

Orca Salmon Alliance

On behalf of the Orca Salmon Alliance, please accept our comment letter on Oil Spill Contingency Plan rule update. Orca Salmon Alliance is a coalition of 17 local, state, and national organizations, working to highlight the connection between two iconic endangered species that need help: Southern Resident Killer Whales and Chinook salmon.

Sincerely
Rein Attemann



October 4, 2019

Sonja Larson, Rulemaking Lead
Spills Program, Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

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

Dear Ms. Larson,

Thank you for the opportunity to provide comments to the Department of Ecology (Ecology) about the Oil Spill Contingency Plan rule update which requires large commercial vessels, oil handling facilities, and pipelines to have detailed plans for appropriate equipment and trained personnel to respond to oil spills.

The Orca Salmon Alliance, a coalition of 17 local, state, and national organizations, works to highlight the connection between two iconic endangered species that need help: Southern Resident Killer Whales and Chinook salmon. One giant threat to the existence of the endangered Southern Resident orcas is the risk of an oil spill in the Salish Sea. According to NOAA's 2005 recovery plan for the Southern Resident orca population, "major oil spills are potentially catastrophic to killer whales".¹ A report from National Marine Fisheries service states, "Their small population size and social structure also puts them at risk for a catastrophic event, such as an oil spill, that could impact the entire population."² Such was the case with

¹ National Marine Fisheries Service. 2008. Recovery Plan for Southern Resident Killer Whales (*Orcinus orca*). National Marine Fisheries Service, Northwest Region, Seattle, Washington.

² National Marine Fisheries Service. *Southern Resident Killer Whales (Orcinus orca) 5-Year Review: Summary and Evaluation*. (National Marine Fisheries Service West Coast Region, Seattle, 2016)
http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/marine_mammals/kw-review-2016.pdf.

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the AT1 orca population in Prince William Sound after the 1989 Exxon Valdez catastrophic oil spill. Thirty years later, that orca population is functionally extinct.³

Communities across Washington are at risk from the existing transport of tar sands crude oil and we are unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River to terminals including to Port Westward which has recently approved shipments of tar sands by rail to be received, stored, and shipped out of a facility permitted as a bio-refinery. In Tacoma, the Par Pacific (formerly US Oil) refinery receives weekly shipments of diluted bitumen (dilbit) by barge across Puget Sound from the existing Trans Mountain pipeline terminal in Burnaby, BC. And in Skagit and Whatcom Counties, the Puget Sound Pipeline supplies Washington's four northern refineries with dilbit. Furthermore, the proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks, and has heightened public concern about the limitations of responding to a tar sands oil spill, especially once it sinks.

Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. The cost associated with this spill exceeds \$1.2 billion and as of June 2013, the EPA determined that 162,000-168,000 gallons of submerged Canadian Tar Sands crude oil would remain in the river bottom given that any further dredging would cause significant adverse impacts to the river.⁴ "The riverbed will never be fully cleansed of bitumen."⁵

Through the passage of 2018 Strengthening Oil Transportation Safety Act the legislature directed the Department of Ecology to use this year's update to develop new rules and protections that address the unique characteristics and risks of non-floating oils, such as diluted bitumen derived from Canadian tar sands oil. Unfortunately, this draft rule is insufficient to protect Washington's waters, marine ecosystems, orcas, and communities.

We are concerned that Ecology's proposed rule does not meet its legislative directive to address the existing risks of non-floating oils, by failing to establish more stringent requirements for dilbit and using outdated models that overestimate our response capacity and for wildlife response requirements. Washington's rule should require more rapid response for companies transporting these oils to respond to spills *before* they submerge and sink. We urge Ecology to strengthen spill response requirements to address the unique risk that dilbit poses to waters in Washington State and the Salish Sea.

³ Esler et al., 2017. Timelines and mechanisms of wildlife population recovery following the Exxon Valdez oil spill. Deep Sea Research Part II: Topical Studies in Oceanography Volume 147, January 2018, Pages 36-42, [10.1016/j.dsr2.2017.04.007](https://doi.org/10.1016/j.dsr2.2017.04.007)

⁴ United States Environmental Protection Agency. June 2013. Oil Cleanup Continues On Kalamazoo River Enbridge Oil Spill, Marshall, Michigan. <https://www.epa.gov/sites/production/files/2013-12/documents/enbridge-fs-20130624.pdf>. Accessed September 16, 2019.

⁵ Joseph Riesterer. BELT magazine. July 12, 2019. The Enduring Legacy of the 2010 Kalamazoo River Oil Spill:

Nearly a decade after one of the largest inland oil spills in U.S. history, the landscape has changed. <https://beltmag.com/kalamazoo-river-line-6b-oil-spill/>. Accessed September 16, 2019.

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More specifically;

- The draft rule, while right to require a faster timeframe for the initial assessment of a spill, fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses. **We urge Ecology to require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils *before* they submerge and sink by updating the table in WAC 173-182-324(2) by including accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst case spill of non-floating oil. The timelines must be shortened and additional personnel deployed in the first few hours, especially for non-floating oils and diluted bitumen which can sink quickly, harm wildlife, and damage underwater habitats.**
- Non-floating oil is omitted in WAC 173-182-030 definitions. **We urge Ecology to further distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly** and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines.
- Within the first hour of the oil spill, the initial assessment could take place remotely which means someone from 1,000 miles away could do the initial assessment. While basic conditions of weather, tides, and currents can be assessed remotely, so many site specific local factors, such as wave activity, wind, ecological sensitive areas, docks, piers, wildlife, etc., can dictate the fate and behavior of the spilled non-floating oil from sinking or not, are better assessed on site. **We urge Ecology to require that the one-hour initial assessment be done at the spill location.**
- The timeframes required in the draft rule provide no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill. There is also no mention of personnel requirements and no details on the amount and type of resources and equipment to ensure that the “capability” would be sufficient to respond to a worst-case spill (as is required by WAC 173-182-030 (48) that defines “planning standards” and see also WAC 173-182-030 (70) that defines “worse case spill”). In comparison, other sections of the existing Oil Spill Contingency Plan provide detailed requirements that offer some assurance that the equipment and personnel capacity are capable of effective response in the event of an oil spill (WAC 173-182-522 for covered vessel planning standards for shoreline cleanup). **We urge Ecology to include accelerated timeframes and details on response “capability,” including both equipment and personnel, to ensure that Oil Spill Contingency Plan holders will implement an effective response to a worst-case spill of non-floating oil.**
- The scope of the rulemaking is overly limited and planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities. **We urge Ecology to commit to updating overall response capacity modeling tools and requirements, including the Effective Daily Recovery Capacity (EDRC), immediately as**

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new information becomes available through, for example, ongoing federal modeling studies.

- The wildlife operations plan 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 the scene within 12 hours. The draft rule provides no correlation between these minimal personnel requirements and their ability to effectively deploy wildlife operations for all impacted species. **We urge Ecology to update WAC 173-182-540 (2)(c)(ii) to require vessels that have been vetted, trained, and equipped for deterrent operations to be available year-round (note that whale watching vessels are typically operated seasonally) and located in all the areas where whales are present.**
- The proposed Plan update requires equipment and personnel to conduct monitoring and deterrence operations to prevent Southern Resident orcas from encountering spilled oil. Since personnel may not be able to distinguish between resident orcas from transient orcas, this requirement should apply to all killer whales. **We urge Ecology to enhance planning standards for wildlife response in the event of a spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately after a spill. The Plan must 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, even if experts who are able to identify Southern Resident orcas are not present.

We appreciate your work to protect Washington's communities, natural resources, and economy and from the risk of oil spills. In recent years, Washington State has made significant gains in improving the safety of oil transport by rail and vessel. The 2015 Oil Transportation Safety Act, the 2018 Strengthening Oil Transportation Safety Act, and most recently the 2019 Oil Spill Prevention Act increase transparency, preparedness, prevention measures and requirements, and funding.

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 improve wildlife response capacity and timelines as well as protections specifically for the Southern Resident orcas.

Sincerely,

The Member Groups of the Orca Salmon Alliance:

Center for Biological Diversity
Defenders of Wildlife
Earthjustice
Friends of the San Juans

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Natural Resources Defense Council
Oceana
Orca Network
Puget Soundkeeper Alliance
Save Our Wild Salmon
Seattle Aquarium
Sierra Club
Toxic-Free Future
Washington Environmental Council
Whale and Dolphin Conservation
Whale Scout

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