



## WASHINGTON STATE MARITIME COOPERATIVE

### Comments on Proposed Rulemaking — WAC 173-182 Technical Manual Provisions

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**Submitted to:** Washington State Department of Ecology

**Re:** CR-101 Preproposal Statement of Inquiry — Technical Manual Provisions (WAC 173-182-349)

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### I. Introduction and the Threshold Question

The Washington State Maritime Cooperative (WSMC) submits these comments on the proposed amendments to WAC 173-182 as they relate to Primary Response Contractor (PRC) technical manuals. At the Department's March 26, 2026 technical manuals workshop, the Department identified opportunities to make technical manuals more prescriptive, to require additional narrative and diagrammatic content, and to enhance the connection between technical manuals and Area Plan processes.

WSMC's comments proceed from a single threshold question: what does the proposed rule gain that the existing rule has not already provided? The existing WAC 173-182-349 is not silent. It is prescriptive, detailed, and specific. It already requires operational diagrams, EDRC values, infrastructure, mobilization times, ownership, personnel requirements, training levels, night operations capability, and oil group optimization. The content elements identified in the Department's March 26, 2026 workshop as anticipated enhancements are, substantially, the content elements already required by the existing rule. The gap is not in rule text. The gap is in the Department's enforcement of the rule text it already has.

WSMC respectfully submits that the Department should not proceed with additional technical manual rulemaking until it has first addressed the inconsistency in its approval and enforcement of the requirements already in place. A more stringent rule applied inconsistently will produce the same outcome as the existing rule applied inconsistently. The remedy is enforcement, not rewriting.

### II. What the Existing WAC 173-182-349 Already Requires

The existing WAC 173-182-349 has been in effect since January 18, 2020. The rule establishes both the mandate for technical manuals and the specific content each manual must contain. It is worth quoting the rule at length, because the comparison between what the rule requires and what the Department has approved is the heart of this comment.

#### **Subsection (1) — Mandate and Scope.**

*"Each covered vessel plan holder that operates or transits in the Neah Bay, Cathlamet, or San Juan Islands planning standard areas must provide a technical manual that includes all of the equipment appropriate for the operating environment that is necessary to meet the recovery and storage requirements, through the forty-eight hour time frame."*

**Subsection (2) — Purpose.**

*“The technical manuals will be used to inform the five year BAP cycle and support ecology’s determination that the response systems, training levels, and staffing demonstrate best available protection.”*

**Subsection (3) — Recovery System Content Requirements.**

*“Plan holders must use a systems approach to identify the equipment ... For each recovery system, the technical manual must include:”*

- (a) An operational picture or diagram of the recovery system, the EDRC for the system, and associated temporary storage;*
- (b) The infrastructure and support resources necessary for deployment;*
- (c) Associated vessels necessary to enhance the skimmer;*
- (d) At least three hundred feet of boom to enhance the skimmer or an alternative based on manufacturer’s recommendations;*
- (e) The mobilization time and home base for the equipment;*
- (f) The ownership or mechanism for accessing the equipment, for example, under contract, subcontract, or letter of intent to the plan holder or other approved means;*
- (g) If applicable, the ability of the recovery system to be used to support night operations;*
- (h) The minimum number of personnel necessary to deploy the equipment for a twelve hour shift and the training level of personnel appropriate to operate the equipment and carry out recovery;*
- (i) If alternative speeds are given for equipment associated with a recovery system, the information should be included in the equipment description; and*
- (j) The oil type(s) the associated skimmer is optimized for.*

**Subsection (4) — Storage System Content Requirements.**

*Subsection (4) imposes parallel content requirements for each storage system, including an operational picture or diagram and capacity of the storage system; infrastructure and support resources; mobilization time and home base; ownership or mechanism for accessing the equipment; minimum personnel for a twelve-hour shift and training level; night operations capability; and alternative speeds if applicable.*

This is what the existing rule requires. It is not a checklist of equipment. It is a detailed, systems-level specification for how each recovery and storage system must be documented, with operational diagrams, access arrangements, personnel and training specificity, environmental and operational parameters, and oil group optimization. Every content element described in the Department’s March 26, 2026 workshop as an anticipated enhancement is already present in the text above.

### **III. What the Proposed Rulemaking Appears to Add**

The March 26, 2026 workshop presentation described the purpose of the technical manual rulemaking as enabling “additional planning, more prescriptive information and diagrams of the response system,” “specific information for specific areas of operation, if necessary,” and “better interpretation of existing WAC requirements and Area Plan processes into a plan for each plan holder.” Measured against the existing text of WAC 173-182-349(3) and (4), these descriptions do not identify a new substantive content requirement.

“Diagrams of the response system” is already required by WAC 173-182-349(3)(a) and (4)(a). “Specific information for specific areas of operation” is the function of the technical manual under WAC 173-182-349(1), which ties the manual to three specific planning standard areas. “Better interpretation of existing WAC requirements” is the Department’s stated purpose for the existing rule under WAC 173-182-349(2). The workshop’s articulated aims describe what the existing rule already directs. The proposed rulemaking appears to restate, with more prescriptive language, content that the existing rule already requires.

The apparent theory of the rulemaking is that more detailed or more emphatic rule text, standing alone, will produce outcomes the current rule has not produced. That theory is not supported by the regulatory record. If the Department has approved manuals that do not meet the existing rule’s requirements—manuals without operational diagrams, manuals predating the current rule, manuals that expressly disclaim content the rule requires—the same Department approving more-detailed rule text will produce the same result. The problem the Department has identified is not that the rule says too little. It is that the Department has asked for too little when applying it.

#### **IV. The Currently Approved Technical Manuals Do Not Uniformly Meet the Existing Rule**

WSMC has conducted a side-by-side review of the seven PRC technical manuals currently on file with the Department for the Neah Bay, Cathlamet, and San Juan Islands planning standard areas. Measured against the explicit content requirements of WAC 173-182-349(3) and (4), the manuals reflect materially different levels of compliance.

One currently approved manual substantially satisfies the existing rule. It includes operational diagrams for each recovery system; consistent equipment tables showing EDRC, boom footage, storage capacity, mobilization times, home base, ownership, and personnel requirements by shift; explicit treatment of night operations; and explicit statements of oil group optimization, including Group V coverage. Two other currently approved manuals consist of dense equipment mobilization matrices without operational pictures or diagrams, omit narrative descriptions of recovery and storage systems, and expressly state that planning for Geographic Response Plans “is not included” in their scope. WAC 173-182-349(3)(a) requires “an operational picture or diagram of the recovery system.” WAC 173-182-349(4)(a) requires the same for storage systems. Technical manuals that do not contain operational pictures or diagrams do not meet these existing requirements. One currently approved manual carries a version date of November 2015, which predates the current rule entirely. The remaining manuals fall between these extremes, with inconsistent treatment of night operations, oil group optimization, and personnel-training specificity.

The Department has approved all seven manuals. The Department has not publicly documented how manuals lacking operational diagrams, narrative descriptions, or oil group optimization statements were found to satisfy WAC 173-182-349. This is the inconsistency that the rulemaking should address. The content requirements of the existing rule are adequate. The consistency of the Department’s review and approval is not.

#### **V. A Specific Case: Planning Standard Compliance at Neah Bay**

The inconsistency extends beyond technical manual content to the underlying planning standards the manuals are intended to document. Under WAC 173-182 planning standards, the Neah Bay planning area requires 12,500 barrels of on-water storage capacity within six hours of spill notification. WAC 173-182-620 provides a procedural pathway for alternative planning

standards, requiring a thirty-day public review period under WAC 173-182-620(1) and a documented finding of equivalent environmental protection under WAC 173-182-620(3)(b).

For one currently approved PRC with Neah Bay coverage, the publicly available regulatory documents produce three mutually inconsistent figures for the same question—how much on-water storage is available at Neah Bay within six hours—all three of which fall short of the regulatory standard:

- The PRC's currently approved plan acknowledges that the PRC cannot meet the 12,500-barrel standard and operates under an alternate planning standard approved by the Department. The alternate standard substitutes additional recovery capacity (EDRC) for storage capacity and references a storage figure materially below the 12,500-barrel rule requirement.
- The same PRC's currently approved technical manual for Neah Bay, reviewed in aggregate across its listed six-hour systems, shows approximately 448 barrels of on-water storage at the six-hour mark, distributed across six listed systems with individual capacities of 0, 0, 0, 100, 100, and 248 barrels.
- The current WRRL data for the same PRC's equipment physically home-based at Neah Bay shows approximately 3,050 barrels of total liquid storage capacity across thirty-two equipment items, a figure that does not match either the technical manual total or the approved alternate plan figure.

The rule requires 12,500 barrels at six hours. Three separate current regulatory documents for the same PRC report three different lower numbers. All three documents—the plan, the technical manual, and the WRRL listing—have been approved by the Department or submitted under Department-mandated certification. They cannot all simultaneously be accurate. The inconsistency is not a matter of interpretation; it is arithmetic.

The alternate planning standard appears to have been approved without a documented WAC 173-182-620 variance proceeding. There is no apparent public record of a thirty-day public review and comment period under WAC 173-182-620(1). There is no apparent documented finding of equivalent environmental protection under WAC 173-182-620(3)(b). The EDRC values cited in support of the alternate standard are described as “approved by Ecology” without a documented application of ASTM F1780 or other recognized methodology, as contemplated by WAC 173-182-610(2).

There is a further, more fundamental problem with the alternate standard: the substitution of additional EDRC for storage capacity is not operationally equivalent and cannot satisfy the “equivalent or higher level of protection” finding that WAC 173-182-620(3)(b) requires. EDRC is the rate at which a recovery system removes oil from the water. Storage is the volume available to hold recovered oil. The two are paired capabilities, not substitutable ones. A skimmer operates at its EDRC only until its associated storage fills; once storage is full, recovery stops until additional storage arrives or existing storage is offloaded. Total on-scene oil removal is therefore bounded by the lesser of cumulative recovery capacity and cumulative storage capacity. The planning standards in WAC 173-182 require both at each time interval for precisely this reason.

Substituting additional EDRC for storage therefore produces no additional on-scene oil removal capacity. It only ensures that additional recovery devices stand ready to recover oil they have nowhere to put. An alternate standard of that structure does not provide equivalent environmental protection under any defensible operational analysis. It provides a lower level of

protection, repackaged in a different unit of measurement. The Department cannot make the finding that WAC 173-182-620(3)(b) requires, because the record does not support it.

The existing rule provides a procedural pathway for the alternate standard that was granted. WAC 173-182-620 requires public notice and a documented finding of equivalent protection. The pathway does not appear to have been used; if it had been used with a defensible operational analysis, the substitution would not have survived it. The arithmetic problem documented above—three certified regulatory figures for one PRC’s Neah Bay six-hour storage, none of which meets the rule requirement—is not a problem that additional technical manual rule text can solve. It is a problem caused by the Department’s approval of plans, alternate standards, and technical manuals that do not, individually or collectively, satisfy the rule as written.

## **VI. The WRRL Already Contains the Underlying Data in Structured, Queryable Form**

WAC 173-182-810(3) requires each state-approved PRC to submit a comprehensive equipment list, either via the Worldwide Response Resource List (WRRL) at [www.wrri.world](http://www.wrri.world) or in an equivalent electronic format. The rule specifies the data fields the list must contain for each piece of equipment: a unique identifier; location by latitude/longitude; equipment type, manufacturer, model, and specifications; for boom, length and size; for oil recovery devices, EDRC and operating environment; for temporary storage, maximum capacity in barrels; and the minimum number of personnel required to operate the equipment for one shift. WAC 173-182-810(14) further requires PRCs to certify the accuracy of this list on a quarterly basis.

The WRRL therefore contains, as a matter of existing regulatory requirement: EDRC values, liquid storage capacity, boom footage, personnel requirements, home base locations, equipment specifications, and tactical-status flags for every PRC operating in Washington. The data is structured, queryable, uniform across organizations, and updated quarterly. The content elements required by WAC 173-182-349 that the WRRL does not independently provide are limited to operational diagrams of how individual equipment items combine into deployable systems, narrative description of those systems, oil group optimization statements, and access mechanism. These are meaningful supplements to the WRRL data, not substitutes for it.

The bulk of the content required by WAC 173-182-349(3) and (4)—the equipment-level detail—is already in the WRRL in a form more current, more uniform, and more analytically useful than a PDF technical manual. If the Department’s analytical need is to understand equipment inventories, EDRC, storage capacity, boom footage, personnel, and home base across Washington’s PRCs, the WRRL provides that with greater rigor than any technical manual. If the Department’s need is something other than that, the rulemaking should articulate what that need is.

## **VII. The “Informs the BAP Cycle” Rationale Requires a Documented Methodology**

WAC 173-182-349(2) states that technical manuals “will be used to inform the five year BAP cycle and support ecology’s determination that the response systems, training levels, and staffing demonstrate best available protection.” The Department’s spills program website repeats this statement, describing technical manuals as “planning and training documents that support our understanding of on-water oil spill response equipment capabilities” used to “inform the five-year Best Achievable Protection (BAP) review cycle.” If this statement describes an

operating methodology, it would justify significant technical manual content requirements. As currently applied, it does not appear to describe an operating methodology.

The Department has not publicly documented how technical manuals are aggregated, analyzed, or compared across PRCs to produce BAP determinations. The Department has not published, for any planning standard area, a finding identifying what the current manuals collectively demonstrate about response capability, what gaps exist, and whether the current planning standards should be adjusted. The Department has not described how inconsistent manuals—one dated 2015, others without operational diagrams, others with differing oil group coverage—are reconciled for a defensible BAP determination. If technical manuals are in fact the factual foundation for BAP analysis, the manuals would need to be approved to a uniform standard so the aggregated analysis is valid. The currently approved manuals do not reflect that standard.

Further, the WRRL is a structurally better source for BAP analysis than a collection of PDF technical manuals in three different formats. If the Department's position is that technical manuals serve an analytical purpose the WRRL cannot serve, the rulemaking should identify that purpose with specificity. If the Department's position is that technical manuals serve a different purpose altogether—a compliance demonstration at plan approval, or an archival record for future use—the rulemaking should say so and align the content requirements with that purpose.

## **VIII. Recommendations**

WSMC urges the Department, before finalizing any new technical manual content requirements, to conduct and publish the following reviews: (1) a review of the seven currently approved PRC technical manuals against the explicit content requirements of the existing WAC 173-182-349(3) and (4), with written findings for each manual as to each required element; (2) a review of all currently active alternate planning standards, identifying for each whether the WAC 173-182-620 procedural pathway was followed, whether a public review period occurred, and whether a documented finding of equivalent environmental protection was made; (3) a public record of any EDRC values relied upon for alternate-standard approvals, including the methodology used to derive those values, the derating factors applied, and the basis under WAC 173-182-610(2); and (4) a written description of the Department's BAP analysis methodology, specifying how technical manual content and WRRL data are used to produce BAP determinations.

If, after those reviews, the Department determines that rulemaking amendments are warranted, WSMC offers the following recommendations for the amendments themselves.

First, the rule should require that every technical manual affirmatively demonstrate compliance with each element of WAC 173-182-349(3) and (4), and that the Department's written approval include findings that each element is satisfied. This is a consistency requirement, not a new-content requirement.

Second, the rule should expressly distinguish the technical manual from the WRRL and specify the content elements the technical manual must provide that the WRRL does not—operational diagrams of multi-equipment response systems, narrative descriptions, oil group optimization, and access mechanism—without duplicating data the WRRL already contains.

Third, the rule should require that any alternate planning standard operative for any plan holder be documented through the WAC 173-182-620 procedure, including a thirty-day public review period and a written finding of equivalent environmental protection, and that the technical manual reference the approved alternate standard.

Fourth, the rule should require that EDRC values relied upon for compliance demonstrations, whether baseline or alternate, be calculated using ASTM F1780 or another recognized methodology consistent with WAC 173-182-610(2), with published derating factors appropriate to Washington operating conditions and a publicly documented basis for any alternate values.

Fifth, the rule should document the Department's BAP analysis methodology, specifying how technical manuals and WRRL data are integrated, how inconsistencies between the two sources are resolved, and how the aggregated analysis supports the periodic BAP determination.

## **IX. Conclusion**

The existing WAC 173-182-349 already requires the content the Department's March 26, 2026 workshop described as anticipated enhancements. The existing WAC 173-182-810 already requires PRCs to report the underlying equipment data to the WRRL and certify its accuracy quarterly. The existing WAC 173-182-620 already provides the procedural pathway for alternate planning standards. The question the rulemaking must answer is not how to write the existing requirements more strictly. It is how to enforce the existing requirements as written.

A more prescriptive rule, applied by the same approval process to the same plan holders without additional enforcement action, will produce the same record the existing rule has produced: manuals approved to materially different standards, planning-standard variances that bypass the documented procedural pathway, and a BAP rationale the Department has not been able to support with a documented analytical methodology.

It is perhaps worth observing that the content the Department now proposes to require through rulemaking is content the Department could have required—at any point in the six years the existing rule has been in effect—through the ordinary exercise of its plan review authority. The Department may wish to reflect on whether rulemaking is the appropriate instrument for the task at hand.

Respectfully submitted,

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