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**SUBSTITUTE HOUSE BILL 1186**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House Environment (originally sponsored by Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Llias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu, and Seaquist)

READ FIRST TIME 02/11/11.

1       AN ACT Relating to requirements under the state's oil spill  
2 program; amending RCW 88.46.060, 88.46.100, 88.46.090, and 90.48.366;  
3 reenacting and amending RCW 88.46.010; adding new sections to chapter  
4 88.46 RCW; creating new sections; prescribing penalties; and providing  
5 expiration dates.

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

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

1 (2) The legislature further finds that during the fall of 2010 the  
2 department of ecology compiled lessons learned from the Gulf of Mexico  
3 spill and the Puget Sound partnership convened an oil spill work group  
4 in an effort to ensure there is a rapid and aggressive response to a  
5 large scale spill in Washington and that oversight of spills is well  
6 coordinated among different levels of government. These efforts, and  
7 other recent studies, have made clear that the state may be  
8 underprepared for a large scale oil spill of the magnitude possible by  
9 failures of an oil tanker or a tank barge, particularly within the  
10 confined waters of Puget Sound.

11 (3) The legislature further finds that a large scale oil spill from  
12 an oil tanker or barge could result in the loss of an estimated one  
13 hundred sixty-five thousand jobs and result in ten billion eight  
14 hundred million dollars in economic impacts. Such a spill could  
15 devastate multiple industries in the state, including commercial  
16 fishing, tourism, the shellfish industry, and recreation.

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

19 The definitions in this section apply throughout this chapter  
20 unless the context clearly requires otherwise.

21 (1) "Best achievable protection" means the highest level of  
22 protection that can be achieved through the use of the best achievable  
23 technology and those staffing levels, training procedures, and  
24 operational methods that provide the greatest degree of protection  
25 achievable. The director's determination of best achievable protection  
26 shall be guided by the critical need to protect the state's natural  
27 resources and waters, while considering:

- 28 (a) The additional protection provided by the measures;
- 29 (b) The technological achievability of the measures; and
- 30 (c) The cost of the measures.

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

- 33 (~~(a)~~) (i) Processes that are being developed, or could feasibly  
34 be developed, given overall reasonable expenditures on research and  
35 development(~~(7)~~); and
- 36 (~~(b)~~) (ii) Processes that are currently in use.

1       **(b)** In determining what is best achievable technology, the director  
2 shall consider the effectiveness, engineering feasibility, and  
3 commercial availability of the technology.

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

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

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

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

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

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

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

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

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

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

1 (12) "Offshore facility" means any facility located in, on, or  
2 under any of the navigable waters of the state, but does not include a  
3 facility any part of which is located in, on, or under any land of the  
4 state, other than submerged land. "Offshore facility" does not include  
5 a marine facility.

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

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

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

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

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

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

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

37 (19) "Severe weather conditions" means observed nautical conditions

1 with sustained winds measured at forty knots and wave heights measured  
2 between twelve and eighteen feet.

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

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

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

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

- 14 (a) Operates on the waters of the state; or
- 15 (b) Transfers oil in a port or place subject to the jurisdiction of  
16 this state.

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

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

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

30 (27) "Vessels of opportunity system" means an oil spill response  
31 system that, before a spill occurs, prepares for the utilization of  
32 commercial fishing vessels and other nondedicated commercial vessels  
33 that are under contract with plan holders to train for spill response  
34 incidents, be adequately equipped to respond to a spill, and to assist  
35 in spill response.

36 (28) "Regional vessels of opportunity response group" means a fleet  
37 of at least six vessels capable of participating in a vessels of  
38 opportunity system and directed and positioned to respond to spills in

1 a defined geographic area so the response actions occur within twelve  
2 hours after the occurrence of a spill, to the extent a response by the  
3 response group is determined to be safe and effective.

4 (29) "Volunteer coordination system" means an oil spill response  
5 system that, before a spill occurs, prepares for the utilization of  
6 local emergency management organizations to implement a system that  
7 ensures the emergency management organization has access to trained  
8 volunteers to assist with oil spill response activities, which may  
9 include shoreline protection, wildlife recovery, and other aspects of  
10 a spill response.

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

13 (1) The owner or operator of a tank vessel transiting to or from a  
14 Washington marine facility shall establish and fund at least one  
15 regional vessels of opportunity response group to supplement the timely  
16 and effective response to spills in the vessel's area of operation.  
17 Each regional vessels of opportunity response group must include the  
18 maintenance of active contracts with a fleet of capable vessels that  
19 ensures the following:

20 (a) The crew of the participating vessels are equipped with and  
21 trained to use dedicated equipment that represents the best achievable  
22 technology for booming, storage, and the recovery of oil at the time of  
23 the spill and with adequate personal protection gear;

24 (b) The response equipment to be utilized must be readily available  
25 for use and be appropriate for the expected operating environment,  
26 including containment boom and oil recovery systems capable of  
27 operating in currents of at least four knots and waves of at least five  
28 feet; and

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

32 (2) In addition to meeting requirements specified in RCW 88.46.060,  
33 contingency plans for tank vessels operating in Washington waters must  
34 provide for the organization, contracting, and use of a regional  
35 vessels of opportunity response group to participate in a vessels of  
36 opportunity system as required by this section.

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

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

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

19 (1) The owner or operator of a tank vessel transiting to or from a  
20 Washington marine facility shall partner with local emergency  
21 management organizations to fund a volunteer coordination system, to be  
22 implemented by the local emergency management organization in  
23 coordination with the department, to supplement the timely and  
24 effective response to spills.

25 (2) In addition to meeting requirements specified in RCW 88.46.060,  
26 contingency plans for tank vessels operating in Washington waters must  
27 provide for the contracting with a local emergency management  
28 organization, or the department, to fund the organization's  
29 establishment, coordination, and use of a volunteer coordination system  
30 as required by this section.

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

34 (4) An act or omission by any volunteer participating in a spill  
35 response or training as part of a volunteer coordination system, while  
36 engaged in such activities, does not impose any liability on the  
37 department, the implementing local emergency management organization,

1 or the volunteer for civil damages resulting from the act or omission.  
2 However, the immunity provided under this subsection does not apply to  
3 an act or omission that constitutes gross negligence or willful or  
4 wanton misconduct.

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

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

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

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

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

21 (2) In reviewing tank vessel contingency plans to measure  
22 compliance with this section, the department shall ensure that, at a  
23 minimum, plans:

24 (a) Achieve oil recovery, to the maximum extent practicable and  
25 without unreasonably jeopardizing crew safety, in areas that routinely  
26 experience high currents up to four knots and waves up to five feet;

27 (b) Include a technical analysis of best achievable technology and  
28 best achievable protection, and incorporate best achievable protection;  
29 and

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

34 (3) Contingency plans for tank vessels must also provide for  
35 operation at the site of a spill, within four hours of plan activation,  
36 of multispectrum scanning technologies that enhance the ability of  
37 responders to detect and respond to oil spills in times of low



1 visibility and at night, including technology that is capable of aerial  
2 oil identification, location mapping, and downloading of the  
3 information in real time to response vessels and the command post.

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

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

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

13 (a) The functional ability for multiple contingency plans to be  
14 simultaneously effectively activated; and

15 (b) The operational readiness during both the first six hours of a  
16 spill and over multiple operational periods of response.

17 (3) Each successful large-scale, multiple plan equipment deployment  
18 drill conducted under this section may be considered by the department  
19 as a drill of the underlying contingency plan and credit may be awarded  
20 to the plan holder accordingly.

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

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

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

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

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

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

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

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

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

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

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

32 (j) Provide arrangements for the prepositioning of spill  
33 containment and cleanup equipment and trained personnel at strategic  
34 locations from which they can be deployed to the spill site to promptly  
35 and properly remove the spilled oil;

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

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

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

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

11 (o) If the department has adopted rules permitting the use of  
12 dispersants, the circumstances, if any, and the manner for the  
13 application of the dispersants in conformance with the department's  
14 rules; and

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

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

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

28 (3)(a) The owner or operator of a tank vessel or of the facilities  
29 at which the vessel will be unloading its cargo, or a Washington state  
30 nonprofit corporation established for the purpose of oil spill response  
31 and contingency plan coverage and of which the owner or operator is a  
32 member, shall submit the contingency plan for the tank vessel. Subject  
33 to conditions imposed by the department, the owner or operator of a  
34 facility may submit a single contingency plan for tank vessels of a  
35 particular class that will be unloading cargo at the facility.

36 (b) The contingency plan for a cargo vessel or passenger vessel may  
37 be submitted by the owner or operator of the cargo vessel or passenger  
38 vessel, by the agent for the vessel resident in this state, or by a

1 Washington state nonprofit corporation established for the purpose of  
2 oil spill response and contingency plan coverage and of which the owner  
3 or operator is a member. Subject to conditions imposed by the  
4 department, the owner, operator, or agent may submit a single  
5 contingency plan for cargo vessels or passenger vessels of a particular  
6 class.

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

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

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

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

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

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

31 (d) The existence of navigational hazards within the area covered  
32 by the plan;

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

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

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

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

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

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

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

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

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

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

29 ~~((1))~~ In ~~((order to assist the state in identifying areas of the~~  
30 ~~navigable waters of the state needing special attention, the owner or~~  
31 ~~operator of a covered vessel shall notify the))~~ addition to any  
32 notifications that the owner or operator of a covered vessel must  
33 provide to the United States coast guard ~~((within one hour~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34       ~~(5) Failure of any person to make a report under this section shall~~  
35 ~~not be used as the basis for the imposition of any fine or penalty))~~  
36 regarding a vessel emergency, the owner or operator of a covered vessel  
37 must notify the state of any vessel emergency that results in the  
38 discharge or substantial threat of discharge of oil to state waters or

1 that may affect the natural resources of the state. The purpose of  
2 this notification is to enable the department to coordinate with the  
3 vessel operator, contingency plan holder, and the United States coast  
4 guard to protect the public health, welfare, and natural resources of  
5 the state and to ensure all reasonable spill preparedness and response  
6 measures are in place prior to a spill occurring.

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

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

18 (2) Except as provided in subsection (4) of this section, it shall  
19 be unlawful for a covered vessel to transfer oil to or from an onshore  
20 or offshore facility that does not have an approved contingency plan  
21 required under RCW 90.56.210, a spill prevention plan required by RCW  
22 90.56.200, or financial responsibility in compliance with chapter 88.40  
23 RCW and the federal oil pollution act of 1990.

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

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

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

33 (b) A contingency plan and prevention plan has been submitted to  
34 the department as required by this chapter and rules adopted by the  
35 department and the department is reviewing the plan and has not denied  
36 approval; or

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

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

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

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

23 The department, in consultation with the departments of fish and  
24 wildlife and natural resources, and the parks and recreation  
25 commission, shall adopt rules establishing a compensation schedule for  
26 the discharge of oil in violation of this chapter and chapter 90.56  
27 RCW. The amount of compensation assessed under this schedule shall be  
28 no less than (~~one dollar~~) three dollars per gallon of oil spilled and  
29 no greater than (~~one~~) three hundred dollars per gallon of oil  
30 spilled. The compensation schedule shall reflect adequate compensation  
31 for unquantifiable damages or for damages not quantifiable at  
32 reasonable cost for any adverse environmental, recreational, aesthetic,  
33 or other effects caused by the spill and shall take into account:

34 (1) Characteristics of any oil spilled, such as toxicity,  
35 dispersibility, solubility, and persistence, that may affect the  
36 severity of the effects on the receiving environment, living organisms,  
37 and recreational and aesthetic resources;



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

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

18 NEW SECTION. **Sec. 11.** (1) The director of the department of  
19 ecology must formally request that the federal government contribute to  
20 the establishment of regional oil spill response equipment caches in  
21 Washington to ensure adequate response capabilities during a multiple  
22 spill event.

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

24 NEW SECTION. **Sec. 12.** (1) The requirements of this act must be  
25 met according to the compliance schedule provided in this subsection.  
26 The owners or operators of all affected vessels must either have new  
27 contingency plans approved by the department of ecology or updates to  
28 existing contingency plans approved by the department of ecology for  
29 the following plan components by the following dates:

30 (a) Compliance with section 3 of this act, relating to regional  
31 vessels of opportunity response groups, by July 1, 2012;

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

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

1 (d) Compliance with section 4 of this act, relating to volunteer  
2 coordination systems, by July 1, 2014; and

3 (e) Other than section 4 of this act and RCW 88.46.090 and  
4 90.48.366, which become enforceable on the effective date of this  
5 section, all other sections of this act must be complied with by  
6 October 1, 2011.

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

10 (3) This section expires July 31, 2014.

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