read as follows:

25 (1) Any inland barge that transports hazardous substances in bulk  
26 as cargo, using any port or place in the state of Washington or the  
27 navigable waters of the state shall establish evidence of financial  
28 responsibility in the amount of the greater of one million dollars, or  
29 one hundred fifty dollars per gross ton of such vessel.

1 (2)(a) Except as provided in (c) of this subsection, a tank vessel  
2 that carries oil as cargo in bulk shall demonstrate financial  
3 responsibility to pay at least five hundred million dollars.

4 (b) The administrator by rule may establish a lesser standard of  
5 financial responsibility for barges of three hundred gross tons or  
6 less. The standard shall set the level of financial responsibility  
7 based on the quantity of cargo the barge is capable of carrying. The  
8 administrator shall not set the standard for barges of three thousand  
9 gross tons or less below that required under federal law.

10 (c) The owner or operator of a tank vessel who is a member of an  
11 international protection and indemnity mutual organization and is  
12 covered for oil pollution risks up to the amounts required under this  
13 section is not required to demonstrate financial responsibility under  
14 this chapter. The administrator may require the owner or operator of  
15 a tank vessel to prove membership in such an organization.

16 (3) A cargo vessel or passenger vessel that carries oil as fuel  
17 shall demonstrate financial responsibility to pay the greater of at  
18 least six hundred dollars per gross ton or five hundred thousand  
19 dollars.

20 (4) The documentation of financial responsibility shall demonstrate  
21 the ability of the document holder to meet state and federal financial  
22 liability requirements for the actual costs for removal of oil spills,  
23 for natural resource damages, and necessary expenses.

24 (5) The office may by rule set a lesser amount of financial  
25 responsibility for a tank vessel that meets standards for construction,  
26 propulsion, equipment, and personnel established by the office. The  
27 office shall require as a minimum level of financial responsibility  
28 under this subsection the same level of financial responsibility  
29 required under federal law.

1 (6) This section shall not apply to a covered vessel owned or  
2 operated by the federal government or by a state or local government.

3 **Sec. 8.** RCW 88.40.040 and 1991 c 200 s 706 are each amended to  
4 read as follows:

5 (1) The office shall deny entry to the waters of the state to any  
6 vessel that does not meet the financial responsibility requirements of  
7 this chapter. Any vessel owner or operator that does not meet the  
8 financial responsibility requirements of this chapter and any rules  
9 prescribed thereunder or the federal oil pollution act of 1990 shall be  
10 reported by the office to the United States coast guard.

11 (2) The office shall enforce section 1016 of the federal oil  
12 pollution act of 1990 as authorized by section 1019 of the federal act.

13 ~~((3) Any onshore or offshore facility owner or operator who does  
14 not meet the financial responsibility requirements of RCW 88.40.025 and  
15 any rules adopted by the department or office shall be reported to the  
16 secretary of state. The secretary of state shall suspend the  
17 facility's privilege of operating in this state until financial  
18 responsibility is demonstrated.))~~

19 **Sec. 9.** RCW 88.44.010 and 1991 c 200 s 901 are each amended to  
20 read as follows:

21 Unless the context clearly requires otherwise, the definitions in  
22 this section apply throughout this chapter.

23 (1) "Administrator" means the administrator of the office of marine  
24 safety created by RCW 43.21I.010.

25 (2) "Business class" means a recognized trade segment of the  
26 maritime industry.

27 (3) "Commission" means the Washington state maritime commission.

1       (4) "Fishing vessel" means a vessel (a) on which persons  
2 commercially engage in: (i) Catching, taking, or harvesting fish; (ii)  
3 preparing fish or fish products; or (b) that supplies, stores,  
4 refrigerates, or transports fish, fish products, or materials directly  
5 related to fishing or the preparation of fish.

6       (5) "Foreign vessel" means a vessel of foreign registry or operated  
7 under the authority of a country, except the United States.

8       (6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel  
9 oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural  
10 gas, propane, butane, oils distilled from coal, and other liquid  
11 hydrocarbons regardless of specific gravity, or any other petroleum  
12 related products.

13       (7) "Oceanographic research vessel" means a vessel that is employed  
14 only in instruction in oceanography or limnology, or both, or only in  
15 oceanographic or limnological research, including those studies about  
16 the sea such as seismic, gravity meter, and magnetic exploration and  
17 other marine geophysical or geological surveys, atmospheric research,  
18 and biological research.

19       (8) "Protection and indemnity club" means a mutual insurance  
20 organization formed by a group of shipowners or operators in order to  
21 secure cover for various risks of vessel operation, including oil spill  
22 costs, not covered by normal hull insurance.

23       (9) "Public vessel" means a vessel that is owned, or chartered and  
24 operated by the United States government, by a state of the United  
25 States, or a government of a foreign country and is not engaged in  
26 commercial service.

27       (10) "State" means a state of the United States, Guam, Puerto Rico,  
28 the Virgin Islands, American Samoa, the District of Columbia, the  
29 Northern Mariana Islands, and any other territory or possession of the  
30 United States.

1 (11) "Steamship agent or agency" means an agent or agency appointed  
2 by a vessel owner or operator to enter or clear vessels at ports within  
3 the state of Washington and to conduct onshore activities, or contract  
4 on behalf of the owner or operator for whatever is required for the  
5 efficient operation of the vessel.

6 (12) "Steamship liner company" means a steamship company  
7 maintaining a regular schedule of calls at designated ports of the  
8 state of Washington.

9 (13) "Towboat" means a commercial vessel engaged in, or intending  
10 to engage in, the service of pulling, pushing, or hauling along side,  
11 or any combination of pulling, pushing, or hauling along side.

12 (14) "United States flag vessel" means a vessel documented under  
13 the laws of the United States or registered under the laws of any state  
14 of the United States.

15 (15) "Vessel" means every description of watercraft, other than a  
16 seaplane on water, used or capable of being used as a means of  
17 transportation on water, carrying oil as fuel or cargo, (~~and over~~) of  
18 three hundred or more gross registered tons, except oceanographic  
19 research vessels, public vessels, passenger vessels with a maximum fuel  
20 capacity of less than five thousand gallons, vessels being employed  
21 exclusively for pleasure, or vessels which, prior to entering  
22 Washington waters, have a contingency plan approved pursuant to RCW  
23 88.46.060, or have (~~formerly~~) arranged for immediate oil spill  
24 response with an officially recognized cleanup cooperative or with a  
25 private cleanup contractor (~~for immediate oil spill response~~).

26 (16) "Vessel owner or operator" means the legal owner of a vessel  
27 and/or the charterer or other person in charge of the day-to-day  
28 operation.

29 (17) "Waters of this state" or "waters of the state of Washington"  
30 has the meaning in RCW 90.56.010.

1       **Sec. 10.** RCW 88.44.100 and 1990 c 117 s 11 are each amended to  
2 read as follows:

3       There is levied on and after October 1, 1990, an assessment upon  
4 all vessels, or the owners or operators thereof, which transit upon  
5 waters of this state, except as exempted herein and not including  
6 vessels which transit upon the portion of the Columbia river that runs  
7 between the states of Washington and Oregon, an assessment to be set by  
8 the commission on each vessel transit, plus annual increases as are  
9 imposed pursuant to the provisions of RCW 88.44.110. (~~(Vessels which~~  
10 ~~show proof to the commission or the department of ecology that they~~  
11 ~~have previously and individually arranged with an officially recognized~~  
12 ~~cleanup cooperative or with a private cleanup contractor to provide~~  
13 ~~immediate response capabilities in the event of an oil spill or~~  
14 ~~threatened release, are exempt from assessment under this chapter.))  
15 Of those vessels assessed, the commission may set the rate. When the  
16 fund reaches one million five hundred thousand dollars, the commission  
17 shall discontinue the assessment until the fund declines to one million  
18 dollars, at which time the assessment must be reinstated. The  
19 assessment, at a minimum, must be able to generate the maximum fund  
20 level within four years. All moneys collected hereunder shall be  
21 expended to effectuate the purpose and objects of this chapter.~~

22       If the commission establishes an oil spill first response system  
23 for the Columbia river, there may be levied on and after ((January))  
24 July 1, 1992, an assessment upon all vessels, or the owners or  
25 operators thereof, which transit upon the portion of the Columbia river  
26 that runs between the states of Washington and Oregon.

27       **Sec. 11.** RCW 88.44.110 and 1991 c 200 s 906 are each amended to  
28 read as follows:

1        If it appears from investigation by the commission that the revenue  
2 from the assessment levied on vessels under this chapter is inadequate  
3 to accomplish the purposes of this chapter, the commission by rule  
4 shall increase the assessment to a sum determined by the commission to  
5 be necessary for those purposes. The rule adopting the increase shall  
6 be filed with the administrator(~~(. An increase shall not take effect~~  
7 ~~earlier than ninety days after the rule is adopted and filed with the~~  
8 ~~administrator, unless)) at least thirty days prior to the date set by  
9 the commission for final adoption of the rule. If the administrator  
10 determines that the increase is not justified, the commission shall be  
11 notified of this decision not later than the date set by the commission  
12 for adoption of the final rule.~~

13        **Sec. 12.** RCW 88.46.010 and 1991 c 200 s 414 are each amended to  
14 read as follows:

15        Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

17        (1) "Administrator" means the administrator of the office of marine  
18 safety created in RCW 43.21I.010.

19        (2) "Best achievable protection" means the highest level of  
20 protection that can be achieved through the use of the best achievable  
21 technology and those staffing levels, training procedures, and  
22 operational methods that provide the greatest degree of protection  
23 achievable. The administrator's determination of best achievable  
24 protection shall be guided by the critical need to protect the state's  
25 natural resources and waters, while considering (a) the additional  
26 protection provided by the measures; (b) the technological  
27 achievability of the measures; and (c) the cost of the measures.

28        (3) "Best achievable technology" means the technology that provides  
29 the greatest degree of protection taking into consideration (a)

1 processes that are being developed, or could feasibly be developed,  
2 given overall reasonable expenditures on research and development, and  
3 (b) processes that are currently in use. In determining what is best  
4 achievable technology, the administrator shall consider the  
5 effectiveness, engineering feasibility, and commercial availability of  
6 the technology.

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

11 (5) "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 (6) "Covered vessel" means a tank vessel, cargo vessel, or  
15 passenger vessel.

16 (7) "Department" means the department of ecology.

17 (8) "Director" means the director of the department of ecology.

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

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

25 (b) A facility does not include any: (i) Railroad car, motor  
26 vehicle, or other rolling stock while transporting oil over the  
27 highways or rail lines of this state; (ii) retail motor vehicle motor  
28 fuel outlet; (iii) facility that is operated as part of an exempt  
29 agricultural activity as provided in RCW 82.04.330; (iv) underground  
30 storage tank regulated by the department or a local government under

1 chapter 90.76 RCW; or (v) ((a)) marine fuel outlet that does not  
2 dispense more than three thousand gallons of fuel to a ship that is not  
3 a covered vessel, in a single transaction.

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

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

12 (13) "Office" means the office of marine safety established by RCW  
13 43.21I.010.

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

23 (15) "Offshore facility" means any facility(~~(, as defined in~~  
24 ~~subsection (10) of this section,~~) located in, on, or under any of the  
25 navigable waters of the state, but does not include a facility any part  
26 of which is located in, on, or under any land of the state, other than  
27 submerged land. "Offshore facility" does not include a marine facility  
28 (~~(as defined in subsection (11) of this section)~~).

29 (16) "Onshore facility" means any facility(~~(, as defined in~~  
30 ~~subsection (10) of this section,~~) any part of which is located in, on,

1 or under any land of the state, other than submerged land, that because  
2 of its location, could reasonably be expected to cause substantial harm  
3 to the environment by discharging oil into or on the navigable waters  
4 of the state or the adjoining shorelines.

5 (17)(a) "Owner or operator" means (i) in the case of a vessel, any  
6 person owning, operating, or chartering by demise, the vessel; (ii) in  
7 the case of an onshore or offshore facility, any person owning or  
8 operating the facility; and (iii) in the case of an abandoned vessel or  
9 onshore or offshore facility, the person who owned or operated the  
10 vessel or facility immediately before its abandonment.

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

14 (18) "Passenger vessel" means a ship of (~~greater than~~) three  
15 hundred or more gross tons (~~or five hundred or more international~~  
16 ~~gross tons~~) with a fuel capacity of at least five thousand gallons  
17 carrying passengers for compensation.

18 (19) "Person" means any political subdivision, government agency,  
19 municipality, industry, public or private corporation, copartnership,  
20 association, firm, individual, or any other entity whatsoever.

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

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

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

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

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

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

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

10 **Sec. 13.** RCW 88.46.050 and 1991 c 200 s 418 are each amended to  
11 read as follows:

12 (1) In order to ensure the safety of marine transportation within  
13 the navigable waters of the state and to protect the state's natural  
14 resources, the administrator shall adopt rules by July 1, 1992, for  
15 determining whether cargo vessels and passenger vessels entering the  
16 navigable waters of the state pose a substantial risk of harm to the  
17 public health and safety and the environment.

18 (2) The rules adopted by the administrator pursuant to this section  
19 may include, but are not limited to the following:

20 (a) Examining available information (~~(to examine)~~) sources for  
21 evidence that a cargo or passenger vessel may pose a substantial risk  
22 to safe marine transportation or the state's natural resources(~~(~~  
23 ~~including,~~~~)~~). Information sources may include: Vessel casualty lists,  
24 United States coast guard casualty reports, maritime insurance ratings,  
25 the index of contingency plans compiled by the department of ecology,  
26 other data gathered by the office or the maritime commission, or any  
27 other resources;

1 (b) (~~(A request to)~~) Requesting the United States coast guard to  
2 deny a cargo vessel or passenger vessel entry into the navigable waters  
3 of the state, if the vessel poses a substantial environmental risk;

4 (c) (~~(A notice to)~~) Notifying the state's spill response system  
5 that a cargo or passenger vessel entering the state's navigable waters  
6 poses a substantial environmental risk;

7 (d) ((A)) Inspecting a cargo or passenger vessel (~~(inspection for~~  
8 ~~vessels)~~) that may pose a substantial environmental risk, to determine  
9 whether (~~(a cargo vessel or passenger)~~) the vessel complies with  
10 applicable state or federal laws. Any vessel inspection conducted  
11 pursuant to this section shall be performed during the vessel's  
12 scheduled stay in port; and

13 (e) Enforcement actions.

14 **Sec. 14.** RCW 88.46.060 and 1991 c 200 s 419 are each amended to  
15 read as follows:

16 (1) Each covered vessel shall have a contingency plan for the  
17 containment and cleanup of oil spills from the covered vessel into the  
18 waters of the state and for the protection of fisheries and wildlife,  
19 natural resources, and public and private property from such spills.  
20 The office shall by rule adopt and periodically revise standards for  
21 the preparation of contingency plans. The office shall require  
22 contingency plans, at a minimum, to meet the 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 office(~~(+,+)~~), removing oil and minimizing any damage  
28 to the environment resulting from a worst case spill;

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

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

8 (e) State the number, training preparedness, and fitness of all  
9 dedicated, prepositioned personnel assigned to direct and implement the  
10 plan;

11 (f) Incorporate periodic training and drill programs to evaluate  
12 whether personnel and equipment provided under the plan are in a state  
13 of operational readiness at all times;

14 (g) Describe important features of the surrounding environment,  
15 including fish and wildlife habitat, environmentally and  
16 archaeologically sensitive areas, and public facilities. The  
17 departments of ecology, fisheries, wildlife, and natural resources, and  
18 the office of archaeology and historic preservation, upon request,  
19 shall provide information that they have available to assist in  
20 preparing this description. If the office has adopted rules for  
21 contingency plans prior to July 1, 1992, the description of  
22 archaeologically sensitive areas shall only be required when the office  
23 revises the rules for contingency plans after July 1, 1992. The  
24 description of archaeologically sensitive areas shall not be required  
25 to be included in a contingency plan until it is reviewed and updated  
26 pursuant to subsection (9) of this section;

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

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

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

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

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

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

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

21 (o) If the department of ecology has adopted rules permitting the  
22 use of dispersants, the circumstances, if any, and the manner for the  
23 application of the dispersants in conformance with the department's  
24 rules.

25 (2)(a) The owner or operator of a tank vessel of three thousand  
26 gross tons or more shall submit a contingency plan to the office within  
27 six months after the office adopts rules establishing standards for  
28 contingency plans under subsection (1) of this section.

29 (b) Contingency plans for all other covered vessels shall be  
30 submitted to the office within eighteen months after the office has

1 adopted rules under subsection (1) of this section. The office may  
2 adopt a schedule for submission of plans within the eighteen-month  
3 period.

4 (3)(a) The owner or operator of a tank vessel or of the facilities  
5 at which the vessel will be unloading its cargo shall submit the  
6 contingency plan for the tank vessel. Subject to conditions imposed by  
7 the office, the owner or operator of a facility may submit a single  
8 contingency plan for tank vessels of a particular class that will be  
9 unloading cargo at the facility.

10 (b) The contingency plan for a cargo vessel or passenger vessel may  
11 be submitted by the owner or operator of the cargo vessel or passenger  
12 vessel, by the agent for the vessel resident in this state, or by the  
13 Washington state maritime commission pursuant to RCW 88.44.020.  
14 Subject to conditions imposed by the office, the owner, operator, or  
15 agent may submit a single contingency plan for cargo vessels or  
16 passenger vessels of a particular class.

17 (c) A person who has contracted with a covered vessel to provide  
18 containment and cleanup services and who meets the standards  
19 established pursuant to RCW 90.56.240, may submit the plan for any  
20 covered vessel for which the person is contractually obligated to  
21 provide services. Subject to conditions imposed by the office, the  
22 person may submit a single plan for more than one covered vessel.

23 (4) A contingency plan prepared for an agency of the federal  
24 government or another state that satisfies the requirements of this  
25 section and rules adopted by the office may be accepted by the office  
26 as a contingency plan under this section. The office shall assure that  
27 to the greatest extent possible, requirements for contingency plans  
28 under this section are consistent with the requirements for contingency  
29 plans under federal law.

1 (5) In reviewing the contingency plans required by this section,  
2 the office shall consider at least the following factors:

3 (a) The adequacy of containment and cleanup equipment, personnel,  
4 communications equipment, notification procedures and call down lists,  
5 response time, and logistical arrangements for coordination and  
6 implementation of response efforts to remove oil spills promptly and  
7 properly and to protect the environment;

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

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

12 (d) The existence of navigational hazards within the area covered  
13 by the plan;

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

16 (f) The sensitivity of fisheries and wildlife and other natural  
17 resources within the area covered by the plan;

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

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

23 (6) The office shall approve a contingency plan only if it  
24 determines that the plan meets the requirements of this section and  
25 that, if implemented, the plan is capable, in terms of personnel,  
26 materials, and equipment, of removing oil promptly and properly and  
27 minimizing any damage to the environment.

28 (7) The approval of the contingency plan shall be valid for five  
29 years. Upon approval of a contingency plan, the office shall provide  
30 to the person submitting the plan a statement indicating that the plan

1 has been approved, the vessels covered by the plan, and other  
2 information the office determines should be included.

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

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

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

16 **Sec. 15.** RCW 88.46.090 and 1991 c 200 s 422 are each amended to  
17 read as follows:

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

1 90.56.200, or financial responsibility in compliance with chapter 88.40  
2 RCW and the federal oil pollution act of 1990.

3 (3) The administrator may assess a civil penalty of up to one  
4 hundred thousand dollars against the owner or operator of a vessel who  
5 is in violation of this section. Each day that the owner or operator  
6 of a covered vessel is in violation of this section shall be considered  
7 a separate violation.

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

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

12 (b) A contingency plan and prevention plan has been submitted to  
13 the office as required by this chapter and rules adopted by the office  
14 and the office is reviewing the plan and has not denied approval; or

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

17 (5) Any person may rely on a copy of the statement issued by the  
18 office to RCW 88.46.060 as evidence that the vessel has an approved  
19 contingency plan and the statement issued pursuant to RCW 88.46.040 as  
20 evidence that the vessel has an approved spill prevention plan.

21 **Sec. 16.** RCW 88.46.110 and 1991 c 200 s 424 are each amended to  
22 read as follows:

23 (1) The office shall establish regional marine safety committees  
24 (~~at least~~) for the Strait of Juan de Fuca/Northern Puget Sound,  
25 Southern Puget Sound, and Grays Harbor/Pacific coast. It is the intent  
26 of the legislature that the office also establish a regional marine  
27 safety committee jointly with the state of Oregon for the Columbia  
28 river. The office by rule shall establish the boundaries of the

1 committees. The office may establish additional committees that it  
2 determines will be in the public interest.

3 (2) The administrator shall appoint to each regional committee for  
4 a term of three years six persons representing a cross section of  
5 interests and the public with an interest in maritime transportation  
6 and environmental issues.

7 (3) The administrator or his or her designee shall chair each of  
8 the regional committees. Each member of the committee shall be  
9 reimbursed for actual and necessary expenses incurred in the  
10 performance of committee duties in accordance with RCW 43.03.250.

11 (4) Each regional committee shall be responsible for planning for  
12 the safe navigation and operation of tankers, barges, and other vessels  
13 within each region. Each committee shall prepare a regional marine  
14 safety plan, encompassing all vessel traffic within the region. The  
15 coast guard, the federal environmental protection agency, the army  
16 corps of engineers, and the navy shall be invited to attend the  
17 meetings of each marine regional safety committee.

18 (5) The administrator shall adopt rules and guidelines for regional  
19 marine safety plans in consultation with affected parties. The rules  
20 shall require the committees to establish subcommittees to involve all  
21 interested parties in the development of the plans and to require the  
22 committees to include a summary of public comments and any minority  
23 reports with recommendations submitted to the administrator. The rules  
24 shall also require the plans to consider all of the following:

25 (a) Requirements for tug escorts of tankers and other commercial  
26 vessels, and speed limits for tankers and other vessels in addition to  
27 the requirements imposed by statute;

28 (b) A review and evaluation of the adequacy of and any changes  
29 needed in:

30 (i) Anchorage designations and sounding checks;

- 1 (ii) Communications systems;
- 2 (iii) Commercial and recreational fishing, recreational boaters,  
3 and other small vessel congestion in shipping lanes; and
- 4 (iv) Placement and effectiveness of navigational aids, channel  
5 design plans, and the traffic and routings from port construction and  
6 dredging projects;
- 7 (c) Procedures for routing vessels during emergencies that impact  
8 navigation;
- 9 (d) Management requirements for vessel control bridges;
- 10 (e) Special protection for environmentally sensitive areas;
- 11 (f) Suggested mechanisms to ensure that the provisions of the plan  
12 are fully and regularly enforced; and
- 13 (g) A recommendation as to whether establishing or expanding vessel  
14 traffic safety systems within the regions is desirable.

15 (6) Each regional marine safety plan shall be submitted to the  
16 office for approval within one year after the regional marine safety  
17 committee is established. The office shall review the plans for  
18 consistency with the rules and guidelines and shall approve the plans  
19 or give reasons for their disapproval. If a regional marine safety  
20 committee does not submit a regional marine safety plan to the office  
21 within one year after the committee is established, the office, after  
22 consulting with affected interests, may adopt a plan for the region  
23 that meets the requirements of subsection (5) of this section.

24 (7) Upon approval of a plan, the office shall implement those  
25 elements of the plan over which the state has authority. If federal  
26 authority or action is required, the office shall petition the  
27 appropriate agency or congress.

28 (8) Not later than July 1st of each even-numbered year each  
29 regional marine safety committee shall report its findings and  
30 recommendations to the marine oversight board established in RCW

1 90.56.450 and the office concerning vessel traffic safety in its region  
2 and any recommendations for improving tanker, barge, and other vessel  
3 safety in the region by amending the regional marine safety plan. The  
4 regional committees shall also provide technical assistance to the  
5 marine oversight board.

6 (9) The regional safety committees shall recommend to the office  
7 the need for, and the structure and design of, an emergency response  
8 system for the Strait of Juan de Fuca and the Pacific coast.

9 **Sec. 17.** RCW 90.48.366 and 1991 c 200 s 812 are each amended to  
10 read as follows:

11 By July 1, 1991, the department, in consultation with the  
12 departments of fisheries, wildlife, and natural resources, and the  
13 parks and recreation commission, shall adopt rules establishing a  
14 compensation schedule for the discharge of oil in violation of this  
15 chapter and chapter 90.56 RCW. The department shall establish a  
16 scientific advisory board to assist in establishing the compensation  
17 schedule. The amount of compensation assessed under this schedule  
18 shall be no less than one dollar per gallon of oil spilled and no  
19 greater than fifty dollars per gallon of oil spilled. The compensation  
20 schedule shall reflect adequate compensation for unquantifiable damages  
21 or for damages not quantifiable at reasonable cost for any adverse  
22 environmental, recreational, aesthetic, or other effects caused by the  
23 spill and shall take into account:

24 (1) Characteristics of any oil spilled, such as toxicity,  
25 dispersibility, solubility, and persistence, that may affect the  
26 severity of the effects on the receiving environment, living organisms,  
27 and recreational and aesthetic resources;

28 (2) The sensitivity of the affected area as determined by such  
29 factors as: (a) The location of the spill; (b) habitat and living

1 resource sensitivity; (c) seasonal distribution or sensitivity of  
2 living resources; (d) areas of recreational use or aesthetic  
3 importance; (e) the proximity of the spill to important habitats for  
4 birds, aquatic mammals, fish, or to species listed as threatened or  
5 endangered under state or federal law; (f) significant archaeological  
6 resources as determined by the office of archaeology and historic  
7 preservation; and ~~((f))~~ (g) other areas of special ecological or  
8 recreational importance, as determined by the department. If the  
9 department has adopted rules for a compensation table prior to July 1,  
10 1992, the sensitivity of significant archaeological resources shall  
11 only be included among factors to be used in the compensation table  
12 when the department revises the rules for the compensation table after  
13 July 1, 1992; and

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

21 **Sec. 18.** RCW 90.48.368 and 1991 c 200 s 814 are each amended to  
22 read as follows:

23 (1) The department shall adopt rules establishing a formal process  
24 for preassessment screening of damages resulting from spills to the  
25 waters of the state causing the death of, or injury to, fish, animals,  
26 vegetation, or other resources of the state. The rules shall specify  
27 the conditions under which the department shall convene a preassessment  
28 screening committee. The preassessment screening process shall occur  
29 concurrently with reconnaissance activities. The committee shall use

1 information obtained from reconnaissance activities as well as any  
2 other relevant resource and resource use information. For each  
3 incident, the committee shall determine whether a damage assessment  
4 investigation should be conducted, or, whether the compensation  
5 schedule authorized under RCW 90.48.366 and 90.48.367 should be used to  
6 assess damages. The committee may accept restoration or enhancement  
7 projects or studies proposed by the liable parties in lieu of some or  
8 all of: (a) The compensation schedule authorized under RCW 90.48.366  
9 and 90.48.367; or (b) the claims from damage assessment studies  
10 authorized under RCW 90.48.142.

11 (2) A preassessment screening committee may consist of  
12 representatives of the departments of ecology, fisheries, wildlife,  
13 natural resources, social and health services, and emergency  
14 management, the parks and recreation commission, the office of  
15 archaeology and historic preservation, as well as other federal, state,  
16 and local agencies, and tribal and local governments whose presence  
17 would enhance the reconnaissance or damage assessment aspects of spill  
18 response. The department shall chair the committee and determine which  
19 representatives will be needed on a spill-by-spill basis.

20 (3) The committee shall consider the following factors when  
21 determining whether a damage assessment study authorized under RCW  
22 90.48.367 should be conducted: (a) Whether evidence from  
23 reconnaissance investigations suggests that injury has occurred or is  
24 likely to occur to publicly owned resources; (b) the potential loss in  
25 services provided by resources injured or likely to be injured and the  
26 expected value of the potential loss; (c) whether a restoration project  
27 to return lost services is technically feasible; (d) the accuracy of  
28 damage quantification methods that could be used and the anticipated  
29 cost-effectiveness of applying each method; (e) the extent to which  
30 likely injury to resources can be verified with available

1 quantification methods; and (f) whether the injury, once quantified,  
2 can be translated into monetary values with sufficient precision or  
3 accuracy.

4 (4) When a resource damage assessment is required for an oil spill  
5 in the navigable waters of the state, as defined in RCW 90.56.010, the  
6 state trustee agency responsible for the resource and habitat damaged  
7 shall conduct the damage assessment and pursue all appropriate remedies  
8 with the responsible party.

9 (5) Oil spill damage assessment studies authorized under RCW  
10 90.48.367 may only be conducted if the committee, after considering the  
11 factors enumerated in subsection (3) of this section, determines that  
12 the damages to be investigated are quantifiable at a reasonable cost  
13 and that proposed assessment studies are clearly linked to  
14 quantification of the damages incurred.

15 (6) As new information becomes available, the committee may  
16 reevaluate the scope of damage assessment using the factors listed in  
17 subsection (3) of this section and may reduce or expand the scope of  
18 damage assessment as appropriate.

19 (7) The preassessment screening process shall provide for the  
20 ongoing involvement of persons who may be liable for damages resulting  
21 from an oil spill. The department may negotiate with a potentially  
22 liable party to perform restoration and enhancement projects or studies  
23 which may substitute for all or part of the compensation authorized  
24 under RCW 90.48.366 and 90.48.367 or the damage assessment studies  
25 authorized under RCW 90.48.367.

26 (8) For the purposes of this section and RCW 90.48.367, the cost of  
27 a damage assessment shall be considered "reasonable" when the  
28 anticipated cost of the damage assessment is expected to be less than  
29 the anticipated damage that may have occurred or may occur.

1       **Sec. 19.** RCW 90.48.400 and 1991 c 200 s 816 are each amended to  
2 read as follows:

3       (1) Moneys in the coastal protection fund shall be disbursed for  
4 the following purposes and no others:

5       (a) Environmental restoration and enhancement projects intended to  
6 restore or enhance environmental, recreational, archaeological, or  
7 aesthetic resources for the benefit of Washington's citizens;

8       (b) Investigations of the long-term effects of oil spills; and

9       (c) Development and implementation of an aquatic land geographic  
10 information system.

11       (2) The director may allocate a portion of the fund to be devoted  
12 to research and development in the causes, effects, and removal of  
13 pollution caused by the discharge of oil or other hazardous substances.

14       (3) A steering committee consisting of representatives of the  
15 department of ecology, fisheries, wildlife, and natural resources, and  
16 the parks and recreation commission shall authorize the expenditure of  
17 the moneys collected under RCW 90.48.366 through 90.48.368, after  
18 consulting impacted local agencies and local and tribal governments.

19       (4) Agencies may not be reimbursed from the coastal protection fund  
20 for the salaries and benefits of permanent employees for routine  
21 operational support. Agencies may only be reimbursed under this  
22 section if money for reconnaissance and damage assessment activities is  
23 unavailable from other sources.

24       **Sec. 20.** RCW 90.56.010 and 1991 c 200 s 102 are each amended to  
25 read as follows:

26       For purposes of this chapter, the following definitions shall apply  
27 unless the context indicates otherwise:

28       (1) "Administrator" means the administrator of the office of marine  
29 safety created in RCW 43.21I.010.

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

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

17 (4) "Board" means the pollution control hearings board.

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

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

25 (7) "Committee" means the preassessment screening committee  
26 established under RCW 90.48.368.

27 (8) "Covered vessel" means a tank vessel, cargo vessel, or  
28 passenger vessel.

29 (9) "Department" means the department of ecology.

30 (10) "Director" means the director of the department of ecology.

1 (11) "Discharge" means any spilling, leaking, pumping, pouring,  
2 emitting, emptying, or dumping.

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

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

17 (13) "Fund" means the state coastal protection fund as provided in  
18 RCW 90.48.390 and 90.48.400.

19 (14) "Having control over oil" shall include but not be limited to  
20 any person using, storing, or transporting oil immediately prior to  
21 entry of such oil into the waters of the state, and shall specifically  
22 include carriers and bailees of such oil.

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

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

1 (17) "Necessary expenses" means the expenses incurred by the  
2 department and assisting state agencies for (a) investigating the  
3 source of the discharge; (b) investigating the extent of the  
4 environmental damage caused by the discharge; (c) conducting actions  
5 necessary to clean up the discharge; (d) conducting predamage and  
6 damage assessment studies; and (e) enforcing the provisions of this  
7 chapter and collecting for damages caused by a discharge.

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

17 (19) "Offshore facility" means any facility(~~(, as defined in~~  
18 ~~subsection (12) of this section,~~) located in, on, or under any of the  
19 navigable waters of the state, but does not include a facility any part  
20 of which is located in, on, or under any land of the state, other than  
21 submerged land.

22 (20) "Onshore facility" means any facility(~~(, as defined in~~  
23 ~~subsection (12) of this section,~~) any part of which is located in, on,  
24 or under any land of the state, other than submerged land, that because  
25 of its location, could reasonably be expected to cause substantial harm  
26 to the environment by discharging oil into or on the navigable waters  
27 of the state or the adjoining shorelines.

28 (21)(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

1 operating the facility; and (iii) in the case of an abandoned vessel or  
2 onshore or offshore facility, the person who owned or operated the  
3 vessel or facility immediately before its abandonment.

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

7 (22) "Passenger vessel" means a ship of (~~greater than~~) three  
8 hundred or more gross tons (~~or five hundred or more international~~  
9 ~~gross tons~~) with a fuel capacity of at least five thousand gallons  
10 carrying passengers for compensation.

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

14 (24) "Ship" means any boat, ship, vessel, barge, or other floating  
15 craft of any kind.

16 (25) "Spill" means an unauthorized discharge of oil or hazardous  
17 substances into the waters of the state.

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

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

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

24 (~~(27) ("Technical feasibility" or "technically feasible" shall mean~~  
25 ~~that given available technology, a restoration or enhancement project~~  
26 ~~can be successfully completed at a cost that is not disproportionate to~~  
27 ~~the value of the resource prior to the injury.~~

28 ~~(28))~~ "Waters of the state" includes lakes, rivers, ponds,  
29 streams, inland waters, underground water, salt waters, estuaries,  
30 tidal flats, beaches and lands adjoining the seacoast of the state,

1 sewers, and all other surface waters and watercourses within the  
2 jurisdiction of the state of Washington.

3 ~~((29))~~ (28) "Worst case spill" means: (a) In the case of a  
4 vessel, a spill of the entire cargo and fuel of the vessel complicated  
5 by adverse weather conditions; and (b) in the case of an onshore or  
6 offshore facility, the largest foreseeable spill in adverse weather  
7 conditions.

8 **Sec. 21.** RCW 90.56.100 and 1990 c 116 s 12 are each amended to  
9 read as follows:

10 (1) The Washington wildlife rescue coalition shall be established  
11 for the purpose of coordinating the rescue and rehabilitation of  
12 wildlife injured or endangered by oil spills or the release of other  
13 hazardous substances into the environment.

14 (2) The Washington wildlife rescue coalition shall be composed of:

15 (a) A representative of the department of wildlife designated by  
16 the director of wildlife. The department of wildlife shall be  
17 designated as lead agency in the operations of the coalition. The  
18 coalition shall be chaired by the representative from the department of  
19 wildlife;

20 (b) A representative of the department of ecology designated by the  
21 director;

22 (c) A representative of the department of community development  
23 emergency management program designated by the director of community  
24 development;

25 (d) A licensed veterinarian, with experience and training in  
26 wildlife rehabilitation, appointed by the veterinary board of  
27 governors;

28 (e) The director of the Washington conservation corps;

1 (f) A lay person, with training and experience in the rescue and  
2 rehabilitation of wildlife appointed by the department; and

3 (g) A person designated by the legislative authority of the county  
4 where oil spills or spills of other hazardous substances may occur.  
5 This member of the coalition shall serve on the coalition until  
6 wildlife rescue and rehabilitation is completed in that county. The  
7 completion of any rescue or rehabilitation project shall be determined  
8 by the director of wildlife.

9 (3) The duties of the Washington wildlife rescue coalition shall be  
10 to:

11 (a) Develop an emergency mobilization plan to rescue and  
12 rehabilitate waterfowl and other wildlife that are injured or  
13 endangered by an oil spill or the release of other hazardous substances  
14 into the environment;

15 (b) Develop and maintain a resource directory of persons,  
16 governmental agencies, and private organizations that may provide  
17 assistance in an emergency rescue effort;

18 (c) Provide advance training and instruction to volunteers in  
19 rescuing and rehabilitating waterfowl and wildlife injured or  
20 endangered by oil spills or the release of other hazardous substances  
21 into the environment. The training may be provided through grants to  
22 community colleges or to groups that conduct programs for training  
23 volunteers. The coalition representatives from the agencies described  
24 in subsection (2) of this section shall coordinate training efforts  
25 with the director of the Washington conservation corps and work to  
26 provide training opportunities for young citizens;

27 (d) Obtain and maintain equipment and supplies used in emergency  
28 rescue efforts;

29 (e) Report to the appropriate standing committees of the  
30 legislature on the progress of the coalition's efforts and detail

1 future funding options necessary for the implementation of this section  
2 and RCW 90.56.110. The coalition shall report by January 30, 1991.

3 (4)(a) Expenses for the coalition may be provided by the coastal  
4 protection fund administered according to RCW 90.48.400.

5 (b) The (~~commission~~) coalition is encouraged to seek grants,  
6 gifts, or donations from private sources in order to carry out the  
7 provisions of this section and RCW 90.56.110. Any private funds  
8 donated to the commission shall be deposited into the wildlife rescue  
9 account hereby created within the wildlife fund as authorized under  
10 Title 77 RCW.

11 **Sec. 22.** RCW 90.56.210 and 1991 c 200 s 202 are each amended to  
12 read as follows:

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

21 (a) Include full details of the method of response to spills of  
22 various sizes from any facility which is covered by the plan;

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

27 (c) Provide a clear, precise, and detailed description of how the  
28 plan relates to and is integrated into relevant contingency plans which

1 have been prepared by cooperatives, ports, regional entities, the  
2 state, and the federal government;

3 (d) Provide procedures for early detection of oil spills and timely  
4 notification of such spills to appropriate federal, state, and local  
5 authorities under applicable state and federal law;

6 (e) State the number, training preparedness, and fitness of all  
7 dedicated, prepositioned personnel assigned to direct and implement the  
8 plan;

9 (f) Incorporate periodic training and drill programs to evaluate  
10 whether personnel and equipment provided under the plan are in a state  
11 of operational readiness at all times;

12 (g) Describe important features of the surrounding environment,  
13 including fish and wildlife habitat, environmentally and  
14 archaeologically sensitive areas, and public facilities. The  
15 departments of ecology, fisheries, wildlife, and natural resources, and  
16 the office of archaeology and historic preservation, upon request,  
17 shall provide information that they have available to assist in  
18 preparing this description. If the department has adopted rules for  
19 contingency plans prior to July 1, 1992, the description of  
20 archaeologically sensitive areas shall only be required when the  
21 department revises the rules for contingency plans after July 1, 1992.  
22 The description of archaeologically sensitive areas shall not be  
23 required to be included in a contingency plan until it is reviewed and  
24 updated pursuant to subsection (9) of this section;

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

29 (i) Provide arrangements for the prepositioning of oil spill  
30 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 (j) Provide arrangements for enlisting the use of qualified and  
4 trained cleanup personnel to implement the plan;

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

7 (l) Until a spill prevention plan has been submitted pursuant to  
8 RCW 90.56.200, 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 facility, training of personnel, number of  
11 personnel, and backup systems designed to prevent a spill;

12 (m) 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 (n) 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.

19 (2)(a) The following shall submit contingency plans to the  
20 department within six months after the department adopts rules  
21 establishing standards for contingency plans under subsection (1) of  
22 this section:

23 (i) Onshore facilities capable of storing one million gallons or  
24 more of oil; and

25 (ii) Offshore facilities.

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

1 (3)(a) The owner or operator of a facility shall submit the  
2 contingency plan for the facility.

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

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

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

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

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

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

27 (d) The existence of navigational hazards within the area covered  
28 by the plan;

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

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

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

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

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

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

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

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

28 (10) Approval of a contingency plan by the department does not  
29 constitute an express assurance regarding the adequacy of the plan nor

1 constitute a defense to liability imposed under this chapter or other  
2 state law.

3 **Sec. 23.** RCW 90.56.300 and 1991 c 200 s 301 are each amended to  
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, it shall  
6 be unlawful for the owner or operator to knowingly and intentionally  
7 operate in this state or on the waters of this state an onshore or  
8 offshore facility without an approved contingency plan or an approved  
9 prevention plan as required by this chapter, or financial  
10 responsibility in compliance with chapter 88.40 RCW and the federal oil  
11 pollution act of 1990. The first conviction under this section shall  
12 be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent  
13 conviction shall be a class C felony under chapter 9A.20 RCW.

14 (2) It shall not be unlawful for the owner or operator to operate  
15 an onshore or offshore facility if:

16 (a) The facility is not required to have a contingency plan, spill  
17 prevention plan, or financial responsibility; or

18 (b) All required plans have been submitted to the department as  
19 required by RCW 90.56.210 and rules adopted by the department and the  
20 department is reviewing the plan and has not denied approval.

21 (3) A person may rely on a copy of the statement issued by the  
22 department pursuant to RCW 90.56.210(7) as evidence that a facility has  
23 an approved contingency plan and the statement issued pursuant to RCW  
24 (~~(90.56.200(5))~~) 90.56.200(4) that a facility has an approved  
25 prevention plan.

26 **Sec. 24.** RCW 90.56.310 and 1991 c 200 s 302 are each amended to  
27 read as follows:

1 (1) Except as provided in subsection (3) of this section, it shall  
2 be unlawful:

3 (a) For the owner or operator to operate an onshore or offshore  
4 facility without an approved contingency plan as required under RCW  
5 90.56.210, a spill prevention plan required by RCW 90.56.200, or  
6 financial responsibility in compliance with chapter 88.40 RCW and the  
7 federal oil pollution act of 1990; or

8 (b) For the owner or operator of an onshore or offshore facility to  
9 ~~((accept))~~ transfer cargo or passengers to or from a covered vessel  
10 that does not have an approved contingency plan or an approved  
11 prevention plan required under chapter 88.46 RCW or financial  
12 responsibility in compliance with chapter 88.40 RCW and the federal oil  
13 pollution act of 1990.

14 (2) ~~((The department may notify the secretary of state to suspend  
15 the business license of any onshore or offshore facility or other  
16 person that is in violation of this section.))~~ The department may  
17 assess a civil penalty under RCW 43.21B.300 of up to one hundred  
18 thousand dollars against any person who is in violation of this  
19 section. Each day that a facility or person is in violation of this  
20 section shall be considered a separate violation.

21 (3) It shall not be unlawful for a facility or other person to  
22 operate or accept cargo or passengers from a covered vessel if:

23 (a) A contingency plan, a prevention plan, or financial  
24 responsibility is not required for the facility; or

25 (b) A contingency and prevention plan has been submitted to the  
26 department as required by this chapter and rules adopted by the  
27 department and the department is reviewing the plan and has not denied  
28 approval.

29 (4) Any person may rely on a copy of the statement issued by the  
30 department pursuant to RCW 90.56.210(7) as evidence that the facility

1 has an approved contingency plan and the statement issued pursuant to  
2 RCW (~~(90.56.200(5))~~) 90.56.200(4) as evidence that the facility has an  
3 approved spill prevention plan. Any person may rely on a copy of the  
4 statement issued by the office to RCW 88.46.060 as evidence that the  
5 vessel has an approved contingency plan and the statement issued  
6 pursuant to RCW 88.46.040 as evidence that the vessel has an approved  
7 prevention plan.

8 **Sec. 25.** RCW 90.56.330 and 1990 c 116 s 20 are each amended to  
9 read as follows:

10 Except as otherwise provided in RCW (~~(90.48.383)~~) 90.56.390, any  
11 person who negligently discharges oil, or causes or permits the entry  
12 of the same, shall incur, in addition to any other penalty as provided  
13 by law, a penalty in an amount of up to twenty thousand dollars for  
14 every such violation, and for each day the spill poses risks to the  
15 environment as determined by the director. Any person who  
16 intentionally or recklessly discharges or causes or permits the entry  
17 of oil into the waters of the state shall incur, in addition to any  
18 other penalty authorized by law, a penalty of up to one hundred  
19 thousand dollars for every such violation and for each day the spill  
20 poses risks to the environment as determined by the director. The  
21 amount of the penalty shall be determined by the director after taking  
22 into consideration the gravity of the violation, the previous record of  
23 the violator in complying, or failing to comply, with the provisions of  
24 chapter 90.48 RCW, the speed and thoroughness of the collection and  
25 removal of the oil, and such other considerations as the director deems  
26 appropriate. Every act of commission or omission which procures, aids  
27 or abets in the violation shall be considered a violation under the  
28 provisions of this section and subject to the penalty herein provided

1 for. The penalty herein provided for shall be imposed pursuant to RCW  
2 43.21B.300.

3 **Sec. 26.** RCW 90.56.380 and 1990 c 116 s 19 are each amended to  
4 read as follows:

5 In addition to any cause of action the state may have to recover  
6 necessary expenses for the cleanup of oil pursuant to RCW 90.56.340 and  
7 90.56.330, and except as otherwise provided in RCW ((90.48.383))  
8 90.56.390, any other person causing the entry of oil shall be directly  
9 liable to the state for the necessary expenses of oil cleanup arising  
10 from such entry and the state shall have a cause of action to recover  
11 from any or all of said persons. Except as otherwise provided in RCW  
12 ((90.48.383)) 90.56.390, any person liable for cost of oil cleanup as  
13 provided in RCW 90.56.340 and 90.56.330 shall have a cause of action to  
14 recover for costs of cleanup from any other person causing the entry of  
15 oil into the waters of the state including any amount recoverable by  
16 the state as necessary expenses under RCW 90.56.330.

17 **Sec. 27.** RCW 90.56.390 and 1991 c 200 s 304 are each amended to  
18 read as follows:

19 (1)(a) ((~~Notwithstanding any other provision of law,~~)) A person is  
20 not liable for removal costs or damages that result from actions taken  
21 or omitted to be taken in the course of rendering care, assistance, or  
22 advice consistent with the national contingency plan or as otherwise  
23 directed by the federal on-scene coordinator or by the official within  
24 the department with responsibility for oil spill response. This  
25 subsection (1)(a) does not apply:

26 (i) To a responsible party;

27 (ii) With respect to personal injury or wrongful death; or

1 (iii) If the person is grossly negligent or engages in willful  
2 misconduct.

3 (b) A responsible party is liable for any removal costs and damages  
4 that another person is relieved of under (a) of this subsection.

5 (c) Nothing in this section affects the liability of a responsible  
6 party for oil spill response under state law.

7 (2) For the purposes of this section:

8 (a) "Damages" means damages of any kind for which liability may  
9 exist under the laws of this state resulting from, arising out of, or  
10 related to the discharge or threatened discharge of oil.

11 ~~(b) ("Discharge" means any emission other than natural seepage,  
12 intentional or unintentional, and includes, but is not limited to,  
13 spilling, leaking, pumping, pouring, emitting, emptying, or dumping.~~

14 ~~(c))~~ "Federal on-scene coordinator" means the federal official  
15 predesignated by the United States environmental protection agency or  
16 the United States coast guard to coordinate and direct federal  
17 responses under subpart D, or the official designated by the lead  
18 agency to coordinate and direct removal under subpart E, of the  
19 national contingency plan.

20 ~~((d))~~ (c) "National contingency plan" means the national  
21 contingency plan prepared and published under section 311(d) of the  
22 federal water pollution control act (33 U.S.C. Sec. 1321(d)), as  
23 amended by the oil pollution act of 1990 (P.L. 101-380, 104 Stat. 484  
24 (1990)).

25 ~~((e) "Oil" means oil of any kind or in any form, including, but  
26 not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed  
27 with wastes other than dredged spoil.~~

28 ~~(f) "Person" means an individual, corporation, partnership,  
29 association, state, municipality, commission, or political subdivision  
30 of a state, or any interstate body.~~

1       ~~(g)~~) (d) "Removal costs" means the costs of removal that are  
2 incurred after a discharge of oil has occurred or, in any case in which  
3 there is a substantial threat of a discharge of oil, the costs to  
4 prevent, minimize, or mitigate oil pollution from such an incident.

5       ~~((h))~~ (e) "Responsible party" means a person liable under RCW  
6 90.56.370.

7       **Sec. 28.** RCW 90.56.400 and 1991 c 200 s 305 are each amended to  
8 read as follows:

9       The department shall investigate each activity or project conducted  
10 under RCW 90.56.350 to determine, if possible, the circumstances  
11 surrounding the entry of oil into waters of the state and the person or  
12 persons allowing said entry or responsible for the act or acts which  
13 result in said entry. Whenever it appears to the department, after  
14 investigation, that a specific person or persons are responsible for  
15 the necessary expenses incurred by the state pertaining to a project or  
16 activity as specified in RCW 90.56.360, the department shall notify  
17 said person or persons by appropriate order. The department may not  
18 issue an order pertaining to a project or activity which was completed  
19 more than five years prior to the date of the proposed issuance of the  
20 order. The order shall state the findings of the department, the  
21 amount of necessary expenses incurred in conducting the project or  
22 activity, and a notice that said amount is due and payable immediately  
23 upon receipt of said order. The department may, upon application from  
24 the recipient of an order received within thirty days from the receipt  
25 of the order, reduce or set aside in its entirety the amount due and  
26 payable, when it appears from the application, and from any further  
27 investigation the department may desire to undertake, that a reduction  
28 or setting aside is just and fair under all the circumstances. If the  
29 amount specified in the order issued by the department notifying said

1 person or persons is not paid within thirty days after receipt of  
2 notice imposing the same, or if an application has been made within  
3 thirty days as herein provided and the amount provided in the order  
4 issued by the department subsequent to such application is not paid  
5 within fifteen days after receipt thereof, the attorney general, upon  
6 request of the department, shall bring an action on behalf of the state  
7 in the superior court of Thurston county or any county in which the  
8 person to which the order is directed does business, or in any other  
9 court of competent jurisdiction, to recover the amount specified in the  
10 final order of the department. No order issued under this section  
11 shall be construed as an order within the meaning of RCW 43.21B.310 and  
12 shall not be appealable to the hearings board. In any action to  
13 recover necessary expenses as herein provided said person shall be  
14 relieved from liability for necessary expenses if the person can prove  
15 that the oil to which the necessary expenses relate entered the waters  
16 of the state by causes set forth in RCW (~~(90.56.320(2))~~) 90.56.370(2).

17 **Sec. 29.** RCW 90.56.450 and 1991 c 200 s 501 are each amended to  
18 read as follows:

19 (1) The (~~oil~~) marine oversight board is established to provide  
20 independent oversight of the actions of the federal government,  
21 industry, the department, the office, and other state agencies with  
22 respect to oil spill prevention and response for covered vessels and  
23 onshore and offshore facilities.

24 (2)(a) The board may, at its own discretion, study any aspect of  
25 oil spill prevention and response for covered vessels and onshore and  
26 offshore facilities in the state. The board shall report to the  
27 governor and make recommendations to the department and the office on  
28 activities of the federal government and industry with respect to oil  
29 spill prevention and response for covered vessels and onshore and

1 offshore facilities, including recommendations for the state's response  
2 to those actions. The board shall specifically review the need for,  
3 and the structure and design of an emergency response system for the  
4 Strait of Juan de Fuca and the Pacific coast. The board shall also  
5 make recommendations to the legislature and other state agencies on any  
6 provision of this chapter, other state laws, and rules, policies, and  
7 guidelines adopted by the department, the office, or((~~7~~)) other state  
8 agencies relating to the prevention and cleanup of oil spills into the  
9 waters of the state from covered vessels and onshore and offshore  
10 facilities.

11 (b) To minimize duplication of effort, reviews conducted by the  
12 board shall be coordinated with related activities of the federal  
13 government, the department, the office, and other appropriate state and  
14 international entities. The Puget Sound water quality authority shall  
15 ensure that studies and recommendations by the board shall not be  
16 duplicated by any recommendations prepared and adopted pursuant to  
17 chapter 90.70 RCW after May 15, 1991.

18 (c) The board shall evaluate and report at least annually to the  
19 governor and the appropriate standing committees of the legislature on  
20 oil spill prevention, response, and preparedness programs within the  
21 state for covered vessels and onshore and offshore facilities.

22 (3) There shall be five members of the board appointed by the  
23 governor for terms of five years. Members' terms shall be staggered.  
24 The members of the board shall be representative of the public and  
25 shall have demonstrable knowledge of environmental protection and the  
26 study of marine ecosystems, or have familiarity with marine  
27 transportation systems.

28 (4) A chair shall be selected by majority vote of the board. The  
29 board shall meet as often as required, but at least four times per

1 year. Members shall be reimbursed for travel and expenses for  
2 attending meetings as provided in RCW 43.03.050 and 43.03.060.

3 (5) The chair may hire staff as necessary for the board to fulfill  
4 its responsibilities.

5 **Sec. 30.** RCW 90.56.510 and 1991 c 200 s 806 are each amended to  
6 read as follows:

7 The ((state)) oil spill administration account is created in the  
8 state treasury. All receipts from RCW 82.23B.020(2) shall be deposited  
9 in the account. Moneys from the account may be spent only after  
10 appropriation. The account is subject to allotment procedures under  
11 chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts  
12 deposited in the account from the tax imposed by RCW 82.23B.020(2) for  
13 the previous fiscal biennium exceed the amount appropriated from the  
14 account for the previous fiscal biennium, the state treasurer shall  
15 transfer the amount of receipts exceeding the appropriation to the oil  
16 spill response account. If, on the first day of any calendar month,  
17 the balance of the oil spill response account is greater than twenty-  
18 five million dollars and the balance of the oil spill administration  
19 account exceeds the unexpended appropriation for the current biennium,  
20 then the tax under RCW 82.23B.020(2) shall be suspended on the first  
21 day of the next calendar month until the beginning of the following  
22 biennium, provided that the tax shall not be suspended during the last  
23 six months of the biennium. If the tax imposed under RCW 82.23B.020(2)  
24 is suspended during two consecutive biennia, the department shall by  
25 November 1st after the end of the second biennium, recommend to the  
26 appropriate standing committees an adjustment in the tax rate. For the  
27 period 1991-93 the state treasurer may transfer funds from the oil  
28 spill response account to the oil spill administration account in  
29 amounts necessary to support appropriations made from the oil spill

1 administration account in the omnibus appropriations act. Expenditures  
2 from the oil spill administration account shall be used exclusively for  
3 the administrative costs related to the purposes of this chapter, and  
4 chapters 90.48, 88.40, and 88.46 RCW. Costs of administration include  
5 the costs of:

6 (1) Routine responses not covered under RCW 90.56.500;

7 (2) Management and staff development activities;

8 (3) Development of rules and policies and the state-wide plan  
9 provided for in RCW 90.56.060;

10 (4) Facility and vessel plan review and approval, drills,  
11 inspections, investigations, enforcement, and litigation;

12 (5) Interagency coordination and public outreach and education;

13 (6) Collection and administration of the tax provided for in  
14 chapter 82.23B RCW; and

15 (7) Appropriate travel, goods and services, contracts, and  
16 equipment.

17 **Sec. 31.** RCW 90.56.520 and 1991 c 200 s 807 are each amended to  
18 read as follows:

19 The director of the department of ecology shall submit a report to  
20 the appropriate standing committees of the legislature by November 1 of  
21 each even-numbered year showing detailed information regarding  
22 expenditures authorized by the director under RCW 90.56.500. The  
23 report shall include, but not be limited to:

24 (1) The total amount spent for each response for which the director  
25 has approved expenditures and the amount paid for from the oil spill  
26 (~~prevention and~~) response account;

27 (2) The amount recovered from a responsible party for each spill;

28 (3) The amount of time between a spill and the time a responsible  
29 party assumes responsibility for the response costs related to a spill;

1 (4) The number of incidents for which the director has determined  
2 that the responsible party or another source was available to pay for  
3 the response; and

4 (5) A recommendation concerning the need to continue collecting the  
5 tax under RCW 82.23B.020(1).

6 This section shall expire December 31, 1996.

7 NEW SECTION. **Sec. 32.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 33.** Section 9 of this act shall apply to  
12 vessels beginning May 15, 1991.

13 NEW SECTION. **Sec. 34.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and shall take  
16 effect immediately.