



IAA No. C2000090

INTERAGENCY AGREEMENT (IAA)

BETWEEN

THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

AND

WASHINGTON STATE BOARD OF PILOTAGE COMMISSIONERS

THIS INTERAGENCY AGREEMENT (“Agreement” or “IAA”) is made and entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “**ECOLOGY**,” and the Washington State Board of Pilotage Commissioners, hereinafter referred to as “**BPC**,” pursuant to the authority granted by Chapter 39.34 RCW and RCW 88.16.260.

THE PURPOSE OF THIS AGREEMENT is to establish guidelines, roles, and responsibilities for collaboration between **ECOLOGY** and **BPC** in the effective implementation of Sections 2, 3, 4, and 5 of Reducing Threats to Southern Resident Killer Whales by Improving the Safety of Oil Transportation Act, ESHB 1578 (Laws of 2019, ch. 289) (hereinafter referred to as the “**Act**”).

WHEREAS, the Act authorized **ECOLOGY** and **BPC** to enter into an Interagency Agreement allowing **ECOLOGY** to assist **BPC** with modeling and rulemaking activities authorized by the Act.

WHEREAS, close coordination and consultation between **ECOLOGY** and **BPC** is essential to ensure successful and effective implementation of these activities given legislative direction for consultation and interdependence of outcomes.

WHEREAS, the Legislature provided funding to **ECOLOGY** in the 2019-21 Operating Budget to support activities required by the Act.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1) RESPONSIBILITIES AND COORDINATION OF WORK

ECOLOGY and BPC will work together to:

- Develop project plans to accomplish the requirements of the Act Sections 2, 3, and 5, including projects to help inform the requirements of the Act.
- Coordinate on communication, consultation and outreach activities.
- Provide technical assistance to plan and prepare for activities.

ECOLOGY and BPC Meetings:

ECOLOGY and BPC will meet in-person quarterly and via conference call monthly, or as needed to accomplish these related projects. ECOLOGY and BPC may change the meeting schedule by mutual agreement. Each organization is responsible for keeping their respective leadership (e.g., the full Board of Pilotage Commissioners) apprised about the status of the projects and associated meetings, as appropriate. Meeting topics will include:

- project planning
- status updates
- monitoring and evaluation of outcomes

Decision-making:

- a) **Coordination and project details decision:** decided by consensus of the portfolio management team and documented in meeting notes.
 - a. **The portfolio management team:** will consist at a minimum of the BPC Executive Director, ECOLOGY Spills Program Prevention and Statewide Resources Section Managers, and the ECOLOGY BPC representative.
- b) **Policy decisions:** made by ECOLOGY Spills Program Manager and/or a formal Board of Pilotage Commissioners vote. Decision-makers may elevate decisions within their organizations when appropriate.

Project-specific responsibilities:

In this section 'BPC' refers to BPC staff and 'Board' refers to the full Board of Pilotage Commissioners. Additional responsibilities will be assigned through mutually agreed upon project plans.

- a) **BPC to Implement Rosario Tug Escort Requirements** (due September 1, 2020) Act Sec.2.(1)(a)(ii)
 - Roles:
 - BPC: Outreach to and inform tribes and stakeholders about tug escort requirements; determine monitoring and enforcement procedures; implement tug escort requirements.
 - Board: Vote on decisions including interpretive and policy statements.
 - ECOLOGY: Provide technical assistance to BPC.
- b) **BPC to Identify and define geographic waterway zones** (due September 1, 2020) Act Sec.3.(1)(d)(i)
 - Roles:
 - BPC: Lead a process to define geographic regions, or zones, encompassing these waters.
 - Board: Make final decision on identifying and defining zones.
 - ECOLOGY: Provide technical assistance to BPC.
- c) **ECOLOGY to Develop and maintain risk model** Act Sec.4.(1)
 - Roles:
 - ECOLOGY: Develop and maintain a vessel traffic risk model in consultation with the parties listed in 88.46.250. Consult with tribes and stakeholders.

- BPC: Provide technical assistance to ECOLOGY as requested.
- d) **ECOLOGY to Report to the Legislature on the quantitative assessment of the Emergency Response Towing Vessel** (due September 1, 2023) Act Sec.4.(2)
- Roles:
 - ECOLOGY: Quantitatively assess whether an emergency response towing vessel serving Haro Strait, Boundary Pass, Rosario Strait, and connected navigable waterways will reduce oil spill risk; report findings to the Legislature (due September 1, 2023).
 - BPC: Provide technical assistance to ECOLOGY.
- e) **BPC to conduct an analysis of tug escorts using the model developed by ECOLOGY** (due September 1, 2023) Act Sec.3.(1)(d)(iii)
- Roles:
 - BPC: Develop scope of tug escort analysis using the model developed by ECOLOGY. Scope should include related outreach activities.
 - ECOLOGY: Provide technical assistance to BPC in the development of the scope. Perform tug escort analysis and related outreach activities based on the scope with input from BPC. Write and submit a summary of the tug escort analysis to the legislature by September 1, 2023.
 - Board: Vote to approve the analysis scope.
- f) **BPC to complete a synopsis of changing vessel traffic trends** (due December 2021) Act Sec.3.(1)(d)(ii)
- Roles:
 - BPC: Develop scope of changing vessel traffic trends synopsis and submit final synopsis to the legislature.
 - ECOLOGY: Provide technical assistance to BPC in the development of the scope. Develop report of Synopsis of changing vessel traffic trends.
 - Board: Vote to approve scope. Review and approve the Synopsis of changing vessel traffic trends.
- g) **BPC to conduct Tug escort rulemaking** (due December 2025) Act Sec.3.(1)(a)
- Roles:
 - Board: Make final decisions regarding tug escort requirements and adopt rules.
 - ECOLOGY: Lead rulemaking process and outreach efforts for BPC. Conduct regulatory analyses required by the Administrative Procedure Act, State Environmental Policy Act and the Regulatory Fairness Act.
 - BPC: Provide technical assistance to ECOLOGY as needed related to rulemaking process, outreach, and technical expertise.

External Communications:

ECOLOGY and BPC will create a joint Communications plan. External communications (e.g., emails, presentations and letters) will align with the joint Communications plan and will be coordinated between ECOLOGY and BPC. Whenever possible and appropriate, communications products will be joint messages from both ECOLOGY and BPC.

Consultation responsibilities:

The Act directs ECOLOGY and BPC to consult with tribes and stakeholders during model development, risk analysis, and rulemaking. Consultation requirements will be incorporated into the joint Communications plan and project plans.

2) PERIOD OF PERFORMANCE

The period of performance of this IAA shall commence on **December 1, 2019**, (or the date of final signature, whichever comes later,) and be completed by **December 31, 2025**, unless terminated sooner as provided herein. Amendments extending the period of performance, if any, shall be mutually agreed upon in writing by ECOLOGY and BPC.

3) ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. This agreement may be continually renewed via amendment for time periods that are mutually agreed upon.

4) FUNDING AVAILABILITY

ECOLOGY's and BPC's ability to perform work pursuant to the agreement is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY or BPC, at their sole discretion, may elect to terminate the Agreement, in whole or part, for convenience or to renegotiate the Agreement subject to new funding limitations and conditions. ECOLOGY or BPC may also elect to suspend performance of the Agreement until ECOLOGY or BPC determines the funding insufficiency is resolved. ECOLOGY or BPC may exercise any of these options with no notification restrictions, although ECOLOGY or BPC will make a reasonable attempt to provide notice.

5) ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes, regulations, and rules.
- b. Mutually agreed upon written amendments to this Agreement.
- c. This Agreement, number C2000090.
- d. Any other provisions or term of this Agreement, including materials incorporated by reference or otherwise incorporated.

6) RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, and other documents, related to the activities covered by this agreement consistent with the records retentions requirements and procedures of their agency. Each party will utilize reasonable security procedures and protections for all materials related to this Agreement. All materials are subject to state public disclosure laws.

7) RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

8) RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be owned by state of Washington, ECOLOGY. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

9) SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

10) TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

11) WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a written amendment to this Agreement signed by an authorized representative of the parties.

12) AGREEMENT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications, notifications, and billings questions regarding the performance of this Agreement. The parties agree that if there is a change in representatives that they will promptly notify the other party in writing of such change, such changes do not need an amendment.

The ECOLOGY Representative is:	The BPC Representative is:
Name: Brian Kirk, Prevention Section Manager Address: 3190 160 th Ave SE, Bellevue WA 98008-5452 Phone: 425-649-7292 Email: brian.kirk@ecy.wa.gov Fax: 425-649-7098	Name: Jaimie C. Bever, Executive Director Address: 2901 3 rd Avenue, Suite 500 Seattle, WA 98121 Phone: (206) 515-3887 Email: BeverJ@wsdot.wa.gov Fax: (206) 515-3906

13) ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties below, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their signatures below.

State of Washington
Department of Ecology

State of Washington
Board of Pilotage Commissioners

By:

Signature Date

By:

Signature Date

Print Name: Dale Jensen

Print Name: Jaimie C. Bever

Title: Spills Program Manager

Title: Executive Director

Approved as to form only:
Office of Attorney General