



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**PugetSoundPartnership**  
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# **IMPROVING OIL SPILL PREVENTION AND RESPONSE IN WASHINGTON STATE**

**LESSONS LEARNED FROM THE BP DEEPWATER HORIZON OIL SPILL**

A Joint Review by the Department of Ecology and the Puget Sound Partnership

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**Appendix 1 – The Puget Sound Partnership’s Cross-Partnership Oil Spill Work Group recommendations.**

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The BP Deepwater Horizon Gulf oil spill began on April 20, 2010 and flowed for three months eventually releasing an estimated 206 million gallons of crude oil into the Gulf of Mexico. The initial fire and explosion killed 11 men working on the platform and injured another 17. At least two more people died while the cleanup was underway. The oil caused extensive damage to marine and wildlife habitats as well as the Gulf's fishing, tourism and other industries. Socioeconomic impacts are only now being fully compiled and include home foreclosures, divorces, lost jobs and other impacts to families and local businesses. The full extent of the impacts will likely not be understood or realized for years to come.

On May 22, 2010, President Barack Obama issued an executive order establishing the National Commission (Commission) on the BP Deepwater Horizon Oil Spill and Offshore Drilling. The Commission was directed to evaluate the causes of the BP Deepwater Horizon disaster and to make recommendations for improvements for oil spill response and reforms for offshore drilling. On January 11, 2011 the Commission released its final report providing an assessment of the failures and recommendations for preventing and responding to similar incidents in the future.

Immediately after the release of the Commission's report, Governor Gregoire requested the Department of Ecology (Ecology) and the Puget Sound Partnership (Partnership) to evaluate the report. While Washington State does not have offshore drilling, the Governor felt that the Gulf oil spill provides an important opportunity to capture lessons learned and recommendations that could apply in our state.

The Commission Report is divided into three sections with each section focusing on the specific areas of the Commission's review of the disaster. Our analysis is focused on the chapters with recommendations for reforms in business practices, regulatory oversight and broader policy concerns (Chapters 8 – 10 of the Commission Report).

The Commission Report presents over 30 primary recommendations and numerous secondary recommendations. In the review and analysis process, Ecology and the Partnership used state studies and other strategic documents to crosswalk the Commission Report recommendations and show how those recommendations would apply to the state. The Commission Report identified and grouped seven distinct areas of critical issues:

- Improving the Safety of Offshore Operations
- Safeguarding the Environment
- Strengthening Oil Spill Response, Planning and Capacity
- Advancing Well-Containment Capabilities
- Overcoming the Impacts of the Deepwater Horizon Spill and Restoring the Gulf
- Ensuring Financial Responsibility of Responsible Parties
- Promoting Congressional Engagement to Ensure Responsible Offshore Drilling

This report focuses on three of those critical issues as having relevance to Washington's efforts to strengthen its oil spill prevention, preparedness and response system:

- Improving Safety of Offshore Operations
- Strengthening Oil Spill Response, Planning and Capacity
- Ensuring Financial Responsibility

Like many states around the nation, the question is often asked here – *how prepared is Washington for a catastrophic spill?* The reality here and around the nation is that no matter how well prepared we are for spills, we fight a losing battle from the start and we have to rely on other regions to assist in our response and recovery to a Spill of National Significance. Recognizing that preparedness is a continuous cycle we must put in place now the mechanism and processes to:

- Address the risk of oil spills and shift priorities as that risk evolves.
- Analyze the adequacy of and access to appropriate response equipment.
- Continuously find and fix the weak areas of the system through testing of plans.
- Promote and encourage response technology development.
- Strengthen and enhance relationships with our federal, state, local, tribal industry and community partners.

This report identifies the gaps and strengths that exist in these critical areas and provide recommendations for how the system can be improved to prevent catastrophic spills and to ensure response to spills are rapid, aggressive and well coordinated in Washington State.

On January 11, 2011 the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling Report was released to President Obama. Governor Gregoire directed Ecology and the Partnership to evaluate the report for significant lessons learned and recommendations that would have potential impacts to Washington State.

In reviewing the Commission Report, it is important to note that the Deepwater Horizon disaster is sadly another hard lesson to learn about the complexity and risk involved in oil exploration, production and transportation. Here in Washington, we know too well the inherent risk associated with having over 15 billion gallons of oil transferred around our state every year. Throughout our history of spills there have been six significant spills that have particularly shaped Washington's oil spill laws, policies and issues today.

- In 1985, the *Arco Anchorage* spilled 239,000 gallons of crude oil off the Strait of Juan de Fuca.
- In 1988, the barge *Nestucca* spilled 231,000 gallons of crude oil in the outer coast near Grays Harbor.
- In 1991, the cargo ship *Tuo Hai* collided with the fishing vessel *Tenyo Maru* spilling 400,000 gallons of heavy oil outside the entrance of the Strait of Juan de Fuca.
- In 1999, the explosion at Olympic Pipeline, killing 3 and spilling 277,000 gallons of gasoline into Whatcom Creek in Bellingham.
- In 2003, the Foss barge spill at Point Wells spilled approximately 4,700 gallons of heavy fuel during a transfer in Snohomish County.
- In 2004, the Conoco Phillips oil tanker *Polar Texas* spilled 7,200 gallons of ANS Crude oil while the ship attempted to introduce ballast water into its oil tanks.

Along with the inherent risk of oil spills to the environment, there are tremendous costs both economically and socially as a result of large oil spills. Similar and more significantly compared to the Gulf, Washington State's economy is dependent on its marine waters to drive its economic engine. A Department of Ecology study in 2004 concluded that a major oil spill could cost Washington's economy \$10.8 billion and impact 165,000 jobs<sup>1</sup>.

In addition, the Puget Sound is confined to a limited geographic area as compared to the vast geographic area of the Gulf. The state's smaller enclosed water bodies dictate that once a spill occurs, the oil will rapidly begin oiling shorelines and impacting natural resources. Recognizing this limitation, a rapid and aggressive response to oil spills becomes a critical factor in minimizing threats to our beaches, our environment, and our economy. However, more importantly, we must continue to invest in broader prevention mechanisms in order to ensure catastrophic spills do not occur in our confined waters.

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<sup>1</sup> Source: "Evaluation of the Consequences of Various Response Options Using Modeling of Fate, Effects and NRDA costs for Oil Spills into Washington Waters," 2004 study by Applied Science Associates, Inc.

The following report outlines important lessons learned and recommendations that can inform our state lawmakers, regulatory agencies (state, federal, and local), tribal partners and help industry to stay vigilant in our mission to prevent, plan for and respond to oil spills.

This report is a combination of Ecology's and the Partnership's strategic thinking about oil spills and associated risks in Washington waters. Each recommendation from the National Commission's report was evaluated to determine if and how it applied to Washington. In addition to reviewing the report, lessons learned were compiled from phone conferences with a number of BP Deepwater Horizon response participants, including regional incident commanders, as well as through discussions with Ecology staff who participated in the Gulf response.

The following sections of this report outline the gaps and strengths of the existing response system in Washington and recommend actions necessary to improve our ability to prevent, plan for and respond to oil spills.

**Commission Report Finding 1: The need for a new approach to risk assessment and management (Chapter 9, page 251).**

*“Neither the industry’s nor the federal government’s approaches to managing and overseeing the leasing and development of offshore resources have kept pace with rapid changes in the technology, practices, and risks associated with the different geological and ocean environments being explored and developed for oil and gas production.”*

Although this finding is related specifically to the operation of off-shore drilling practices, it is applicable to Washington's operational risks inherent in oil transportation and refining activities taking place on our state waters and lands. Preventing large and small spills in Washington is a top priority and a legislative goal (“zero spills”<sup>2</sup>). Meeting this goal requires the agency to identify industry specific risks at every level in marine transportation and oil handling systems, and to *target* those risks with the right prevention activities.

***Washington Gaps and Strengths***

Considerable progress has been made through oil spill prevention activities that emphasize vessel inspections and providing technical assistance to large commercial ships. Other activities include conducting risk analysis by addressing water way risk management and, following the Point Wells spill, pre-booming and inspection of high risk oil transfers that occur over state waters. However, incidents continue to occur. Key prevention issues, such as fatigue, inadequate crewing requirements and inadequate company training, operating procedures and policies continue to be prominent causal

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<sup>2</sup>See intent language in 90.56 RCW

factors in these incidents. Ecology must continue working with industry partners to emphasize human factors as the key to spill prevention in Washington's waters. Spill data also indicates that incidents from non-regulated sources, such as fishing and recreational vessels, pose a disproportionate risk of incidents and spills.

### **Recommendations**

- Complete a rigorous risk analysis on higher risk industry sectors to ensure there is an appropriate level of investment reducing the risk of oil spills. Target our spill prevention education, grant assistance, inspection and regulatory activities based on the risks presented by the various sectors.
- Complete an analysis of U.S. Coast Guard and Ecology tug/oil barge incident data. This industry sector appears to have a relatively high risk of towing incidents in which the oil barges contain millions of gallons.
- Expand vessel inspection activities of regulated fishing vessels and ensure non-regulated fishing vessels receive voluntary pollution control technical assistance.
- Continue to seek opportunities to influence federal standards relating to these risk factors. Seek formal or informal delegation from the USCG of some activities where the agencies have concurrent jurisdiction and program missions.

### **Commission Report Finding 1: The need for improved oil spill response planning (Chapter 9, page 265).**

*"...it was clear that neither BP nor the federal government was prepared to deal with a spill of the magnitude and complexity of the Deepwater Horizon disaster..."*

This finding in the Commission Report relates to the need for "a common interagency approach" to area planning and contingency plan review. Washington, Idaho and Oregon have combined regional level oil spill planning into a single, shared Northwest Area Contingency Plan (Area Plan). The Area Plan contains response policies and tools, and provides a coordination mechanism for all three states and the federal government. The Area Plan is updated annually. Industry oil spill plans are reviewed for their consistency with the Area Plan and are measured against regulatory standards for approval.

### **Washington Gaps and Strengths**

In addition to challenges associated with fast currents and high seas, one of the biggest gaps in the Northwest is our capability to respond to large oil spills when they cross the international border with Canada. Planning under the Canada-United States Joint Marine Pollution Contingency Plan is less advanced than with our state partners. There are many complex coordination and logistical issues that must be addressed well ahead of a spill. The goal must be to mount a response that is rapid, aggressive and well coordinated with our Canadian partners in industry, the federal government and province.

Recognizing the importance of transboundary planning, the Pacific States/British Columbia Oil Spill Task Force launched a multi-year initiative in 2008 to review and document existing US/Canadian oil spill response planning and capabilities. The report will be completed in June 2011. The work group for the

project is addressing mutual aid agreements, regional response plans, incident management systems and guidelines for agency decision making processes.

### **Recommendations**

- Once the Pacific States/British Columbia Oil Spill Task Force report is issued, response agencies in the transboundary area should develop and implement an action plan around the findings in the Transboundary Spill Planning and Response Issues report.
- The Joint Response Teams should work quickly to resolve gaps in coordination mechanisms and adopt consistent policies and processes to manage cross border spills.

### **Commission Report Finding 2: The need for a new approach to handling Spills of National Significance (Chapter 9, page 267).**

*“The Macondo well blowout caused the largest accidental oil spill in history—one that presented an unprecedented challenge to the response capability of both government and industry. Clearly, neither was adequately equipped: In fact it was quickly evident that even the response capacity indicated in industry’s spill response plans did not exist. Though the National Contingency Plan permitted the government to designate the spill as one of “national significance,” this designation did not trigger any procedures other than allowing the federal government to name a National Incident Commander... “*

This finding in the Commission Report relates to the National Contingency Plan and the role of the federal government in managing a Spill of National Significance (SONS). The report offers many recommendations for increased government oversight of the party responsible for a spill, better integration of science and policy expertise in the response and improved communication with the public.

### **Washington Gaps and Strengths**

When the Gulf spill was designated as SONS, Washington, like other states around the nation, assisted Gulf States and their residents by sending response equipment to the area. Washington strongly encourages reciprocity as a means to assist other coastal states and provinces. However, we lacked a mechanism or process to evaluate the requests, and quickly worked with Area Plan partners to develop one. Timely decisions were made on how to backfill or mitigate for equipment that moved, and we balanced the need to aid the Gulf against the need to maintain the level of preparedness in our state if a spill were to occur while our response assets were moved to the Gulf. This was critically important since any major response assets moved to the spill had to transit through the Panama Canal. This long transit placed the equipment on an approximately 30 day recall schedule, should they be needed to respond to a second major spill in the northwest.

Another concern that arose during the response was the Coast Guard and EPA’s emergency rule making that temporarily lowered federal response standards nation-wide. The emergency rule temporarily lowered the Average Most Probable Discharge standard in order to facilitate the movement of resident equipment into the Gulf, without placing the plan-holder out of compliance with federal standards. This lowered standard was considered by Ecology and many in industry as unacceptably low for the Pacific

Northwest area, even as a temporary standard. The Department of Ecology, in coordination with response contractors and contingency plan holders, developed a methodology to analyze the level of preparedness that must be maintained in Washington. This methodology helped ensure sound decisions were made about equipment movement to the Gulf.

As the SONS process was further developing we became aware, through direct communication with NW Treaty Tribes, that a federal Tribal Consultation Policy mechanism didn't exist. Although there is not a national framework for this consultation, Washington has devised a mechanism for tribal participation in decision making processes through the Regional Response Team and Northwest Area Planning Committee. Throughout the process of determining response equipment moves, the tribes were part of the discussion on what would be moved.

### **Recommendations**

- Ecology will adopt the methodology and process for making decisions on equipment movement during SONS into the Northwest Area Plan as a best management practice.
- The federal government should develop an alternative process to ensure rapid cascading of equipment other than the emergency rule standard used in the Gulf SONS.
- The federal government should develop a SONS process mechanism to engage in Tribal Consultation when tribal resources are impacted by a SONS designation.

### **Commission Report Finding 3: The need to strengthen state and local involvement (Chapter 9, page 268).**

*“The response to the Deepwater Horizon disaster showed that state and local elected officials had not been adequately involved in oil spill contingency planning, though career responders in state government had participated extensively in such planning. Before the Deepwater Horizon spill, state and local elected officials were not regular participants in Area Committee meetings or familiar with local Area Contingency Plans. The Coast Guard and Area Committee member agencies had done little to reach out to state and local elected officials.”*

Local elected official, tribal government and citizen involvement in the oil spill planning process is critical if an area is to be truly prepared to deliver a well coordinated response. This involvement ensures that the response team is able to take advantage of local knowledge and local resources in the response. The Northwest Area Plan has a long standing policy to include tribes and local government in Unified Command. Beyond decision making processes, local involvement also includes volunteer management and assisting in the identification of local commercial vessels of opportunity for use as response assets.

### **Washington Gaps and Strengths**

One of the planning strengths in Washington is local and tribal involvement in developing Geographic Response Plans (GRPs), which are an appendix to the Area Plan. GRPs are site-specific response plans for oil spills to water. They are strategies tailored to a specific beach, shore, or waterway and meant to minimize impact on sensitive areas threatened by the spill. GRPs are a good place to start involving communities in the planning process, but more work is needed.

## **Local Involvement in Oil Spill Drills**

Drills are a requirement for companies to test their plans. They are also an opportunity to involve local officials and tribes in the Area Plan, so that the coordination and prioritization issues experienced in the Gulf do not occur here. Area plan initiatives are also an opportunity for companies and response agencies to learn local knowledge that is critical during a spill response. All parties to a spill need to know other people involved in the spill response prior to the day of the spills. This requires practice. We recognize that funding limitations for tribes and local government is a limiting factor to their involvement.

## **Volunteer Management Program**

Many Washington State citizens feel outraged and frustrated when oil spills impact their beaches, and they feel compelled to take action. For many, this means looking for opportunities to be involved as volunteers and contribute to restoring their community. Through the Beach Watchers program, Ecology has provided training to community groups around the state who serve as “eyes” for Ecology and in many cases are the closest field observers to help size up reported spills.

Many volunteers are interested in participating with oiled wildlife care. Because of the potential to harm affected wildlife and the potential for human exposures to toxic oil and diseases, additional levels of training are required. This training is coordinated by the Washington Department of Fish and Wildlife and federal agencies within an existing network of wildlife care organizations.

There are a number of issues to be addressed regarding use of volunteers during oil spill response including liability, proper training, compensation, reporting and supervision relationships. Similar to the need to have local governmental and tribal involvement prior to a large spill, it is also critical to have trained and organized volunteers to be accessible during spill incidents. While managing volunteers is an inherently governmental function, funding for use of volunteers should be borne by the industry during an actual spill incident.

## **Vessel of Opportunity Program**

In a major spill, it is evident early on that the need for vessels to support response activities over large geographic areas will outgrow the professional, dedicated vessel response assets. The Vessel of Opportunity Program (VOO) is an opportunity to utilize existing vessels, such as fishing and other commercial vessels in our waters during oil spill response. The Gulf oil spill offered many lessons learned in using local fishing fleets and other commercial vessels as spill response assets. The VOO Program offers assistance in many response activities including:

- Transporting supplies and providing overnight berthing (lodging).
- Assisting wildlife survey and rescue.
- Deploying containment and sorbent boom.
- Providing on-water recovery (skimming) and storage.

There are many viable advantages to using vessels of opportunity, such as accessing local knowledge of waterways and environmental conditions. It also offers employment opportunities for an economic sector that may be severely impacted by oil spills.

One of the many lessons learned from the Gulf is the advantage of establishing a VOO Program well before a major spill occurs. In the Deepwater Horizon spill, the pressures to develop an ad-hoc program led to a number of unintended corner-cutting procedures that resulted in unnecessary waivers for training requirements and a lack of process to determine vessel ownership and seaworthiness.

Currently in Washington, there are several programs led by industry response contractors that could be built upon for a more robust VOO Program. This would include enhancing the program to ensure that:

- Vessels and crews are available.
- Crews are well trained.
- Safety equipment is ready.
- Dedicated response equipment is pre-staged.
- Drills are conducted to practice the VOO system for readiness in the event of oil spills.

The VOO Program should be designed to supplement, but not replace, professional responders. VOOs can be managed through response contractors and should be equally available to all regulated plan holders to establish a level regulatory playing field.

#### **Recommendations**

- Build upon the existing VOO Program and formalize program structure to provide recruitment, training and management to ensure VOOs are a viable asset during oil spill response.
- Develop a government-led Volunteer Management Program with coordination through Northwest Area Committees, industry and response contractors, the non-governmental organization (NGO) community, local emergency management personnel and others.
- Identify funding for, and establish, a small state grant program to ensure local and tribal governments are able to attend Area Plan Meetings, oil spill planning drills and training. Request a budget proviso or on-going appropriation during the 2012 Legislative Session.
- Ensure liability issues are addressed for both volunteers and non-dedicated vessels of opportunity and their crews.

#### **Commission Report Finding 4: The need to increase research and development to improve spill response (Chapter 9, page 269).**

*“The technology available for cleaning up oil spills has improved only incrementally since 1990. Federal research and development programs in this area are underfunded. In fact, Congress has never appropriated even half the full amount authorized by the Oil Pollution Act of 1990 for oil spill research and development. In addition, the major oil companies have committed minimal resources to in-house research and development related to spill response technology.”*

The National Commission’s Report makes a compelling finding that oil spill response technology and practices to respond to and clean up spills has only seen limited improvement since 1990. Although the Gulf spill introduced and tested some new technology, it was also evident that oil spill response technology and practices were not keeping pace with the risk of spills. While Washington has achieved

a solid baseline in terms of equipment that is cached in areas of highest risk, it is also true that these investments have not brought in the latest technology already deployed elsewhere in this nation.

### *Washington Gaps and Strengths*

- Best available technology takes a commitment to high standards and continuous effort to maintain. The Department of Ecology in examining equipment capabilities has adopted a standard focusing on making sure equipment is appropriate for the operating environment. This standard is applied in contingency plan reviews and during oil spills and drills. Although the oil spill statutes (Chapter 90.56 and 88.46 Revised Code of Washington) define the terms “best available technology” and “best achievable protection”, under current law these terms are not applied to the provisions related to oil spill contingency plans.
- Best achievable technologies were used and demonstrated to be effective in responding to the Gulf of Mexico spill. Here in Washington, industry has not invested in these technologies. Examples of this technology include “boom vanes” used to hold oil collection boom in place in fast water, advanced high efficiency oil skimming technology that increases the amount of oil recovered while reducing the amount of water collected, and oil recovery devices that contain oil, separate oil from water and store the recovered oil all in one unit. These represent best available technologies that have already proven their value and should be part of the response system in Washington State.

### *Recommendations*

- Apply best available technology and best achievable protection to the contingency plan portion of the statute. Create incentives for industry to invest in developing and prepositioning advanced oil recovery systems suitable to prevailing conditions in the state’s diverse marine environments. Periodically revise regulatory standards that define and keep up with changing technologies, risk analysis, standards of care, and best achievable practices.
- Develop a regulatory methodology to rate best achievable equipment. This would encourage its acquisition and caching for immediate use in responding to spills. This includes the combined containment, recovery and storage equipment.
- Encourage professional spill response contractors to maximize the efficiency of enhanced skimming systems through regular training, as well as practicing techniques collaboratively with other response contractors. These technologies maximize encounter rates and provide an opportunity for continuous skimming operations. Document lessons learned in deploying the new technology through drill evaluations.
- Ensure remote sensing and vessel operation and recovery systems are capable of safely and effectively performing 24-hour spill assessment and oil recovery operations.<sup>3</sup>

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<sup>3</sup> See Oil Spill Early Action Task Force

**Commission Report Finding 5: The need for new regulations to govern the use of dispersants. (Chapter 9, page 269).**

*“The decision to use dispersants involves difficult tradeoffs: If dispersants are effective, less oil will reach shorelines and fragile marsh environments, but more dispersed oil will be spread throughout the water column. Prior to the Deepwater Horizon incident, the federal government had not adequately planned for the use of dispersants to address such a large and sustained oil spill, and did not have sufficient research on the long-term effects of dispersants and dispersed oil to guide its decision-making.”*

Planning efforts for the use of dispersants has been inadequate and the *Deepwater Horizon* incident serves as a wake-up call for coastal states. The large quantities of dispersants applied to the spill, the subsea application method, the previously undisclosed chemical formula of the products being used and our understanding of the long term impacts from the use of dispersants are all areas to evaluate in the future. During the Gulf response there was conflict over the dispersant process between the two federal agencies that directly regulated their use (EPA and USCG). Given this controversy, the need for further research on dispersant use and coastal states’ local knowledge of their environments and values, it is imperative that states continue to be authorized to set dispersant policies using local considerations rather than mandating policies from the federal government in a “one size fits all” approach.

***Washington Gaps and Strengths***

As part of the Northwest Area Contingency Plan, policies and decision making processes have been developed specifically for the use of dispersants in our environment. The *Deepwater Horizon* has shown the importance of how much more specific and sophisticated state policy should be.

***Recommendations***

- The Northwest Area Contingency Plan policy should be re-visited to consider changes relating to duration of use, spatial reach, volume and establish a specific policy on under what circumstances subsea application should be considered in the Northwest.
- Request EPA to update their dispersant product testing protocols and require more comprehensive testing prior to listing or pre-approving dispersant products for specific environments and oil types.
- State policy should require industry to disclose the chemical properties and proportion of each chemical ingredient of the dispersants products in order to allow communities to set policies on dispersant usage.

**Commission Report Finding 1: The need to increase existing limitation on responsible party liability (Chapter 9, page 283).**

*“Liability for damages from spills from offshore facilities is capped under the Oil Pollution Act at \$75 million, unless it can be shown that the responsible party was guilty of gross negligence or willful misconduct, violated a federal safety regulation, or failed to report the incident or cooperate with removal activities, in which case there is no limit on damages (see*

*Chapter 8). Claims up to \$1 billion above the \$75 million cap for certain damages can be made to, and paid out of, the Oil Spill Liability Trust Fund, which is currently supported by an 8-cent per-barrel tax on domestic and imported oil.”*

As of February 3, 2011, British Petroleum reported it has paid out just over \$5 billion in clean-up costs and claims<sup>4</sup> for the Gulf of Mexico spill to date. Enormous additional expenses were incurred in the effort to control the release. These figures also do not include natural resource damage assessments, penalties or future 3<sup>rd</sup> party damages, all of which promise to be very large.

Federal and state laws make the party responsible for a spill liable for compensating those who suffered as a result of a spill (economic damages) and for restoring injured natural resources (natural resource damages). Additionally federal laws provide a claims process to petition for compensation from the federal dedicated Oil Spill Liability Trust Fund. The federal government, however, imposes limits on the amount of damages for which the responsible party is liable, and the amount of compensation available through the trust fund.

### **Washington Gaps and Strengths**

Under Washington State law, unlike the federal government, liability for oil spill costs and damages is unlimited. Demonstration of financial responsibility, however, is subject to specified limits. Washington state law grants the Department of Ecology authority to administer state financial responsibility requirements by rule, if necessary. While regulations for vessels have been established, financial responsibility regulations for facilities have not been set.

There is also a gap in verifying that vessel and facility operators meet state financial responsibility levels. Ecology relies upon the federal government (USCG) and the State of California’s Office of Spill Prevention and Response (OSPR), whose financial responsibility levels are similar to this state’s, to verify compliance and issue certificates.

### **Recommendations**

- Ecology should evaluate existing coverage to determine if they are adequate for worst case spills. If not, the coverage amount should be increased.
- Ecology should adopt a rule establishing financial responsibility requirements for regulated facilities, and establish a formal Financial Responsibility Certification Program to certify that vessels, oil handling facilities, and pipelines have adequate financial coverage.
- Ecology should support efforts by the federal government to increase the current limits for which a spiller is responsible to compensate for damages.

### **Commission Report Finding 2: The need to increase limitations on payments from the Oil Spill Liability Trusts Fund (Chapter 9, page 285).**

*“If liability and financial responsibility limits are not set at a level that will ensure payment of all damages for spills, then another source of funding will be required to ensure full compensation.*

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<sup>4</sup> As reported on BP’s claims website.

<http://www.bp.com/sectiongenericarticle.do?categoryId=9034722&contentId=7064398>

*The federal government could cover additional compensation costs, but this approach requires the taxpayer to foot the bill. Therefore, Congress should raise the Oil Spill Liability Trust Fund per-incident limit because the current limits are clearly inadequate.”*

The Federal Oil Spill Liability Trust Fund (OSLTF), with an estimated balance of \$2.5 billion (as of fiscal year 2012), was established to be a funding source for paying oil spill response costs for “orphan” oil spills and those spills which exceed the federal limits of liability. Eligible state response expenses for responding to spills can also be covered through the OSLTF. Additionally, Washington State has the Oil Spill Response Account (OSRA) which can pay for response and cleanup costs for large oil spills, up to the unspent balance.

It was apparent from the outset of the spill in the Gulf that response costs and damages were likely to exceed the existing federal liability limits, which could then place the responsibility on the government to cover the cost of the spill response. To their credit in this incident, BP committed to cover all response costs; however, few other corporations would have the financial resources that BP has. Existing financial responsibility levels expose the government to significant financial risk when responsible parties cannot be held liable to cover all response costs.

### **Washington Gaps and Strengths**

There have been incidents where the state response policy conflicts with the federal response policies and creates a situation in which the state might have to cover all or a significant portion of an oil spill’s cleanup costs. As an example, cleanup of the *SS Catala* shipwreck in Ocean Shores, Grays Harbor County required over \$7 million in state funds to remove and dispose of 34,000 gallons of heavy fuel oil. The US Coast Guard initially recommended against using federal OSLTF monies for this project. Fortunately, the state was eventually reimbursed approximately \$6.5 million, but had to carry the expenses for two years after initiating the project and was not compensated for the remaining \$500,000.

Washington’s Oil Spill Response Account (OSRA) was originally established at \$25 million in 1991, but the cap was reduced over time and is currently at \$9 million. The example of the *SS Catala* indicates the state is not positioned financially to mount an aggressive response to oil spills, if the responsible party and federal government are unable or unwilling to pay for the response. In addition, due to the slow and cumbersome claims process to access the OSLTF, the state may be inadequately funded to respond to other spills while its waits to be reimbursed from the OSLTF or responsible party.

### **Recommendations**

- Evaluate the adequacy of the current \$9 million ceiling on the state Oil Spill Response Account and if necessary propose an increased ceiling that will protect Washington’s public health, environment and economy.
- Add additional language to the state’s current rule to address the claims processes in contingency plans and also require the responsible party to establish a third party damage claims process during drills.
- Support the federal government’s efforts to increase the ceiling in the OSLTF.

Washington Governor Christine Gregoire asked the Department of Ecology and the Puget Sound Partnership to evaluate the final report of the National Commission on the BP Deepwater Horizon Oil Spill. This report provided recommendations to improve oil spill prevention and enhance the state's readiness to mount a rapid, aggressive and well coordinated response should a major spill occur.

Some of the recommendations should be implemented by the federal government; others would require action by the legislature or agency rule-making to implement. Because of the risk of complacency all of the recommendations will require continuing industry diligence and state vigilance.

The reality of the Gulf oil spill is that as long as we are dependent on oil as our main energy resource, we are required and obligated to ensure that oil exploration, refining and transport of petroleum is safe and our environment and economy are protected from oil spills.

Similar to the Gulf area, Washington State is heavily dependent on maritime commerce, the marine environment, and the continued recovery and restoration of Puget Sound as key elements of its economic engine. We recognize that implementing some of these recommendations may be challenging in the state's current economic environment. However, it is critical that our state make appropriate investments now to ensure we protect the state's future economic interests against major oil spills. The recommendations outlined in this report promise effective protections to avert or mitigate damages from a major oil spill, and avoid the potential of an environmental disaster that would threaten our economy, our environment and our region's quality of life.

DEEPWATER, The Gulf Oil Disaster and Future of Offshore Drilling, Report to the President, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, January 2011.

<http://www.oilspillcommission.gov/>

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*The Puget Sound Partnership convened a Cross-Partnership Oil Spill Work Group during fall 2010 to fulfill its legislative responsibility to “provide independent advice and assessment of Washington State’s oil spill programs.”*

*The broadly based stakeholder work group met for three full days during September and October. At the conclusion of the group’s third meeting on October 29, 2010, the group adopted four recommendations by consensus of the attending members. The recommendations were developed with the intention they be forwarded to the Puget Sound Partnership’s Leadership Council for consideration as potential legislative priorities.<sup>1</sup>*

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## **Cross-Partnership Oil Spill Work Group – October 29, 2010**

### **General Recommendation #1**

#### **Ensure the State Spill Program has Adequate and Stable Funding\***

\*We define the terms “adequate” and “stable” to mean:

“Adequate” means the level of revenue necessary to allow the Legislature to appropriate (authorize expenditure of) sufficient money to the Departments of Ecology and Fish & Wildlife to fully and efficiently implement their statutory directives.

“Stable” means that the inter-annual variation in the level of revenue available to support legislative appropriations is small enough to allow the agencies to have predictable staffing levels and consistently apply regulatory requirements over time.

### **General Recommendation #2**

**Ensure that sufficient and appropriate response equipment and trained personnel are positioned to safely, promptly and properly respond to potential worst-case spills to the maximum extent practicable, and are well-matched to locations and regardless of time of day and operating environments throughout the waters of the State. Such equipment should reflect best available and emerging technology and procedures deployed in order to achieve state’s goal of a “rapid, aggressive and well-coordinated response.”**

### **General Recommendation #3**

## **The Department of Ecology should receive adequate funding from the Legislature to ensure the effectiveness and coordination of vessels of opportunity programs.**

- Ecology should work with the regulated industry, tribes, commercial fin fishers and shell fishers, spill response contractors, and the public in a collaborative process to define and ensure coordinated non-dedicated vessel of opportunity programs, including participation in drills.
- Industry oil spill contingency plan holders should be given appropriate response credit for the enhanced containment and recovery available from vessels of opportunity, as they comply with state contingency plan regulations.

### **General Recommendation #4**

#### **Effort should be made to enhance and make drill program more robust, including re-establishing presence of key participants (state, locals, tribes, federal) at drills.**

With particular attention to:

- Gaps
- Cost effectiveness
- More on-water (deployments)
- Consistent performance and level playing field
- Up-scaled to include multiple plan holders and beyond 48 hours

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#### **<sup>1</sup>Members Present: October 29, 2010 – Cross-Partnership Oil Spill Work Group**

Work Group Chair – **Tom Leschine**, Director School of Marine Affairs, University of Washington  
Lead Staff & Contact – **Todd Hass**, Oil Spill Policy Specialist, Puget Sound Partnership (todd.hass@psp.wa.gov)

- Tribal Government
  - **Chad Bowechop**, Makah Tribe
- Counties
  - Commissioner **Mike Doherty**, Clallam County
  - Councilmember **Lovel Pratt**, San Juan County
- Public Ports – **Johan Hellman**, WSPP
- Business sectors
  - Oil refining – **Dave Sawicki**, BP (alt. **Frank Holmes**, WSPA)
  - Oil shipping – **Jeff Shaw**, Polar Tankers
  - Cargo and other shipping – **Mike Moore**, PMSA
  - Commercial fishing – **Leslie Hughes**, NPFVOA
  - Shellfish growing – **Lisa Bishop**, Little Skookum Shellfish Growers
- Environmental organizations
  - **Bruce Wishart**, People For Puget Sound
  - **Jerry Joyce**, Seattle Audubon Society

- Recreational Boating – **Lee Roussel**, Citizens for a Healthy Bay
- Washington Department of Natural Resources – **Shane Cothorn**

**Ex Officio Members**

- Department of Ecology – **Dale Jensen**
- Department of Fish and Wildlife – **Dan Doty**
- Washington Utilities and Transportation Commission – **Joe Subsits**
- National Oceanic and Atmospheric Administration – **Ruth Yender**
- U.S. Coast Guard – **Scott Knutson**
- U.S. Department of the Interior – **Jeff Krausmann**