

**Friends of the San Juans • Save Our wild Salmon Coalition
Puget Soundkeeper Alliance • Communities for a Healthy Bay
Washington Conservation Action • RE Sources • Orca Network • Madrona Institute
Pacific Environment • Endangered Species Coalition
San Juan Islanders for Safe Shipping
Cherry Point Aquatic Reserve Citizens' Stewardship Committee
Seattle Aquarium**

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*Comments submitted via email: Matt.Bissell@ecy.wa.gov and Sean.Orr@ecy.wa.gov and
the online public comment form:
<https://sppr.ecology.commentinput.com/?id=ieMmAushE>*

RE: [2025 Best Achievable Protection Summary Document](#)

Dear Matt Bissell and Sean Orr,

Thank you for this opportunity to submit comments on the 2025 Best Achievable Protection Summary Document. The undersigned represent 13 organizations that work in Washington State on environmental and public health and safety issues. We are deeply concerned about the risk of oil spills and their impacts to Washington State waters and communities, the Salish Sea ecosystem and the critically endangered Southern Resident killer whales, and environmental, cultural, and economic resources.

The intent and the requirements of the Best Achievable Protection process is to identify the scope for the rulemaking for the five-year update to [Chapter 173-182 WAC](#) per [WAC 173-182-621 Oil spill contingency plan best achievable protection five-year review cycle](#). See especially subsections 1 and 2:

- (1) Ecology will review the planning standards at five-year intervals to ensure the maintenance of best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety.
- (2) Ecology will adopt a five-year review cycle to ensure that the planning standards are updated to include proven new response technologies and response processes.

...

The 2025 Best Achievable Protection Summary Document includes several recommendations for updates to the Northwest Area Contingency Plan (NWACP) and other Area Contingency Plans (ACP) and also spill response coordination with Canada. These recommendations would be beneficial, if achieved, but cannot be achieved by Washington State alone. While the NWACP serves as the statewide master oil and hazardous substance contingency plan required by [RCW 90.56.060](#) (as defined in [WAC 173-182-030](#) (34)), there is no reference to or requirements for updates to the Northwest Area Contingency Plan or any other Area Contingency Plan in [WAC 173-182-621 Oil spill contingency plan best achievable protection five-year review cycle](#). Any potential updates to Area Contingency Plans or coordination with Canada should not be relied upon to ensure Best Achievable Protection. Instead, all of the recommendations for strengthening Washington State’s oil spill preparedness system should be included in the scope of the rulemaking for the five-year update to Chapter 173-182 WAC.

To ensure Best Achievable Protection, the rulemaking team should include independent experts that are not affiliated with contingency plan holders or oil spill response providers.

Below are comments on the recommendations for 1) Southern Resident killer whale deterrence, 2) non-floating oil spills, and 3) Shoreline Cleanup Assessment Techniques.

Thank you for your attention to these comments.

Sincerely,

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Southern Resident Killer Whale Deterrence Workgroup Recommendations

The Southern Resident Killer Whale Deterrence Workgroup recommendations include the current issues and challenges for the implementation of deterrence operations in the event of an oil spill. However, the specific actions needed to ensure Best Achievable Protection were not addressed.

The recommendation to “consider planning standards for SRKW protection that provides a framework and funding mechanism for improved access to trained personnel, technical experts and equipment to conduct deterrence operations” should also address the framework and funding mechanism needed for trained personnel, technical experts and equipment to conduct reconnaissance and monitoring operations, and the on-going training of dedicated personnel.

An oil spill could severely impact and potentially cause the extinction of the Southern Resident killer whales.¹ According to NOAA (National Oceanic and Atmospheric Administration) researchers and marine biologists, exposure to oil from the EXXON VALDEZ oil spill contributed to high killer whale mortality rates, particularly among immature whales and breeding females.² The killer whale pods that were impacted by the EXXON VALDEZ oil spill have not recovered, and the AT-1 pod has experienced zero reproduction since that oil spill.³

In 2022, the fishing vessel ALEUTIAN ISLE sank off the west coast of San Juan Island, causing an oil spill. The ALEUTIAN ISLE was not required to have an oil spill contingency plan, which is required for larger commercial ships. However, the delays and challenges to implement deterrence operations demonstrated the lack of preparedness to protect Southern Resident killer whales from oil spills, including oil spills that could originate from ships covered by a contingency plan.

The scope for the rulemaking to update Chapter 173-182 WAC should include updates to [WAC 173-182-540 Planning standards for wildlife response](#) to specify whether a state agency or Wildlife Response Service Provider(s) shall obtain the permits and specific

¹ NOAA Fisheries webpages:

- <https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/southern-resident-killer-whale-orcinus-orca>
- <https://www.fisheries.noaa.gov/species/killer-whale/spotlight>

Federal Register Vol. 70, No. 222, November 18, 2005, page 69908, <https://www.govinfo.gov/content/pkg/FR-2005-11-18/pdf/05-22859.pdf>.

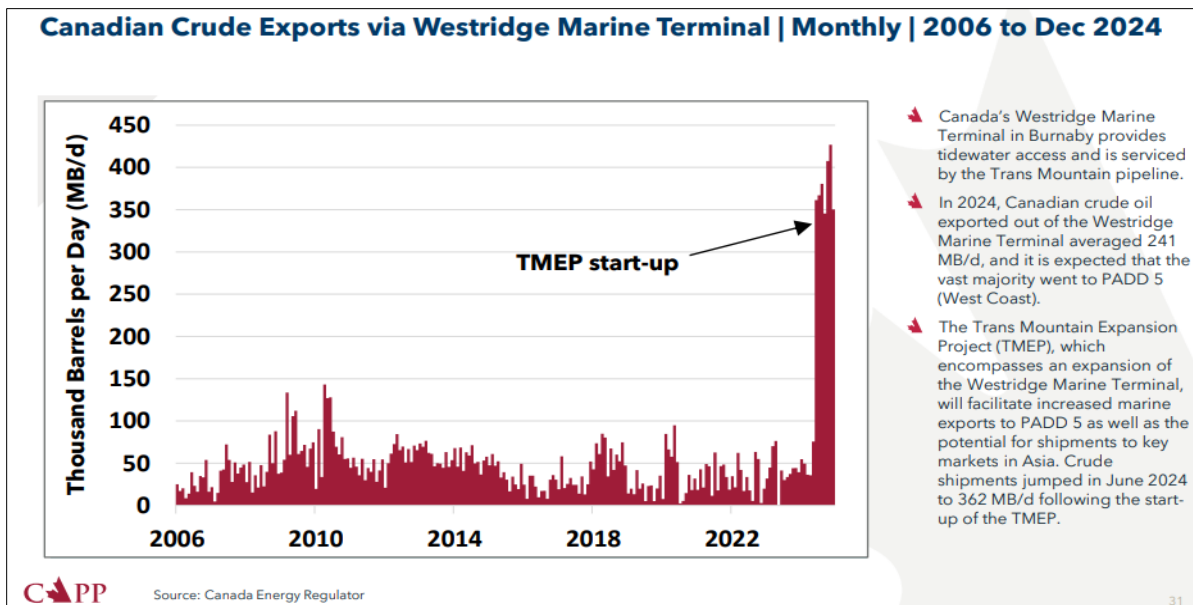
² NOAA (National Oceanic and atmospheric administration) Office of Response and Restoration. More Than Two Decades Later, Have Killer Whales Recovered from the Exxon Valdez Oil Spill? <https://response.restoration.noaa.gov/oil-and-chemical-spills/significant-incidents/exxon-valdez-oil-spill/more-two-decades-later-have-kill>.

³ Gulf Watch Alaska killer whale monitoring program: <https://gulfwatchalaska.org/monitoring/pelagic-ecosystem/killer-whales/>.

authorizations to perform certain deterrence tactics and provide the training and the dedicated equipment and personnel (as defined in [WAC 173-182-030\(12\)](#)) for the reconnaissance, monitoring, and deterrence needed to protect Southern Resident killer whales from an oil spill. Given the inability to identify sustainable state and/or federal funding sources, plan holders should be required to provide the necessary funding.

Non-Floating Oils Workgroup Recommendations

Updates to Washington State’s oil spill contingency plan requirements for non-floating oil spills are critically needed given the completion of the Trans Mountain pipeline expansion project in May 2024. Canada’s oil tanker exports of non-floating tar sands diluted bitumen crude oil have increased dramatically. According to the Canadian Association of Petroleum Producers, crude shipments from Trans Mountain’s Westridge Terminal in Burnaby, BC, “jumped in June 2024 to 362 MB/d [thousand barrels per day] following the start-up of the TMEP [Trans Mountain Expansion Project].” See also the graph below.⁴ Oil tanker exports are currently at 630,000 barrels per day.⁵ Trans Mountain has proposed a further increase of 75,000 barrels of crude per day by early 2027.⁶ Some of this oil tanker traffic is transiting directly to Washington State refineries and anchorage areas.⁷



⁴ Canadian Exports of Crude Oil and Natural Gas. April 2025. Page 31. <https://www.capp.ca/wp-content/uploads/2025/02/Canadian-Exports-of-Crude-Oil-and-Natural-Gas.pdf>.

⁵ Trans Mountain webpage. Westridge Marine Terminal. <https://www.transmountain.com/westridge-marine-terminal>.

⁶ Financial Post. June 11, 2025. Trans Mountain eyes pipeline capacity increase by early 2027. <https://financialpost.com/commodities/energy/oil-gas/trans-mountain-pipeline-capacity-2027>.

⁷ Washington State Board of Pilotage Commissioners. May 15, 2025. Meeting materials. Pages 4-6. <https://nebula.wsimg.com/266aa6cb88cc71a26a32213c789e09c2?AccessKeyId=F86D0A1E7A0091C2061F&disposition=0&alloworigin=1>.

The completion of the Trans Mountain pipeline expansion project has resulted in both an increase in oil tanker traffic and new tanker traffic routes that were not evaluated in the permit review process, and for which no mitigations and/or permit conditions were considered. This includes:

- Laden (cargo carrying) oil tankers that cross the Strait of Juan de Fuca between Victoria, BC and Port Angeles, WA or that transit from lower Georgia Strait into Rosario Strait.
- Laden oil tankers under 40,000 DWT (dead weight tons) which do not require tug escorts under US federal law, transiting to Washington State refineries and anchorage areas.
- The use of a “waiting area” near the entrance to the Strait of Juan de Fuca where oil tankers, including partially laden tankers, are in offshore drift.
- Laden oil tankers’ use of WA State anchorage areas.

All of the increase in oil tanker traffic from Trans Mountain’s Westridge Terminal is transiting through the Salish Sea. Whether the oil tankers are destined for Washington State or other US west coast refineries or Asia, all of this oil tanker traffic is causing a significant increase in non-floating oil spill risk to Washington State waters and communities, the Salish Sea ecosystem and the critically endangered Southern Resident killer whales, and environmental, cultural, and economic resources.

Recommendation 1: Consider on-water recovery as a first line of defense in non-floating oil response, especially for products that sink over time:

The scope for the rulemaking to update Chapter 173-182 WAC should include the need for dedicated equipment and personnel for simultaneous floating and non-floating oil spill responses.

Recommendation 3: Update our understanding of response options regarding non-floating oils, either through regional and area planning or improving information in the primary response contractor applications approved by Ecology:

This recommendation should be revised to recommend updates to Chapter 173-182 WAC instead of relying on updates to the Northwest Area Contingency Plan or other Area Contingency Plans.

The undersigned agree that “First responder and community safety are the first priority of any response.” To ensure Best Achievable Protection in regard to community safety in the event of all oil spills (not just non-floating oil spills), the scope for the rulemaking to update Chapter 173-182 WAC should address the need for air quality monitors that are in place or able to be immediately deployed, as well as emergency notification systems, to ensure that evacuations or shelter in place notifications are conducted as needed in all communities that could be impacted by an oil spill.

Recommendation 4: Ecology should evaluate the response resources needed to conduct floating oil and non-floating oil responses to ensure personnel or resources are not “double-counted” and plan holders meet all planning standards for floating and non-floating oils:

The undersigned agree with the workgroup’s emphasis “that Washington should not rely only on Canadian resources, it is important that Washington has access to non-floating oil resources.” The Western Canada Marine Response Corporation has increased its oil spill response preparedness as a condition of the Trans Mountain pipeline expansion project. Oil spill response coordination in the transboundary waters of the Salish Sea would be ideal but cannot be relied upon.

Recommendation 5: The working group recommends that the rulemaking group reviews recent incidents to evaluate any new technologies for addition to planning standards:

The statement, “Other technologies referenced by the WCMRC [Western Canada Marine Response Corporation] report (linked in references)” should be revised to also include Ecology’s [October 2020 Non-Floating Oil Spill Risks](#) publication which states:

Non-floating oil spills are complex, and the response technology may require multiple techniques or tools. For detection of sunken oil on the bottom of a water body, the use of sonar, underwater cameras, remotely operated vehicles (ROVs), bottom sampling, and diver observation are used to understand the scope of the spill.

This workgroup recommended that the rulemaking explore new technologies as additions to the state’s planning standards. This was qualified with:

It may not be necessary to identify the specific equipment but, rather, identify how we could support similar tactics other responses have found effective using equipment available in our region.

And:

A caveat – there wasn’t strong consensus from the workgroup if this would be newly required equipment, or to consider equipment for the next cycle as the technology is improved.

It is understandable that shipping and industry representatives on the workgroup would not support the additional costs to contingency plan holders for new equipment and associated personnel requirements.

To ensure Best Achievable Protection, the scope for the rulemaking to update Chapter 173-182 WAC should “ensure that the planning standards are updated to include proven new response technologies and response processes” – and specifically the dedicated equipment and personnel needed for detecting, containing and recovering non-floating oils.

Shoreline Cleanup Assessment Technique Workgroup Recommendations

The Shoreline Cleanup Assessment Technique (SCAT) Workgroup recommendations emphasize the importance of including SCAT as a part of a larger Shoreline Response Program (SRP), instead of the current practice where the Shoreline Response Program and SCAT occur independent of each other. According to this workgroup’s recommendations, the “NWACP [Northwest Area Contingency Plan] does not mention the use of SRPs and its guidance on what is required of SCAT is outdated.” This workgroup’s recommendations also state that “SCAT is not mentioned in the WACs [Washington State Administrative Codes].”

To ensure Best Achievable Protection, the scope for the rulemaking to update Chapter 173-182 WAC needs to include this workgroup’s recommendations to develop pre-identified SCAT segments for all of Washington State and to establish a timeframe for Shoreline Response Program mobilization that includes SCAT and addresses the dedicated personnel requirements.