WASHINGTON STATE MARITIME COOPERATIVE

Comments on Draft Rule Language — WAC 173-182-710

Submitted to: Washington State Department of Ecology
Re: Draft Amendments to WAC 173-182-710 — Type and Frequency of Drills
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Date: April 14, 2026

The Washington State Maritime Cooperative (WSMC) appreciates the opportunity to provide informal comments on the Department's draft amendments to WAC 173-182-710, Type and Frequency of Drills. WSMC has reviewed the draft rule language circulated on April 13, 2026 and offers the following comments on four provisions that raise substantive concerns.

I. Section (9): Wildlife Deterrence Deployment Drill

The draft adds a new Section (9) requiring all plan holders to deploy "wildlife deterrence equipment and personnel" once per triennial cycle. The provision does not define what "wildlife deterrence" means in this context or specify which species the deterrence is directed toward. This lack of definition creates a compliance problem.

To the extent this provision contemplates deterrence of marine mammals—specifically southern resident killer whales—it requires plan holders to drill an activity they cannot legally perform. Any deterrence activity directed at SRKW requires authorization under the Marine Mammal Protection Act and the Endangered Species Act. No such authorization currently exists for oil spill plan holders. The Department cannot impose a drill requirement that presupposes a federal authorization plan holders do not have. WSMC has submitted separate comments on the proposed SRKW deterrence provisions in WAC 173-182 and WAC 173-186 addressing the federal preemption issues in detail.

The Department should clarify the scope of Section (9) and explain how plan holders are expected to demonstrate compliance with a deterrence drill requirement given the current federal regulatory framework.

II. Section (6)(c)(G): SRKW Deterrence in the Large-Scale Deployment Drill

The draft amends the Multiple Plan Holder Large Scale Equipment Deployment Drill in Section (6)(c)(G) to include "equipment and personnel to conduct monitoring and deterrence operations to prevent whales, which may include southern resident killer whales, from encountering spilled oil." Unlike Section (9), this provision explicitly names SRKW. This is the most consequential deterrence provision in the draft, and it requires the Department to answer two fundamental questions: who leads the deterrence deployment, and what happens when the agencies with legal authority are unavailable to participate?

SRKW deterrence operations must be led by the federal and state agencies with legal authority over protected species. The Marine Mammal Protection Act and the Endangered Species Act vest authority over SRKW harassment and deterrence in NOAA's National Marine Fisheries Service (NMFS). Depending on the species and circumstances, the U.S. Fish and Wildlife Service (USFWS) and the Washington Department of Fish and Wildlife (WDFW) also hold regulatory authority over wildlife deterrence activities. Any deployment of deterrence tactics directed at protected species must be conducted under the authority of and led by the appropriate agency. This is not a function that plan holders can lead, design, or independently execute.

By requiring plan holders to demonstrate wildlife deterrence capability in the large-scale drill, Section (6)(c)(G) necessarily requires the participation of NMFS, USFWS, and WDFW. The Department must secure explicit commitments from these agencies to participate in drill planning and execution. WSMC is prepared to provide the logistical platform for deterrence operations: vessels, crews, and operational support. The authorized agencies can then place their trained deterrence personnel on those vessels to conduct the actual deterrence operations under agency direction, taking tactical direction from an agency task force leader. That is the appropriate division of responsibility: the plan holder provides the platform, and the agencies with legal authority over the protected species lead the deterrence operation.

What the plan holder will not do—and under federal law cannot do—is lead the deterrence deployment, train its own personnel to conduct deterrence, or take on operational responsibility for an activity that is exclusively a government function. If during the drill design process it becomes apparent that NMFS, USFWS, or WDFW are unable to participate—whether due to funding constraints, staffing limitations, or other priorities—then the deterrence component of the drill cannot proceed. Plan holders will not conduct deterrence operations without the authorized agencies present and in command. The Department cannot impose a drill obligation on plan holders that depends on federal and state agency participation without first securing that participation.

The draft language in Section (6)(c)(G) does not address any of this. As written, it reads as though the plan holder is expected to demonstrate deterrence capability as part of its own drill obligations, with no mention of agency participation, agency leadership, or what happens when the agencies with legal authority are unavailable. The rule should be explicit: wildlife deterrence operations involving protected species are led by the agencies with jurisdiction, participation by those agencies is a prerequisite to the deterrence component of the drill, and the plan holder's obligation is limited to providing the logistical support those agencies direct.

If the Department proceeds with a rule that requires plan holders to lead, conduct, or independently execute deterrence operations directed at federally protected species, the rule will impose obligations that federal law does not permit plan holders to perform. A rule of that character is likely to be challenged and struck down on federal preemption grounds—either in proceedings before the Pollution Control Hearings Board under RCW 43.21B or in federal court under the Supremacy Clause. The Department can avoid that result by writing the rule to reflect the federal framework that already governs SRKW deterrence, with agency leadership as a prerequisite and plan holder obligations limited to logistical support.

III. Section (3): Spill Management Team Drill Design

The draft Section (3) provides that "plan holders covering multiple vessels and ecology shall together design a systematic approach to, over time, involve all spill management teams identified in WAC 173-182-230(6)(a) in tabletop and deployment drills." WSMC objects to this

provision. The approval, evaluation, and ongoing competency verification of spill management teams is a regulatory function that belongs to Ecology—not to plan holders.

WAC 173-182-230(6)(a) requires plan holders to identify SMTs in their contingency plans. Plan holders do this. The plan holder's obligation is to contract with qualified SMTs and to demonstrate that its plan can activate the ICS structure it describes. Whether a given SMT is competent to manage a worst-case discharge—and whether it remains competent over time—is a question that the regulator must answer through its own approval process. Section (3) effectively asks plan holders to co-design the Department's SMT quality assurance program. That is Ecology's job.

The language is also remarkably open-ended. "Shall together design a systematic approach to, over time, involve all spill management teams" is not a regulatory standard. It contains no defined endpoint, no performance metrics, and no timeline. It is an invitation to a perpetual collaborative design process with no clear deliverable. Plan holders need clear, measurable drill requirements—not a joint project charter with the regulator.

Ecology has expressed interest in following California's model for spill management team oversight. WSMC supports that goal. Under California's program, the Office of Spill Prevention and Response (OSPR) requires each SMT to demonstrate its own capability through independent worst-case tabletop exercises as a condition of approval. The burden is on the SMT and the regulator who certifies it—not on the plan holder to build the testing framework. If Ecology wants to follow California's lead, it should adopt a program in which Ecology designs, conducts, and evaluates SMT competency exercises. That approach places the regulatory burden where it belongs and produces a consistent, defensible standard. What Section (3) proposes instead is to push the design work onto plan holders, which results in neither a clear regulatory standard nor a fair allocation of responsibility.

IV. Section (10): Nonfloating Oil Deployment Drill

The draft adds a new Section (10) requiring plan holders handling oils that "depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink" to deploy nonfloating oil response equipment and personnel once per triennial cycle. WSMC supports the concept of demonstrating NFO preparedness through drills. However, the triggering condition needs clarification.

Nearly any petroleum product can theoretically become non-floating under extreme conditions. The question is whether it will become non-floating under the actual environmental conditions in which a spill is likely to occur. The Department should clarify the scope of Section (10) by reference to a defensible technical standard—for example, oils classified as Group IV or Group V under the NOAA ADIOS oil classification system, or oils whose weathered density is projected to exceed the density of ambient receiving water within a defined timeframe. Without this clarity, Section (10) could be read to apply to every plan holder handling any crude oil, which would make the requirement meaningless as a preparedness standard and burdensome as a drill obligation.

WSMC also recommends that the Department consider what a meaningful NFO deployment drill looks like in practice. A drill that deploys sonar equipment and recovery barges in calm water on a sunny day demonstrates equipment mobilization but does not test the critical decision-making that makes NFO response effective: rapid assessment, fate-and-transport modeling, and tactical flexibility to respond where the oil actually goes. The drill requirement should be designed to test the full chain of NFO response—from initial sinking risk assessment to modeling-informed tactical deployment—not just equipment staging.

V. Conclusion

WSMC supports Ecology's effort to modernize the drill program to address emerging preparedness requirements including wildlife response and non-floating oil. However, the drill rule must impose clear, measurable obligations that plan holders can actually perform. Section (9) requires clarification of what "wildlife deterrence" means—or an acknowledgment that the requirement as written is satisfied by demonstrating deterrence of birds and other non-protected wildlife. Section (6)(c)(G) must require NMFS, USFWS, and WDFW participation as a prerequisite to any deterrence drill component, with the plan holder's obligation limited to providing logistical support under agency direction. Section (3) should be withdrawn and replaced with an Ecology-led SMT competency program modeled on California's approach. Section (10) should be refined with a defensible technical trigger and a drill design that tests the full NFO response chain, not just equipment deployment.

WSMC welcomes further discussion on each of these points and is available to participate in any stakeholder process the Department convenes to refine the draft rule language before formal proposal.

Respectfully submitted,

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