

2SHB 1186 - H AMD 63

By Representative Hudgins

ADOPTED AS AMENDED 02/28/2011

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

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

16 (2) The legislature further finds that during the fall of 2010 the
17 department of ecology compiled lessons learned from the Gulf of Mexico
18 spill and the Puget Sound partnership convened an oil spill work group
19 in an effort to ensure there is a rapid and aggressive response to a
20 large scale spill in Washington and that oversight of spills is well
21 coordinated among different levels of government and industry. The
22 legislature intends to build upon these efforts, and other recent
23 studies, to improve Washington's prevention and response capabilities.
24 While current oil spill contingency plans are required to address worst
25 case spills, it is also clear that the state may be underprepared for
26 a large scale oil spill of the magnitude possible by failures of an oil
27 tanker or a tank barge, particularly within the confined waters of
28 Puget Sound. Lessons learned from the 2010 deepwater horizon incident
29 demonstrate that improvements to Washington's existing oil spill

1 prevention, preparedness, and response capabilities are both necessary
2 and possible.

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

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

7 (1) "Best achievable protection" means the highest level of
8 protection that can be achieved through the use of the best achievable
9 technology and those staffing levels, training procedures, and
10 operational methods that provide the greatest degree of protection
11 achievable. The director's determination of best achievable protection
12 shall be guided by the critical need to protect the state's natural
13 resources and waters, while considering:

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

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

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

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

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

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

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

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

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

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

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

3 (9)(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) marine fuel outlet that does not dispense
15 more than three thousand gallons of fuel to a ship that is not a
16 covered vessel, in a single transaction.

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

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

25 (12) "Offshore facility" means any facility located in, on, or
26 under any of the navigable waters of the state, but does not include a
27 facility any part of which is located in, on, or under any land of the
28 state, other than submerged land. "Offshore facility" does not include
29 a marine facility.

30 (13) "Oil" or "oils" means oil of any kind that is liquid at
31 atmospheric temperature and any fractionation thereof, including, but
32 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,
33 biological oils and blends, oil sludge, oil refuse, and oil mixed with
34 wastes other than dredged spoil. Oil does not include any substance
35 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,
36 under section 101(14) of the federal comprehensive environmental
37 response, compensation, and liability act of 1980, as amended by P.L.
38 99-499.

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

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

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

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

18 (17) "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 (18) "Race Rocks light" means the nautical landmark located
22 southwest of the city of Victoria, British Columbia.

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

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

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

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

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

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

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

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

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

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

16 (27) "Vessels of opportunity response system" means a fleet of
17 nondedicated commercial vessels and crew, including commercial fishing
18 vessels, other commercial vessels, publicly owned vessels, and other
19 appropriate nonrecreational vessels, that are under contract with, and
20 equipped by, contingency plan holders to assist with oil spill response
21 activities, including on-water oil recovery in the near shore
22 environment and the placement of oil spill containment booms to protect
23 sensitive habitats.

24 (28) "Regional vessels of opportunity response group" means a fleet
25 of vessels participating in a vessels of opportunity response system
26 and directed and positioned to respond to spills in a defined
27 geographic area.

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

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

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

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

7 (b) Except for tank vessels with an area of operation limited to
8 the Columbia river, the vessels of opportunity response system must be
9 composed of an adequate number of regional vessels of opportunity
10 response groups so as to be prepared to respond to a spill anywhere
11 within the tank vessel's area of operation within twelve hours after
12 notification of a spill event, to the extent that a twelve-hour spill
13 response is determined to be safe and effective. For tank vessels with
14 an area of operation limited to the Columbia river, the vessels of
15 opportunity system may be limited to one regional vessels of
16 opportunity response group located near the mouth of the river.

17 (c) Each regional vessels of opportunity response group must be
18 composed of a sufficient number of participating vessels to satisfy a
19 planning standard of having at least six capable vessels available at
20 any one time during a spill response incident. To achieve the planning
21 standard of deploying six individual nondedicated vessels at any one
22 time, a regional vessels of opportunity response group must include a
23 total of more than six participating nondedicated vessels.

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

27 (a) Participating vessels can be rapidly equipped, consistent with
28 subsection (3) of this section, with dedicated response equipment that
29 represents the best achievable technology, given the expected operating
30 environment, for the booming, storage, and recovery of oil. The best
31 achievable technology may vary among regional vessels of opportunity
32 response groups and the individual participating vessels based on
33 whether or not the expected response area is open marine water, harbor
34 areas, Puget Sound, or river environments; however, the vessels
35 participating in an individual response group must, at a minimum,
36 collectively have access to equipment that includes containment boom
37 and oil recovery systems capable of operating in currents of at least
38 four knots;

1 (b) The appropriate response equipment is readily available to the
2 individual vessels participating in a regional vessels of opportunity
3 response group; and

4 (c) Crews of the participating vessels are:

5 (i) Equipped with adequate personal protection gear; and

6 (ii) Properly trained to utilize response equipment that represents
7 the highest level of available oil spill response technology for the
8 expected operating environment. Crew training may be limited to safe
9 response equipment utilization and deployment and not the maintenance
10 of response equipment.

11 (3)(a) The dedicated response equipment actually provided to
12 individual participating vessels in a regional vessels of opportunity
13 system may differ among participating vessels; however, the equipment
14 provided collectively to the individual participants in a response
15 group must satisfy the requirements of this section. As such, when
16 necessary to satisfy the requirements of this section, not all
17 participating vessels are, individually, required to be equipped with
18 technology representing the best achievable protection.

19 (b) The dedicated response equipment provided to individual
20 participating vessels in a regional vessels of opportunity system may
21 be dedicated equipment owned and maintained by the contingency plan
22 holder and not by the owner or operator of the participating vessel as
23 long as the participating vessels have access to, and can be equipped
24 with, the equipment as required in this section. Equipment that is
25 required to be available to dedicated responders under section 5 of
26 this act may supplement but not substitute for equipment available to
27 regional vessels of opportunity response groups.

28 (4) In addition to meeting requirements specified in RCW 88.46.060,
29 contingency plans for tank vessels operating in Washington waters must
30 provide for the organization and contracting of a vessels of
31 opportunity response system as required by this section.

32 (5)(a) The requirements of this section may be fulfilled by one or
33 more private organizations or nonprofit corporations providing umbrella
34 coverage under contract to single or multiple tank vessels. Any
35 organization or corporation providing coverage to satisfy the
36 requirements of this section must ensure that the vessels of
37 opportunity response system being provided includes the establishment

1 of a minimum of six distinct regional vessels of opportunity response
2 groups that are located strategically to ensure a timely response in
3 any of Washington's marine waters or the Columbia river.

4 (b) Unless otherwise directed by the department, the response
5 groups must at a minimum be stationed so as to be able to respond to
6 incidents occurring in the following locations:

- 7 (i) The outer coast;
- 8 (ii) The Strait of Juan de Fuca;
- 9 (iii) Northern Puget Sound;
- 10 (iv) Central Puget Sound;
- 11 (v) Southern Puget Sound; and
- 12 (vi) The mouth of the Columbia river.

13 (c) The department may require a private organization or nonprofit
14 corporation providing umbrella coverage to satisfy the requirements of
15 this section to station regional vessels of opportunity response groups
16 in areas that are in addition to the minimum required response areas of
17 this subsection based on risk and need.

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

28 (7) The decision to activate a vessels of opportunity response
29 system during a spill response, and provide direction as to how and
30 where the regional vessels of opportunity response groups should
31 respond, is the sole responsibility of the designated incident
32 commander or the unified command. The incident commander or unified
33 command is the only entity empowered to direct which of the response
34 equipment available to a regional vessels of opportunity response group
35 is appropriate for the operating environment and for the capabilities
36 of the specific individual responding vessels.

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

3 (1) The department shall establish a volunteer coordination system.
4 The volunteer coordination system may be included as a part of the
5 state's overall oil spill response strategy, and may be implemented by
6 local emergency management organizations, in coordination with any
7 analogous federal efforts, to supplement the state's timely and
8 effective response to spills.

9 (2) The department should consider how the volunteer coordination
10 system will:

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

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

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

21 (d) Coordinate public outreach regarding the need for and use of
22 volunteers;

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

24 (f) Identify volunteer training requirements and, if applicable,
25 provide training opportunities for volunteers prior to an oil spill
26 response incident.

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

35 (3) The decisions to utilize volunteers in an oil spill response,
36 which volunteers to utilize, and to determine which response activities
37 are appropriate for volunteer participation in any given response are

1 the sole responsibilities of the designated incident commander or
2 unified command.

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

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

8 (a) Rapid access to equipment located within the state that
9 reflects the best achievable protection for the expected operating
10 environment in the vessel's area of operation without requiring
11 equipment with capabilities that exceeds the response requirements for
12 the expected operating environment; and

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

16 (2) In reviewing tank vessel contingency plans to measure
17 compliance with this section, the department must ensure that, at a
18 minimum, plans:

19 (a) Provide access to dedicated equipment appropriate for the
20 operating environment as needed to achieve oil recovery, to the maximum
21 extent practicable and without unreasonably jeopardizing crew safety;
22 including, at minimum, equipment that includes containment boom and oil
23 recovery systems capable of operating in currents of at least four
24 knots. Equipment intended to be used for response activities on the
25 outer coast or the Strait of Juan de Fuca must also be capable of open
26 water operations;

27 (b) Include a technical analysis of best achievable technology and
28 best achievable protection for the expected operating environment in
29 the vessel's area of operation, and incorporate best achievable
30 protection; and

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

35 (3) Contingency plans for tank vessels must provide for the ability
36 of the tank vessel to have access, either directly or through an
37 assured contract with a third party, to multispectrum scanning

1 technologies that enhance the ability of responders to detect and
2 respond to oil spills in times of low visibility and at night,
3 including technology that is capable of aerial oil identification,
4 location mapping, and downloading of the information in real time to
5 response vessels and the command post. This technology is not required
6 to be stationed in Washington, but must be capable of being operational
7 at the site of an incident within four hours of plan activation.

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

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

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

17 (a) The functional ability for multiple contingency plans to be
18 simultaneously activated with the purpose of testing the ability for
19 dedicated equipment and trained personnel cited in multiple contingency
20 plans to be activated in a large scale spill; and

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

24 (3) Joint drills ordered under this section may be incorporated
25 into other drill requirements under this chapter when deemed beneficial
26 by the department for enabling larger scale drills within the overall
27 drill management framework.

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

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

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

3 (1) Each covered vessel shall have a contingency plan for the
4 containment and cleanup of oil spills from the covered vessel into the
5 waters of the state and for the protection of fisheries and wildlife,
6 shellfish beds, natural resources, and public and private property from
7 such spills. The department shall by rule adopt and periodically
8 revise standards for the preparation of contingency plans. The
9 department shall require contingency plans, at a minimum, to meet the
10 following standards:

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

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

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

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

24 (e) State the number, training preparedness, and fitness of all
25 dedicated, prepositioned personnel assigned to direct and implement the
26 plan;

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

30 (g) Describe important features of the surrounding environment,
31 including fish and wildlife habitat, shellfish beds, environmentally
32 and archaeologically sensitive areas, and public facilities. The
33 departments of ecology, fish and wildlife, (~~and~~) natural resources,
34 and (~~the office of~~) archaeology and historic preservation, upon
35 request, shall provide information that they have available to assist
36 in preparing this description. The description of archaeologically
37 sensitive areas shall not be required to be included in a contingency

1 plan until it is reviewed and updated pursuant to subsection (9) of
2 this section;

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

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

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

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

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

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

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

27 (o) If the department has adopted rules permitting the use of
28 dispersants, the circumstances, if any, and the manner for the
29 application of the dispersants in conformance with the department's
30 rules;

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

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

35 (2)~~((a+))~~ The owner or operator of a ~~((tank))~~ covered vessel ~~((of~~
36 ~~three thousand gross tons or more shall))~~ must submit ~~((a))~~ any
37 required contingency plan updates to the department within ~~((six months~~

1 after)) the timelines established by the department ((adopts rules
2 establishing standards for contingency plans under subsection (1) of
3 this section.

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

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

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

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

32 (4) A contingency plan prepared for an agency of the federal
33 government or another state that satisfies the requirements of this
34 section and rules adopted by the department may be accepted by the
35 department as a contingency plan under this section. The department
36 shall ensure that to the greatest extent possible, requirements for
37 contingency plans under this section are consistent with the
38 requirements for contingency plans under federal law.

1 (5) In reviewing the contingency plans required by this section,
2 the department 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, shellfish beds, and
17 other natural 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)(a) The department 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 (b) The department must notify the plan holder in writing within
29 sixty-five days of an initial or amended plan's submittal to the
30 department as to whether the plan is disapproved, approved, or
31 conditionally approved. If a plan is conditionally approved, the
32 department must clearly describe each condition and specify a schedule
33 for plan holders to submit required updates.

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

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

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

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

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

16 (1) When submitting a contingency plan to the department under RCW
17 88.46.060, any umbrella plan holders that enroll both tank vessels and
18 covered vessels that are not tank vessels must, in addition to
19 satisfying the other requirements of this chapter, specify:

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

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

25 (2) Tank vessel owners or operators that are enrolled with an
26 umbrella plan holder and that have worse case discharge volumes larger
27 than the maximum volume covered by the contingency plan of the umbrella
28 plan holder must demonstrate to the satisfaction of the department that
29 the owner or operator of the tank vessel has access to the necessary
30 additional response capabilities.

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

33 ~~((1)) In ((order to assist the state in identifying areas of the~~
34 ~~navigable waters of the state needing special attention, the owner or~~
35 ~~operator of a covered vessel shall notify the)) addition to any~~

1 notifications that the owner or operator of a covered vessel must
2 provide to the United States coast guard ((within one hour:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 ~~(c) A near miss incident is an incident that requires the pilot or~~
36 ~~master of a covered vessel to take evasive actions or make significant~~
37 ~~course corrections in order to avoid a collision with another ship or~~

1 to avoid a grounding as required by the international rules of the
2 road.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (a) For spills totaling one thousand gallons or more in any one
35 event, no less than (~~((one-dollar))~~) three dollars per gallon of oil
36 spilled and no greater than (~~((one))~~) three hundred dollars per gallon of
37 oil spilled; and

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

4 (2) The compensation schedule adopted under this section shall
5 reflect adequate compensation for unquantifiable damages or for damages
6 not quantifiable at reasonable cost for any adverse environmental,
7 recreational, aesthetic, or other effects caused by the spill and shall
8 take into account:

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

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

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

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

17 ~~((c))~~ (iii) Seasonal distribution or sensitivity of living
18 resources;

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

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

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

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

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

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

32 ~~((b))~~ (ii) Enhance or impede the detection of the spill, the
33 determination of the quantity of oil spilled, or the extent of damage,
34 including the unauthorized removal of evidence such as injured fish or
35 wildlife.

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

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

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

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

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

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

24 ((+3)) (5) The liability established in this section shall in no
25 way affect the rights which: (a) The owner or other person having
26 control over the oil may have against any person whose acts may in any
27 way have caused or contributed to the discharge of oil, or (b) the
28 state of Washington may have against any person whose actions may have
29 caused or contributed to the discharge of oil.

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

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

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

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

15 (3) The report required by this section must be delivered by
16 January 5, 2015.

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

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

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

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

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

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

35 (2) The department must comply with section 4 of this act, relating
36 to volunteer coordination systems, by July 1, 2014.

1 (3) In the initial implementation of sections 3 through 8 of this
2 act, the department of ecology shall consult with appropriate
3 stakeholders interested in tank vessel oil spill preparedness and
4 response, as invited to participate by the director of the department
5 of ecology. However, nothing in this subsection limits the ability of
6 the department of ecology to implement this act in the manner deemed
7 most appropriate by the department of ecology.

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

11 (5) This section expires July 31, 2014."

12 Correct the title.

EFFECT: Changes the nature of the volunteer coordination system from being funded by tank vessels to being developed by the department of ecology; provides that response equipment required of tank vessels and regional vessels of opportunity response groups be tailored to the expected operating environment; identifies the six regions where a vessels of opportunity response system provided by an umbrella plan holder must operate; clarifies that the goals of the vessels of opportunity system are planning standards; removes wave height standards for required oil spill response equipment; clarifies that the response equipment made available to a vessels of opportunity system may be owned and maintained by the holder of the underlying contingency plan; provides for the incident commander or unified command of a spill response to have authority over the deploying of a vessels of opportunity or volunteer coordination system; clarifies that the additional drill requirements are intended to test the response capabilities of assets cited in multiple contingency plans; and limits the increase in natural resource damages to spills greater than 1000 gallons in size.

--- END ---