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VIA DEC COMMENT PORTAL: <http://alaskadec.commentinput.com>

Re: Scoping comments on Alaska Department of Environmental Conservation’s oil discharge prevention and contingency plan regulations

Mr. Robinson:

On behalf of our members and supporters, Ocean Conservancy¹ submits the following comments on the Alaska Department of Environmental Conservation’s (DEC) request for scoping comments on its oil discharge prevention and contingency plan regulations (18 AAC 75 Article 4).

DEC’s existing oil discharge prevention and contingency plan regulations have helped protect Alaska’s people, wildlife, and marine environment for decades. Ocean Conservancy urges DEC not to undertake regulatory revisions that would weaken existing safeguards. If DEC opts to consider changes to the regulations, those changes should strengthen prevention and response measures, increase transparency, and facilitate opportunities for public review and engagement.

1. Clean waters are critical to the state of Alaska.

DEC’s regulations help keep Alaska’s waters clean by preventing oil spills and limiting the impact of spills that do occur. Maintaining strong oil spill prevention and response regulations is critically

¹ With headquarters in Washington, DC and Alaska-based staff in Anchorage, Juneau and Eagle River, Ocean Conservancy works to protect the ocean from today’s greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife and communities dependent on it.

important for our ocean, its fish and wildlife, and all people who rely on Alaska's healthy marine ecosystems for their livelihoods and enjoyment, including:

- Alaskans who practice subsistence hunting and fishing and rely on the ocean as an important source of healthy uncontaminated food, including Indigenous peoples who rely on fish and marine mammals for food security, health and as part of traditional cultural practices dating back thousands of years;
- Commercial fishermen whose livelihoods depend on Alaska's reputation for clean ocean waters;
- Recreational fisherman who come to the state to fish for salmon, halibut and other game fish;
- Tourists who visit Alaska to see the state's outstanding marine wildlife and scenery; and
- Residents of Alaska who have a deep connection to the state's waters and coastlines.

As DEC regulators consider changes to spill prevention and response regulations, they should bear in mind the severe disruption and negative economic impacts that could result from a major oil spill in Alaskan waters. Given the stakes, we urge DEC to take a precautionary approach and resist pressure to weaken substantive or procedural protections.²

2. DEC should not allow success to breed complacency.

Since 1989, significant oil spills have occurred in Alaskan waters, but nothing on the scale of the *Exxon Valdez* disaster. This relative success and the passage of time should not lull DEC into complacency or give the agency a false sense of security. Robust oil spill prevention and response regulations are every bit as necessary today as they were in the days after the *Exxon Valdez* spill.

3. DEC should not weaken existing procedures and protections.

If DEC considers changes to its oil discharge prevention and contingency plan regulations, those changes should not weaken procedures and protections that safeguard the marine environment. Any proposed changes must be consistent with underlying law, including statutory requirements that require contingency plans to ensure the availability of response resources adequate to meet response planning standards, protect environmentally sensitive areas and "to contain, clean up, and mitigate" potential spills and that contingency plans use the best available technology.³

Existing regulations create a web of procedures and protections designed to function together, which makes it difficult to single out specific provisions that are especially important. With that caveat, we urge DEC to maintain the following provisions:

² Ocean Conservancy is not necessarily opposed to all potential regulatory revisions—only those changes that might—directly or indirectly—undermine preparedness, weaken preventative measures or erode the capacity to respond effectively to a spill.

³ See, e.g., AS 46.04.030(e), id. 46.04.030(k).

- **Response planning standards (RPS):** DEC should maintain RPS at existing levels to help maintain a high standard for effective spill response.⁴
- **Response scenarios:** DEC should maintain regulatory requirements for site-specific spill response scenarios.⁵
- **Tailored regulations:** DEC should continue having specific, tailored regulations for different types of operations (e.g., tankers, nontank vessels, pipelines, production facilities, etc.). One size does not fit all, and DEC should not cut down on specificity in a misguided attempt to streamline or shorten its regulations.
- **Prevention:** Prevention is much more effective than response. Going forward, DEC regulations should maintain or strengthen their emphasis on prevention to avoid spills.⁶
- **Transparency and opportunities for public participation:** Existing regulations provide for public review. DEC should maintain provisions that promote transparency and facilitate public review of oil spill prevention and response plans, and the agency should consider building on this foundation by expanding outreach to rural communities and tribes that may be affected. For instance, DEC should consider changes to ensure that local governments and tribes receive courtesy copies of relevant spill response plans, including updates and amendments.

4. DEC can strengthen standards and procedures.

If DEC chooses to revise the spill prevention and response rules, it should focus on strengthening protection of the marine environment and adjacent coastal areas. DEC can strengthen some specific provisions, including:

- **Discharge History:** Existing regulations require reporting on spills greater than 55 gallons.⁷ For spills to water, DEC should consider reducing this regulatory threshold so that it is consistent with requirements listed on DEC's website.⁸
- **Prevention Credits:** Existing regulations authorize DEC to consider modifications to response planning standards if a plan proposes prevention measures that go beyond bare requirements.⁹ However, some of these "extra" prevention measures are now legal requirements. DEC should revise its regulations to ensure that owners and operators do not receive "prevention credits" for actions already required by law.

More broadly, DEC should consider changes to the regulations that would promote oil spill prevention. For instance, with respect to vessels, automatic identification systems, electronic chart display and

⁴ *Id.* 46.04.030(k); 18 AAC 75.430 et seq.

⁵ *E.g.*, 18 AAC 75.425(e)(1)(F).

⁶ *E.g.*, *id.* 75.425(e)(2).

⁷ *Id.* 75.425(e)(2)(B).

⁸ See DEC, Report a Spill (undated) at <https://dec.alaska.gov/spar/ppr/spill-information/reporting/> (requiring the immediate reporting of any oil spill to water, regardless of the size of the spill). Similarly, DEC should consider reducing the discharge history reporting threshold for spills to land.

⁹ See *e.g.*, 18 AAC 75.430(b) and (c).

information systems, and other new and emerging communication and navigation technologies provide opportunities to bolster spill prevention efforts by providing cost-effective ways to monitor all types of vessels. DEC should consider regulatory changes designed to prevent oil spills by taking advantage of the opportunities afforded by these new technologies.

5. Growing threats in western and Arctic Alaska merit more rigorous protections.

More ships are traveling in remote waters off the Aleutians and off the coast of western and Arctic Alaska. This increased traffic increases the potential for an oil spill in these regions. Some of these ships travel in innocent passage and are not be subject to Alaska or U.S. regulations—but the oil they carry still represents a threat to Alaska’s waters and coasts. In reviewing its regulations, DEC should consider carefully whether and how to increase oil spill response capacity in these remote regions to better match the growing threat.

6. DEC should consider improving its implementation of the regulations before it considers changing the regulations themselves.

To the extent that DEC receives comments critical of the existing regulations, it should consider carefully whether the perceived problems could be solved by changing DEC implementation of the regulations (as opposed to revising the regulations themselves). Some perceived problems may be the result of inconsistent implementation and could be remedied with more or better training and supervision of DEC staff who review oil spill prevention and contingency plans.

Conclusion

If in the future DEC opts to propose changes to the oil spill prevention and contingency plan regulations, it should give the public ample time to review and assess the proposed changes. Doing so will require a comment period that is significantly longer than the 30 days required under regulation.

Many Alaskans depend directly on a healthy and vibrant marine ecosystem, and all Americans recognize Alaska for its magnificent ocean and coasts. It’s in all of our interests to prevent spills and to ensure prompt effective spill response. DEC’s regulations have helped to do so for decades now. Any changes to the regulations should be made with an eye toward strengthening procedures and protections for the marine environment on which Alaskans depend.

Respectfully submitted,



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