

BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket TP-220513

**PUGET SOUND PILOTS' MOTION
FOR LEAVE TO FILE REPLY IN
SUPPORT OF PSP'S MOTION FOR
THE UTC TO SEEK BPC
DETERMINATION**

MOTION

1. Pursuant to WAC 480-07-370(5)(b), Respondent Puget Sound Pilots ("PSP") move for leave to file the Reply in Support of Motion for the UTC to Seek BPC Determination that is attached hereto as Exhibit A, as well as the Declaration of Charles P. Costanzo attached hereto as Exhibit B. In support of this motion, PSP relies on the record previously filed herein and the following points and authorities.

MEMORANDUM

I. BACKGROUND

2. On February 1, 2023, Puget Sound Pilots ("PSP") filed a Motion for the UTC to Seek BPC Determination regarding applicability of the "best achievable protection" ("BAP") standard to pilotage in Washington.
3. On February 7, 2023, UTC Staff and the Pacific Merchant Shippers' Association ("PMSA") filed responses opposing PSP's motion on substantive and procedural grounds.

///

II. ARGUMENT.

4. WAC 480-07-370(5)(b) grants the Commission discretion to allow a reply in support of a petition where a reply is necessary to address new facts or legal argument raised in a response. In this case, Staff and PMSA’s responses raise new arguments asserting that the applicability of the BAP standard to pilotage is irrelevant and that PSP’s motion is untimely. Given the importance of the issues at stake, PSP seeks leave to file a brief reply in support of its motion that responds to the specific arguments raised in Staff and PMSA’s respective opposition briefs.

III. CONCLUSION.

5. PSP’s motion should be granted and the proposed reply should be entered in the record.

Respectfully submitted this 13th day of February, 2023.

HAGLUND KELLEY LLP

s/ Michael E. Haglund

Michael E. Haglund, OSB No. 772030

Julie Weis, WSBA No. 43427

Eric J. Brickenstein, OSB No. 142852

HAGLUND KELLEY LLP

2177 SW Broadway

Portland, OR 97201

Telephone: (503) 225-0777

Facsimile: (503) 225-1257

Email: mhaglund@hk-law.com

jweis@hk-law.com

ebrickenstein@hk-law.com

Attorneys for Respondent

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I. INTRODUCTION

1. RCW 81.116.020(3) requires the Washington Utilities and Transportation Commission (“UTC” or the “Commission”) to set rates that are “fair, just, reasonable and sufficient for the provision of pilotage services.” This statutory mandate nonetheless leaves unaddressed the follow-on question: What standard applies to the “provision of pilotage services” under Washington law? The answer to this question is crucial to the disposition of this general rate case because it informs the Commission’s decision as to what pilotage rates are “sufficient” under RCW 81.116.020(3).
2. Puget Sound Pilots’ (“PSP”) position on this issue – set out in detail in the testimony of Executive Director Charles Costanzo – is that Washington law requires the provision of pilotage services to meet the “best achievable protection” (“BAP”) standard. Therefore, to pass muster under RCW 81.116.020(3), pilotage rates must be sufficient to sustain a pilotage program that meets the BAP standard. Among other things, this requires funding pilot

compensation at a nationally competitive level in order to attract a diverse group of top candidates from within a small group of qualified mariners.

3. The fact that Washington law demands an elite pilotage system designed – and sufficiently funded – to maximize protection of the State’s waterways should not be controversial.

However, based on recently filed testimony, there is no question that both Commission staff and the PMSA contend that the applicable rate-setting standard for pilotage services is rates that are "fair, just, reasonable, and sufficient," a very general and fundamentally vague rule of thumb or standard. In response to a question regarding the "Commission's role in setting pilotage rates, UTC Staff testimony offers the following answer:

The Commission ensures that rates charged by pilots are fair, just, reasonable, and sufficient, meaning that it basically balances customers' needs for fair rates for a service they must purchase with the pilots' interest in fair compensation for services provided.¹

PMSA concurs with this description of the rate-setting standard, testifying that it supports the Commission's legal conclusions for these "terms of art."² From PSP's perspective, the core issue here is whether the statutory standard – "fair, just, reasonable, and sufficient" – must be informed by and conform to BAP principles in order to meet the Pilotage Act's statutory mandate for Washington's compulsory pilotage system. The parties’ disagreement is material, because the Commission cannot accurately determine appropriate rates under RCW 81.116.020(3) without first making a threshold finding as to the level of protection and performance that the Legislature demands from the State’s compulsory pilotage system.

4. In order to address disagreement about whether the provision of pilotage services in Washington is subject to the BAP standard, PSP moved the Commission to consult its sister agency, the Washington Board of Pilotage Commissioners (“BPC”). This request that will

¹ Exh. JNS-1T at 4.

² Exh. MM-1T at 9.

assist the UTC in its adjudication of this rate case. The BPC is the controlling authority on this disputed issue and the UTC can only benefit from seeking its guidance. That is true regardless of the weight that the UTC ultimately assigns to this issue in its final order.

5. Moreover, RCW 81.116.020(5) expressly provides for the requested process, stating that: “In exercising duties under this section, the commission may: (a) Request assistance from the board.” In other words, the Legislature understood that UTC’s jurisdiction over pilotage ratemaking was likely to raise issues for which consultation with the BPC on regulatory matters would aid the Commission’s decision making. That is precisely the case here. There is simply no possible downside to the Commission requesting guidance from the BPC regarding the applicability of the BAP standard in aid of the Commission’s duty to set rates that are “sufficient for the provision of pilotage services.”
6. Given what PSP believes to be the uncontroversial nature of its motion, PSP was surprised by the Commission Staff (“Staff”) and PMSA’s vigorous opposition. These parties’ objections fall into two categories: (1) substantive objection that determining the regulatory standard that applies to pilotage is irrelevant to ratemaking; and (2) procedural objection that PSP’s motion is untimely. Neither category of objection is well-founded, and each is addressed briefly below. The key point, however, is that the requested process is expressly provided for in the legislative mandate (RCW 81.116.020(5)) and can only serve to benefit the Commission’s decision-making. For this fundamental reason, PSP’s motion should be granted.

II. STATEMENT OF FACTS

7. On June 29, 2022, PSP filed its general rate case with testimony from five witnesses opining that the "best achievable protection" standard is applicable to the funding of Washington's compulsory pilotage system. On October 20, 2022, the PMSA submitted a data request to PSP requesting that PSP admit that the Commission had already adopted a ratemaking standard in Order 09 in Docket TP-190976 that was different than the BAP standard.³ PSP denied that BAP was inapplicable as the standard that should guide the Commission's rate making decisions in this case.⁴
8. On or about October 28, 2022, PSP became aware that four Washington legislators had posed questions to the Department of Ecology regarding the applicability of BAP to both DOE and BPC.⁵ Ecology answered the legislators' questions in a letter dated November 18, 2022, stating that BAP governed DOE's operations as well as BPC's development of tug escort rules, but the agency deferred to the BPC "on the question of whether BAP principles govern the approach to the State pilotage system."⁶ PSP first became aware of DOE's November 18, 2022 letter on January 3, 2023 and filed this motion less than four weeks later.⁷
9. BPC's work developing tug escort rules pursuant to the Reducing Threats to Southern Resident Killer Whales by Improving the Safety of Oil Transportation Act ("Act") is described in an Interagency Agreement ("IAA") between DOE and BPC.⁸ Costanzo Decl. Ex. A. BPC's project-specific responsibilities include implementation of tug escort requirements for Rosario Strait, identifying and defining the geographic waterway zones

³ Haglund Decl. ¶ 7 and Ex. E.

⁴ *Id.* Ex. E.

⁵ Costanzo Decl. ¶ 2.

⁶ Haglund Decl. Ex. D.

⁷ Costanzo Decl. ¶ 3.

⁸ *Id.* at Ex. A.

subject to tug escort requirements, a post-implementation analysis of tug exports, completing a synopsis of changing vessel traffic trends and conducting a tug escort rulemaking. As part of its process to implement the Act's tug escort requirements, BPC developed an Implementation Plan⁹, an FAQ¹⁰ and an Interpretive Statement¹¹ defining statutory terms.

III. ARGUMENT

A. The Legal Standard that Governs the Provision of Pilotage Services Under Washington Law is Relevant to Ratemaking.

10. In its opposition, Staff argues that granting PSP's motion would not assist the Commission and would instead "transform this proceeding into a forum for litigation about the safety aspects of pilotage." Staff claims that this is because determining the regulatory standard that applies to pilotage falls under the jurisdiction of BPC, not UTC.¹²
11. Staff is correct, of course, that BPC is the authority that determines the appropriate regulatory standard for the provision of pilotage services. But Staff draws the wrong conclusion from this premise. Specifically, rather than encouraging litigation in this rate case over aspects of pilotage within BPC's jurisdiction, requesting guidance from BPC regarding the appropriate regulatory standard will resolve an important area of disagreement and narrow the scope of litigation.

As explained above, to determine what rates are sufficient under RCW 81.116.020(3), the Commission needs to know what is required of the program that is to be funded. For example, significant portions of pilot training, for which expenses have been submitted as an approved expense in the instant rate case, are not statutorily mandated but rather undertaken as a best

⁹ *Id.* at Ex. B.

¹⁰ *Id.* Ex. C.

¹¹ *Id.* Ex. D.

¹² PMSA makes essentially the same argument. PMSA Opp. ¶ 7 ("Commission should leave to the jurisdiction of the BPC all questions regarding marine safety, fatigue, and licensing issues as they do not pertain to the tariffs.").

practice. It is unclear under the presently undefined “fair, just, reasonable, and sufficient” standard whether non-mandated pilot training is a defensible expense. If Washington law requires just minimal competence or sufficient competence in the provision of pilotage, then perhaps this best-practice training is unnecessary. Conversely, if Washington law requires its pilotage system, as an integral aspect of its “best achievable protection” marine environmental protection scheme, then this type of best practices training is consistent with the obligations imposed by statute. As another example, if Washington law requires just minimal competence in the provision of pilotage, then funding the pilotage system at a level that is sufficient to attract a diverse group of top national pilot candidates would perhaps be unnecessary. Conversely, if Washington law requires an elite pilotage system designed to maximize protection of the State’s waterways, then funding pilot compensation at a nationally competitive level is essential.

12. Significantly, the Commission expressly anticipated the need to address issues of this type in its 2021 report to the Legislature, stating at that time that “the parties [should] consider the degree to which the Commission has successfully implemented the Pilotage Act through its processes in PSP’s next general rate case. This will give parties an opportunity to present fact-based arguments and witness testimony regarding this issue.”¹³

13. PSP has done exactly that by submitting detailed testimony from multiple witnesses explaining that the current lack of sufficient funding is hindering its ability to (for example) consistently attract a diverse group of top national candidates that are critical to PSP’s ability to consistently meet the standard for pilotage services required by the Pilotage Act. PSP has also put forth evidence as to the funding that is necessary to maintain a pilotage system that

¹³ Haglund Decl. Ex. B at 19.

consistently provides pilotage services that meet the BAP standard. Good practice, common sense, and the Commission's stated intent to ensure its rates promote the policy of the Pilotage Act all counsel strongly in favor of requesting BPC's guidance as to whether BAP is the relevant standard for pilotage services that "sufficient" rates must provide for.

14. In addition, given the BPC's many years of experience with regulatory issues under the Pilotage Act, it is only appropriate that the Commission give deference to a sister administrative agency's "specialized knowledge and expertise," *Nw. Alloys, Inc. v. Dep't of Natural Resources*, 10 Wn. App. 2d 169, 184 (2019), particularly in the context of the agency's "construction of a statute it administers." *Wash. State Nurses Ass'n v. Bd. of Med. Exam'rs*, 93 Wash.2d 117, 121 (1980) (explaining that the "[t]he construction placed upon a statute by the agency charged with its administration is entitled to considerable weight"). *See also Wash. State Nurses Ass'n*, 93 Wash.2d at 121 (further explaining that a statute's construction is guided by "the legislative purposes behind its enactment," as informed by consideration of "the problem that the statute was intended to solve"). BPC's guidance as to whether BAP is the relevant standard for the provision of pilotage in Washington therefore will provide essential information to the Commission in this proceeding, information the Commission and the parties should welcome given the State's undisputed desire to reduce the risk of oil spills and protect people and natural resources in Washington.

B. PSP's Motion is Timely and Procedurally Proper.

15. Staff argues that PSP's motion should be denied as untimely but cites no authority that supports its position. Rather, Staff cites *U.S. v. Olano*, 507 U.S. 725, 731, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993) for the general proposition that "a constitutional right, or a right of any other sort, may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." *Olano* was

discussing the blackletter principal that an appellate court has “limited power to correct errors that were forfeited because not timely raised in district court.” *Olano* is not applicable to the situation here.

16. PSP made its motion during the discovery period more than two months before the scheduled hearing. No rule required PSP to bring its motion at an earlier time. In fact, the deadline for *dispositive* motions – which are far more complex and burdensome – does not run in this case until March 5.¹⁴ There is no basis in the applicable rules or case law to support the claim that PSP’s motion is untimely.
17. Nor will granting PSP’s motion “disrupt the orderly disposition” of this rate case.¹⁵ Indeed, PMSA states explicitly in its own opposition to PSP’s motion that “[t]he answer that would be sought from BPC . . . will not impact any argument, testimony, or exhibit submitted by PMSA in this case.”¹⁶
18. Lastly, PMSA asserts a related procedural argument that PSP’s motion is improper because “PSP has had ample opportunity to propose and suggest the application of such a standard of review prior to juncture in a pending rate case” and that PSP “could have submitted in its petition in this rate case evidence of what PSP now asks the Commission to obtain for PSP.”¹⁷ But PSP *did* do exactly that in its initial filing, which includes extensive evidence in support of its position that the BAP standard should inform the Commission’s determination of rates that are sufficient for the provision of pilotage services. The relief requested in the pending motion is simply that the Commission ask BPC whether PSP’s position that BAP

¹⁴ See WAC 480-07-380(b) (motion for summary determination must be filed at least 30 days before hearing unless ordered otherwise).

¹⁵ Staff Opp. ¶ 9.

¹⁶ PMSA Opp. ¶ 2.

¹⁷ *Id.* ¶ 11.

applies to pilotage is consistent with that agency’s interpretation of its enabling statute, as specifically provided for in RCW 81.116.020(5).

IV. CONCLUSION

19. To set rates that are sufficient for the provision of pilotage services, the Commission needs to know the standard that the provision of pilotage services must meet in order to satisfy the requirements of the Pilotage Act. PSP raised this issue directly in its initial filing, and PMSA has signaled through its data requests that “adequacy” rather than BAP is the standard that applies. Rather than reserve this matter to be disputed by the parties at the upcoming evidentiary hearing, the more appropriate and efficient path is to ask BPC – the agency with authority to interpret its enabling statute – for relevant guidance.
20. Because the PSP’s motion is timely and the requested relief will aid the Commission’s analysis and decision-making, the motion should be granted.

Respectfully submitted this 13th day of February, 2023.

HAGLUND KELLEY LLP

s/ Michael E. Haglund

Michael E. Haglund, OSB No. 772030

Julie Weis, WSBA No. 43427

Eric J. Brickenstein, OSB No. 142852

HAGLUND KELLEY LLP

2177 SW Broadway

Portland, OR 97201

Telephone: (503) 225-0777

Facsimile: (503) 225-1257

Email: mhaglund@hk-law.com

jweis@hk-law.com

ebrickenstein@hk-law.com

Attorneys for Respondent

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**DECLARATION OF CHARLES P.
COSTANZO IN SUPPORT OF
PUGET SOUND PILOTS' REPLY IN
SUPPORT OF PSP'S MOTION FOR
THE UTC TO SEEK BPC
DETERMINATION**

1. I, Charles P. Costanzo, being sworn, say:
2. I am the Executive Director of the Puget Sound Pilots ("PSP") and make this declaration based upon my own personal knowledge.
3. On or about October 28, 2022, I was made aware of the fact that four Washington legislators had directed questions regarding the "best achievable protection" on BAP standard to the Washington Department of Ecology ("DOE") and I was provided with a copy of this letter. PSP first learned that DOE had answered the legislators' questions regarding the BAP standard on January 3, 2023, when PSP was provided with a copy of the November 18, 2022 letter.
4. The Washington Board of Pilotage Commissioners ("BPC") has been working on the implementation of the tug escort rules required by the enactment in 2019 of the Reducing Threats to Southern Resident Killer Whales by Improving the Safety of Oil Transportation Act since this law was enacted. The BPC has entered into an Interagency Agreement ("IAA") with the Department of Ecology which specifies the project-specific responsibilities of each agency. A copy of the IAA is attached as Exhibit A. PSP pilots

were actively involved with the BPC in identifying and defining the geographic waterway zones that would be subject to tug escort rules and in the development of the specific tug escort requirements for Rosario Strait. In connection with its implementation of this statute, BPC on December 6, 2019 issued an Implementation Plan focused on the agency's September 1, 2020 deliverables, on September 1, 2020 issued a Frequently Asked Questions document regarding its work on tug escort implementation and on September 17, 2020 adopted an Interpretive Statement defining relevant statutory terms. Copies of these three documents are attached as Exhibits B, C and D, respectively.

5. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 13th day of February, 2023.

s/ Charles P. Costanzo

Charles P. Costanzo



DEPARTMENT OF
ECOLOGY
State of Washington

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



STATE OF WASHINGTON
BOARD OF PILOTAGE COMMISSIONERS

IMPLEMENTATION PLAN

ESHB 1578 Reducing the Threats to Southern Resident Killer Whales by Improving the Safety of Oil Transportation

Section 2:
Concerning Rosario Strait and
Connected Waterways East

FOCUS:

SEPTEMBER 1, 2020 DELIVERABLES

Revised December 6, 2019

2901 Third Avenue, Suite 500 | Seattle, Washington 98121 | (206) 515-3904 | www.pilotage.wa.gov



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INTRODUCTION AND BACKGROUND

ABOUT THIS PLAN

This Implementation Plan provides a framework for how the Board of Pilotage Commissioners (BPC), with technical assistance from the Department of Ecology (Ecology), will implement the tug escort and rulemaking requirements of The Reducing Threats to Southern Resident Killer Whales by Improving the Safety of Oil Transportation Act, ESHB 1578 (The Act). As described in this plan, BPC will inform the public through discussion and engagement of the new tug escort requirements in Rosario Strait and connected waterways beginning September 1, 2020.

WHO WE ARE

The BPC is responsible for the regulation of marine pilotage in Washington State. Our mission is to ensure against the loss of lives, loss of or damage to property and vessels, and to protect the marine environment by maintaining efficient and competent pilotage service in our state's inland waters.

The BPC develops and proposes statutory language for legislative adoption to ensure safe and compulsory pilotage, adopts rules to administer State pilotage laws, and enforces pilot and public adherence to the Pilotage Act. The BPC also administers testing, training, and licensing of marine pilots, and establishes standards for reporting and investigating incidents involving state-piloted vessels.

Currently, the BPC's statutory authority, Chapter 88.16 RCW, Pilotage Act, requires tug escorts on all oil-laden tankers over 40,000 deadweight tons.

THE SITUATION

More than 20 billion gallons of crude oil and refined petroleum products are transported through Washington State each year by vessel, pipeline, and rail. For decades, tug escorts have been required for large loaded oil tankers in the Salish Sea. The powerful tugs can quickly act to rescue a vessel if it loses propulsion or steering, preventing a tragic accident and/or oil spill.

However, small loaded oil tank vessels are not escorted, leaving a gap in the safety regime. These include Articulated Tug Barges (ATBs), towed oil barges, and smaller oil tankers that transport millions of gallons of oil through Washington's waters.

NEW LEGISLATION

The 2019 Legislature passed The Reducing Threats to Southern Resident Killer Whales by Improving the Safety of Oil Transportation Act, ESHB 1578. The Act provides a measured approach



to preventing a catastrophic oil spill in the Puget Sound by closing important safety gaps related to vessels carrying oil in bulk.

The Act directs the BPC, with technical assistance from Ecology, to adopt rules implementing tug escorts in Puget Sound for oil tankers, ATBs, towed waterborne vessels or barges by December 2025.

The Act will require, as of September 1, 2020, tug escorts for specific vessel types and sizes in Rosario Strait and connected waters to the east. The new tug escort requirements apply to oil tankers between 5,000 – 40,000 deadweight tons, and to ATBs and towed waterborne vessels or barges that are 1) designed to transport oil in bulk internal to the hull, and 2) greater than 5,000 deadweight tons.

The Act also requires the BPC to identify and define geographic zones for the waters east of the line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area by September 1, 2020.

OUTREACH

As a part of the RCW implementation process for Rosario Strait and connected waterways east, the BPC will consult with potentially affected federally recognized Indian treaty fishing tribes, other federally recognized treaty tribes with potentially affected interests, and conduct outreach to the United States Coast Guard, the Puget Sound Harbor Safety Committee, ports, local governments, state agencies, non-government organizations (NGO's), and other appropriate entities, collectively referred to as tribes, government entities and stakeholders throughout this document.

Input from tribes, government entities and stakeholders is vital for inclusive and transparent communication regarding implementation of the new legislation, and to improve regulations as they are adopted.

TRIBES, GOVERNMENT ENTITIES & STAKEHOLDERS

TRIBES

BPC will consult with potentially affected federally recognized Indian treaty fishing tribes, and other federally recognized treaty tribes with potentially affected interests. BPC's tribal outreach and consultation principles include:

- Working directly with tribes in a way that respects each other's roles and responsibilities;
- Taking appropriate steps to remove impediments to working directly and effectively with each other's governments and programs;



- Endeavoring to ensure that each other's concerns and interests are considered whenever actions or decisions may affect the other's governments or programs;
- Encouraging cooperation to resolve problems of mutual concern;

Outreach will include but is not limited to the following:

Federally Recognized Fishing Treaty Tribes

Treaty of Neah Bay, 1855	Makah Tribe
Treaty of Point Elliott, 1855	Lummi Nation
	Nooksack Tribe
	Samish Indian Nation
	Sauk-Suiattle Indian Tribe
	Snoqualmie Indian Tribe
	Stillaguamish Tribes of Indians
	Suquamish Tribe
	Swinomish Tribe
	Tulalip Tribes
	Upper Skagit Indian Tribe
Point No Point Treaty, 1855	Jamestown S'Klallam Tribe
	Lower Elwha Klallam Tribe
	Port Gamble S'Klallam Tribe
	Skokomish Indian Tribe
Treaty of Olympia, 1855	Hoh Tribe
	Quileute Nation
	Quinault Indian Nation
Treaty of Medicine Creek, 1854	Muckleshoot Indian Tribe
	Nisqually Indian Tribe
	Puyallup Tribe of Nations
	Squaxin Island Tribe

Federally Recognized Tribes with Interests in Washington State

Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Cowlitz Indian Tribe



Kalispel Indian Community of the Kalispel Reservation
Shoalwater Bay Tribe
Spokane Tribe of the Spokane Reservation

GOVERNMENT ENTITIES

The BPC will be conducting outreach to various government entities including, but not limited to:

Army Corps of Engineers (USACE)
Department of Ecology (ECY)
Department of Fish and Wildlife (DFW)
National Oceanic and Atmospheric Administration (NOAA)
Northwest Indian Fisheries Commission
Puget Sound Partnership (PSP)
San Juan County
Transport Canada
United State Coast Guard (USCG) – Sector Puget Sound
United States Navy
Washington Environmental Council (WEC)
Washington State Ferries (WSF)
Whatcom County

STAKEHOLDERS

Stakeholder input is a vital component of the implementation outreach process. Outreach will include, but is not limited to:

ACGI Shipping Co Inc.
Alaskan Tanker Company
American Waterways Operators (AWO)
BP Cherry Point Refinery
Center for Whale Research
Chamber of Shipping of British Columbia
Citizens for a Healthy Bay
Conoco Phillips
Council of Marine Carriers
Crowley
Foss Maritime
Friends of the Earth
Friends of the San Juans
General Steamship Corp.
Harley Marine Services



Inchcape Shipping Services
Intalco
Intrepid Ship Management
Kirby Offshore Marine
Marathon Anacortes Refinery
Marine Exchange of Puget Sound
The Northwest Seaport Alliance (NWSA)
Norton Lily International
Pacific Merchant Shipping Association (PMSA)
Pacific Pilotage Authority (PPA)
Phillips 66
The Port of Bellingham
The Port of Everett
The Port of Seattle
Puget Sound Harbor Safety Committee (PSHSC)
Puget Soundkeeper Alliance
Puget Sound Pilots (PSP)
Polar Tankers
Shell Anacortes Refinery
Shell Trading
Sound Action
Talon Marine Services
Targa Sound Terminal
Tesoro Anacortes Refinery
Transmarine Navigation
U.S. Oil and Refining
Wave Consulting
Western States Petroleum Association (WSPA)
Washington Public Ports Association (WPPA)
Westway Terminal

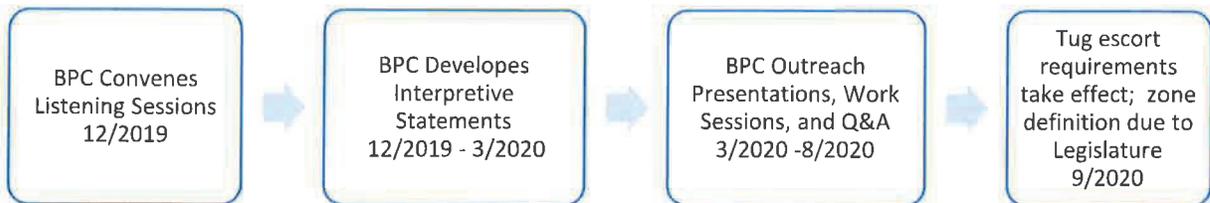
If you would like your organization to be included in outreach, but are not on the list, or if you are aware of another organization that should be considered in outreach, please contact BPC staff at PilotageInfo@wsdot.wa.gov.

KEY MESSAGES AND PROPOSED TIMELINE

The key messages of this implementation effort center on providing information to interested parties regarding the September 2020 mandates for additional tug escorts in Rosario Strait and



connected waterways east, and identification and definition of geographic zones. This legislation has impacts on the oil industry, the tug industry, pilotage operations, tribes, and the environmental community. It is important that planning begins early and that information is exchanged in a timely and efficient manner.



BPC CONVENES LISTENING SESSIONS 12/9/2019

BPC, with technical assistance from Ecology, will convene two public listening sessions on December 9, 2019 at the Port of Everett in order to receive feedback concerning the tug escort requirements in Rosario Strait and connected waterways east, and geographic zones identification and definitions to help inform future presentations and work sessions. The public listening sessions are a time for you to share your input, questions, and concerns regarding the September 1, 2020 mandates. Meeting notices will be distributed, posted on the BPC's website and sent to tribes, government entities and stakeholders. All are welcome to attend the meeting and help inform the outreach process.

BPC DEVELOPS INTERPRETIVE STATEMENTS 12/2019 – 3/2020

During this time, the BPC will develop interpretive statements for terms in The Act that need further clarification, including "in ballast", "unladen", "under escort", "Rosario Strait and connected waterways east", and "bunkering or refueling services". See discussion below on Clarifying/Interpreting Terms. The development of these interpretive statements will occur during public BPC meetings scheduled for December 12, 2019, January 16, 2020, February 20, 2020, and March 19, 2020. More information regarding BPC meetings, including Notices, Agendas, Materials and Minutes, can be found on our website at www.pilotage.wa.gov. If you would like to be added to the meeting notice distribution list, please send your request to PilotageInfo@wsdot.wa.gov.

BPC OUTREACH PRESENTATIONS, WORK SESSIONS, AND Q&A 3/2020 - 8/2020

From March 2019 to August 2020, BPC will present key information, including information identified at the December 10, 2019 listening sessions and interpretive statements developed by BPC. During these presentations, BPC will gather additional questions to form an FAQ document



that will be available to the public. The FAQ document will be updated and distributed monthly. BPC and Ecology will also provide opportunities for questions throughout the future rulemaking process. Inquires can be sent to PilotageInfo@wsdot.wa.gov.

In addition, the BPC, with technical assistance from Ecology, will hold public work sessions to identify and define the geographic zones.

ADDITIONAL TUG ESCORTS IN ROSARIO STRAIT AND CONNECTED WATERWAYS EAST / ZONE IDENTIFICATION AND DEFINITION 9/2020

The mandates regarding Rosario Strait and connected waterways east go into effect September 1, 2020. Additionally geographic waterway zone identification and definition must be completed by September 1, 2020 per The Act.

ISSUES, OBSTACLES AND CONCERNS

BPC recognizes that the mandates in The Act have implications for tribes, government entities and stakeholders, and need further clarification. Through the implementation process, including the listening session, we hope to identify and address common and individual concerns to the best of our ability.

CLARIFYING/INTERPRETING TERMS

There are terms in The Act that are in need of further clarifying to assist in the understanding of the mandates. Below are terms that have already been identified. The BPC anticipates this list will grow through the listening session and implementation process.

- The Act refers to Rosario Strait and connected waterways east. The BPC will consider clarifying "Rosario Strait" and "connected waterways east" in more detail.
- Section 2(2)(a)(iii) of The Act stipulates that the "requirements of (a)(ii) of the subsection: (A) Do not apply to vessels providing bunkering or refueling services". The BPC may consider defining "bunkering or refueling".
- Section 2(2)(b) of The Act stipulates that "an oil tankers, articulated tug barge, or towed waterborne vessel or barge in ballast or when unladen is not required to be under escort of a tug". The BPC adopted a Statement of Policy in 2005 regarding the BPC's interpretation of "in ballast". This definition will be reviewed by current BPC commissioners and revised, if needed, or affirmed, and further codified through the rule-making process.
- The Act refers to vessels "under the escort of a tug or tugs" in multiple sections. The BPC will review and define this term, as deemed necessary.



- Section 2(2)(b) uses the term “unladen”. The BPC will review and define this term, as deemed necessary.

ENFORCEMENT

The BPC has authority through the Pilotage Act, RCW 88.16.150 *General penalty – Civil penalty – Jurisdiction – Disposition of fines – Failure to inform of special directions, gross misdemeanor*, to enforce the mandates of The Act.

CONTACT INFORMATION AND RESOURCES

MAILING ADDRESS

2901 Third Avenue, Suite 500
Seattle, WA 98121

BPC CHAIR

Sheri J. Tonn
(206) 515-3904

TonnS@wsdot.wa.gov

BPC EXECUTIVE DIRECTOR

Jaimie C. Bever
(206) 515-3887

BeverJ@wsdot.wa.gov

GENERAL INQUIRIES

PilotageInfo@wsdot.wa.gov
(206) 515-3904

ON THE WEB

www.pilotage.wa.gov/tug-escort-rulemaking.html

Twitter @WA_Pilotage

DEPARTMENT OF ECOLOGY

<https://ecology.wa.gov/About-us/Get-to-know-us/Our-Programs/Spills-Prevention-Preparedness-Response/Legislative-work>



STATE OF WASHINGTON
BOARD OF PILOTAGE COMMISSIONERS

FAQs – SEPTEMBER 1, 2020 TUG ESCORT IMPLEMENTATION

Where are tug escorts required on tank vessels (oil tankers, ATBs, towed waterborne vessels or barges between 5,000 and 40,000 deadweight tons)?

Tug escorts are required by law, 88.16.190 RCW, in Rosario Strait and connected waterways east, as further defined by the Board of Pilotage Commissioners in the Interpretive Statement (see visual on Figure 1).

Do escort tugs for the 5,000 to 40,000 deadweight ton tank vessels have to be tethered?

The regulations do not stipulate that the escort tug must be tethered. However, all escorts must be in close proximity for timely and effective response. Tug escorts may consider tethering particularly in narrow channels where shorter response time is required.

Do escort tugs for the 5,000 to 40,000 deadweight ton tank vessels have to be tractor tugs?

The current regulations only require that an escort tug be greater than 2,000HP. An escort tug for this class of tank vessel can have conventional propulsion but according to the BPC Interpretive Statement must be suitably configured, equipped, and manned for escort service.

What are the tug escort requirements for tank vessels carrying animal/vegetable oils?

The Board's definition of oil, as outlined in the Interpretive Statement, includes fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oil from seeds, nuts, fruits, or kernels. A vessel carrying any of these types of oil is required to take a tug escort in Rosario Strait and connected waterways east.

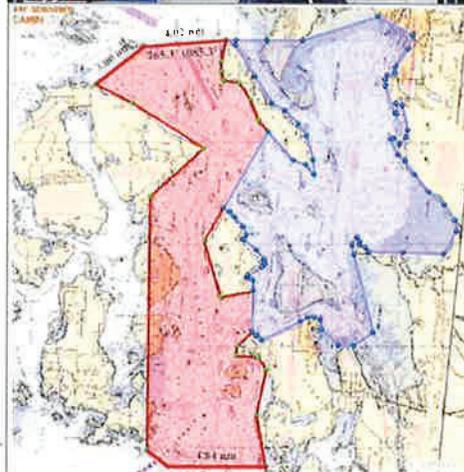


Figure 1 Rosario Strait (red) and Connected Waterways East (blue)

Do you have additional questions?

CONTACT

Jaimie Bever, Executive Director
BeverJ@wsdot.wa.gov
(206) 515-3887

or

VISIT OUR WEBSITE

www.pilotage.wa.gov



STATE OF WASHINGTON
BOARD OF PILOTAGE COMMISSIONERS

INTERPRETIVE STATEMENT

(Revised 17 September 2020)

REGARDING: ESHB 1578 Terms

It is the policy of the Board to use the following definitions when interpreting terms as they relate to ESHB 1578 *Reducing threats to southern resident killer whales by improving the safety of oil transportation* and RCW 88.16.190¹. For the sake of consistency, justification, and efficiency; the Board sought and relied on published references to inform, adapt, or adopt definitions for this specific interpretation of RCW 88.16.190, Section 2, Rosario Strait and Connected Waterways East Tug Escort Implementation.

1. Under the Escort of a Tug or Tugs

It is the interpretation of the Board that, as per 33 CFR 168.05², "escort vessel means any tug that is assigned and dedicated to a tank vessel during the escort transit". It is further the interpretation of the Board that, as per the Puget Sound Harbor Safety Plan Tanker Escort Section B³, "all escorts must be in close proximity for timely and effective response taking into consideration" the proximity to hazards, "ambient sea and weather conditions, escort configuration, maneuvering characteristics of the vessels, emergency connection procedures, surrounding vessel traffic and other factors that may affect response capability".

2. Rosario Strait

It is the interpretation of the Board that "Rosario Strait" is defined as the waters connecting the Strait of Juan de Fuca and the Strait of Georgia bounded on the West by Lopez Island, Decatur Island, Blakeley Island and Orcas Island, and on the East by Fidalgo Island, Cypress Island, Sinclair Island and Lummi Island. The northern entrance to Rosario Strait, as defined by the USGS⁴, is bounded by a line from Pt. Thompson on Orcas Island to Puffin Island light

¹ Pilotage Act, 88.16, R.C.W § 190 (2019)

² 33 C.F.R. § 168.05 (2013)

³ *Puget Sound Harbor Safety Plan*, PUGET SOUND HARBOR SAFETY COMMITTEE, (April 28, 2020, 1:35PM) <https://pshsc.org/puget-sound-harbor-safety-plan>.

⁴ *Feature Detail Report for: Rosario Strait*, U.S. GEOLOGICAL SURVEY (April 28, 2020, 1:50pm) https://geonames.usgs.gov/apex/f?p=gnispq:3:0::NO::P3_FID:1507915.

and then to Point Migley on Lummi Island. The southern entrance to Rosario Strait is bounded by a line from Davidson Rock light, Southeast to position Lat. 48° 24.0'N, Long. 122° 47.15'W then East to the shore of Whidbey Island at Lat. 48° 24.0'N, Long. 122° 39.9'W (near W. Point). See Figure 1. *Note: this definition is different from the VTS Special Area as defined in 33 CFR 161.55.*⁵

3. Connected Waterways East

It is the interpretation of the Board that "connected waterways east" is defined as all connected channels, waterways, bays and anchorages East of Rosario Strait and north of 48° 30.0' N Latitude. These waters include but are not limited to Guemes Channel, Bellingham Channel, the channels around Sinclair, Vendovi and Saddlebag islands as well as Bellingham Bay, Samish Bay, Padilla Bay and Fidalgo Bay. *Note: this definition is different from the VTS Special Area as defined in 33 CFR 161.55.*

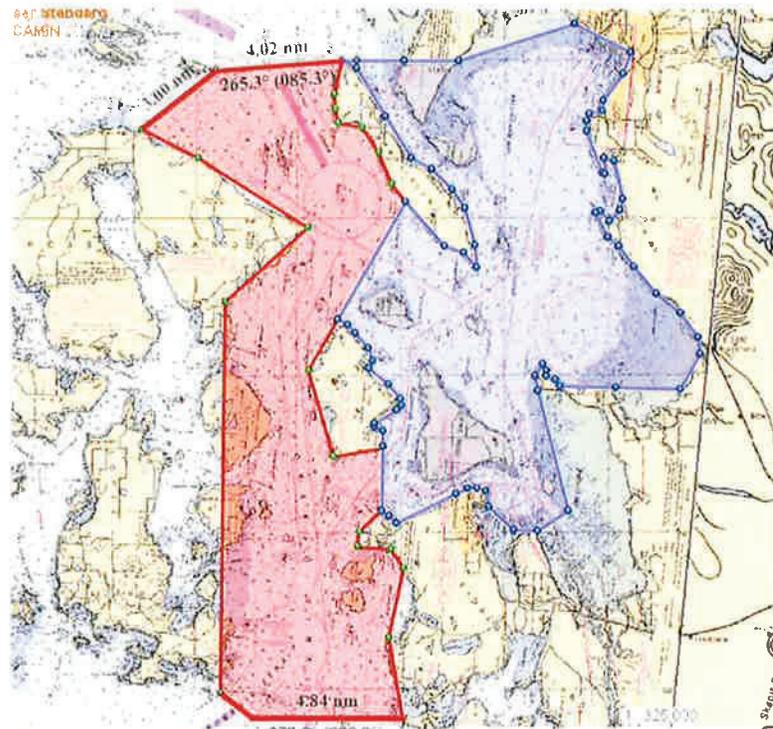


Figure 1 Rosario Strait (red) and Connected Waterways East (blue)

4. Oil

It is the interpretation of the Board that, as per RCW 90.56.010 (19)⁶, the definition of "oil" or "oils" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils (see note 2 below) and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 CFR 302 adopted August 14, 1989, under section 102(a) of the federal comprehensive

⁵ 33 C.F.R. § 161.55 (2019)

⁶ Oil and Hazardous Substance Spill Prevention and Response, 90.56, R.C.W. § 010 (2015)

environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.”

Notes: (1) The Board considers diluted bitumen to be a part of this definition;

(2) The Board considers biological oils to include: “fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels” in alignment with Federal Regulations.⁷

5. Laden/Unladen (In Ballast)

It is the interpretation of the Board that, as per the Board’s existing Statement of Policy,⁸ “any tank vessels 40,000 deadweights tons or more whose clingage, residue, or other applicable cargo onboard is greater than 0.5% of the vessel’s maximum cargo carrying capacity or 3,000 barrels, whichever figure is less, shall be considered laden and therefore not in ballast. The term “Tank Vessel” in this interpretation refers to oil tankers, articulated tug and barge units and towed barges designed to carry oil in bulk”.

It is further the interpretation of the Board that any tank vessels below 40,000 deadweight tons whose clingage, residue, or other applicable cargo onboard is greater than 2% of the vessel’s maximum cargo carrying capacity or 3,000 barrels, whichever figure is less, shall be considered laden and therefore not in ballast.

Note: This interpretation was developed to acknowledge most tank vessels are capable of pumping their tanker down to 0.5% of their capacity. However, some 5,000 – 40,000 deadweight ton bunker barges do not have the pumping capacity to reach the 0.5% threshold in order to be considered unladen.

In addition, that “for the purpose of interpreting the above referenced RCW and WAC section, “in ballast” is defined when an LPG carrier is deemed to be in a ballast condition if the vessel has retained on board only the minimum cargo necessary plus a safety factor to arrive at its next load port in a cold condition. This quantity is not to exceed 1.5% of the cargo carrying capacity”.⁹

6. Vessels Providing Bunkering or Refueling Services.

It is the interpretation of the Board that bunkering means an oil transfer operation to replenish a self-propelled vessel with fuel or bunkers used for ship services or propulsion of the vessel.¹⁰

It is further the interpretation of the Board that “vessels providing bunkering or refueling services” means tank vessels that are conducting bunkering, which includes the transit of the tank vessel to the bunker location, the oil transfer operation, and the return transit of the tank vessel.

⁷ 40 C.F.R § 112.2 (2020)

⁸ *Statement of Policy Regarding Interpretation of the Term “In Ballast” used in RCW 88.16.190 and WAC 363-116-500.* BOARD OF PILOTAGE COMMISSIONERS, (May 1, 2020) <https://pilotage.wa.gov/policystatements.html>.

⁹ *Statement of Policy Regarding Interpretation of the Term “In Ballast” used in RCW 88.16.190 and WAC 363-116-500.* BOARD OF PILOTAGE COMMISSIONERS, (May 1, 2020) <https://pilotage.wa.gov/policystatements.html>

¹⁰ Bunkering Operations, 317-40, W.A.C. § 030 (1994)