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Improving oil spill response time is the most important tactic to limit the impacts of a nonfloating oil spill.

The 2018 Strengthen Oil Transportation Safety Act (E2SSB 6269) gave Ecology the authority and a clear directive to update oil spill contingency plans to specifically address the unique characteristics and risks of nonfloating oils. However, Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks nonfloating oils pose to our region.

Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of nonfloating oil — before it begins to submerge and sink. Ecology must act now to establish the strongest possible protection from spills of nonfloating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities.

Ecology's own Preliminary Regulatory Analyses for this update states (on page 40):

## Non-floating oil impacts

Additional coordination and preparedness for dealing with spills of potentially non-floating oils reduce the likelihood that oils will weather and sink before they are addressed. Improved preparedness for potentially sinking oils could have helped reduce damages and ultimate cleanup costs from the Enbridge Kalamazoo spill that cost \$1.2 billion to clean up.

Update the table in WAC 173-182-324 (2) to include accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of nonfloating oil. The nonfloating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges. The draft update requires additional but unquantified resources and equipment to detect, contain and collect nonfloating oils to arrive within 6-12 and 12-24 hours. These timeframes are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will be sufficient to respond to a worst-case spill (as is required by WAC 173-182-030 (48) and see also WAC 173-182-030 (70)(c)).

Current draft update of table in WAC 173-182-324 (2):

Time (hours) Capability

1 Initiate an assessment and consultation regarding the potential for the spilled oil to submerge or sink.

6-12 Resources to detect and delineate the spilled oil such as side scan or multibeam sonar, divers, remotely operated vehicles, or other methods to locate the oil on the bottom or suspended in the water column could have arrived.

Additionally, containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom could have arrived.

12-24 Resources and equipment, such as sampling equipment, necessary to assess the impact of the spilled oil on the environment oil could have arrived.

Dredges, submersible pumps, or other equipment necessary to recover oil from the bottom and shoreline could have arrived.

Additional requirements for respiratory protection as well as air quality monitoring need to be established to protect oil spill responders. There should also be requirements for notifying shoreline residents and businesses and providing public health and safety in the early hours of an oil spill.

Wildlife response operations require additional detail and capacity.

#### WAC 173-182-540 Planning standards for wildlife response

The draft update only requires two wildlife response personnel to arrive within 12 hours of a spill to conduct wildlife response operations, with an additional 7 personnel to arrive within 48 hours. An unspecified amount and type of deterrent equipment is also required to arrive on scene within 12 hours. It is essential that wildlife response actions are initiated as soon as possible. In particular, deterrence actions that keep wildlife from entering a spill are critical to have underway immediately following a spill.

(In WAC 173-182-540 (2)(c)(ii)) the monitoring and deterrence operations to prevent Southern Resident Killer Whales from encountering spilled oil should be required for all killer whales, and, if necessary and only if personnel with killer whale identification expertise are required, priority should be given to Southern Resident Killer Whales, which are listed as endangered by Washington State and the federal Endangered Species Act. Whale scientists that specialize in Southern Resident Killer Whales and trained naturalists can identify individual whales and differentiate between the different killer whale species. However, unless the oil spill contingency plan is updated to require experts who can identify Southern Resident Killer Whales as an integral part of all whale monitoring and deterrence operations, there would be no assurance that if only some killer whales were deterred from encountering a spill, that those whales would be the Southern Resident Killer Whales. To provide certainty that Southern Resident Killer Whales are deterred from entering an oil spill, which could cause their death and the extinction of the species, this rulemaking should require monitoring and deterrence operations for all killer whales. Other whales listed as Washington State Endangered Species are Fin Whales, Sei Whales, Blue Whales, Humpback Whales, North Pacific Right Whales, and Sperm Whales. The oil spill contingency plan should also require that these whales be monitored and deterred from encountering and being impacted by oil spills.

The wildlife response operations included in the draft update are 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. Replace "wildlife impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation operations" with "wildlife impact assessment, reconnaissance, deterrence, pre-emptive capture and relocation of wildlife at risk of being oiled, capture of oiled wildlife, stabilization, and rehabilitation operations, and the immediate removal of oiled carcasses"

#### WAC 173-182-510 Requirements for response and protection strategies

It is not sufficient to merely require the identification of water column and benthic species at risk from sunken, submerged, or nonfloating oil spills. The Contingency Plan update should require the wildlife response operations needed to specifically address the water column and benthic species that could be impacted by a nonfloating oil spill.

The 2015 San Juan County Oil Spill Response Capacity Evaluation includes important findings and recommendations that address deficiencies on the current oil spill contingency plan. These recommendations should have been included in this update, or at the very least, thoroughly

considered.

The San Juan Islands require heightened oil spill response capacity.

The San Juan Islands provide critical habitat for forage fish, salmon, and Southern Resident Killer Whales and are surrounded by major shipping lanes that transit narrow channels and navigational challenges such as Turn Point, all of which are in close proximity to shoreline residences and businesses. The increase in tanker traffic transporting nonfloating oils increases the risk of nonfloating oil spills. Oil spill response operations would be especially challenging given the swift currents and depths of the waterways. The importance of early and aggressive containment and collection of nonfloating oil spills and effective wildlife deterrence operations are especially significant in this biologically rich oasis of the State.