

**E2SHB 1186** - S COMM AMD

By Committee on Natural Resources & Marine Waters

OUT OF ORDER 04/05/2011

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

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

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

1 Washington's existing oil spill prevention, preparedness, and response  
2 capabilities are both prudent and possible.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (28) "Regional vessels of opportunity response group" means a group  
23 of nondedicated vessels participating in a vessels of opportunity  
24 response system to respond when needed and available to spills in a  
25 defined geographic area.

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

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

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

37 (1) In addition to meeting the requirements specified in RCW

1 88.46.060, contingency plans for tank vessels operating in Washington  
2 waters must provide for the organization and contracting of a vessels  
3 of opportunity response system as required by this section.

4 (2)(a) The owner or operator of a tank vessel operating in  
5 Washington waters shall establish or fund a vessels of opportunity  
6 response system to supplement the timely and effective response to  
7 spills in the vessel's area of operation.

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

18 (c) Each regional vessels of opportunity response group must be  
19 composed of a sufficient number of participating nondedicated vessels  
20 to satisfy the following planning standards:

21 (i) By July 1, 2012, two vessels are available to respond at any  
22 one time;

23 (ii) By July 1, 2013, four vessels are available to respond at any  
24 one time; and

25 (iii) On and after July 1, 2014, six vessels are available to  
26 respond at any one time.

27 (3) A vessels of opportunity response system must ensure the  
28 following:

29 (a) Participating vessels have access to and can be rapidly  
30 equipped, consistent with subsections (4) and (5) of this section, with  
31 dedicated response equipment including equipment as provided in section  
32 5(1)(a) of this act. The response equipment made available to vessels  
33 of opportunity response groups may vary among individual response  
34 groups based on the expected operating environment where the equipment  
35 will be utilized. While vessels of opportunity response groups must  
36 have access to equipment as provided in section 5(1)(a) of this act,  
37 the equipment utilized by individual vessels may vary within each group

1 and not all vessels must have access to such equipment during a spill  
2 response;

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

6 (c) Crews of the participating vessels are:

7 (i) Equipped with appropriate personal protection gear; and

8 (ii) Properly trained to utilize response equipment as provided in  
9 section 5(1)(a) of this act. Crew training may be limited to safe  
10 response equipment utilization and deployment and not the maintenance  
11 of response equipment.

12 (4) Nothing in this section requires repositioning response  
13 equipment that would require a major refit of a participating vessel of  
14 opportunity or dedicated response vessel.

15 (5) The dedicated response equipment made available to a regional  
16 vessels of opportunity group may be dedicated equipment owned and  
17 maintained by the contingency plan holder and not by the owner or  
18 operator of the participating vessel as long as the participating  
19 vessels have access to, and can be equipped with, the equipment as  
20 required in this section.

21 (6)(a) The requirements of this section may be fulfilled by one or  
22 more private organizations or nonprofit corporations providing umbrella  
23 coverage under contract to single or multiple tank vessels. Any  
24 organization or corporation providing coverage to satisfy the  
25 requirements of this section must ensure that the vessels of  
26 opportunity response system being provided includes the establishment  
27 of a minimum of six distinct regional vessels of opportunity response  
28 groups stationed so as to be able to respond to incidents occurring in  
29 the following locations:

30 (i) The outer coast;

31 (ii) The Strait of Juan de Fuca;

32 (iii) Northern Puget Sound, including the San Juan Islands;

33 (iv) Central Puget Sound;

34 (v) Southern Puget Sound; and

35 (vi) The mouth of the Columbia river.

36 (b) The department may require a private organization or nonprofit  
37 corporation providing umbrella coverage to satisfy the requirements of

1 this section to station regional vessels of opportunity response groups  
2 in areas that are in addition to the minimum required response areas of  
3 this subsection based on risk and need.

4 (7) Each regional vessel of opportunity response group must  
5 complete a minimum of two drills a year to ensure that the overall  
6 vessels of opportunity response system is maintained at an appropriate  
7 level of readiness and the actual number of participating vessels is  
8 sufficient to meet the planning standards provided in subsection (2)(c)  
9 of this section. The department may award credit to the plan holder  
10 for practice drills accordingly. Each successful activation of the  
11 vessels of opportunity response system may be considered by the  
12 department to satisfy a drill covering this portion of the contingency  
13 plan.

14 (8) The decision to activate a vessels of opportunity response  
15 system during a spill response, and provide direction as to how and  
16 where the regional vessels of opportunity response groups should  
17 respond, is the responsibility of the designated incident commander or  
18 the unified command.

19 (9) The department may implement and enforce the requirements of  
20 this section without adopting rules.

21 (10) The department shall adjust requirements provided in this  
22 section where the department determines that compliance with a  
23 requirement is not practicable.

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

26 (1) The department shall establish a volunteer coordination system.  
27 The volunteer coordination system may be included as a part of the  
28 state's overall oil spill response strategy, and may be implemented by  
29 local emergency management organizations, in coordination with any  
30 analogous federal efforts, to supplement the state's timely and  
31 effective response to spills.

32 (2) The department should consider how the volunteer coordination  
33 system will:

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



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

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

7 (d) Coordinate public outreach regarding the need for and use of  
8 volunteers;

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

10 (f) Identify volunteer training requirements and, if applicable,  
11 provide training opportunities for volunteers prior to an oil spill  
12 response incident.

13 (3) An act or omission by any volunteer participating in a spill  
14 response or training as part of a volunteer coordination system, while  
15 engaged in such activities, does not impose any liability on any state  
16 agency, any participating local emergency management organization, or  
17 the volunteer for civil damages resulting from the act or omission.  
18 However, the immunity provided under this subsection does not apply to  
19 an act or omission that constitutes gross negligence or willful or  
20 wanton misconduct.

21 (4) The decisions to utilize volunteers in an oil spill response,  
22 which volunteers to utilize, and to determine which response activities  
23 are appropriate for volunteer participation in any given response are  
24 the sole responsibilities of the designated incident commander or  
25 unified command.

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

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

31 (a) Response systems that represent best available protection and  
32 are located in close proximity to vessels of opportunity response  
33 groups as provided in section 3 of this act. The response systems  
34 must: (i) Be capable of oil recovery in currents of three knots and in  
35 adverse weather normally experienced in the area of operation for an  
36 individual vessel of opportunity response group; and (ii) be composed,  
37 at minimum, of on-water oil collection, oil skimming, and on-water

1 storage equipment. Equipment required under this section must  
2 supplement equipment required under subsections (2) and (3) of this  
3 section. Nothing in this subsection requires repositioning response  
4 equipment that would require a major refit of a participating vessel of  
5 opportunity or dedicated response vessel; and

6 (b) Access to aerial remote sensing technology that enhances the  
7 ability of response personnel to detect and respond to oil spills in  
8 times of low visibility and at night, including technology that is  
9 capable of aerial oil identification, location mapping, and downloading  
10 of the information in real time to response vessels and the command  
11 post. This technology is not required to be stationed in Washington,  
12 but must be capable of being operational at the site of an incident  
13 within four hours of a response request.

14 (2) In addition to meeting the requirements specified in this  
15 chapter applicable to all covered vessels, contingency plans for tank  
16 vessels must provide for:

17 (a) Rapid access to equipment located within the state that  
18 reflects the best achievable protection for the expected operating  
19 environment in the vessel's area of operation without requiring  
20 equipment with capabilities that exceeds the response requirements for  
21 the expected operating environment; and

22 (b) Continuous operation of oil spill response activities without  
23 regard to the operating environment to the maximum extent practicable  
24 and without jeopardizing crew safety, as determined by the incident  
25 commander or the unified command.

26 (3) In reviewing tank vessel contingency plans to measure  
27 compliance with this subsection and subsection (2) of this section, the  
28 department must ensure that, at a minimum, plans:

29 (a) Provide access to dedicated equipment appropriate for the  
30 operating environment as needed to achieve oil recovery, to the maximum  
31 extent practicable and without jeopardizing crew safety; including,  
32 being capable of oil recovery in currents of three knots and in adverse  
33 weather normally experienced in the area of operation. These response  
34 systems must include on-water oil collection, oil skimming, and on-  
35 water storage equipment, and trained personnel representing best  
36 achievable protection. Equipment intended to be used for response  
37 activities on the outer coast or the Strait of Juan de Fuca must also  
38 be capable of open water operations;

1 (b) Include a technical analysis of best achievable technology and  
2 best achievable protection for the expected operating environment in  
3 the vessel's area of operation; and

4 (c) Provide adequate capacity for storage or proper disposal of the  
5 volume and type of oil considered by the contingency plan so as to  
6 achieve continuous operation of oil recovery to the maximum extent  
7 practicable considering currents, wave heights, weather conditions, and  
8 the safety of response personnel.

9 (4)(a) The department may implement and enforce the requirements of  
10 subsection (1) of this section without adopting rules.

11 (b) Subject to the availability of amounts appropriated for this  
12 specific purpose, the department shall adopt rules specifying  
13 requirements under subsections (2) and (3) of this section.

14 (c) The department may not revise standards to require equipment  
15 upgrades under this section more than once in any five-year period.

16 (5) The department shall adjust requirements provided in this  
17 section where the department determines that compliance with a  
18 requirement is not practicable.

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

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

26 (2) Drills ordered under this section must focus on, at a minimum,  
27 the following:

28 (a) The functional ability for multiple contingency plans to be  
29 simultaneously activated with the purpose of testing the ability for  
30 dedicated equipment and trained personnel cited in multiple contingency  
31 plans to be activated in a large scale spill; and

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

35 (3) Drills ordered under this section may be incorporated into  
36 other drill requirements under this chapter to avoid increasing the  
37 number of drills and equipment deployments otherwise required.

1 (4) Each successful drill conducted under this section may be  
2 considered by the department as a drill of the underlying contingency  
3 plan and credit may be awarded to the plan holder accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (c) A person who has contracted with a covered vessel to provide  
35 containment and cleanup services and who meets the standards  
36 established pursuant to RCW 90.56.240, may submit the plan for any  
37 covered vessel for which the person is contractually obligated to

1 provide services. Subject to conditions imposed by the department, the  
2 person may submit a single plan for more than one covered vessel.

3 (4) A contingency plan prepared for an agency of the federal  
4 government or another state that satisfies the requirements of this  
5 section and rules adopted by the department may be accepted by the  
6 department as a contingency plan under this section. The department  
7 shall ensure that to the greatest extent possible, requirements for  
8 contingency plans under this section are consistent with the  
9 requirements for contingency plans under federal law.

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

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

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

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

21 (d) The existence of navigational hazards within the area covered  
22 by the plan;

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

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

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

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

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

37 (b) The department must notify the plan holder in writing within  
38 sixty-five days of an initial or amended plan's submittal to the

1 department as to whether the plan is disapproved, approved, or  
2 conditionally approved. If a plan is conditionally approved, the  
3 department must clearly describe each condition and specify a schedule  
4 for plan holders to submit required updates.

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

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

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

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

23 NEW SECTION. Sec. 8. A new section is added to chapter 88.46 RCW  
24 to read as follows:

25 (1) When submitting a contingency plan to the department under RCW  
26 88.46.060, any umbrella plan holders that enroll both tank vessels and  
27 covered vessels that are not tank vessels must, in addition to  
28 satisfying the other requirements of this chapter, specify:

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

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

34 (2) Tank vessel owners or operators that are enrolled with an  
35 umbrella plan holder and that have worse case discharge volumes larger  
36 than the maximum volume covered by the contingency plan of the umbrella



1 plan holder must demonstrate to the satisfaction of the department that  
2 the owner or operator of the tank vessel has access to the necessary  
3 additional response capabilities.

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

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

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

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

15 ~~(2) The state military department and the department shall request~~  
16 ~~the coast guard to notify the state military department as soon as~~  
17 ~~possible after the coast guard receives notice of a disabled covered~~  
18 ~~vessel or of a collision or near miss incident within twelve miles of~~  
19 ~~the shore of the state. The department shall negotiate an agreement~~  
20 ~~with the coast guard governing procedures for coast guard notification~~  
21 ~~to the state regarding disabled covered vessels and collisions and near~~  
22 ~~miss incidents.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31       (a) For spills totaling one thousand gallons or more in any one  
32 event, no less than ((one dollar)) three dollars per gallon of oil  
33 spilled and no greater than ((one)) three hundred dollars per gallon of  
34 oil spilled; and

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

1        (2) Oil recovered from the water within forty-eight hours of a  
2 discharge must be deducted from the total spill volume for purposes of  
3 determining the amount of compensation assessed under the compensation  
4 schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32       NEW SECTION.   **Sec. 12.** (1) The director of the department of  
33 ecology must formally request that the federal government contribute to  
34 the establishment of regional oil spill response equipment caches in  
35 Washington to ensure adequate response capabilities during a multiple  
36 spill event.

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

1        NEW SECTION.    **Sec. 13.**    (1) The department of ecology shall prepare  
2 a report to the legislature, consistent with RCW 43.01.036, that  
3 identifies the lessons learned through the implementation of sections  
4 3 through 6 of this act and presents any recommendations for changes in  
5 the state oil spill preparation and response policies gleaned from the  
6 lessons learned.

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

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

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

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

20        (1) If necessary, the department shall adjust the requirements  
21 provided in section 3 of this act to ensure that the documented costs  
22 of compliance with that section, above and beyond the costs of  
23 compliance with this chapter and rules of the department on the  
24 effective date of this section, do not exceed ten million dollars in  
25 any one year. For the purposes of this subsection, "costs of  
26 compliance" with section 3 of this act are direct operating costs, such  
27 as training and drills, and do not include any equipment requirements.  
28 The maximum cost figure must be adjusted for inflation using the  
29 consumer price index as calculated by the United States department of  
30 labor.

31        (2) If necessary, the department shall adjust the requirements  
32 provided in section 5 of this act to ensure that the documented costs  
33 of compliance with that section, above and beyond the costs of  
34 compliance with this chapter and rules of the department on the  
35 effective date of this section, do not exceed thirty million dollars in  
36 any five-year period. For the purposes of this subsection, "costs of  
37 compliance" with section 5 of this act are capital equipment costs and

1 direct operating costs for the equipment. The maximum cost figure must  
2 be adjusted for inflation using the consumer price index as calculated  
3 by the United States department of labor.

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

- 10 (a) Compliance with section 3 of this act by July 1, 2012;
- 11 (b) Compliance with section 5(1)(a) of this act by July 1, 2012;
- 12 (c) Compliance with section 5(1)(b) of this act by July 1, 2013;
- 13 (d) With the exception of section 5(1) of this act, compliance with  
14 the remainder of section 5 of this act by July 1, 2013; and
- 15 (e) Other than section 12 of this act and RCW 90.56.370 and  
16 90.48.366, which become enforceable on the effective date of this  
17 section, all other sections of this act must be complied with by  
18 October 1, 2011.

19 (2) The department of ecology must comply with section 4 of this  
20 act by July 1, 2014.

21 (3) In the initial implementation of sections 3 through 6 and 8 of  
22 this act and RCW 88.46.060, the department of ecology shall consult  
23 with appropriate stakeholders interested in tank vessel oil spill  
24 preparedness and response, as invited to participate by the director of  
25 the department of ecology. However, nothing in this subsection limits  
26 the ability of the department of ecology to implement this act in the  
27 manner deemed most appropriate by the department of ecology.

28 (4) Any rules the department of ecology is required to adopt under  
29 this act or deems necessary to adopt for the implementation of this act  
30 must be adopted in time to facilitate the submittal and approval of new  
31 or updated contingency plans according to the compliance schedule in  
32 subsection (1) of this section.

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

**E2SHB 1186** - S COMM AMD

By Committee on Natural Resources & Marine Waters

**OUT OF ORDER 04/05/2011**

1        On page 1, line 2 of the title, after "program;" strike the  
2 remainder of the title and insert "amending RCW 88.46.060, 88.46.100,  
3 90.48.366, and 90.56.370; reenacting and amending RCW 88.46.010; adding  
4 new sections to chapter 88.46 RCW; creating new sections; prescribing  
5 penalties; and providing expiration dates."

**--- END ---**