
HOUSE BILL 2389

State of Washington

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By Representatives Rust, Horn, Valle, Pruitt, Bray, J. Kohl, Brekke, D. Sommers and Jones

Read first time 01/16/92. Referred to Committee on Environmental Affairs.

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, 88.46.010, 88.46.050, 88.46.060, 88.46.090, 88.46.110,
5 90.48.366, 90.48.368, 90.48.400, 90.56.010, 90.56.060, 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, except that the administrator may appoint and fix the salaries of
20 up to six employees who are exempt from chapter 41.06 RCW.

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

23 The executive head and appointing authority of the office shall be
24 the administrator of marine safety. The administrator shall be
25 appointed by, and serve at the pleasure of, the governor (~~in~~
26 ~~accordance with RCW 43.17.020~~). The administrator shall be paid a
27 salary to be fixed by the governor in accordance with RCW 43.03.040.

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

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

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

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

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

18 (7) "Petroleum product" means any liquid hydrocarbons at
19 atmospheric temperature and pressure that are the product of the
20 fractionation, distillation, or other refining or processing of crude
21 oil, and that are used as, useable as, or may be refined as a fuel or
22 fuel blendstock, including but not limited to, gasoline, diesel fuel,
23 aviation fuel, bunker fuel, and fuels containing a blend of alcohol and
24 petroleum. Petroleum product does not include any substance listed in
25 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
26 section 101(14) of the federal comprehensive environmental response,
27 compensation, and liability act of 1980, as amended by P.L. 99-499.

28 (8) "Taxpayer" means the person owning crude oil or petroleum
29 products immediately before the same are off-loaded at a marine

1 terminal in this state and who is liable for the taxes imposed by this
2 chapter.

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

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

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

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

25 (3) The taxes imposed by this chapter shall be collected by the
26 marine terminal operator from the owner of the crude oil or petroleum
27 products off-loaded at the marine terminal. If any person charged with
28 collecting the taxes fails to ~~((bill the taxpayer for the taxes, or in~~
29 ~~the alternative has not notified the taxpayer in writing of the~~

1 ~~imposition of~~) collect the taxes, or having collected the taxes, fails
2 to pay them to the department in the manner prescribed by this chapter,
3 whether such failure is the result of the person's own acts or the
4 result of acts or conditions beyond the person's control, he or she
5 shall, nevertheless, be personally liable to the state for the amount
6 of the taxes. Payment of the taxes by the owner to a marine terminal
7 operator shall relieve the owner from further liability for the taxes.

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

16 (5) If a taxpayer fails to pay the taxes imposed by this chapter to
17 the person charged with collection of the taxes and the person charged
18 with collection fails to pay the taxes to the department, the
19 department may, in its discretion, proceed directly against the
20 taxpayer for collection of the taxes.

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

25 (7) The amount of taxes, until paid by the taxpayer to the marine
26 terminal operator or to the department, shall constitute a debt from
27 the taxpayer to the marine terminal operator. Any person required to
28 collect the taxes under this chapter who, with intent to violate the
29 provisions of this chapter, fails or refuses to do so as required and

1 any taxpayer who refuses to pay any taxes due under this chapter, shall
2 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

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

15 (9) All receipts from the tax imposed in subsection (1) of this
16 section shall be deposited into the state oil spill response account.
17 All receipts from the tax imposed in subsection (2) of this section
18 shall be deposited into the state oil spill administration account.

19 (10) Within forty-five days after the end of each calendar quarter,
20 the office of financial management shall determine the balance of the
21 oil spill response account as of the last day of that calendar quarter.
22 Balance determinations by the office of financial management under this
23 section are final and shall not be used to challenge the validity of
24 any tax imposed under this chapter. The office of financial management
25 shall promptly notify the departments of revenue and ecology of the
26 account balance once a determination is made. For each subsequent
27 calendar quarter, the tax imposed by subsection (1) of this section
28 shall be imposed during the entire calendar quarter unless:

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

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

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

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

15 In addition to any other powers granted the administrator, the
16 administrator may:

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

19 (2) Appoint such advisory committees as may be necessary to carry
20 out the provisions of this chapter and chapter 88.46 RCW. Members of
21 such advisory committees are authorized to receive travel expenses in
22 accordance with RCW 43.03.050 and 43.03.060. The administrator shall
23 review each advisory committee within the jurisdiction of the office
24 and each statutory advisory committee on a biennial basis to determine
25 if such advisory committee is needed. The criteria specified in RCW
26 43.131.070 shall be used to determine whether or not each advisory
27 committee shall be continued;

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

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

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

7 (6) Act for the state in the initiation of, or the participation
8 in, any intergovernmental program for the purposes of this chapter and
9 chapter 88.46 RCW; or

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

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

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

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

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

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

24 (4) "Covered vessel" means a tank vessel, cargo vessel, or
25 passenger vessel.

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

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

28 (7)(a) "Facility" means any structure, group of structures,
29 equipment, pipeline, or device, other than a vessel, located on or near

1 the navigable waters of the state that transfers oil in bulk to or from
2 a tank vessel or pipeline, that is used for producing, storing,
3 handling, transferring, processing, or transporting oil in bulk.

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

13 (8) "Hazardous substances" means any substance listed in Table
14 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section
15 101(14) of the federal comprehensive environmental response,
16 compensation, and liability act of 1980, as amended by P.L. 99-499.
17 The following are not hazardous substances for purposes of this
18 chapter:

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

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

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

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

28 (11) "Office" means the office of marine safety established by RCW
29 43.21I.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

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

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

26 (4) "Fishing vessel" means a vessel (a) on which persons
27 commercially engage in: (i) Catching, taking, or harvesting fish; (ii)
28 preparing fish or fish products; or (b) that supplies, stores,

1 refrigerates, or transports fish, fish products, or materials directly
2 related to fishing or the preparation of fish.

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

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

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

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

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

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

28 (11) "Steamship agent or agency" means an agent or agency appointed
29 by a vessel owner or operator to enter or clear vessels at ports within
30 the state of Washington and to conduct onshore activities, or contract

1 on behalf of the owner or operator for whatever is required for the
2 efficient operation of the vessel.

3 (12) "Steamship liner company" means a steamship company
4 maintaining a regular schedule of calls at designated ports of the
5 state of Washington.

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

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

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

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

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

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

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

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

25 **Sec. 11.** RCW 88.46.010 and 1991 c 200 s 414 are each amended to
26 read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

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

3 (10)(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 (11) "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 (12) "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 (13) "Office" means the office of marine safety established by RCW
26 43.21I.010.

27 (14) "Oil" or "oils" means any naturally occurring liquid
28 hydrocarbons at atmospheric temperature and pressure coming from the
29 earth, including condensate and natural gasoline, and any fractionation
30 thereof, including, but not limited to, crude oil, petroleum, gasoline,

1 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
2 other than dredged spoil. Oil does not include any substance listed in
3 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
4 section 101(14) of the federal comprehensive environmental response,
5 compensation, and liability act of 1980, as amended by P.L. 99-499.

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

12 (16) "Onshore facility" means any facility(~~(, as defined in~~
13 ~~subsection (10) of this section,~~) any part of which is located in, on,
14 or under any land of the state, other than submerged land, that because
15 of its location, could reasonably be expected to cause substantial harm
16 to the environment by discharging oil into or on the navigable waters
17 of the state or the adjoining shorelines.

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 12.** RCW 88.46.050 and 1991 c 200 s 418 are each amended to
24 read as follows:

25 (1) In order to ensure the safety of marine transportation within
26 the navigable waters of the state and to protect the state's natural
27 resources, the administrator shall adopt rules by July 1, 1992, for
28 determining whether cargo vessels and passenger vessels entering the

1 navigable waters of the state pose a substantial risk of harm to the
2 public health and safety and the environment.

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

5 (a) Examining available information (~~((to examine))~~) sources for
6 evidence that a cargo or passenger vessel may pose a substantial risk
7 to safe marine transportation or the state's natural resources(~~((~~
8 ~~including~~)). Information sources may include: Vessel casualty lists,
9 United States coast guard casualty reports, maritime insurance ratings,
10 the index of contingency plans compiled by the department of ecology,
11 other data gathered by the office or the maritime commission, or any
12 other resources;

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

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

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

25 (e) Enforcement actions.

26 **Sec. 13.** RCW 88.46.060 and 1991 c 200 s 419 are each amended to
27 read as follows:

28 (1) Each covered vessel shall have a contingency plan for the
29 containment and cleanup of oil spills from the covered vessel into the

1 waters of the state and for the protection of fisheries and wildlife,
2 natural resources, and public and private property from such spills.
3 The office shall by rule adopt and periodically revise standards for
4 the preparation of contingency plans. The office shall require
5 contingency plans, at a minimum, to meet the following standards:

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

8 (b) Be designed to be capable in terms of personnel, materials, and
9 equipment, of promptly and properly, to the maximum extent practicable,
10 as defined by the office((†,†)), removing oil and minimizing any damage
11 to the environment resulting from a worst case spill;

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

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

19 (e) State the number, training preparedness, and fitness of all
20 dedicated, prepositioned personnel assigned to direct and implement the
21 plan;

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

25 (g) Describe important features of the surrounding environment,
26 including fish and wildlife habitat, environmentally and
27 archaeologically sensitive areas, and public facilities. The
28 departments of ecology, fisheries, wildlife, and natural resources, and
29 the office of archaeology and historic preservation, upon request,

1 shall provide information that they have available to assist in
2 preparing this description;

3 (h) State the means of protecting and mitigating effects on the
4 environment, including fish, marine mammals, and other wildlife, and
5 ensure that implementation of the plan does not pose unacceptable risks
6 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 of ecology has adopted rules permitting the
28 use of dispersants, the circumstances, if any, and the manner for the
29 application of the dispersants in conformance with the department's
30 rules.

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

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

10 (3)(a) The owner or operator of a tank vessel or of the facilities
11 at which the vessel will be unloading its cargo shall submit the
12 contingency plan for the tank vessel. Subject to conditions imposed by
13 the office, the owner or operator of a facility may submit a single
14 contingency plan for tank vessels of a particular class that will be
15 unloading cargo at the facility.

16 (b) The contingency plan for a cargo vessel or passenger vessel may
17 be submitted by the owner or operator of the cargo vessel or passenger
18 vessel, by the agent for the vessel resident in this state, or by the
19 Washington state maritime commission pursuant to RCW 88.44.020.
20 Subject to conditions imposed by the office, the owner, operator, or
21 agent may submit a single contingency plan for cargo vessels or
22 passenger vessels of a particular class.

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

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

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

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

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

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

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

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

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

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

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

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

28 (6) The office shall approve a contingency plan only if it
29 determines that the plan meets the requirements of this section and
30 that, if implemented, the plan is capable, in terms of personnel,

1 materials, and equipment, of removing oil promptly and properly and
2 minimizing any damage to the environment.

3 (7) The approval of the contingency plan shall be valid for five
4 years. Upon approval of a contingency plan, the office shall provide
5 to the person submitting the plan a statement indicating that the plan
6 has been approved, the vessels covered by the plan, and other
7 information the office determines should be included.

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

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

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

21 **Sec. 14.** RCW 88.46.090 and 1991 c 200 s 422 are each amended to
22 read as follows:

23 (1) Except as provided in subsection (4) of this section, it shall
24 be unlawful for a covered vessel to enter the waters of the state
25 without an approved contingency plan required by RCW 88.46.060, a spill
26 prevention plan required by RCW 88.46.040, or financial responsibility
27 in compliance with chapter 88.40 RCW and the federal oil pollution act
28 of 1990. The office may deny entry onto the waters of the state to any

1 covered vessel that does not have a required contingency or spill
2 prevention plan or financial responsibility.

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

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

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

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

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

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

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

27 **Sec. 15.** RCW 88.46.110 and 1991 c 200 s 424 are each amended to
28 read as follows:

1 (1) The office shall establish regional marine safety committees
2 (~~at least~~) for the Strait of Juan de Fuca/Northern Puget Sound,
3 Southern Puget Sound, and Grays Harbor/Pacific coast. It is the intent
4 of the legislature that the office also establish a regional marine
5 safety committee jointly with the state of Oregon for the Columbia
6 river. The office by rule shall establish the boundaries of the
7 committees. The office may establish additional committees that it
8 determines will be in the public interest.

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

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

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

24 (5) The administrator shall adopt rules and guidelines for regional
25 marine safety plans in consultation with affected parties. The rules
26 shall require the committees to establish subcommittees to involve all
27 interested parties in the development of the plans and to require the
28 committees to include a summary of public comments and any minority
29 reports with recommendations submitted to the administrator. The rules
30 shall also require the plans to consider all of the following:

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

4 (b) A review and evaluation of the adequacy of and any changes
5 needed in:

6 (i) Anchorage designations and sounding checks;

7 (ii) Communications systems;

8 (iii) Commercial and recreational fishing, recreational boaters,
9 and other small vessel congestion in shipping lanes; and

10 (iv) Placement and effectiveness of navigational aids, channel
11 design plans, and the traffic and routings from port construction and
12 dredging projects;

13 (c) Procedures for routing vessels during emergencies that impact
14 navigation;

15 (d) Management requirements for vessel control bridges;

16 (e) Special protection for environmentally sensitive areas;

17 (f) Suggested mechanisms to ensure that the provisions of the plan
18 are fully and regularly enforced; and

19 (g) A recommendation as to whether establishing or expanding vessel
20 traffic safety systems within the regions is desirable.

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

1 (7) Upon approval of a plan, the office shall implement those
2 elements of the plan over which the state has authority. If federal
3 authority or action is required, the office shall petition the
4 appropriate agency or congress.

5 (8) Not later than July 1st of each even-numbered year each
6 regional marine safety committee shall report its findings and
7 recommendations to the marine oversight board established in RCW
8 90.56.450 and the office concerning vessel traffic safety in its region
9 and any recommendations for improving tanker, barge, and other vessel
10 safety in the region by amending the regional marine safety plan. The
11 regional committees shall also provide technical assistance to the
12 marine oversight board.

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

16 **Sec. 16.** RCW 90.48.366 and 1991 c 200 s 812 are each amended to
17 read as follows:

18 By July 1, 1991, the department, in consultation with the
19 departments of fisheries, wildlife, and natural resources, and the
20 parks and recreation commission, shall adopt rules establishing a
21 compensation schedule for the discharge of oil in violation of this
22 chapter and chapter 90.56 RCW. The department shall establish a
23 scientific advisory board to assist in establishing the compensation
24 schedule. The amount of compensation assessed under this schedule
25 shall be no less than one dollar per gallon of oil spilled and no
26 greater than fifty dollars per gallon of oil spilled. The compensation
27 schedule shall reflect adequate compensation for unquantifiable damages
28 or for damages not quantifiable at reasonable cost for any adverse

1 environmental, recreational, aesthetic, or other effects caused by the
2 spill and shall take into account:

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

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

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

24 **Sec. 17.** RCW 90.48.368 and 1991 c 200 s 814 are each amended to
25 read as follows:

26 (1) The department shall adopt rules establishing a formal process
27 for preassessment screening of damages resulting from spills to the
28 waters of the state causing the death of, or injury to, fish, animals,
29 vegetation, or other resources of the state. The rules shall specify

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

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

23 (3) The committee shall consider the following factors when
24 determining whether a damage assessment study authorized under RCW
25 90.48.367 should be conducted: (a) Whether evidence from
26 reconnaissance investigations suggests that injury has occurred or is
27 likely to occur to publicly owned resources; (b) the potential loss in
28 services provided by resources injured or likely to be injured and the
29 expected value of the potential loss; (c) whether a restoration project
30 to return lost services is technically feasible; (d) the accuracy of

1 damage quantification methods that could be used and the anticipated
2 cost-effectiveness of applying each method; (e) the extent to which
3 likely injury to resources can be verified with available
4 quantification methods; and (f) whether the injury, once quantified,
5 can be translated into monetary values with sufficient precision or
6 accuracy.

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

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

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

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

29 (8) For the purposes of this section and RCW 90.48.367, the cost of
30 a damage assessment shall be considered "reasonable" when the

1 anticipated cost of the damage assessment is expected to be less than
2 the anticipated damage that may have occurred or may occur.

3 **Sec. 18.** RCW 90.48.400 and 1991 c 200 s 816 are each amended to
4 read as follows:

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

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

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

11 (c) Development and implementation of an aquatic land geographic
12 information system.

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

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

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

26 **Sec. 19.** RCW 90.56.010 and 1991 c 200 s 102 are each amended to
27 read as follows:

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

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

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

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

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

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

26 (6) "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 (7) "Committee" means the preassessment screening committee
30 established under RCW 90.48.368.

1 (8) "Covered vessel" means a tank vessel, cargo vessel, or
2 passenger vessel.

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

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

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

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

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

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

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

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

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

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

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

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

27 (20) "Onshore facility" means any facility(~~(, as defined in~~
28 ~~subsection (12) of this section,~~) any part of which is located in, on,
29 or under any land of the state, other than submerged land, that because
30 of its location, could reasonably be expected to cause substantial harm

1 to the environment by discharging oil into or on the navigable waters
2 of the state or the adjoining shorelines.

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

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

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

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

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

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

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

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

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

29 (~~"Technical feasibility" or "technically feasible" shall mean~~
30 ~~that given available technology, a restoration or enhancement project~~

1 ~~can be successfully completed at a cost that is not disproportionate to~~
2 ~~the value of the resource prior to the injury.~~

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

8 ~~((29))~~ (28) "Worst case spill" means: (a) In the case of a
9 vessel, a spill of the entire cargo and fuel of the vessel complicated
10 by adverse weather conditions; and (b) in the case of an onshore or
11 offshore facility, the largest foreseeable spill in adverse weather
12 conditions.

13 **Sec. 20.** RCW 90.56.060 and 1991 c 200 s 107 are each amended to
14 read as follows:

15 (1) The department shall prepare and annually update a state-wide
16 master oil and hazardous substance spill prevention and contingency
17 plan. In preparing the plan, the department shall consult with an
18 advisory committee representing diverse interests concerned with oil
19 and hazardous substance spills, including the office of marine safety,
20 the United States coast guard, the federal environmental protection
21 agency, state agencies, local governments, port districts, private
22 facilities, environmental organizations, oil companies, shipping
23 companies, containment and cleanup contractors, tow companies, and
24 hazardous substance manufacturers.

25 (2) The state master plan prepared under this section shall at a
26 minimum:

27 (a) Take into consideration the elements of oil spill prevention
28 and contingency plans approved or submitted for approval pursuant to
29 this chapter and chapter 88.46 RCW and oil and hazardous substance

1 spill contingency plans prepared pursuant to other state or federal law
2 or prepared by federal agencies and regional entities;

3 (b) State the respective responsibilities as established by
4 relevant statutes and rules of each of the following in the prevention
5 of and the assessment, containment, and cleanup of a worst case spill
6 of oil or hazardous substances into the environment of the state: (i)
7 State agencies; (ii) local governments; (iii) appropriate federal
8 agencies; (iv) facility operators; (v) property owners whose land or
9 other property may be affected by the oil or hazardous substance spill;
10 and (vi) other parties identified by the department as having an
11 interest in or the resources to assist in the containment and cleanup
12 of an oil or hazardous substance spill;

13 (c) State the respective responsibilities of the parties identified
14 in (b) of this subsection in an emergency response;

15 (d) Identify actions necessary to reduce the likelihood of spills
16 of oil and hazardous substances;

17 (e) Identify and obtain mapping of environmentally and
18 archaeologically sensitive areas at particular risk to oil and
19 hazardous substance spills; and

20 (f) Establish an incident command system for responding to oil and
21 hazardous substances spills.

22 (3) In preparing and updating the state master plan, the department
23 shall:

24 (a) Consult with federal, provincial, municipal, and community
25 officials, other state agencies, the state of Oregon, and with
26 representatives of affected regional organizations;

27 (b) Submit the draft plan to the public for review and comment;

28 (c) Submit to the appropriate standing committees of the
29 legislature for review, not later than November 1 of each year, the
30 plan and any annual revision of the plan; and

1 (d) Require or schedule unannounced oil spill drills as required by
2 RCW 90.56.260 to test the sufficiency of oil spill contingency plans
3 approved under RCW 90.56.210.

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

6 (1) The Washington wildlife rescue coalition shall be established
7 for the purpose of coordinating the rescue and rehabilitation of
8 wildlife injured or endangered by oil spills or the release of other
9 hazardous substances into the environment.

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

11 (a) A representative of the department of wildlife designated by
12 the director of wildlife. The department of wildlife shall be
13 designated as lead agency in the operations of the coalition. The
14 coalition shall be chaired by the representative from the department of
15 wildlife;

16 (b) A representative of the department of ecology designated by the
17 director;

18 (c) A representative of the department of community development
19 emergency management program designated by the director of community
20 development;

21 (d) A licensed veterinarian, with experience and training in
22 wildlife rehabilitation, appointed by the veterinary board of
23 governors;

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

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

27 (g) A person designated by the legislative authority of the county
28 where oil spills or spills of other hazardous substances may occur.
29 This member of the coalition shall serve on the coalition until

1 wildlife rescue and rehabilitation is completed in that county. The
2 completion of any rescue or rehabilitation project shall be determined
3 by the director of wildlife.

4 (3) The duties of the Washington wildlife rescue coalition shall be
5 to:

6 (a) Develop an emergency mobilization plan to rescue and
7 rehabilitate waterfowl and other wildlife that are injured or
8 endangered by an oil spill or the release of other hazardous substances
9 into the environment;

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

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

22 (d) Obtain and maintain equipment and supplies used in emergency
23 rescue efforts;

24 (e) Report to the appropriate standing committees of the
25 legislature on the progress of the coalition's efforts and detail
26 future funding options necessary for the implementation of this section
27 and RCW 90.56.110. The coalition shall report by January 30, 1991.

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

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

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

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

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

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

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

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

1 (e) State the number, training preparedness, and fitness of all
2 dedicated, prepositioned personnel assigned to direct and implement the
3 plan;

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

7 (g) Describe important features of the surrounding environment,
8 including fish and wildlife habitat, environmentally and
9 archaeologically sensitive areas, and public facilities. The
10 departments of ecology, fisheries, wildlife, and natural resources, and
11 the office of archaeology and historic preservation, upon request,
12 shall provide information that they have available to assist in
13 preparing this description;

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

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

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

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

26 (l) Until a spill prevention plan has been submitted pursuant to
27 RCW 90.56.200, state the measures that have been taken to reduce the
28 likelihood that a spill will occur, including but not limited to,
29 design and operation of a facility, training of personnel, number of
30 personnel, and backup systems designed to prevent a spill;

1 (m) State the amount and type of equipment available to respond to
2 a spill, where the equipment is located, and the extent to which other
3 contingency plans rely on the same equipment; and

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

8 (2)(a) The following shall submit contingency plans to the
9 department within six months after the department adopts rules
10 establishing standards for contingency plans under subsection (1) of
11 this section:

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

14 (ii) Offshore facilities.

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

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

22 (b) A person who has contracted with a facility to provide
23 containment and cleanup services and who meets the standards
24 established pursuant to RCW 90.56.240, may submit the plan for any
25 facility for which the person is contractually obligated to provide
26 services. Subject to conditions imposed by the department, the person
27 may submit a single plan for more than one facility.

28 (4) A contingency plan prepared for an agency of the federal
29 government or another state that satisfies the requirements of this
30 section and rules adopted by the department may be accepted by the

1 department as a contingency plan under this section. The department
2 shall assure that to the greatest extent possible, requirements for
3 contingency plans under this section are consistent with the
4 requirements for contingency plans under federal law.

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

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

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

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

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

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

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

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

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

27 (6) The department shall approve a contingency plan only if it
28 determines that the plan meets the requirements of this section and
29 that, if implemented, the plan is capable, in terms of personnel,

1 materials, and equipment, of removing oil promptly and properly and
2 minimizing any damage to the environment.

3 (7) The approval of the contingency plan shall be valid for five
4 years. Upon approval of a contingency plan, the department shall
5 provide to the person submitting the plan a statement indicating that
6 the plan has been approved, the facilities or vessels covered by the
7 plan, and other information the department determines should be
8 included.

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

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

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

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

24 (1) Except as provided in subsection (2) of this section, it shall
25 be unlawful for the owner or operator to knowingly and intentionally
26 operate in this state or on the waters of this state an onshore or
27 offshore facility without an approved contingency plan or an approved
28 prevention plan as required by this chapter, or financial
29 responsibility in compliance with chapter 88.40 RCW and the federal oil

1 pollution act of 1990. The first conviction under this section shall
2 be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent
3 conviction shall be a class C felony under chapter 9A.20 RCW.

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

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

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

11 (3) A person may rely on a copy of the statement issued by the
12 department pursuant to RCW 90.56.210(7) as evidence that a facility has
13 an approved contingency plan and the statement issued pursuant to RCW
14 (~~90.56.200(5)~~) 90.56.200(4) that a facility has an approved
15 prevention plan.

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

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

20 (a) For the owner or operator to operate an onshore or offshore
21 facility without an approved contingency plan as required under RCW
22 90.56.210, a spill prevention plan required by RCW 90.56.200, or
23 financial responsibility in compliance with chapter 88.40 RCW and the
24 federal oil pollution act of 1990; or

25 (b) For the owner or operator of an onshore or offshore facility to
26 (~~accept~~) transfer cargo or passengers to or from a covered vessel
27 that does not have an approved contingency plan or an approved
28 prevention plan required under chapter 88.46 RCW or financial

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

3 (2) (~~The department may notify the secretary of state to suspend~~
4 ~~the business license of any onshore or offshore facility or other~~
5 ~~person that is in violation of this section.~~) The department may
6 assess a civil penalty under RCW 43.21B.300 of up to one hundred
7 thousand dollars against any person who is in violation of this
8 section. Each day that a facility or person is in violation of this
9 section shall be considered a separate violation.

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

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

14 (b) A contingency and prevention plan has been submitted to the
15 department as required by this chapter and rules adopted by the
16 department and the department is reviewing the plan and has not denied
17 approval.

18 (4) Any person may rely on a copy of the statement issued by the
19 department pursuant to RCW 90.56.210(7) as evidence that the facility
20 has an approved contingency plan and the statement issued pursuant to
21 RCW (~~(90.56.200(5))~~) 90.56.200(4) as evidence that the facility has an
22 approved spill prevention plan. Any person may rely on a copy of the
23 statement issued by the office to RCW 88.46.060 as evidence that the
24 vessel has an approved contingency plan and the statement issued
25 pursuant to RCW 88.46.040 as evidence that the vessel has an approved
26 prevention plan.

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

1 Except as otherwise provided in RCW (~~90.48.383~~) 90.56.390, any
2 person who negligently discharges oil, or causes or permits the entry
3 of the same, shall incur, in addition to any other penalty as provided
4 by law, a penalty in an amount of up to twenty thousand dollars for
5 every such violation, and for each day the spill poses risks to the
6 environment as determined by the director. Any person who
7 intentionally or recklessly discharges or causes or permits the entry
8 of oil into the waters of the state shall incur, in addition to any
9 other penalty authorized by law, a penalty of up to one hundred
10 thousand dollars for every such violation and for each day the spill
11 poses risks to the environment as determined by the director. The
12 amount of the penalty shall be determined by the director after taking
13 into consideration the gravity of the violation, the previous record of
14 the violator in complying, or failing to comply, with the provisions of
15 chapter 90.48 RCW, the speed and thoroughness of the collection and
16 removal of the oil, and such other considerations as the director deems
17 appropriate. Every act of commission or omission which procures, aids
18 or abets in the violation shall be considered a violation under the
19 provisions of this section and subject to the penalty herein provided
20 for. The penalty herein provided for shall be imposed pursuant to RCW
21 43.21B.300.

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

24 In addition to any cause of action the state may have to recover
25 necessary expenses for the cleanup of oil pursuant to RCW 90.56.340 and
26 90.56.330, and except as otherwise provided in RCW (~~90.48.383~~)
27 90.56.390, any other person causing the entry of oil shall be directly
28 liable to the state for the necessary expenses of oil cleanup arising
29 from such entry and the state shall have a cause of action to recover

1 from any or all of said persons. Except as otherwise provided in RCW
2 ((90.48.383)) 90.56.390, any person liable for cost of oil cleanup as
3 provided in RCW 90.56.340 and 90.56.330 shall have a cause of action to
4 recover for costs of cleanup from any other person causing the entry of
5 oil into the waters of the state including any amount recoverable by
6 the state as necessary expenses under RCW 90.56.330.

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

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

16 (i) To a responsible party;

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

18 (iii) If the person is grossly negligent or engages in willful
19 misconduct.

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

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

24 (2) For the purposes of this section:

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

1 ~~(("Discharge" means any emission other than natural seepage,~~
2 ~~intentional or unintentional, and includes, but is not limited to,~~
3 ~~spilling, leaking, pumping, pouring, emitting, emptying, or dumping.~~

4 ~~((e))~~ "Federal on-scene coordinator" means the federal official
5 predesignated by the United States environmental protection agency or
6 the United States coast guard to coordinate and direct federal
7 responses under subpart D, or the official designated by the lead
8 agency to coordinate and direct removal under subpart E, of the
9 national contingency plan.

10 ~~((d))~~ (c) "National contingency plan" means the national
11 contingency plan prepared and published under section 311(d) of the
12 federal water pollution control act (33 U.S.C. Sec. 1321(d)), as
13 amended by the oil pollution act of 1990 (P.L. 101-380, 104 Stat. 484
14 (1990)).

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

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

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

25 ~~((h))~~ (e) "Responsible party" means a person liable under RCW
26 90.56.370.

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

1 The department shall investigate each activity or project conducted
2 under RCW 90.56.350 to determine, if possible, the circumstances
3 surrounding the entry of oil into waters of the state and the person or
4 persons allowing said entry or responsible for the act or acts which
5 result in said entry. Whenever it appears to the department, after
6 investigation, that a specific person or persons are responsible for
7 the necessary expenses incurred by the state pertaining to a project or
8 activity as specified in RCW 90.56.360, the department shall notify
9 said person or persons by appropriate order. The department may not
10 issue an order pertaining to a project or activity which was completed
11 more than five years prior to the date of the proposed issuance of the
12 order. The order shall state the findings of the department, the
13 amount of necessary expenses incurred in conducting the project or
14 activity, and a notice that said amount is due and payable immediately
15 upon receipt of said order. The department may, upon application from
16 the recipient of an order received within thirty days from the receipt
17 of the order, reduce or set aside in its entirety the amount due and
18 payable, when it appears from the application, and from any further
19 investigation the department may desire to undertake, that a reduction
20 or setting aside is just and fair under all the circumstances. If the
21 amount specified in the order issued by the department notifying said
22 person or persons is not paid within thirty days after receipt of
23 notice imposing the same, or if an application has been made within
24 thirty days as herein provided and the amount provided in the order
25 issued by the department subsequent to such application is not paid
26 within fifteen days after receipt thereof, the attorney general, upon
27 request of the department, shall bring an action on behalf of the state
28 in the superior court of Thurston county or any county in which the
29 person to which the order is directed does business, or in any other
30 court of competent jurisdiction, to recover the amount specified in the

1 final order of the department. No order issued under this section
2 shall be construed as an order within the meaning of RCW 43.21B.310 and
3 shall not be appealable to the hearings board. In any action to
4 recover necessary expenses as herein provided said person shall be
5 relieved from liability for necessary expenses if the person can prove
6 that the oil to which the necessary expenses relate entered the waters
7 of the state by causes set forth in RCW (~~(90.56.320(2))~~) 90.56.370(2).

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

10 (1) The (~~(oil)~~) marine oversight board is established to provide
11 independent oversight of the actions of the federal government,
12 industry, the department, the office, and other state agencies with
13 respect to oil spill prevention and response for covered vessels and
14 onshore and offshore facilities.

15 (2)(a) The board may, at its own discretion, study any aspect of
16 oil spill prevention and response for covered vessels and onshore and
17 offshore facilities in the state. The board shall report to the
18 governor and make recommendations to the department and the office on
19 activities of the federal government and industry with respect to oil
20 spill prevention and response for covered vessels and onshore and
21 offshore facilities, including recommendations for the state's response
22 to those actions. The board shall specifically review the need for,
23 and the structure and design of an emergency response system for the
24 Strait of Juan de Fuca and the Pacific coast. The board shall also
25 make recommendations to the legislature and other state agencies on any
26 provision of this chapter, other state laws, and rules, policies, and
27 guidelines adopted by the department, the office, or(~~(7)~~) other state
28 agencies relating to the prevention and cleanup of oil spills into the

1 waters of the state from covered vessels and onshore and offshore
2 facilities.

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

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

14 (3) There shall be five members of the board appointed by the
15 governor for terms of five years. Members' terms shall be staggered.
16 The members of the board shall be representative of the public and
17 shall have demonstrable knowledge of environmental protection and the
18 study of marine ecosystems, or have familiarity with marine
19 transportation systems.

20 (4) A chair shall be selected by majority vote of the board. The
21 board shall meet as often as required, but at least four times per
22 year. Members shall be reimbursed for travel and expenses for
23 attending meetings as provided in RCW 43.03.050 and 43.03.060.

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

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

28 The ((state)) oil spill administration account is created in the
29 state treasury. All receipts from RCW 82.23B.020(2) shall be deposited

1 in the account. Moneys from the account may be spent only after
2 appropriation. The account is subject to allotment procedures under
3 chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts
4 deposited in the account from the tax imposed by RCW 82.23B.020(2) for
5 the previous fiscal biennium exceed the amount appropriated from the
6 account for the previous fiscal biennium, the state treasurer shall
7 transfer the amount of receipts exceeding the appropriation to the oil
8 spill response account. If, on the first day of any calendar month,
9 the balance of the oil spill response account is greater than twenty-
10 five million dollars and the balance of the oil spill administration
11 account exceeds the unexpended appropriation for the current biennium,
12 then the tax under RCW 82.23B.020(2) shall be suspended on the first
13 day of the next calendar month until the beginning of the following
14 biennium, provided that the tax shall not be suspended during the last
15 six months of the biennium. If the tax imposed under RCW 82.23B.020(2)
16 is suspended during two consecutive biennia, the department shall by
17 November 1st after the end of the second biennium, recommend to the
18 appropriate standing committees an adjustment in the tax rate. For the
19 period 1991-93 the state treasurer may transfer funds from the oil
20 spill response account to the oil spill administration account in
21 amounts necessary to support appropriations made from the oil spill
22 administration account in the omnibus appropriations act. Expenditures
23 from the oil spill administration account shall be used exclusively for
24 the administrative costs related to the purposes of this chapter, and
25 chapters 90.48, 88.40, and 88.46 RCW. Costs of administration include
26 the costs of:

- 27 (1) Routine responses not covered under RCW 90.56.500;
- 28 (2) Management and staff development activities;
- 29 (3) Development of rules and policies and the state-wide plan
30 provided for in RCW 90.56.060;

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

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

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

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

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

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

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

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

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

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

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

26 This section shall expire December 31, 1996.

27 NEW SECTION. **Sec. 32.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 33.** Section 9 of this act has retroactive
4 application since October 1, 1990, to vessels.

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