

EMERGENCY RESPONSE TOWING VESSEL (ERTV)  
ENROLLMENT AGREEMENT

A. Background and Statement of Purpose

In order to legally enter Washington State waters, certain cargo, passenger, commercial fish processing and other commercial vessels of 300 or more gross tons and all tank vessels and tank barges (“Covered Vessels”) are required to file and maintain with the Washington State Department of Ecology an approved oil spill contingency plan for the containment and cleanup of oil spills. In 2009, the Washington State legislature passed a separate law (ESSB 5344) effective July 1, 2010 (the “Act”), which requires all Covered Vessels to provide an emergency response towing vessel (“ERTV”) stationed at Neah Bay, Washington, if a Covered Vessel transits the ERTV Transit Area. The Act defines the ERTV Transit Area to cover all Covered Vessel transits to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks light. Contingency plans for a Covered Vessel operating in the Strait of Juan de Fuca must provide for ERTV coverage.

The Act requires the ERTV to be stationed at Neah Bay and made available to be hired by vessels experiencing a vessel emergency while in the Strait of Juan de Fuca and off the western coast of Washington State from Cape Flattery light in Clallam County, Washington south to Cape Disappointment light in Pacific County, Washington. The Act defines a vessel emergency to mean a substantial threat of pollution originating from a Covered Vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability. The ERTV is on station at Neah Bay under charter; however, it must be hired under separate contract by the vessel’s owner, operator or duly authorized agent or representative or by government agencies in order to perform emergency vessel assist services.

The ERTV is chartered by the Washington State Maritime Cooperative for stationing at Neah Bay pursuant to a long-term charter agreement. Funding for the charter, maintenance and administrative costs of the ERTV is provided by assessments paid by Covered Vessels that are required to reference the ERTV in their oil spill contingency plans. The ERTV is available to any Covered Vessel owner or operator to reference in its Washington State oil spill response contingency plan and for hire by such Covered Vessels for a vessel emergency response, provided the Covered Vessel’s owner or operator enrolls for ERTV coverage and agrees to abide by the terms and conditions of this Enrollment Agreement, including payment of the ERTV assessment determined and allocated by the ERTV Compliance Group. A schedule of assessments is available from the Marine Exchange of Puget Sound.

The ERTV may also be hired by or for other than Covered Vessels, not subject to the Act or oil spill response contingency plan requirements, under the same vessel emergency circumstances.

B. ERTV Enrollment

1. By completing and submitting this Enrollment Agreement, the owner/operator of a Covered Vessel:

- a. Agrees to provide the information for the owner/operator’s Covered Vessel set forth in the Enrollment Agreement’s Schedule of Vessel Information, which is made a part of this Enrollment Agreement;

- b. Is entitled to reference compliance with the ERTV requirements in the Covered Vessel's approved Washington State oil spill response contingency plan, whether such contingency plan is an individual plan, a fleet plan or a blanket plan, such as the contingency plan of the Washington State Maritime Cooperative; and
- c. Agrees to pay the ERTV assessment within thirty (30) days of the invoice date for each voyage of the Covered Vessel.

2. Failure to timely pay the ERTV assessment may result in enforcement action by the State of Washington. The Covered Vessel will be considered in violation of the ERTV requirements of the Act for any transit for which assessment payment has not been made, unless the Covered Vessel owner or operator has arranged for a separate emergency response towing vessel to provide compliant coverage. Future transits of such Covered Vessel and any other vessels owned/operated by the same owner will not be considered covered by the chartered ERTV until all outstanding assessments are paid.

### C. Other Terms

1. A separate Enrollment Agreement must be submitted for each Covered Vessel, provided that if the owner or operator of the Covered Vessel identified in the attached Schedule of Vessel Information, owns or operates more than one vessel, the owner or operator needs to execute only one Enrollment Agreement, but shall provide and complete a separate Schedule of Vessel Information for each vessel owned or operated by such owner or operator. Only one Enrollment Agreement needs to be submitted for each Covered Vessel, unless there are changes to the information contained on the Schedule of Vessel Information, in which case the owner/operator shall provide an updated Schedule to the ERTV Compliance Group.

2. In the event the ERTV is needed by a Covered Vessel during a vessel emergency:

- a. The decision to contract the ERTV shall be made by the Covered Vessel's owner/operator, its authorized agent or representative, or by the United States Coast Guard ("USCG") or Washington State Department of Ecology ("DOE");
- b. The Covered Vessel's owner/operator, its authorized agent or representative, the USCG or DOE requesting or directing use of the ERTV, shall contract directly with the ERTV for whatever services are required from the ERTV (the "Emergency Contract");
- c. The ERTV Compliance Group, the Marine Exchange of Puget Sound, and the Washington State Maritime Cooperative shall not be parties to the Emergency Contract of another party;
- d. The ERTV shall be off-hire from the Washington State Maritime Cooperative's charter agreement from the time the ERTV is released from the charter (typically, when the ERTV leaves its station) for the benefit of the Covered Vessel (or other vessel, if not a Covered Vessel) until such time as the ERTV returns to its station at Neah Bay (the "Emergency Response Period"); and
- e. The Covered Vessel's owner or operator, authorized agent or representative, USCG or DOE shall be solely responsible for all costs incurred by the ERTV during the Emergency Response Period and/or pursuant to the terms of the Emergency Contract.

3. In accordance with the requirements of the Act, in the event a Covered Vessel requests and hires, or otherwise receives the assistance of the ERTV, the Covered Vessel's owner or operator is required to submit a written report to the Washington State Department of Ecology as soon as practicable regarding the use of the ERTV. The report must include photographic documentation (if

the situation allows for safely taking photographs or video) and shall provide a detailed description of the incident necessitating a response and the actions taken to render assistance by the ERTV.

4. The ERTV Compliance Group has made arrangements with the Marine Exchange of Puget Sound to act as its agent to invoice and collect the ERTV assessment and to make payments to the owner of the chartered ERTV. Covered Vessel assessment payments made pursuant to this Enrollment Agreement shall be made as specified in the invoices issued by the Marine Exchange of Puget Sound.

5. This Enrollment Agreement shall become effective on the date indicated below, provided that the ERTV assessment need not be paid until each actual transit is made by the owner/operator's Covered Vessel of the ERTV Transit Area, at which time(s) an ERTV assessment invoice shall be issued. This Enrollment Agreement may be terminated at any time by the Covered Vessel owner or operator giving written notice to the ERTV Compliance Group, provided that any outstanding and unpaid ERTV assessments at the time of such notice shall remain fully due and payable. The ERTV Compliance Group may terminate the Enrollment of a Covered Vessel due to the owner/operator's failure to timely pay the ERTV assessment, in which event the Marine Exchange, as agent for the ERTV Compliance Group, shall report such termination to the Washington Department of Ecology, advising that the subject vessel(s) and any other vessel(s) owned/operated by the same owner/operator are no longer enrolled for the ERTV and may no longer identify and reference the ERTV in its oil spill contingency plan.

6. The ERTV Compliance Group confirmed that the stakeholders representing the various vessel categories with the assistance of a tug broker made their commercially reasonable best effort to identify a responsible, experienced and qualified contractor to provide the ERTV at Neah Bay. The ERTV Compliance Group, Washington State Maritime Cooperative and the Marine Exchange of Puget Sound make no express or implied warranties concerning the ERTV, its crew (including experience or competence), capabilities, operations, condition, maintenance or other functions.

7. This Agreement may be amended from time to time by the ERTV Compliance Group as may be required to maintain compliance with applicable Washington State law or as otherwise deemed necessary by the ERTV Compliance Group. Any such amendments shall be in writing and communicated to all enrolled Covered Vessel owners or operators. Such notification shall be given at least thirty (30) days in advance of the effective date of any amendments or modifications going into effect, unless the law requires otherwise.

8. Covered Vessel owners or operators who have enrolled under this Enrollment Agreement may refer to the ERTV in general reporting and oil spill contingency plan filing with governmental agencies. The ERTV Compliance Group shall be entitled to provide information to any governmental agency regarding the enrollment of any Covered Vessel with the ERTV Compliance Group.

9. If any provision of this Enrollment Agreement or portion thereof should be declared invalid for any reason, the invalid provision or portion shall be deemed omitted and the remaining terms shall nevertheless be given effect.

10. Neither the ERTV Compliance Group nor any owner/operator or Covered Vessel or any Covered Vessel's authorized agent or representative may assign their respective rights or obligations under this Enrollment Agreement without the prior written consent of the other party.

11. No governmental agency or other private party, including any other contractors or subcontractors referenced herein, are intended to be third-party beneficiaries of any rights or obligations under this Enrollment Agreement.

12. This Agreement shall be construed under the laws of the State of Washington without reference to its conflict of laws provisions. The parties agree that all matters involving interpretation or enforcement of this Agreement will be referred to the United States District Court for the Western District of Washington at Seattle, or, if and only if the United States District Court does not have jurisdiction over any such matter, to any other court of competent jurisdiction in Seattle, Washington.

13. This Enrollment Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument. This Enrollment Agreement may be signed and transmitted by facsimile (or electronically in a form that allows the receiving party to print a copy of the signature), with the same effect as an original signature, provided such signing party shall provide a counterpart signed original of the executed document, if requested by the other party.

14. If this Enrollment Agreement is signed by an agent or authorized representative of the Covered Vessel's owner or operator, such agent or authorized representative warrants his/her authority to sign this Enrollment Agreement and shall, upon request, provide a copy of his/her written authorization to act on behalf of the owner/operator to sign this Enrollment Agreement.

\_\_\_\_\_  
Ship Owner/Operator/Authorized Agent

By \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
Date

Attach Schedule of Vessel Information