



## **Washington Oil Spill Advisory Council**

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# **2007 Annual Report**

## **Making Continuing Improvements in Oil Spill Prevention, Preparedness, and Response in Washington**

**Prepared for:**

**Washington's Governor, Legislature, and Department of Ecology**

September 26, 2007

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STATE OF WASHINGTON  
OIL SPILL ADVISORY COUNCIL

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September 26, 2007

Re: *2007 Annual Report of the Oil Spill Advisory Council to Governor Christine O. Gregoire, Washington State Legislature, and the Washington State Department of Ecology*

Dear Governor Gregoire, Legislative Members, and Director Manning:

Enclosed please find the Oil Spill Advisory Council's 2007 Annual Report to the Governor, Legislature, and Department of Ecology on Continuing Improvement to Oil Spill Prevention, Preparedness, and Response Activities in Washington.

Our 2007 report summarizes the current legislative and agency responses to the recommendations the Council made in its 2006 report, provides an update on the Council's recent activities, and discusses the work the Council is doing to advance improvements to Washington's oil spill prevention, preparedness, and response system.

This year's activities have included the following:

- The Council held four full Council meetings and 16 subcommittee meetings and received public input at each meeting. Throughout the year, numerous stakeholder groups contributed invaluable information to the Council.
- Council representatives attended meetings of the Puget Sound Harbor Safety Committee, requesting an advisory membership to this committee.
- Council representatives attended meetings of the Regional Response Team/ Harbor Safety Committee.
- They also helped in the planning of the inaugural Clean Pacific Conference, which was sponsored by the Pacific States/ British Columbia Oil Spill Task Force last month in Seattle.
- The Council commissioned two studies.

- The Council completed a study on Tugboat Compliance with the International Maritime Organization Area to be Avoided (“ATBA”) off the Washington Coast.
- The Council also completed a causal analysis that identified root causes underlying mishaps that lead to oil spills. This study will act as the basis for a follow up study that the Council is commissioning. The follow up study will examine whether oil spill programs that apply in Washington can be improved to address these underlying root causes.

Looking to the future, the report lays out the Council’s biennial work plan and goals.

This plan includes:

- Tracking the Washington Department of Ecology’s implementation of two new rules—the oil spill contingency planning rule and the oil transfer rules.
- Examining towing practices for oil laden barges.
- Examining issues relating to compliance with the West Coast Marine Sanctuary Area to be Avoided.
- Conducting public outreach and education.
- Participating in the Puget Sound Partnership process.

In addition, the Council hopes to be able to do the following:

- Study whether the State is ready to respond to a large-scale spill (including implementing Geographic Response Plans and including oiled wildlife).
- Review the use of escort tugs and review manning issues relating to articulated tug and barge systems and integrated tug and barge systems.
- Work with the Washington State Department of Fish and Wildlife to recommend ways of improving the oiled wildlife program.
- Evaluate methods of calculating natural resources damages assessments.

Further, the Council looks forward to working with Washington Joint Legislative Audit and Review Committee (JLARC) staff as JLARC complies with its legislative mandate to assess the sources of oil spill risks and identify new equitable funding mechanisms for the State’s oil spill prevention and response program.

The Council will also continue to track legislation that Senator Maria Cantwell recently introduced in Congress relating to the State’s oil spill program.

I would like to thank all those who participated in the Council’s meetings and assisted the Council with its tremendous workload. I would like to extend a special thank-you to Daniel Smith from Oregon State University for his hard work and effort with the ATBA Tugboat Compliance Study and to the folks at Environment International, Inc. for their invaluable assistance with the Causal Analysis Study.

Additionally, I wish to thank the many employees of the United States Coast Guard, Washington State Department of Ecology, the Washington State Department of Natural Resources, the Washington State Department of Fish and Wildlife, the Puget Sound Pilots, the Inland Boatman’s Union, the Puget Sound Marine Exchange, Citizens for a

Healthy Bay, People for Puget Sound, and King County for dedicating their time to attend Council meetings, and for sharing their expertise and knowledge in support of the Council's work.

Respectfully,

A handwritten signature in cursive script that reads "Mike Cooper".

Mike Cooper, Chair  
Washington Oil Spill Advisory Council

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## **Introduction**

RCW 90.56.130(5) requires the Council to provide annual reports to the Governor, the Director of the Department of Ecology, and to key committees of the Legislature, providing recommendations on improving the State's oil spill program regarding prevention, response, and remediation.

## **Summary of the Council's 2006 Report**

On October 2, 2006, the Council issued its first report. This report was titled "Report Providing Recommendations to the Governor, the Legislature, and the Department of Ecology On State-of-the-Art Oil Spill Prevention Program, Council Operations and Funding, and Sustainable Funding for the Oil Spill Program."

The primary recommendations set forth in that report are as follows.

### **1. Permanently station a year-round rescue tug in the Western Strait of Juan de Fuca.**

The Council recommended that there be a fully funded, year-round "Straits and coastal Waters Prevention Response/Rescue Tug," at or near Neah Bay, Washington. (See Table 1 in Appendix B for estimated cost of this tug).

The primary mission of this dedicated straits and coastal waters response/rescue tug should be standing by and responding to, and, when needed, providing towing services for disabled or drifting vessels in order to prevent pollution events. Aside from not being stationed year round, the current tug stationed at Neah Bay provides this protection.

The Council recommended that this prevention response/rescue tug at Neah Bay should also be a state-of-the-art vessel. It should be of sufficient power, maneuverability, and deck configuration to enable it to timely respond to any vessel, within the response area, in sea state conditions up to and including extreme weather. In addition, the Neah Bay tug should have additional capabilities of spill response, firefighting, and early salvage capabilities (as part of a critical partner of a salvage company), as long as the primary service of the tug is not compromised or jeopardized. The response area of operation should encompass the Pacific coast of the State of Washington, along with all "marine waters" within 60 nautical miles from Buoy "J" at the entrance to the Strait of Juan de Fuca, the Strait, and its western approaches.

The Council recommended that the "Straits and Coastal Waters Prevention Response/Rescue Tug" at Neah Bay be achieved through:

- State or federal statutes or regulations that require all shippers to pay for the tug.
- State or federal appropriations that are generated by fees on potential spillers (i.e., tank vessels, cargo vessels, cruise lines, and others).
- A combination of the above statutes or regulations and appropriations.

The Council recommended that funding be made available in the interim-- while regulations are being developed and/or funding is secured to achieve the additional capability tug—to support year-round service with a tug comparable to that which currently protects the Strait and coast.

**2. Create a Department of Ecology managed tug fund for periodic, as-needed placement of rescue/response tugs in key locations.**

The Council also recommended establishing a “Contingency Tug Fund” of \$1,000,000 per biennium to be managed by the Department of Ecology (“Ecology”). This fund would enable Ecology to periodically place as-needed response/rescue tugs in strategic locations. For example, if bad weather is coming, placing temporary protection in key areas could be critical to preventing storm-related incidents that could lead to large oil spills. This fund would not accumulate if unspent.

**3. Provide sufficient funding for the Council to be able to achieve the ambitious assignments given to it by the Legislature.**

When the Council’s report was written, the Council was operating on an estimated budget of approximately \$500,000 for the 2005-2007 biennium. The \$500,000 budget provided the Council with two staff, overhead, funding to reimburse Council members for involvement in seven council meetings, funding for meetings of two subcommittees and four Technical Advisory Committees (“TACs”), and funding for two independent studies conducted by an outside consultant. The full cost associated with the services of two staff members is approximately \$300,000 per biennium. The independent studies conducted cost approximately \$120,000. Overhead for the 2006 fiscal year was approximately \$40,000 for the biennium, which includes line items for supplies and materials, communications, rentals and leases, printing, professional development, and subscriptions.<sup>1</sup>

As was found by the independent consultant hired by the Council in preparation for its 2006 report, the Council’s budget is insufficient to perform the duties that the Legislature gave to the Council in RCW 90.56.130.<sup>2</sup> The consultant’s analysis resulted in the

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<sup>1</sup> In the 2006-2007 legislative session, the Legislature increased the Council’s budget to approximately \$700,000 for the 2007-2009 biennium. The Council has hired a third staff person. This addition will increase the cost of staff services by approximately \$60,000 per year. Staff also has been moved from its temporary and free-of-charge housing provided by the Office of Financial Management (“OFM”) to another OFM space for which it is being charged \$80,000 for the biennium. The Council is in the process of initiating another study, which will cost upwards of \$80,000.

<sup>2</sup> The Legislature charged the Council with approximately ten duties, including the following:

1. Hire professional staff and expert consultants.
2. Early consultation with government decision makers in relation to the state's oil spill program, analyses, rule making, and related oil spill activities.
3. Provide independent advice, expertise, research, monitoring, and assessment for review of and necessary improvements to the state's oil spill program, analyses, rule making, and other decisions, including those of the Northwest Area Committee, as well as the adequacy of funding for these programs.

Council recommending that the Council be funded at approximately \$1,755,568 per biennium. This request is reflected in Appendix E (State of Washington Oil Spill Advisory Council 2007-2009 Budget Request).

**4. Provide sufficient funding to prevent the oil spill program's impending funding shortfall.**

The Council recommended that the Legislature provide funding to prevent an impending budget shortfall for Ecology's oil spill program.

At the time the 2006 report was written, it was the Council's understanding that current funds available in the Oil Spill Prevention Account ("OSPA") would be insufficient to fund Ecology's oil spill program costs (See Appendix A). The date of the shortfall would depend on what other programs the Legislature funds from the OSPA. The inclusion of only Ecology-requested additions, will result in a budget shortfall as late as the 2009-2011 biennium. However, if, for example, the Legislature funds an enhanced and year-round tug at Neah Bay, and other programs listed in Table 13 (See Appendix D), a budget shortfall will exist as early as the end of the 2007-2009 biennium. By now, these projections may be outdated. Therefore, the Council has requested updated budget shortfall estimates from Ecology for the upcoming legislative session. (See Appendix F)

**5. Establish the following sustainable funding mechanisms.**

**a. Establish an "Oil Spill Prevention and Response Service Transfer Fee."**

This fee would pay for the State's oil spill prevention and response services. The fee would be imposed on all transfers of refined oil product that are done on, near, or over waters of the State served by Ecology's oil spill program.

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4. Monitor and provide information to the public, as well as state and federal agencies regarding state of the art oil spill prevention, preparedness, and response programs.
  5. Actively seek public comments on proposals for specific measures to improve the state's oil spill prevention, preparedness, and response program, including measures to improve the effectiveness of the Northwest Area Committee.
  6. Evaluate incident response reports and make recommendations to the Department of Ecology regarding improvements.
  7. Consult with the Department of Ecology on lessons learned and agency progress on necessary actions in response to lessons learned.
  8. Promote opportunities for the public to become involved in oil spill response activities, and provide assistance to community groups with an interest in oil spill prevention and response, and coordinate with the Department of Ecology on the development and implementation of a citizens' involvement plan.
  9. Serve as an advisory body to the Department of Ecology on matters relating to international, national, and regional issues concerning oil spill prevention, preparedness, and response, and provide a mechanism for stakeholder and public consideration of federal actions relating to oil spill preparedness, prevention, and response in or near the waters of the state, with recommended changes or improvements in federal policies on these matters.
  10. Each year, make recommendations for the continuing improvement of the state's oil spill prevention, preparedness, and response activities through a report to the Governor, the Director, and the appropriate committees of the Senate and House of Representatives.

This fee would be a risk-based fee charged on the transfer of processed or refined oil products and fuels and would be charged to persons that transfer oil products to others. The fee would spread the burden of paying for the State's services broadly across many sectors, all of which pose a risk to Washington's waters during their fuel transfers.

This fee would not apply to transfers of crude oil. It would only apply to processed oil products—including jet fuel, home heating oil, kerosene, gasoline, and more. This fee would be charged on bulk transfers of refined product from refineries. The fee would be imposed on all vessels transferring fuel, including recreational boaters refueling at marina fuel docks and fishing fleet vessels.

Because it would apply to all transfers of all these products, the Transfer Fee would be self-regulating in its ability to spread the burden of paying for the State's services according to who poses the most risk. This is, in part, because the Transfer Fee is based on the number of gallons or barrels transferred during each transfer.

**b. Alter the barrel tax on crude oil in three ways.**

**i. Eliminate the one-cent reduction to the five-cent barrel tax when the cap on the oil spill response account is reached.**

The Council recommended eliminating the one-cent reduction to the five-cent barrel tax that occurs when the \$9 million cap on the Oil Spill Response Account is reached. This would result in the barrel tax staying constant at five cents per barrel.

**ii. Remove the barrel tax credit for the export of processed or refined oil products.**

Removing the barrel tax credit for the export of processed or refined oil products will eliminate the inequitable situation of a dangerous product being given a tax credit when it is transported, as cargo, through Washington's waters for a second time. It will also eliminate the possibility that those paying the barrel tax, while not paying the tax on *all* crude oil entering the State, (as there is no barrel tax on crude entering the State by pipeline or other means) can co-mingle fungible refined fuels obtained originally from sources that were not previously taxed in order to receive an export credit thereupon.

This change thus creates a more equitable situation for Washington taxpayers by eliminating the possibility that oil not subject to the barrel tax could be mixed with oil that was taxed, resulting in inaccurate export credit numbers that are difficult to audit.

**iii. Tie the current volume-based tax to the average annual price of a barrel of crude oil.**

The Legislature may also tie the current volume-based tax to the average annual price of a barrel of oil. At \$60 per barrel, the current five-cent tax would constitute 0.00083

percent of a barrel of oil. By altering the tax from five cents to 0.00083 percent, the barrel tax will become self-indexing and become more sustainable than it is now—able to keep pace with inflationary driven programmatic costs. Linking the tax to the average annual price, rather than more frequent price shifts, provides revenue stability.

**6. Address the issue of derelict vessels.**

**a. Eliminate the “backlog” and fund the program adequately thereafter.**

The Council recommended that the Legislature authorize a one-time allocation of funds to eliminate the back-log of derelict vessels and then to adequately fund the derelict vessel program thereafter.

The Council understood when it issued its report that the Washington Department of Natural Resources (“DNR”) estimated it would need over \$4 million to eliminate the current commercial derelict vessel “backlog.” DNR estimated that \$1 million to \$1.5 million over five years would provide funds sufficient to handle the “backlog” and also any anticipated new influx of formerly commercial derelict vessels into the program.

**b. Close the derelict vessel pipeline.**

The best way to prevent oil spills from derelict and abandoned vessels is to close the influx of these vessels into the “system.”

**c. Create an amnesty program.**

One method of closing the pipeline, would be to create a State run program that would take old and leaky boats for free. The Council requested that DNR and Ecology investigate and make a recommendation to the Council regarding an Amnesty Program. It is anticipated that under such a program, citizens could dispose of unwanted vessels before they become dilapidated to the point of becoming derelict.

**d. Bifurcate the derelict vessel program.**

The Council recommended that the Legislature bifurcate DNR’s Abandoned and Derelict Vessel Program between commercial / formerly commercial vessels and recreational vessels. The Council further recommended that the Legislature create a new funding source derived solely from commercial vessel owners and operators to fund DNR’s ability to deal with commercial vessels that have become abandoned or derelict.

**e. Give DNR temporary custody of problem vessels.**

The Council recommended that the Legislature grant DNR new statutory authority to take temporary custody of a vessel if the vessel poses a reasonably imminent threat to human health or safety, which would include threats from environmental contamination.

**f. Change the priority ranking system.**

The Council recommended that DNR leave intact the Priority Ranking of all vessels at the time when any governmental agency steps in to remediate contamination or other threats from the vessel. The Council further recommended that DNR eliminate the Ranking of Priority 3A and move this category of vessels to Priority 2 Ranking. If this is done, and the Legislature changes the statute to allow DNR to take temporary custody of vessels that pose a reasonably imminent threat to human health or safety, DNR will have the ability to take temporary possession of more risky and problematic vessels (for example, those that have sunk and still have fuel aboard).

## **Status of Council Recommendations. Were They Implemented?**

### **1. Permanently station a year-round/rescue tug in the Western Strait of Juan de Fuca.**

The Legislature did not adopt this recommendation. Instead a “federal strategy” is being pursued. This strategy relies on federal legislation being introduced by Senator Maria Cantwell that would create a mechanism to fund an enhanced capability and year-round tug at Neah Bay.

Senator Cantwell did introduce this legislation. Section 713 of Senator Cantwell’s bill would amend 33 USC 1321(j) to require that the Coast Guard station a year-round response tug of a minimum of 70-tons bollard pull in the entry to the Strait of Juan de Fuca at Neah Bay, and that the tug be capable of providing rapid assistance and towing capability to disabled vessels during severe weather conditions. Under the bill, financial resources for this tug are to come from the joint resources of those who are required under 33 USC 1321(j) to complete federal oil spill response plans.

If passed, the bill would require these plan holders to negotiate and adopt a cost-sharing formula and a schedule for carrying out the payment for the tug. The deadline for doing this is June 1, 2008. If the plan holders fail, the Coast Guard would be mandated to establish a cost-sharing formula and a schedule by July 1, 2008.

The reason for this date is that the current funding mechanism for the Neah Bay tug sunsets on June 30, 2008, at the end of fiscal year.

The Legislature will need to track the progress of the Cantwell legislation in Congress. If it becomes clear that the Cantwell bill will not become law, the Council strongly urges the Legislature to fund an enhanced year-round tug at Neah Bay in the upcoming legislative session. If the Cantwell bill does not pass and the State Legislature does not act in the upcoming session, there will be no funding available for the Neah Bay tug—even as a seasonal tug with existing capabilities.

### **2. Create a Department of Ecology managed tug fund for periodic, as-needed placement of rescue/response tugs in key locations.**

The Legislature did not act on this recommendation. Further, Senator Cantwell’s legislation would not create such a fund. Therefore, this fund will not be created unless the Legislature acts to create the fund.

**3. Provide sufficient funding so the Council may achieve the ambitious assignments given to it by the Legislature.**

The Legislature did not adopt the Council's recommendation to fund the Council at a level of approximately \$1,755,568 per biennium. It was understood that Senator Cantwell's legislation would provide funding for the Council similar to the federal funding provided for the Regional Citizen Advisory Councils in Alaska. Senator Cantwell's draft legislation included funding for the Council at a rate of two million dollars per biennium. However, when the Coast Guard reauthorization bill was introduced, this provision had been removed.

If the Council is to be funded at a level that will allow it to do the work mandated by the Legislature in RCW 90.56.130(1), the Legislature, itself, will need to provide this funding.

**4. Provide sufficient funding to prevent the impending funding shortfall of the oil spill program.**

During the last legislative session, the Legislature did not act on the Council's recommendation to create more funding for Ecology's oil spill program by altering the barrel tax or creating an oil transfer fee. Depending, of course, on when Ecology reports that its predicted budget shortfall will occur, the Legislature may need to act during the upcoming legislative session to assure that Ecology's oil spill program is adequately funded.

- a. Establish the following sustainable funding mechanisms via an "Oil Spill Prevention and Response Service Transfer Fee," altering the barrel tax on crude oil in three ways to:**
- (1) eliminate the one-cent reduction to the five-cent tax,**
  - (2) remove the barrel tax credit for the export of processed or refined oil products, and**
  - (3) self-index tax by tying the current volume-based tax to the average annual price of a barrel of crude oil or to the rate of inflation.**

Rather than adopting the Council's recommendations, the Legislature issued a request to the Washington Joint Legislative Audit and Review Committee ("JLARC"). The Legislature directed JLARC to evaluate the sources of risk justifying the State's oil spill program and compare the risk posed with those sources with the mechanisms that fund the state's programs. The Legislature tasked JLARC with ascertaining studying options for allocating the State's costs to the major risk categories by sector.<sup>3</sup>

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<sup>3</sup> Section 2 of Second Substitute House Bill 1488 provided, "By September 1, 2008, the joint legislative audit and review committee shall examine the funding mechanism for the oil spill prevention and response programs. This study shall evaluate the state's oil spill prevention, preparedness, and response programs to compare the sources of oil spill risk with the funding mechanism.

The study shall include:

- (1) A review of existing oil spill risk evaluations and qualitative models, including:

The Council understands JLARC to be in the very beginning stages of this study. When the JLARC report is released in the fall of 2008, the Council will review the report and will consider weighing in at that time.

**5. Address the issue of derelict vessels.**

**a. Eliminate the “backlog” and fund the program adequately thereafter.**

During the 2007 legislative session, Senator Phil Rockefeller introduced Senate Bill 6044 to address the derelict vessel problem in Washington State. The bill passed the Legislature and was signed into law on May 7, 2007.

As enacted, the statute grants DNR authority to take temporary possession of vessels that pose an imminent threat to public health and safety or to the environment. The provisions of the statute allow marina owners to contract with local governments to participate in the derelict vessel program.

The statute also mandates DNR and other stakeholders to:

- Examine the costs and benefits of extending the derelict vessel fees to vessels that are not subject to the current statutory registration requirements.
- Examine the use of alternative revenue streams, such as the watercraft excise tax, in order to more equitably distribute the financial responsibility of supporting the cost of the derelict vessel program and report back to the Legislature by November 1, 2007.
- Convene a workgroup comprised of representatives from DNR, the Department of Ecology, the ship demolition industry, and the environmental community to discuss operations and permitting requirements surrounding the demolition and disposal of large abandoned and derelict vessels.

The Council intends to work with the statutorily-mandated workgroup charged with finding funding alternatives for the derelict vessel program, and determining better methods for effectively removing and disposing of large vessels.

In a letter sent to DNR and Ecology on August 10, 2007, the Council communicated its interest in receiving a report in early 2008 from DNR and Ecology about the progress being made in this regard. After obtaining more information about agency progress, the

- 
- (a) Evaluations or models for a risk evaluation framework, considering such factors as volume of oil, time at sea, proximity to water, organizational readiness, and damage done; and
  - (b) Evaluations or models for risk allocation, assessing how much of the risk goes with the product and how much with where and how the product is handled and who is handling it;
- (2) A review of empirical data related to actual spill numbers, spill volumes, spill locations, and other circumstances related to individual spills;
- (3) Comparisons of the risk allocation to the actual funding contributed by sector; and
- (4) Options to allocate the state's costs to the major risk categories, by sector.”

Council will be in a better position to conduct an evaluation. The Council will then determine whether to recommend further legislative action and additional funding to resolve this issue.

**b. Close the derelict vessel pipeline.**

The Legislature did not act on the Council's recommendations to:

- Create legislation requiring the procurement of current vessel registration as a precondition for marine slip rentals.
- Establish a Washington State derelict vessel amnesty program.

As indicated *supra*, the Council had requested that DNR and Ecology investigate and make recommendations to the Council regarding an amnesty program. Council staff will contact DNR later this year to schedule a briefing to the Council on this matter. The Council will keep the Legislature apprised of the progress made on this issue.

**c. Bifurcate the derelict vessel program.**

The Legislature did not act on this Council recommendation to bifurcate the derelict vessel program between commercial and recreational vessels and adopt a separate funding source that would fund the removal of commercial derelict vessels.

Instead, in Senate Bill 6044, the Legislature created new temporary funding sources for the derelict vessel removal program to enable DNR to pursue removal of some of the larger vessels and to reduce the backlog of smaller vessels. The Legislature added a temporary \$1 surcharge to recreational boat licenses and provided the authority to transfer funds from the watercraft excise tax to the derelict vessel removal account (via the general fund). As indicated *supra*, the Legislature requested that DNR study the use of alternative revenue streams in order to more equitably distribute the financial responsibility of supporting the cost of the derelict vessel program. DNR is required to report its findings to the Legislature by November 1, 2007.

**d. Give DNR temporary custody authority for problem vessels.**

Senate Bill 6044 authorizes DNR to take temporary possession of vessels if they pose an imminent threat to public health and safety or to the environment.

**e. Change the priority ranking system.**

The Legislature did not act to alter DNR's priority ranking system.

## Ongoing Oil Spill Advisory Council Work

### 1. Continuing the work the Council outlined in 2006 report.

The 2006 report was just the Council's first step in what will be a long endeavor to ensure that Washington has the best oil spill prevention, preparedness, and response program in the country, and in the world. Indeed, the 2006 report identifies future areas for Council study. These include:

- A study to determine areas of programmatic improvement to address underlying root causes of the mishaps that lead to oil spills.
- A study to determine whether additional rescue/ response tugs are appropriate risk interventions in key locations.
- A study to determine if current escort tug regulations are sufficient in light of human factors that cause oil spills.

The Council is unable to conduct all of these studies in the current biennium. This is due to the Council's financial limitations and, in one case, due to the unavailability of suitable data.

#### **a. Study to determine areas for programmatic improvement to address underlying root causes of mishaps.**

In the 2006 report, the Council stated its intention to continue studying lessons-learned reports to identify root causes underlying the incidents evaluated in the reports and to recommend ways to address these causes. The Council commissioned the first phase of this study from a company named Environment International, Inc ("EI"). This study is complete and the Council has reviewed the results. A copy of this study is available on request, and it has been posted to the Council's website at [www.governor.wa.gov/osac](http://www.governor.wa.gov/osac).

In essence, the primary findings from the first phase of the study were that most mishaps stem from organizational and management failures regarding policies and procedures, maintenance, equipment, personnel, and training on cargo ships, fishing vessels, tank ships, and barges. Most of the time these failures resulted in mishaps associated with the movement of oil-- which includes bunkering/ fueling, loading/ discharging cargo, and conducting transfers—or with a loss of propulsion or an equipment failure.

The Council is underway on conducting the second phase of the study. This will involve examining the following:

All organizational and management failures identified in the EI report (policy/ procedure, maintenance, equipment, personnel, and training), which EI identified as primary root causes and secondary contributing factors for:

mishaps that occur in the marine environment during the transfer of oil, loss of propulsion, and equipment failure, fire/explosion, loss of power, loss of steering,

navigation/ship handling, structural failure, and seaworthiness/ fitness for service associated with:

cargo ships, fishing vessels, tank ships, barges, tugs, dredges, bulk carriers, ferries, and passenger ships.

Through phase two of this study, the Council hopes to identify areas where programmatic improvements would be useful in further reducing the risks of oil spills associated with the above-described vessels that are having the above-described mishaps.

**b. Study additional rescue/ response tugs as risk interventions in key locations.**

In the 2006 report, the Council stated its intention to perform additional information-gathering and conduct studies to assist the Council in making final recommendations on whether it would be beneficial to station additional response/rescue tugs throughout Washington's waters. Even with the International Tug of Opportunity System (ITOS), current oil tanker escorts, and a year-round, response/rescue tug stationed at Neah Bay, there are still several high-risk locations that may require additional safeguards in order to achieve state-of-the-art prevention.

**c. Study issues relating to use of escort tugs.**

The Council also expressed a desire to study escort tug issues, in particular those related to human factors and those related to escort requirements for tank ships traveling east of Port Angeles and for other high-risk vessels and areas.

The Council understands that Ecology would like to conduct a second phase of a study it began on the efficacy of existing state tug escort requirements for laden oil tankers. This escort system is one of the most important systems in place to protect Puget Sound from the risk of major and catastrophic oil spills. The goal of the study is to determine if the current system provides adequate protection or should be enhanced. The proposed second phase of the study would focus on human factors related to the escort system. Ecology has requested that the Council act as the advisory body to that study, and the Council is poised to do so. At this time Ecology has not identified funding necessary to conduct this important study.

**2. Work plan for the current biennium.**

In addition to the work listed above, the Council will focus its current biennial work on the following issues:

**a. Ecology's contingency planning rule implementation.**

One of the primary functions of the Alaskan Regional Citizen Advisory Councils has been to review the oil spill contingency plans submitted to and approved by the State of

Alaska. Following in this tradition, the Council will review contingency plans submitted for approval to Ecology.

The quality and adequacy of these plans submitted to Ecology under Chapter 173-182 WAC is crucial to whether oil spilled into Washington's waters will be immediately and thoroughly cleaned up. It is within the purview of the Department of Ecology to assure that the contingency plans being submitted are adequate. It is up to the Council to study the plans and the agency review process, and to provide its opinion regarding needed improvements to the plans and the review process.

The Council anticipates this work will be done primarily through the Council staff.

**b. Ecology's oil transfer rule implementation.**

Operations manuals for transferring oil are to be submitted to Ecology under Chapter 173-180 WAC. These plans include determinations by industry regarding when it will be safe and effective to take the precautionary step of pre-booming around the immediate vicinity of an oil transfer.

Just as the quality of the contingency plans is critical to how well an oil spill will be remediated, the quality and character of the operations manuals—and how well they will be followed-- is absolutely crucial in determining how well the State and industry will be able to prevent oil spills during transfers. Therefore, it is up to the Council to study the plans and the agency review process, and to provide an opinion regarding needed improvements, if any.

The Council anticipates this work will be done primarily through the Council staff.

**c. A study of towing practices for laden barges.**

The Council plans to evaluate coastal shipping practices as they relate to towing of laden oil barges, with particular attention to towing requirements during storm periods. The goal in doing this study is to determine where unnecessary risk is being posed to Washington's outer coast because of existing towing practices, and to make recommendations for changes that would reduce risk.

The Council anticipates this work will be done primarily through Council staff.

**d. The Area to Be Avoided– the Olympic Coast Marine Sanctuary.**

**i. Tug boat compliance with the Area To Be Avoided.**

Earlier this year, a related study was done under the Council's auspices, titled "Tugboat Compliance with the International Maritime Organization Area to be Avoided ("ATBA") off the Washington Coast." Some have contested the validity of the Vessel Entries and

Transits (“VEAT”) data for Washington waters, particularly as they apply to tug and barge compliance rates in the ATBA. The report attempts to examine some of the issues that have led to criticism of the VEAT compliance estimates, and to investigate several factors that could be associated with, or related to, any observed lack of tug compliance. Specifically, the report focuses on:

- Vessel compliance rates accounting for empty barges.
- The magnitude of noncompliant tug incursions into the ATBA.
- A possible association between tug compliance and tugs’ ports of call.
- A possible association between tug transits through the ATBA and tug traffic patterns in the Strait of Juan de Fuca.
- A possible association between tug compliance and offshore weather conditions.
- The assumption that tug transits into the Strait of Juan de Fuca are predominantly made in ballast.
- Relevant incidents and accidents involving tugs and barges off the Washington coast.

A copy of this study is available on request, and it has been posted to the Council’s website at [www.governor.wa.gov/osac](http://www.governor.wa.gov/osac).

**ii. An ATBA loophole? What does it mean to be “empty” and not “carrying cargo” and are oil-carrying vessels allowed in the ATBA?**

During the course of doing the above study, it came to the Council’s attention that the Olympia Coast Marine Sanctuary (“the Sanctuary”), which interprets the voluntary “keep out” provisions that apply to the ATBA, may be interpreting the language of the provisions too loosely.

The International Maritime Organization ATBA applies to “all ships and barges *carrying cargoes* of oil or hazardous materials and all ships 1,600 gross tons and above solely in transit.”

The Sanctuary monitors and records ATBA compliance and non-compliance and sends letters to vessels determined to be non-compliant with the ATBA guidelines. For purposes of keeping records and sending non-compliance letters, the Sanctuary does not consider vessels that have offloaded their cargo to be “carrying cargo.” In other words, the Sanctuary considers them to be empty. While this seems intuitive, the opposite may be true.

The Council has learned that oil-carrying vessels that have been “emptied” actually contain at least several hundred gallons of oil on board, and are more likely to contain several thousand gallons of oil “residue.” The Council also learned that one vessel that had its tanks cleaned and certified to be gas-free was still carrying 15,000 gallons of diesel when it landed on the rocks. While this oil was not cargo but rather fuel for the

barge and its equipment, this much oil spilled seriously harms the environment (day tanks and clingage).

The Council has learned that if an incident involving a vessel carrying thousands of gallons of oil, or even hundreds of gallons of oil, resulted in a release of that oil to the environment, serious environmental and economic harm would almost certainly result. There are scenarios where the release of this residue oil could cost the State of Washington millions and millions of dollars.

It is true that the severity of any oil related incident depends on factors such as the type of oil released, where the oil is spilled, whether weather conditions are conducive to containment and recovery, and the sensitivity of impacted habitats and resources. However, it goes without saying that releasing hundreds to thousands of gallons of oil into the environment would not be an insignificant event, especially in an area where the precautionary principle is being implemented as the International Maritime Organization deemed it to be “exceptionally important to avoid casualties.”

Therefore, earlier this year, the Council requested that the Marine Sanctuary revisit its interpretation of “carrying cargo,” and make a determination about whether oil carrying ships and barges that are mostly empty should be considered empty and not carrying cargo, or whether they should be considered mostly empty and carrying some cargo.

**e. Following up from the June 2007 State-Federal Oil Spill Summit.**

Various Council members took advantage of the invitation to participate in the 2007 Oil Spill Summit at which the Coast Guard and Ecology released their Shared Strategic Plan and an Inventory of Routine Activities and Authorities for Oil Spill Prevention, Preparedness, and Response.

The Council intends to continue working with the Coast Guard and Ecology on the issues presented in the work plan and the inventory.

**f. Coordinating with the Puget Sound Partnership.**

Council staff has begun, and will continue, to coordinate efforts with the newly created Puget Sound Partnership.

**g. Working on issues through Council committees.**

In addition to the work above, the Council has begun much of the following work items through its various committees with the assistance of staff:

- Study whether the State is ready to respond to a large-scale spill (including implementing Geographic Response Plans and including oiled wildlife).
- Review the use of escort tugs and review manning issues relating to articulated tug and barge systems and integrated tug and barge systems.

- Work with the Washington Department of Fish and Wildlife to recommend ways of improving the oiled wildlife program.
- Evaluate methods of calculating natural resources damages assessments.
- Conduct public education on the Council's work and oil spill issues.
- Seek an advisory membership in the Puget Sound Harbor Safety Committee.
- Attend the meetings of the Regional Response Team Northwest Area Committee.
- Attend workshops and other events put on by organizations such as the Pacific States/ British Columbia Oil Spill Task Force.

## **Conclusion**

The Council's mission is to maintain Washington's vigilance in preventing oil spills in marine and navigable waters, by ensuring an emphasis on oil spill prevention while also recognizing the importance of improving spill preparedness and response. The Council is here to help assure that Washington's coastal and marine environments, and navigable waters, continue to be a source of beauty, recreation, health, ecological integrity, food production, and economic betterment for Washington citizens. The Council's goal is to act as a mechanism to foster a long-term partnership and consensus among communities, government, and industry. The Council members agreed to focus the Council's work on the areas described in the report as a means of achieving its mission, vision, and goals.

The Council is committed to using its resources wisely and to collaboratively pursuing its work in advising key players on how to best prevent, respond to, and remediate oil spills in Washington.

**APPENDIX A:**  
**TABLE 1- Oil Spill Prevention Account Forecast, Revenue and Appropriations, All Agencies**

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**Table 1 – Oil Spill Prevention Account Forecast, Revenue and Appropriations, All Agencies<sup>4</sup>**

		2005-07 biennium (Estimate) <sup>1</sup>	2007-09 biennium (Estimate) <sup>1</sup>	2009-11 biennium (Estimate) <sup>1</sup>	2011-13 biennium (Estimate) <sup>1</sup>
<b>Scenario #1</b>	<b>Current OSPA Appropriations + Ecology's Additional Needs</b>				
	<b>Beginning Balance<sup>2</sup></b>	\$6,982,071	\$5,920,071	\$1,868,334	(\$1,603,278)
	DOR Forecast: Oil Spill Prevention Account as of 6/2006 <sup>3</sup>	\$10,900,000	\$11,400,000	\$12,660,000	\$12,660,000
	<b>Total Balance + Revenue</b>	<b>\$17,882,071</b>	<b>\$17,320,071</b>	<b>\$14,528,334</b>	<b>\$11,056,722</b>
	Current OSPA Appropriations <sup>4</sup>	\$11,962,000	\$13,443,737	\$14,035,261	\$14,652,812
	Ecology's Additional Needs <sup>5,6</sup>	\$0	\$2,008,000	\$2,096,351	\$2,188,591
	<b>Total Appropriations</b>	\$11,962,000	\$15,451,737	\$16,131,612	\$16,841,403
	<b>Ending Balance<sup>6</sup></b>	<b>\$5,920,071</b>	<b>\$1,868,334</b>	<b>(\$1,603,278)</b>	<b>(\$5,784,682)</b>
<b>Scenario #2</b>	<b>Current OSPA Appropriations + Ecology's Additional Needs + Council's Proposed Additions</b>				
	<b>Beginning Balance<sup>2</sup></b>	\$7,077,227	\$4,588,200	(\$6,194,731)	(\$23,725,548)
	DOR Forecast: Oil Spill Prevention Account as of 6/2006 <sup>3</sup>	\$10,900,000	\$11,400,000	\$12,660,000	\$12,660,000
	DOR Forecast: Vessel Response Account as of 6/2006 <sup>7</sup>	\$2,881,656	\$1,458,956	\$100,000	\$100,000
	<b>Total Balance + Revenue</b>	<b>\$20,858,883</b>	<b>\$17,447,156</b>	<b>\$6,565,269</b>	<b>(\$10,965,548)</b>
	Current OSPA Appropriations <sup>4</sup>	\$11,962,000	\$13,443,737	\$14,035,261	\$14,652,812
	Ecology's Additional Needs <sup>5</sup>	\$0	\$2,008,000	\$2,096,351	\$2,188,591
	Council's Proposed Additions <sup>8</sup>	\$4,308,683	\$8,190,150	\$14,159,204	\$14,782,209
	<b>Total Appropriations</b>	\$16,270,683	\$23,641,887	\$30,290,816	\$31,623,613
<b>Ending Balance</b>	<b>\$4,588,200</b>	<b>(\$6,194,731)</b>	<b>(\$23,725,548)</b>	<b>(\$42,589,160)</b>	
<b>Scenario #3</b>	<b>Current OSPA Appropriations + Ecology's Additional Needs + Council's Proposed Additions + DNR's Proposed Additions</b>				
	<b>Beginning Balance<sup>2</sup></b>	\$7,077,227	\$4,588,200	(\$9,694,731)	(\$30,923,548)
	DOR Forecast: Oil Spill Prevention Account as of 6/2006 <sup>3</sup>	\$10,900,000	\$11,400,000	\$12,660,000	\$12,660,000
	DOR Forecast: Vessel Response Account as of 6/2006 <sup>7</sup>	\$2,881,656	\$1,458,956	\$100,000	\$100,000
	Current DNR Derelict Vessel Funding <sup>9</sup>	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	<b>Total Balance + Revenue</b>	<b>\$21,858,883</b>	<b>\$18,447,156</b>	<b>\$4,065,269</b>	<b>(\$17,163,548)</b>
	Current OSPA Appropriations <sup>4</sup>	\$11,962,000	\$13,443,737	\$14,035,261	\$14,652,812
	Ecology's Additional Needs <sup>5</sup>	\$0	\$2,008,000	\$2,096,351	\$2,188,591
	Council's Proposed Additions <sup>6</sup>	\$4,308,683	\$8,190,150	\$14,159,204	\$14,782,209
	DNR's Proposed Additions <sup>10</sup>	\$1,000,000	\$4,500,000	\$4,698,000	\$2,724,840
	<b>Total Appropriations</b>	\$17,270,683	\$28,141,887	\$34,988,816	\$34,348,453
<b>Ending Balance</b>	<b>\$4,588,200</b>	<b>(\$9,694,731)</b>	<b>(\$30,923,548)</b>	<b>(\$51,512,000)</b>	

1 The estimate includes a 4.4 percent inflation rate per biennium to promote sustainability.

2 This value was provided by Ecology from the DOR, Research Division. The 2005-2007 biennium value is the estimated funds available to the State Oil Spill Program from the Oil Spill Prevention Account (OSPA) and the Vessel Response Account (VRA). The Scenario 1 beginning balance only includes the OSPA figure, and Scenario

<sup>4</sup> Ecology Spill Program Budget Overview, March 17, 2006, data adjusted.

- 2 and 3 beginning balances include both the OSPA and VRA figures. There is no beginning balance included for the DNR portion.
- 3 This value was provided by DOR and represents the estimated biennial income from the OSPA. The value used for the 2009-2011 and 2011-2013 biennia was calculated based on continuing revenue of \$12,660,000 from the OSPA, taken from information provided by Ecology on March 17 and September 11, 2006.
  - 4 See Table 12. The Council budget (\$508,000 for the current biennium) and the UW Oil Spill Education Program (\$170,000 per biennium) have been subtracted from the Ecology appropriations. Additionally, the Neah Bay Rescue tug (approximately \$ 2.8 million per biennium) is not included in the Ecology appropriation. These costs are included in the Council's Proposed Additions.
  - 5 See Table 12. These programs have been proposed to be added to Ecology's budget in the next funding cycle.
  - 6 In Scenario # 1, if Ecology's Additional Needs are added to the current State Oil Spill Program, the current funding sources will be insufficient to maintain the program and the OSPA will be at a deficit by the 2009-2011 biennium. The deficit in the 2009-2011 biennium is estimated to be \$1,603,278.
  - 7 This value was provided by Ecology on September 11, 2006 and represents the estimated biennial income from the VRA which supports the Neah Bay tug. As the vehicle title transfer fee sunsets in July 2008, the funding from this source will only be present for half of the 2007-2009 biennium. Beginning in the 2009-2011 biennium, the only funding anticipated to be directed to this account is \$100,000 as estimated by Ecology.
  - 8 See Table 13. The Council's Proposed Additions includes funding for the Council, the Neah Bay Tug, the Contingency Tug Fund, and the UW Oil Spill Education Program. It does not include funding for the Derelict Vessel Program. The Council is deliberating whether it will recommend the transfer of the UW funds to the Council. When the Council's determination is made this year, it will be communicated to the appropriate entities via a letter from the Chair.
  - 9 This value was provided by DNR and represents the biennial revenue from the recreational boat registration fee that supports the current Derelict Vessel Program.
  - 10 See Table 13. DNR's Proposed Additions consists of the cost of the Derelict Vessel Program presented in Table 13.

**APPENDIX B:**  
**Table 2 – Neah Bay Tug Funding Options**

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Table 2 – Neah Bay Tug Funding Options<sup>5</sup>

	Daily Charge	Summer Premium (% Increase)	Daily Fuel*	Daily Contract Administration	Total Daily Cost	Days	Total Annual Cost	Total Biennial Cost
<b>Current Tug – Seasonal</b>								
<b>Current Duration</b>	\$5,841.00		\$200.00	\$1.51	\$6,042.51	232	\$1,401,862.00	\$2,803,724.00
						<b>Current Coverage Duration</b>	\$1,401,862.00	<b>2,803,724.00</b>
<b>Current Tug – Year-Round</b>								
<b>Winter</b>	\$5,841.00		\$200.00	\$1.51	\$6,042.51	232	\$1,401,862.00	\$2,803,724.00
<b>Summer</b>	\$5,841.00	3	\$200.00	\$1.51	\$6,217.74	133	\$826,959.24	\$1,653,918.47
						<b>Year Round</b>	\$2,228,821.24	<b>\$4,457,642.47</b>
<b>Average Cost of Year-Round Tug Potentially Renegotiated Contract</b>								
<b>Winter</b>	\$7,000.00		\$200.00	\$1.51	\$7,201.51	232	\$1,670,750.32	\$3,341,500.64
<b>Summer</b>	\$7,000.00		\$200.00	\$1.51	\$7,201.51	133	\$957,800.83	\$1,915,601.66
						<b>Year Round</b>	\$2,628,551.15	<b>\$5,257,102.30</b>
<b>Expanded Capabilities Tug – Year-Round</b>								
<b>Winter</b>	\$15,000.00		\$200.00	\$1.51	\$15,201.51	232	\$3,526,750.32	\$7,053,500.64
<b>Summer</b>	\$15,000.00		\$200.00	\$1.51	\$15,201.51	133	\$2,021,800.83	\$4,043,601.66
						<b>Year Round</b>	\$5,548,551.15	<b>\$11,097,102.30</b>

\* The cost of fuel is calculated based on a prior year’s expenses provided by Ecology. The actual average daily fuel consumption for 232 days of use from Fall 2005 to Spring 2006 totaled \$250 per day. This includes daily operation of the generators, standby readiness, and spill drills. (Pers. comm. Ecology). During this period it is estimated that 125 to 175 gallons of fuel was used per day. The expanded capability tug is not expected to consume more fuel for the operation of the generator while at dock. (Pers. comm. Foss Maritime). However, several factors may increase the costs of fuel while the expanded capability tug is on standby. At present, the dock slip where the current tug is stationed in Neah Bay is too shallow to accommodate the expanded capability tug. If this bigger tug cannot be stationed at a dock or on a mooring, the main engines will need to be used more frequently, resulting in the consumption of more fuel. Further, the expanded capability tug will have larger main engines than the current tug and will consume fuel at a higher rate at idle, to maintain readiness and participate in spill drills. Maintaining it at a dock and powering the tug by shore-power obtained from the dock could reduce fuel costs for the rescue tug. As the specifics of the expanded capability tug are yet to be solidified, it is assumed that this tug will be maintained at a dock or mooring and will consume approximately the same amount of fuel in standby mode on an annual basis.

<sup>5</sup> These numbers were developed within the Escort and Response/Rescue Tug TAC.

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**APPENDIX C:**

***Table 12 – State of Washington Spill Program Proposed Operating Budget***

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**Table 12 – State of Washington Spill Program Proposed Operating Budget**

<b>Appropriations</b>	<b>2005-07 biennium</b>	<b>2007-09 biennium (estimate)<sup>1</sup></b>	<b>2009-11 biennium (estimate)<sup>1</sup></b>	<b>2011-13 biennium (estimate)<sup>1</sup></b>
<b>CURRENT PROGRAM</b>				
Dept. of Revenue	\$14,000	\$14,000	\$14,616	\$15,259
Fish & Wildlife	\$1,040,000	\$1,040,000	\$1,085,760	\$1,133,533
Ecology <sup>2</sup>	10,088,000	11,184,937	11,677,074	\$12,190,865
Ecology Supplemental for 6 Transfer/Facility/Vessel Inspectors	\$820,000	\$1,204,800	\$1,257,811	\$1,313,155
<b>Subtotal - Current Programs</b>	<b>\$11,962,000</b>	<b>\$13,443,737</b>	<b>\$14,035,261</b>	<b>\$14,652,812</b>
<b>Additional Needs<sup>3</sup></b>				
Ecology Add-On for Advisory Council Liaison		\$200,800	\$209,635	\$218,859
Ecology Add-On for 6 Non-tank Vessel Contingency Plan Reviewers		\$1,204,800	\$1,257,811	\$1,313,155
Ecology Add-On for Port Angeles Response Team <sup>4</sup>		\$200,800	\$209,635	\$218,859
Ecology Add-On for 2 Policy Development Specialists		\$401,600	\$419,270	\$437,718
<b>Subtotal - Additional Needs</b>	<b>\$0</b>	<b>\$2,008,000</b>	<b>\$2,096,351</b>	<b>\$2,188,591</b>
<b>Total</b>	<b>\$11,962,000</b>	<b>\$15,451,737</b>	<b>\$16,131,612</b>	<b>\$16,841,403</b>

1. Includes a 4.4 percent inflation rate per biennium to promote sustainability.

2. The UW Oil Spill Education Program (\$170,000 per biennium) and the Council budget (\$508,000 for the current biennium) were backed out of this appropriation number. This number also does not include the Neah Bay Response/Rescue Tug (approximately \$ 2.8 million per biennium). These figures do include Ecology’s overhead rate and the last two numbers were derived from the 2007-2009 biennium figure by applying the 4.4% biennial escalation factor.

3. As of the date of this report, the Council has not had the opportunity to evaluate Ecology’s add-ons. The Council does not express an opinion regarding the reasonableness or appropriateness of these requests at this time, but intends to consider the merits of these requests in detail in November 2006.

4. This is the second of two positions for Port Angeles Response Team.

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**APPENDIX D:**

***Table 13 – Council’s Proposed Additions to Oil Spill Program Operating Budget***

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**Table 13 – Council’s Proposed Additions to Oil Spill Program Operating Budget**

<b>Appropriation</b>	<b>2005-07 biennium</b>	<b>2007-09 biennium<sup>1</sup></b>	<b>2009-11 biennium<sup>1</sup></b>	<b>2011-13 biennium<sup>1</sup></b>
<b>Council Budget</b>	\$508,000	\$1,755,568	\$1,832,813	\$1,913,457
<b>Transfer University of Washington Outreach Program to the Council<sup>2</sup></b>	\$170,000	\$177,480	\$185,289	\$193,442
<b>Year Round Neah Bay Tug<sup>3</sup></b>	\$3,630,683	\$5,257,102	\$11,097,102	\$11,585,375
<b>Contingency Tug Fund</b>		\$1,000,000	\$1,044,000	\$1,089,936
<b>Derelict Vessel Cleanup<sup>4</sup></b>	\$1,000,000			
<b>Backlog</b>		\$2,000,000	\$2,088,000	
		\$1,000,000	\$1,044,000	\$1,089,936
		\$1,500,000	\$1,566,000	\$1,634,904
<b>Total</b>	<b>\$5,308,683</b>	<b>\$12,690,150</b>	<b>\$18,857,204</b>	<b>\$17,507,049</b>

1. Includes a 4.4 percent inflation rate per biennium to promote sustainability.
2. The Council is deliberating whether it will recommend the transfer of these funds to the Council in order to allow the Council to enhance and expand the public outreach and education activities identified in prior sections, while continuing to provide the current services of the UW Outreach position. When the Council’s determination is made this year, it will be communicated to the appropriate entities via a letter from the Chair. This number has been inflated at the 4.4 percent per biennium rate to show what the cost would be to maintain a consistent level of outreach and education.
3. The Council recommends that a tug with additional capabilities be stationed at Neah Bay beginning in the 2009-2011 biennium, if not earlier. In the meantime, it is essential that there be no break in tug service at Neah Bay, and that the rescue tug be on duty year-round, not just seasonally. The Council recommends that funding be made available in the interim (while regulations are being developed and/or funding is secured to achieve a tug with additional capabilities) to support year round service of a tug comparable to the tug currently protecting the coast. Available cost estimates indicate that it will cost \$5,257,102 per biennium to extend the current tug to year-round service under a renegotiated contract.

The 2005-2007 biennium tug figure assumes that the current Neah Bay Tug would be stationed for two winters and one summer. The cost of providing the two seasons of winter service is approximately \$2.8 million per biennium (to operate for 232 days per winter), as shown in Table 1. In addition, the summer rate is projected to be 3 percent higher than the winter rate as it is peak operating season. Operation during the summer of 2007 will cost almost \$827,000, as shown in Table 1.

4. The cost the Derelict Vessel Program is currently \$1,000,000, and this figure is included in this table and in the Oil Spill Prevention Account Forecast table (Table 15).
5. DNR currently estimates that the commercial derelict vessel program will require approximately \$4.0 million per biennium; however, the Council has elected to budget for the original estimate provided to the Tug TAC by DNR in the amount of \$1.5 million per biennium. DNR now estimates that based on a worst-case scenario that four vessels would need to be addressed costing \$500,000 each. This estimate may be high. Additionally, much of the cost of disposal of a vessel is attributable to the disposal of solid waste. It may be possible to fund a portion of the disposal of the derelict vessels through other funding sources or in conjunction with other programs.

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***APPENDIX E:***  
***State of Washington Oil Spill Advisory Council 2007-2009 Budget Request***

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**State of Washington  
Oil Spill Advisory Council**

**2007-09 Budget**

**Fiscal Detail for Operating Expenditures to allow for Optimal Performance**

<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
\$881,575	\$884,496	\$1,766,071

<u>Staffing</u>	<u>FY 2009</u>	<u>Annual Average</u>
<u>FY 2008</u> 5 FTEs	5 FTEs	5 FTEs

**Package Description**

This level of funding would conservatively provide the Council with adequate funding to accomplish the mission and directives that the Legislature established for the Council.

The budget supports the Council's need for office space, overhead, legal assistance, travel, meetings, personal service contracts, and public outreach and education.

**Narrative Justification and Impact Statement**

RCW 90.56.130 sets forth the Council's duties. These duties are broad and encompass a wide range of activities that can support improved oil spill prevention, response, and preparedness in Washington.

The Legislature charged the Council with approximately ten duties, including the following:

1. Hire professional staff and expert consultants.
2. Early consultation with government decision makers in relation to the state's oil spill program, analyses, rule making, and related oil spill activities.
3. Provide independent advice, expertise, research, monitoring, and assessment for review of and necessary improvements to the state's oil spill program, analyses, rule making, and other decisions, including those of the Northwest Area Committee, as well as the adequacy of funding for these programs.
4. Monitor and provide information to the public, as well as state and federal agencies regarding state of the art oil spill prevention, preparedness, and response programs.
5. Actively seek public comments on proposals for specific measures to improve the state's oil spill prevention, preparedness, and response program, including measures to improve the effectiveness of the Northwest Area Committee.
6. Evaluate incident response reports and make recommendations to the Department of Ecology regarding improvements.

7. Consult with the Department of Ecology on lessons learned and agency progress on necessary actions in response to lessons learned.
8. Promote opportunities for the public to become involved in oil spill response activities, and provide assistance to community groups with an interest in oil spill prevention and response, and coordinate with the Department of Ecology on the development and implementation of a citizens' involvement plan.
9. Serve as an advisory body to the Department of Ecology on matters relating to international, national, and regional issues concerning oil spill prevention, preparedness, and response, and provide a mechanism for stakeholder and public consideration of federal actions relating to oil spill preparedness, prevention, and response in or near the waters of the state, with recommended changes or improvements in federal policies on these matters.
10. Each year, make recommendations for the continuing improvement of the state's oil spill prevention, preparedness, and response activities through a report to the Governor, the Director, and the appropriate committees of the Senate and House of Representatives.

This budget option supports the Council's ability to accomplish these tasks by assuring an adequate budget for:

- Council office space and overhead.
- Meetings of the Council, Technical Advisory Committees, and subcommittees.
- Adequate support staff to provide administrative and research support to 19 Council members.
- Participation in activities with other relevant groups.
- Management of consultants.
- Other research.

### **Performance Detail**

#### **Goals of Council**

Created for the purpose of maintaining the state's vigilance in oil spill prevention and improving preparedness and response, the Council has been charged with an expansive list of responsibilities. In order to carry out its mission and fulfill its legislatively-mandated duties, the Council adopted a strategy of setting short and long-term goals. The Council also established an initial list of duties and activities that best utilize its current limited resources. The Council identified the following list of goals as results-oriented targets that will maximize impact on prevention, preparedness and response. In pursuit of these goals and objectives, the Council will focus on the implementation priorities presented below.

Selected goals include:

- Define and recommend a state-of-the-art oil spill prevention program for Washington State.

- Explore and make recommendations regarding better prevention and rapid response efforts.
- Fulfill the legislative tracking and advisory role.
- Define and develop partnerships with Tribal governments and with Tribal stakeholders by working with them individually and through the Northwest Indian Fisheries Commission.
- Define and develop partnerships with organizations, agencies, industry, and other interest groups.

Proactive implementation priorities are:

- Review and provide recommendations on existing and proposed rules and regulations.
- Review and provide recommendations on best practices and lessons learned.
- Implement public outreach and involvement programs.
- Participate in oil spill drills and spill events.
- Conduct independent studies that support the Council's goals.

The Council created committees to focus on specific areas vital to fulfilling the Council's statutory duties. These standing committees include the:

- Executive Committee
- Prevention Committee
- Preparedness and Response Committee
- Restoration, Remediation, and Recovery Committee
- Public Outreach and Education Committee

To carry out their charge, each committee has the authority to create standing or temporary subcommittees and technical advisory committees (TACs). In general, subcommittees are subgroups of the standing committee members placed in charge of researching and investigating a specific topic or issue. Technical advisory committees are panels comprised of experts in a given field convened to advise a committee in an area of special interest. These subcommittees and TACs report back to their respective committees, which in turn provide information to the full Council or Executive Committee so that further action may be taken.

### **Justification for Incremental Budget Change**

The current Council budget was established without reference to the Council's composition or duties. The amount left over from the Department of Ecology budget at the end of the 2005 legislative session was allocated to the Council for convenience.

The Council is currently operating on an estimated budget of approximately \$500,000 per biennium. This budget provides the Council with two staff that:

- Perform meeting support,
- Conduct limited research
- Provide contract management services

The current budget also covers:

- Overhead
- Reimbursements for Council member involvement in seven Council meetings
- Meetings for one subcommittee and one TAC
- Funding for one independent study conducted by outside consultants.

Staff for the Council is temporarily housed in the office space of the Office of Financial Management (OFM) for free. The staff costs for the current biennium, for two employees, is approximately \$300,000. A single independent study was conducted in 2006 for about \$80,000.

Overhead for the 2006 fiscal year is approximately \$20,000 and about \$40,000 for the biennium, which includes line items for supplies and materials, communications, rentals and leases, printing, professional development, and subscriptions.

This budget, however, is not sufficient. Also, current staffing levels are not adequate to provide the necessary support for the requirements set forth by the enacting legislation. Also, one study per year is not sufficient to accomplish the Council's legislative mandates. Thus, at this time, the Council is not able to perform all of the ten legislatively mandated items set forth in RCW 90.56.130. Also, in the near future, the Council's overhead will increase as the OFM will no longer be able to provide office space for the Council.

The Council recommends a budget of **\$1,766,071** per biennium to cover the costs of accomplishing the above-specified items. This budget was developed from the estimated 2006 fiscal budget accounting for additional annual expenses required for the Council to carry out its statutorily-mandated duties. The new budget would pay for needed additional staff, additional research resources, office space, overhead, and to fully fund other Council operations.

#### **Impact on Clients and Services**

If this recommended budget comes to fruition, the Council will be able to achieve the above items and Washington citizens will be well served by a citizen advisory council that works well with the industries that pose the risk of oil spills in order to mitigate that risk. If it is not, these goals will not be achieved as quickly or as well.

#### **Alternatives Explored by Agency**

The Council worked with a consultant to determine how best to achieve the Council's mission and legislative mandates. The consultant initially recommended staff and work that would have resulted in a biennial budget of \$2,242,800. Council members evaluated this high estimate, and paired down staffing costs and the number of annual independent studies. This resulted in a budget of only **\$1,766,071**.

#### **Effects of Non-Funding**

If the Council is not funded at the requested levels, the Legislature will need to choose which of the legislatively-mandated functions it would like the Council to not perform. If

the Council is not able to perform all of the functions, including research and recommendations regarding a state-of-the-art oil spill prevention program, the state will be at a heightened risk of a catastrophic oil spill.

**The following is an example of the type of cuts the Council would have to consider making, were full funding not attained.**

Depending on the level of funding, the Council would need to decide how to prioritize its duties and goals. The following is one possible scenario of what would be eliminated.

First, the Council may have to shrink its proposed \$320,000 biennial budget for independent consultants to around \$60,000. This would allow only one study per biennium, versus two to four studies per year. This would mean that requirement 1 above, from RCW 90.56.130, would not be done adequately. This would also mean a marked reduction in the ability of the Council to provide independent advice, research, monitoring, and assessment (requirement 2 above) or to provide meaningful early consultation with government decisionmakers (requirement 2 above). This would also mean less ability to conduct monitoring and to provide information to the public and agencies regarding getting to a state-of-the-art oil spill program (requirement 4 above).

Second, a lesser budget could also mean that the Council would be able to hire a public outreach and education employee (requirements 5 and 8 above). Moreover, a significant cut would likely mean that the Council would eliminate its whole outreach budget.

Third, it likely that a significantly smaller budget would result in an ability to hire only one project director, instead of two project directors. With this, it would be less likely that the Council could evaluate incident response reports or make recommendations to the Department of Ecology regarding improvements (requirement 6 above) or consult with the Department of Ecology on lessons learned (requirement 7 above). This is because one project director will be needed to help staff 18 Council members, five committees, any number of technical advisory committees, and any consulting studies that can be done.

Under this scenario, the Council would not be able to achieve all of its statutory mandates or the objectives set forth in its work plan. Washington citizens will not be as well served by a citizen advisory council. Also, the Legislature would need to choose which of the legislatively mandated functions it would like the Council to not perform.

**Expenditure Calculations and Assumptions**

The total approximate budget determined by the consultant to be needed to complete the Council's work is comprised of the expense categories set forth in the following table, for

an approximate total of \$1,755,568. The actual total recommended in this budget is **\$1,766,071**.

Expense Category	Estimate
Support Staff	\$ 907,968
Office Space	\$ 78,000
Overhead	\$ 68,400
Assistant AG	\$ 91,200
Meeting Budget	\$ 170,000
Programs and Projects	\$ 440,000
<b>TOTAL</b>	<b>\$ 1,755,568</b>

**Staff**

Support staff provide ready support to Council, committee, and TAC needs. Although many of the Council members are knowledgeable in the various areas of oil spill prevention, planning, and response, additional research is needed to provide accurate and up-to-date knowledge of technical, policy, and legal issues. Staff will increase the Council’s capacity to take on additional projects, without requiring Council members to invest undue or impracticable amounts of time investigating and running projects themselves.

Staffing requirements were estimated in light of the Council’s statutory mandates and its stated priorities and goals. An initial human resources analysis, which was based on the Council’s committees, plans, and objectives, shows a need for at least five full-time-equivalents (FTEs) to support the Council and oversee consultants. **This number is low compared to other similarly sized councils and commissions in Washington.**

Regarding staffing, a consultant hired by the Council determined that biennial expenses for employees, including benefits and employer taxes, would be in the high range set forth in the following table. These figures were determined in consultation with OFM budget staff. For this budget, however, the Council chose the mean number, which falls between this high estimate and the low range that was given by the consultant.

Duty	FTE	High
Council & Staff Management	1	\$ 280,000
Project Management, Research, Support, & Communications	2 @	\$ 220,000 (x2)
Public Outreach & Education	1	\$ 170,800
Administrative Support	1	\$ 134,400
<b>TOTAL</b>	<b>5</b>	<b>\$ 1,025,200</b>

**Office Space**

Regarding office space, the Council calculated office space on an annual cost of \$26/ square foot for 1,500 square feet of office space.

<b>Annual Cost per Square Foot</b>	<b>Required Square Footage</b>	<b>Annual Cost of Office Space</b>	<b>Biennial Cost of Office Space</b>
\$26	1500	\$39,000	\$78,000

**Overhead**

Regarding overhead expenses, the Council presumed utility costs of \$150 per month, communications at \$1,000 per month per FTE. All other cost assumptions are set forth in the table below.

<b>Expense Category</b>	<b>5 FTEs</b>
Utilities	\$ 3,600
Supplies and Materials	\$ 5,000
Communications	\$ 12,000
Rentals & Leases	\$ 18,000
Printing	\$ 10,000
Professional Development	\$ 10,800
Subscriptions	\$ 3,000
Miscellaneous	\$ 6,000
<b>TOTAL</b>	<b>\$ 68,400</b>

**Initial Set-up**

Also, for each FTE not housed with OFM, there will also be an initial set-up expense for office furniture and computers in the range of \$3,500 per FTE totally, an additional \$10,500.

**Legal Assistance (AG)**

It is estimated biennial expenses for legal assistance will be \$91,200. This translates into approximately 0.20 FTEs of an assistant attorney general or about 32 hours of legal assistance per month.

**Meetings**

Regarding meeting budgets, the costs in the tables below reflect that the Council made the following assumptions and calculations. The budget is based on eight meetings per biennium at the average cost of the seven meetings currently scheduled for the first year of operation. Committee meetings are based on the travel of eight persons attending seven meetings annually. For TAC meetings, the number is based on the travel of three persons attending 14 meetings annually. These costs are for expense reimbursement and per diem compensation.

<b>Meeting</b>		<b>Cost</b>
COUNCIL MEETINGS		\$ 40,000
Committees (5)		\$ 80,000
TACs (4)		\$ 50,000
<b>TOTAL</b>		<b>\$ 170,000</b>

### **Programs and Projects**

Cost assumptions for programs and projects are set forth in the table below.

The cost of outreach and education is based on the outreach and education budgets of similar councils in Alaska.

The Council assumes that it will be able to do anywhere from two to four studies per year and that each study could easily cost between \$40,000 and \$80,000.

<b>Programs and Projects</b>		<b>Cost</b>
Public Outreach and Education		\$ 120,000
Independent Studies		\$ 320,000
<b>TOTAL</b>		<b>\$ 440,000</b>

<b><u>Object Detail</u></b>	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>Total</u></b>
A. Salaries And Wages (including benefits and employer taxes and 2009 3% COLA)			
1. Executive Director	\$123,375	\$127,079	\$250,454
2. Project Director (1) project management, research, support, and communications	\$97,700	\$100,631	\$198,331
3. Project Director (2) project management, research, support, and communications	\$97,700	\$100,631	\$198,331
4. Public Outreach & Education	\$70,900	\$73,027	\$143,927
5. Administrative Assistant	\$57,600	\$59,328	\$116,928
Sub Total Staff			\$907,971
B. Employee Benefits (Included in the above numbers at 20 percent)			
C. Office Space	\$39,000	\$39,000	\$78,000
D. Overhead	\$34,200	\$34,200	\$68,400
E. Start up Costs for Employees	\$10,500	\$0	\$10,500
F. Legal Assistance (AG)	\$45,600	\$45,600	\$91,200
G. Meeting Budget	\$60,000	\$60,000	\$120,000
H. Travel	\$25,000	\$25,000	\$50,000
I. Personal Service Contracts	\$160,000	\$160,000	\$320,000
J. Public Outreach & Education	\$60,000	\$60,000	\$120,000

<b>Total Objects</b>	<b>\$881,575</b>	<b>\$884,496</b>	<b>\$1,766,071</b>
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*Appendix F:  
Letter from Ecology regarding impending budget shortfall*

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September 24, 2007

Honorable Harriet Spanel  
Washington State Senate  
PO Box 40482  
Olympia, WA 98504-0482

Dear Senator Spanel:

Thank you for your long time support for the state's Spill Prevention, Preparedness and Response Program. This letter provides an update on state spill program funding. I hope this information is useful to you in preparing for the September 27<sup>th</sup> legislative assembly days hearing.

Status of Oil Spill Program Funding:

Our goal is to achieve sustainable funding for the state's oil spill programs. Based on the previous revenue forecast, Ecology projected that state agencies would exhaust the Oil Spill Prevention Account (OSPA) late in this biennium. However, an unexpected increase of \$1.6 million in August and a slightly increased September revenue forecast now project a maximum possible ending balance of \$847,000. (See attached spread sheet.) But there is still a big problem.

Please know that unbudgeted refunds from the OSPA have averaged \$1.1 million per biennium since 1997-99. The legislature has bailed out the fund three times since it inception. Such refunds could still occur this biennium. This is why we believe that until the tax structure is fundamentally changed, interim solutions should include the prudent business practice of setting aside approximately \$1 million per biennium. This sum would serve as a hedge against the large unanticipated tax refunds, successful tax appeals, or adverse audit findings that occur each biennium.

Also, note that we are continuing to project a significant revenue shortfall during the '09 - '11 biennium – even though we assume spending the “hedge” and incurring no refunds. As the attachment shows, the shortfall is likely because current level expenditures have risen to exceed revenue. The OSPA is insolvent and we are mining the fund balance that was carried forward from previous years.

As a result of 2SHB 1488 passing last session, the Joint Legislative Audit and Review Committee (JLARC) will be conducting a review of the program's needs with the goal of recommending a long-term sustainable fund source. The JLARC evaluation process will begin this fall. The JLARC report is scheduled to be completed by October 2008, and will likely form the basis for funding discussions during the 2009 session.

Status of Emergency Response Tug (rescue tug):

On July 13, 2007 Ecology amended its current contract with Crowley Maritime to continue an emergency response tug at Neah Bay. The primary revenue mechanism for the Vessel Response Account that funds the tug will sunset on June 30, 2008. Consequently, unless additional funding is provided, we will soon begin the last state-funded operating season. The tug is scheduled to be on station from October 1, 2007 until the \$1.45 million FY-08 appropriation is spent sometime between mid-March and early April, 2008.

This spring, we worked with the Governor's Office to support establishing a federal emergency response tug regulatory requirement in Senator Cantwell's legislation. Thanks to the Senator's leadership, the rescue tug requirement has been rolled into the proposed Coast Guard Authorization Act. If passed, that legislation would require the maritime industry to establish a cost sharing mechanism and establish a private sector emergency response tug at Neah Bay. Assuming the legislation passes and is implemented on time, a permanent year round rescue tug could begin service at Neah Bay as soon as June 1, 2008.

I hope this information is useful. Please call me at 360-407-7450 if you have any questions.

Sincerely,

Dale Jensen  
Program Manager  
Spill Prevention, Preparedness, and Response Program

JN:sla

cc: Senator Phil Rockefeller  
Representative Brian Sullivan  
Mike Cooper, Chair, Oil Spill Advisory Council  
Gary Wilburn, Chief Counsel, Senate Democratic Caucus  
Keith Phillips, Environmental Policy Advisor, Office of the Governor  
Jacqui Brown-Miller, Executive Director, Oil Spill Advisory Council  
Ted Sturdevant, Department of Ecology

**Dept. of Ecology  
Oil Spill Prevention Account Status  
Revenue & Appropriations - All Agencies  
as of 9/14/2007**

		2007-09 Biennium Estimate	2009-11 Biennium Estimate	2011-13 Biennium Estimate
<b>Beginning Balance</b>		<b>3,346,336</b>	<b>846,631</b>	<b>(2,878,949)</b>
<b>Revenue</b>				
Dept of Revenue (DOR)	<u>1</u>	11,749,295	10,218,420	10,218,420
Ecology	<u>2</u>	200,000	200,000	200,000
<b>Total Balance + Revenue</b>		<b>15,295,631</b>	<b>11,265,051</b>	<b>7,539,471</b>
<b>Appropriations</b>				
Dept of Revenue		16,000	16,000	16,000
Fish & Wildlife		1,104,000	1,104,000	1,104,000
Ecology		12,614,000	12,614,000	12,614,000
Governor's Office/Advisory Council		715,000	410,000	410,000
<b>Total</b>	<u>3</u>	<b>14,449,000</b>	<b>14,144,000</b>	<b>14,144,000</b>
<b>Ending Balance</b>		<b>846,631</b>	<b>(2,878,949)</b>	<b>(6,604,529)</b>

*Notes:*

1) 2007-09 amount is the DOR Sept 07 Forecast + DOR Actuals thru August. Future biennium amounts are from the DOR Sept 07 Forecast only.

2) Estimated revenue collection by Ecology (Oil spill cost recovery)

3) Does not include a contingency for future refunds/tax assessments.

Refunds and/or tax assessments typically have cost between one and two million a biennium.