WASHINGTON STATE MARITIME COOPERATIVE

Comments on Proposed Rulemaking — WAC 173-182 and WAC 173-186

Submitted to: Washington State Department of Ecology
Re: CR-101 Preproposal Statement of Inquiry — Uncrewed Aerial Systems (UAS) Provisions
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Submitted by: Dan Smiley, Executive Director, Washington State Maritime Cooperative
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I. No Rule Change Is Required to Use UAS in Oil Spill Response

The Washington State Maritime Cooperative (WSMC) submits these comments regarding the proposed amendments to WAC 173-182 and WAC 173-186 as they relate to Uncrewed Aerial Systems (UAS) in oil spill response. Our position is straightforward: no rule change is required. UAS are already being deployed in oil spill responses in Washington State, and neither the current rule language nor any federal regulation prohibits their use.

WAC 173-182-321 establishes aerial surveillance planning standards that reference aircraft with externally mounted thermal cameras and trained aerial spotters. This language was written when manned helicopters and fixed-wing aircraft were the only viable aerial platforms. It does not prohibit UAS. Federal law is equally clear: 33 CFR 155.1050 establishes requirements for aerial observation capabilities but does not mandate the type of aircraft used. Unified commands have authorized UAS in place of manned aircraft when operationally appropriate, and no federal or state on-scene coordinator has objected to their use.

The trained aerial observer requirement in WAC 173-182-321 remains fully applicable to UAS operations. The observer role has always been, and should remain, a position distinct from the pilot in command. In manned operations the pilot flies the aircraft while the trained observer, separately staffed, reviews oil conditions and files observation reports. In UAS operations the same two roles exist, staffed by different individuals at the ground control station: the remote pilot flies the aircraft, and the trained observer reviews the live sensor feed and files observation reports. The shift to UAS changes the observer's physical location but not the function, the required training, or the regulatory rationale. The only element of WAC 173-182-321 that requires updating is the assumption that the observer must be physically aboard the aerial asset. That assumption reflected the only aerial platforms available at the time the rule was written. It does not reflect current operational practice and should be clarified.

WSMC has deployed UAS on multiple recent responses without regulatory objection. These include the Aleutian Falcon fire, the Kodiak Enterprise fire, and the Washington-Oregon mystery oiling event, where both states deployed drones for SCAT surveys. In each case, UAS provided faster deployment, better imagery, and lower cost than manned aircraft—and no one suggested a rule change was needed to authorize their use. This is a solution in search of a problem.

To the extent the Department believes the rule should be updated to reflect current technology, WSMC would support a simple amendment to the aerial surveillance planning standard along the following lines:

> *Access to a helicopter, fixed wing, or UAS as appropriate to the task and operating environment, with a trained aerial observer—aboard the aerial asset for manned operations, or at the ground control station for UAS operations—staffed as a position distinct from the pilot in command.*

That is the kind of straightforward update that recognizes operational reality without creating new regulatory burdens. It preserves the trained-observer requirement that has always been the operational heart of WAC 173-182-321 and clarifies how that requirement applies to platforms the original rule language did not anticipate. Nothing more is required.

II. State-Imposed Pilot Training Requirements Are Federally Preempted

The one area where WSMC has a serious concern with the proposed rulemaking is any attempt to impose state-level pilot training or certification requirements for UAS operators. The federal regulatory scheme governing UAS pilot certification is comprehensive, and state rules that conflict with or supplement that scheme raise substantial preemption concerns.

The Federal Aviation Administration has exclusive authority over airspace regulation, aircraft certification, and pilot licensing under 49 U.S.C. § 40103. Commercial UAS operations are governed by 14 CFR Part 107, which establishes a comprehensive federal framework: operators must hold a Remote Pilot Certificate issued by the FAA, pass an aeronautical knowledge test covering airspace classification, weather, loading, and emergency procedures, and recertify every 24 months. Part 107 also establishes operating limitations including altitude ceilings, visual line-of-sight requirements, and restrictions on operations over people. The comprehensiveness of this regulatory scheme is the basis on which federal courts have found implied preemption of state UAS pilot licensing under field and conflict preemption doctrines, even in the absence of an express preemption clause in the governing statute.

Federal courts have consistently held that state and local governments cannot impose additional pilot certification or training requirements that conflict with or supplement FAA regulations. Because the federal scheme occupies the field of UAS pilot certification, parallel state licensing regimes are preempted under the Supremacy Clause of the U.S. Constitution. Washington State does not have the technical qualifications or aviation expertise to develop drone pilot training standards, and it does not need to—the FAA already has.

Aerial observer training is a separate matter and is already addressed by federal standards. 33 CFR 155.1050(l)(2)(iii) establishes training standards for aerial observers in oil spill response, and ASTM F1779-08 provides the standard practice for aerial observation of oil on water. These existing federal standards apply regardless of whether the observer is in a helicopter or monitoring a UAS video feed. No additional state training requirement is necessary or appropriate.

III. The BAP Workgroup Recommendation Does Not Reflect Consensus

The BAP UAS Workgroup Summary states that “this workgroup recommends Unmanned Aerial Systems (UAS) use in oil spill response be included in the upcoming scope of rulemaking for 173-182 WAC.” WSMC participated in that workgroup and denies having made any such recommendation. Our position—stated clearly during the workgroup process—is that no rule change is required. We do not support including UAS in the rulemaking scope. The Department cannot frame a workgroup discussion as consensus and then cite that consensus as justification

for rulemaking. The summary reflects Ecology's characterization of the discussion, not an agreed recommendation endorsed by the participants.

Similarly, the BAP Final Report recommends that UAS tasks incorporate specific frameworks such as "Shoreline Oiling Aerial Reconnaissance (SOAR)." A UAS is a tool—no different from a helicopter or a fixed-wing aircraft. We do not write rules dictating which missions a helicopter must fly. What you assign a drone to do during a response is an operational decision made by the Incident Commander through the planning process, not a regulatory requirement. Mandating specific use cases for a particular tool is not preparedness planning—it is interest groups seeking to have their services written into rule.

IV. Conclusion

UAS are already being used successfully in Washington State oil spill responses. No rule change is required to authorize their use. If the Department wishes to update the rule to explicitly recognize UAS as an aerial surveillance option, WSMC supports that effort—provided the language is outcomes-based, references existing federal training standards, and does not attempt to impose state pilot certification requirements that are preempted by FAA Part 107. We urge the Department to keep this simple.

Respectfully submitted,

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