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Dale Jensen
Director, Spills Prevention, Preparedness and Response Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

RE: Comments on Washington State Oil Spill Contingency Plan Rule Update

Dear Mr. Jensen,

The Seattle Aquarium is concerned about the risks of oil spills and their potentially devastating consequences for our marine ecosystems and welcomes the opportunity to comment on the proposed update to the Oil Spill Contingency Plan.

Billions of gallons of oil are transported through Washington. While Washington state has passed legislation in recent years that improves the safety of oil transport by rail and vessel, and that increases funding and transparency, we feel the state is not adequately prepared to respond to the changing and growing risks associated with the newly proposed fossil fuel projects, the spill of tar sands or Bakken crude oils.

The Seattle Aquarium has deep expertise in the handling and care of marine species that could be negatively impacted during an oil spill. Many of our staff, including a marine wildlife veterinarian, remain current on the necessary federal and local training required to safely respond in the event of an oil spill (e.g., HAZWOPER 24-hour training). Three of our staff are certified to teach the HAZWOPER 24-hour course and they provide annual trainings for the region with a focus on oiled wildlife response. The Seattle Aquarium also participates in planning meetings with the Department of Ecology and the Washington Department of Fish and Wildlife to quantify the staff and resources we could offer towards an oil spill response.

We are glad to see that the Washington Department of Ecology is updating Chapter 173-182 (Oil Spill Contingency Plan) to improve efficiencies in spill management and reduce the severity of impacts, but we believe steps should be taken to further strengthen this important policy. The proposed rule must establish more stringent spill response requirements to address the risk that diluted bitumen poses to waters in the Salish Sea. Further, it must keep up with the best science and the changing types of oils and associated risks. Our specific comments are as follows.

The updated plan should include accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case scenario spill of non-floating oil. Currently, the draft rule fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses. The plan should also further distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demand more stringent equipment and response time requirements to protect our communities, underwater habitats and shorelines.

The plan should use up-to-date, robust, realistic modeling methods to assess response capabilities. Planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities. Ecology must use a more robust and realistic methodology to evaluate oil spill response capabilities and use those findings to increase equipment and personnel and improve response times.

Initial assessments should be done at the scene of the spill. The draft update, while right to require a faster timeframe for the initial assessment of a spill, should require that the initial assessment be conducted at the scene of the oil spill to ensure an accurate and thorough assessment of environmental conditions that can affect the weathering process of the spilled oil.

The plan should require more capacity for wildlife response operations. The draft update only requires two wildlife response personnel to arrive within 12 hours of a spill, with an additional seven personnel to arrive within 48 hours (WAC 173-182-540; Planning standards for wildlife response). It is critical to immediately initiate deterrence actions that keep wildlife from entering a spill. Additional personnel should be deployed, especially for non-floating oils and diluted bitumen which can sink quickly, to help prevent harm to wildlife and damage to underwater habitats. An unspecified amount and type of deterrent equipment is also required to arrive on scene within 12 hours; additional detail should be provided to ensure that this equipment is sufficient and arrives in a timely manner.

The plan update should detail the specific wildlife response operations necessary to address the water column and benthic species that could be negatively impacted by a non-floating oil spill (WAC 173-182-510), not merely require that they be identified.

The definition of "capture" in reference to at-risk or oiled wildlife needs to be clarified. The wildlife response operations included in the draft update are currently unclear as to what "capture" entails. Wildlife response operations need to include both the pre-emptive capture and release of wildlife at risk of being oiled and the capture of oiled wildlife for stabilization and rehabilitation. Also, wildlife operations need to include the immediate removal of oiled carcasses. We recommend that Ecology replace "wildlife impact assessment, reconnaissance, deterrence, capture, stabilization and rehabilitation operations" with "wildlife impact assessment, reconnaissance, deterrence, <u>pre-emptive capture and relocation of wildlife at risk of being oiled</u>, capture <u>of oiled wildlife</u>, stabilization, ~~and~~ rehabilitation operations <u>and the immediate removal of oiled carcasses</u>."

The Plan should have greater protections for endangered whales. The endangered southern resident orcas are at their lowest population since the 1970s. Encountering an oil spill would very likely tip the population into extinction. We are glad that the plan update has specific provisions for protecting the southern resident orcas. Given that there are different kinds of orcas in this area, and that many people are unable to distinguish the endangered species, we ask that the plan require that experts who can identify southern resident orcas be an integral part of all whale monitoring and deterrence operations—or else require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that southern resident orcas will be deterred from entering an oil spill. The plan should also require that endangered fin whales, sei whales, blue whales, humpback whales, North Pacific right whales, and sperm whales be monitored and deterred from encountering and being impacted by oil spills. The vessels identified for whale deterrence operations must also be available year-round; many whale-watching operations are seasonal.

The plan should also specify greater protections for endangered and threatened shorebirds and sea otters. Washington state sea otters are listed as endangered under the State Endangered Species Act; oil and gas transport are among the primary threats to their population.[1] Deterring birds like the state-listed tufted puffin is also an important part of spill response.

Thank you for the opportunity to comment, and for Ecology's work to protect Washington from the risk of oil spills. We urge Ecology to exercise its full regulatory authority to develop a robust rule establishing more stringent preparation and response requirements for the movement of diluted bitumen and other oils that have a high likelihood of sinking, and to reduce risks to wildlife through improved response operations.

Sincerely,

Robert W. Davidson
President & CEO

[1] Washington Fish and Wildlife Office, https://www.fws.gov/wafwo/articles.cfm?id=149489657