

November 30, 2017

Amy Jankowiak
Department of Ecology
3190 160th Ave. SE
Bellevue, WA 98008-5452

Dear Ms. Jankowiak:

Washington Environmental Council is a 501(c)(3) organization founded in 1967. Our mission is to protect, restore, and sustain Washington's environment for all, and we are committed to clean water protections for Puget Sound and for all Washington State waters.

Together with Friends of the Earth, Futurewise, Puget Soundkeeper Alliance, and the Sierra Club, WEC and our members strongly support establishing the Puget Sound No Discharge Zone. Our coalition generated over 25,000 comments in 2014 supporting Ecology's draft designation and over 40,000 comments in 2016 supporting EPA's determination. Thousands of our members have taken individual actions already during this final comment period in support of establishing a No Discharge Zone, which is wildly popular with our members and with the public.

Specifically, we agree with the proposed language in WAC 173-228-030 defining the Puget Sound No Discharge boundaries as all marine waters of Washington state inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound. However, we urge the Department of Ecology to modify 173-228-050(1) to reduce the implementation period from five years to two years for tugboats, commercial fishing vessels, and National Oceanic and Atmospheric Administration research vessels. We support the five-year implementation period for small commercial passenger vessels.

Puget Sound deserves to be a No Discharge Zone

The Department of Ecology has spent over 6 years considering a No Discharge Zone for Puget Sound, with a carefully considered process that included state agencies, cruise lines, recreational boaters, marinas, yacht clubs, commercial vessels including tugboats and fishing vessels, trade associations, shellfish growers, environmental organizations, scientists, EPA, the Coast Guard, legislators, and members of Congress. Over 90 No Discharge Zones have been established throughout the United States, and the Puget Sound designation will be the first in the Pacific Northwest. Puget Sound and the waters covered by the proposed NDZ are sensitive to inputs of bacteria from any source, and this designation will add an important protection that covers sewage from boats.

Sensitive areas exist throughout Puget Sound, and not just in limited locations

The Washington State Department of Health maps the status of commercial and recreational shellfish beds, based on frequent monitoring conducted by their scientists. Figures 1 and 2 present shellfish bed status for commercial and recreational beds, respectively, as of December 20, 2016. While some beds are currently closed due to pollution or closed to harvesting certain species, shellfish beds occur throughout the area proposed for the No Discharge Zone.

Every year shellfish beds must be closed due to bacterial contamination (<https://www.doh.wa.gov/CommunityandEnvironment/Shellfish/BeachClosures>). Tracking down the source can be timely and complicated, particularly if the source is mobile or intermittent. In the September 27, 2017, Results Washington presentation on Puget Sound recovery, Department of Health Scientist Emily Sanford noted that shellfish beds are closed simply due to proximity to boats, citing the potential for sewage releases (Sanford, 2017).

Other pollution sources, including stormwater runoff from urban and rural land, failing septic systems, combined sewer overflows, and municipal wastewater, each have controls in place to reduce and eliminate contamination. A No Discharge Zone would complement other pollution controls in the Puget Sound region.

Vessel sewage discharges in or near shellfish beds, even using Marine Sanitation Devices (MSDs), do not protect water quality in sensitive resource areas

Raw residential human sewage has concentrations of fecal coliform bacteria on the order of 10,000 to 100,000,000 per 100 mL (Rose et al., 1996). Boater sewage is likely more concentrated than measured in Rose et al. (1996) because it has not been diluted by typical residential water uses that introduce little to no fecal coliform bacteria, such as showering and laundry. An EPA (2008) study of effluent from Type II marine sanitation devices indicates that discharges contained average fecal coliform concentrations of 2,040,000 MPN per 100 mL; the range was non-detect to 24,000,000 MPN per 100 mL. The Washington State water quality standard for fecal coliform bacteria in sensitive areas is a geometric mean of no more than 14 per 100 mL and no more than 10% of samples above 43 per 100 mL.

The concentration of fecal coliform in vessel sewage, even when partially treated by marine sanitation devices, is far greater than the values in the marine water quality standard. Surface water discharges can travel quite far in Puget Sound (Roberts and Mohamedali, 2016; Fricke, 2016; Roberts et al., 2014) and can influence water quality many miles away. Boats that discharge sewage through MSDs in or near shellfish beds pose risks to water quality in those resource areas. Because of the tremendous connectivity of Puget Sound waters, a full NDZ is needed to protect sensitive areas, which occur throughout Puget Sound.

Pumpout stations and mobile facilities serve all of Puget Sound

Over 100 pumpout facilities are available all over Puget Sound (Figure 3) and locations are publicized through www.pumpoutwashington.org. Our partners at Friends of the Earth and Futurewise verified that at least five private companies currently serve the Puget Sound region's larger pumpout needs (Table 1).

As summarized in Table 2, WEC personally verified that at least 7 of the 8 facilities in South Puget Sound (Figure 4), inland of the Tacoma Narrows, were operational even during the winter season – December 20, 2016. Six pumpouts are free and one charges \$5. Adjacent to South Puget Sound, another 13 pumpout facilities serve Commencement Bay, three serve Gig Harbor, and one serves Quartermaster Harbor. Other basins of Puget Sound are equally well served: Hood Canal has 7 pumpouts; 13 serve Sinclair and Dyes Inlet, Liberty Bay, and Bainbridge Island; 13 serve Lake Washington, Lake Union, and the connecting waters; 4 serve Everett and southern Whidbey Island; 9 serve La Conner, Anacortes, and northern Whidbey Island; 6 serve the San Juan Islands; and many more serve Blaine, Bellingham, Sequim, and Port Townsend. This is not an exhaustive list of pumpout facilities within the proposed NDZ but confirms the geographic coverage of the existing network, particularly in places with substantial numbers of recreational boaters.

The number of pumpouts available is far more plentiful than the recommended one per 300 to 600 boats (Department of the Interior, 1994; Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines). Recreational boats have at least one pumpout facility per 171 vessels, and commercial vessels have at least one pumpout per 11 vessels. Commercial pumper trucks and mobile commercial pumpout barges already serve numerous commercial vessels and represent a range of capacities to serve a variety of dock sizes and vessel drafts.

Most vessels already comply

As Ecology's web site explains, only 2% or fewer vessels would need to add holding tanks. The vast majority of vessels already comply with a No Discharge Zone.

Economic analyses likely biased high regarding the costs to commercial boaters

The Small Business Economic Impact Statement (SBEIS) included within the proposed rule considers costs to "businesses in an industry" in Washington State for businesses with 50 or fewer employees. While the SBEIS includes costs for commercial vessels to comply, the SBEIS does not consider the benefits of implementing the rule to other small businesses. These include shellfish companies, companies serving scuba diving, and other recreational businesses that rely on clean water. The recreational shellfish industry alone is valued at \$400 million in Puget Sound, and the commercial shellfish industry another \$71 million in 2013 dollars (Washington SeaGrant, 2015).

While we do not dispute the overall economic analyses, we point out that estimated costs of compliance are likely biased high, particularly for tugboats. The 20-year present value of retrofit costs (\$91,233,047) and 20-year present value pumpout costs (\$148,190,365) are both apparently based on industry-supplied estimates of tank volumes and costs to retrofit, which we believe are unusually high and not realistic.

The Puget Sound NDZ Commercial Vessels Economic Evaluation (Herrera, 2015) cited an analysis provided by Charlie Costanzo (2015) that indicates an upper range of 2,900 gallons for tanks needed on the tugs. This is based on a per capita sewage generation rate of 16 gallons/day, a crew of 7 people, 21 days without access to pumpouts, and 25% overage to prevent spills.

Herrera (2015) researched a number of low-flush heads suitable for onboard toilet facilities, which would produce less than 16 gallons/day. Table 3, adapted from Herrera (2015), provides waste (blackwater, sewage) generation rates for live-aboard crews, based on US Coast Guard Guidelines. In response to the options Herrera (2015) identified with lower sewage generation rates, Mr. Costanzo (2015) commented that high efficiency heads are costlier to install and maintain, and may not be durable enough for daily use on tugboats though did not specify why.

Herrera (2015) then contacted head manufacturers who identified that “[w]hile some of the more efficient heads may be less reliable due to delicate moving parts, mechanical macerators, and complex plumbing systems, it appears that reasonable options suitable for use in a commercial environment are available. For example, one of the heads researched has no moving parts, costs about \$2,000 to install, connects to a holding tank or treatment device with standard piping, and comes with a 5-year warranty. This particular system uses about 1 gallon per flush, which would result in about a 6-gallon ppd [per person per day] waste generation rates, so it is not among the most efficient systems available, but is still many times more efficient than conventional systems (Scott Mulligan, Senior Sales Engineer, Headhunter Inc., personal communication, June 2015). Another head researched is an air-assisted toilet that uses about 0.5 gallons per flush, which would correspond to about a 2-gallon ppd waste generation rate. This head is available for about \$1,500, and comes with a 2-year warranty.”

Using per capita rates of 0.5 to 5.4 gallons/day, a crew of 7 people, 21 days without access to pumpouts, and 25% overage to prevent spills, the tank volume would be 100 to 1,000 gallons, significantly less than 2,900 gallons. Presumably these smaller tanks would cost significantly less than the \$161,500 provided by Costanzo (2015). Therefore, the per capita sewage generation and the resulting tank costs are likely high.

While we have no information as to the crew sizes of tugboats that operate in the Puget Sound region, we question whether any vessel would require 21 consecutive days at sea without access to pumpouts or other utilities such as water or fuel. In addition to the shore-based pumpout facilities, private companies serve mobile pumpout needs using trucks and barges throughout the Puget Sound region (Table 1). Therefore, the tank volume and subsequent tank costs are likely high.

Herrera (2015) cites a 2013 personal communication from Costanzo in stating that “about 95 of the approximately 150 Puget Sound tugboat fleet would need to be retrofitted.” Herrera (2015) then assumed the most conservative costs, “... that all 95 tugboats would require installation of a 3,000-gallon holding tank at an estimated cost of \$161,500, would represent a \$15.3 million expenditure in this sector,” noting that smaller tanks or more efficient heads could be installed. Therefore, applying the largest volume and highest costs to every tugboat in the costs estimate produces a high estimate of actual costs to industry.

Finally, Herrera (2015) cites the Massachusetts Office of Coastal Zone Management (T. Callaghan, personal communication, April 2015) that despite substantial retrofit costs, “tug operators in other recently established NDZs, such as Boston Harbor, have successfully retrofitted tugboats without serious disruption to operations.” We are not aware of any company that has gone out of business as a result of implementing any of the 90 existing NDZs. We are confident that the industry will find reasonable cost alternatives to comply with this rule.

In summary, while we do not dispute the economic analyses, costs for tugboats to comply with the NDZ are likely biased high due to very large tank volumes artificially elevated by the per capita sewage generation assumptions and assumption of 21 consecutive days at sea.

Commercial Vessels already have holding tanks and use pumpouts

Herrera (2015) cites a 2013 personal communication from Costanzo that about 25% of the tugboat fleet based out of Puget Sound already utilize holding tanks. Many of these have simply adopted the company-wide policy to store and pump out all blackwater. The Economic Evaluation also mentions that Campbell Maritime, a small tugboat company has outfitted every tugboat with 50- to 100-gallon holding tanks because those were less expensive than MSDs (cited in Herrera, 2015). The owner noted that while he had no detailed information on the cost of these retrofits, “they were not ‘a memorably significant cost.’”

U.S. Navy already uses pumpouts

The Department of Ecology confirmed that Navy vessels already use pumpout facilities to treat wastewater generated onboard their ships.

Coast Guard consulted

The Department of Ecology met at least three times with the Coast Guard since 2012 on the Puget Sound No Discharge Zone.

Continued Misinformation from Industry

Charlie Costanzo and several marine industry representatives wrote to EPA Administrator Scott Pruitt in March 2017 requesting that he reconsider EPA's confirmation that sufficient pumpout capacity exists to serve the needs of the Puget Sound NDZ. In the letter, included as Attachment 1, Mr. Costanzo includes inaccurate and incomplete information not substantiated by the record. We understand that Mr. Costanzo met with EPA representatives in Washington, DC, sometime in spring 2017 to discuss the letter. After we learned of this letter, WEC, together with Friends of the Earth, Futurewise, Puget Soundkeeper Alliance, and Sierra Club, wrote a May 2017 letter to Administrator Pruitt to correct several errors and misrepresentations. We include that letter as Attachment 2 to these comments. Finally, we recently learned that American Waterways Operators continues to petition Administrator Pruitt to reconsider the pumpout determination, although the content has evolved from the March letter (November 15, 2017 letter from Jennifer Carpenter, American Waterways Operators, included as Attachment 3).

Cost to build proposed facility at Port of Seattle increased following a meeting with tug companies

We understand that industry continues to dispute that sufficient pumpouts exist, particularly in the Seattle area. We point out communications within the Port of Seattle that costs increased substantially after a meeting with the tug companies.

Reduce implementation period to 2 years for nearly all commercial vessels

We urge the Department of Ecology to reduce the implementation period from 5 years in the proposed rule. While the 5-year compliance period was cited as mitigation of disproportionate impacts to small businesses per RCW 19.85.040, a 2-year compliance period would also mitigate disproportionate impact. No other No Discharge Zone has included a compliance period, and even two years would mitigate impacts. The tugboat tank volumes and costs to retrofit, which were provided by industry and adopted by Ecology, are biased high. Given that most commercial vessels already comply with the proposed rule, we urge you to accelerate implementation for tugs, commercial fishing vessels, and NOAA vessels.

Overwhelming support for establishing a No Discharge Zone

Over the years, people have consistently weighed in supporting the Puget Sound No Discharge Zone. During the 2014 draft petition comment period, over 25,000 comments supported the No Discharge Zone while 250 opposed it. In December 2016, during EPA's public comment period regarding the adequacy and availability of pumpout facilities, over 40,000 comments supported the No Discharge Zone. Rarely do the Department of Ecology and EPA receive this level of support.



Summary

In summary, WEC, our partners, and our members strongly support establishing a No Discharge Zone for the marine waters of Washington State inward from the line between the New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union and connecting waters between and to Puget Sound. Now is the time to add this protection for Puget Sound.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Mindy Roberts".

Mindy Roberts, Ph.D., P.E.
Puget Sound Director

Tables
Figures
References
Attachments

Table 1. Large Marine Services Companies contacted by Futurewise and Friends of the Earth on December 14-19, 2016

We contacted the following companies to confirm information that Ecology had provided in their supplemental information to EPA (shown in italics).

- Marine Vacuum Services. They have the capacity to serve all locations of Puget Sound and provide the service of sewage pumping. They have been able to go on any dock requested.
 - Ecology's information: *~15-17 Trucks (3,000-5,000 gallons each) + poly tanks. Services all of Puget Sound and all types of commercial vessels (has been pumping sewage from tugs, large fishing vessels, Navy, USCG, some smaller vessels, etc. and has poly tanks for use at docks)*
- Washington Marine Cleaning. They have the capacity to serve all locations of Puget Sound. They have no constraints on their end with regard to dock loading and the only limitations they have noted are at some shipyards. They do significant work for naval vessels.
 - Ecology's information: *~7 Trucks (3,000-7,500 gallons each). Services all of Puget Sound and all types of commercial vessels (has been pumping sewage from Navy, USCG, ferries, fishing vessels, tug boats, etc.)*
- NRC. They do some sewage haulage, but it is not a large part of their business. They work mostly in Seattle and Bellingham as well as Pasco and Portland. They have 3000 gallon trucks and can service large ships and have worked on cruise ships and ferries. Size and weight limitations aren't a problem; sometimes there is stuff on the dock they have to work around. They have a bunch of trucks ready to go.
 - Ecology's information: *~5 Trucks (2,200 -3780 gallons each) + 20,000-gallon poly tanks Can service all of Puget Sound, typically Bellingham, Pier 90, Fisherman's Terminal (has been pumping sewage from fishing vessels etc.; and has poly tanks for use at docks)*
- Emerald. They work all over the sound – from Canadian border to California. They do not have constraints (weight) and are able to service docks, including pumping sewage.
 - Ecology's information: *~25 Trucks (3,000-6,500 gallons each). Services all of Puget Sound and all types of commercial vessels (has been pumping sewage from tugs, fishing vessels, smaller vessels, etc.)*
- Arrow Marine Services. They have been pumping sewage for 20 years. They service all of Puget Sound and they pump out whatever people need, including sewage.
 - Ecology's information: *2 Mobile Barges (3,000 gallons each). Services all of Puget Sound and all types of commercial vessels, one barge usually in Anacortes, one in Port Angeles, can travel all of Puget Sound (has been pumping sewage from ATB tugs, oil tankers, bulkers, etc.)*

It should also be noted that several of the representatives of these companies mentioned that they would like to expand their services and would welcome more business in the sewage hauling area.

Table 2. South Puget Sound pumpouts contacted by Mindy Roberts on December 20, 2016 Facility

Facility	Phone	Cost	Notes - 12/20/16
Port of Allyn NorthShore Dock	360-275-2430	Free	Currently open. Any boater can use.
Jarrell Cove State Park	360-426-9226	Free	Currently open; water supply off so bring a bucket. Any boater can use.
Jarrell's Cove Marina	360-426-8823	unknown	no answer
West Bay Marina Pumpout	360-943-2022	Free	Currently open. Any boater can use.
Percival Landing Park	360-753-8380	Free	Currently open. Any boater can use.
Port of Olympia - Swantown Marina	360-528-8049	Free	Currently open. Any boater can use.
Penrose Point State Park	253-884-2514	Free	Currently open; water supply off so bring a bucket. Any boater can use.
Narrows Marina	253-564-3032	\$5	Currently open. Any boater can use.

Table 3. Waste generation rate for live-aboard crew based on US Coast Guard Guidelines (adapted from Herrera, 2015)

Head Type	Gallons per person per day	Tank volume for 4 crew, 14 days, 25% overage	Tank volume for 7 crew, 21 days, 25% overage
Recirculating	0.5	35	92
Vacuum	1.9	133	349
Hand pump	2.9	203	533
Electric	5.4	378	992

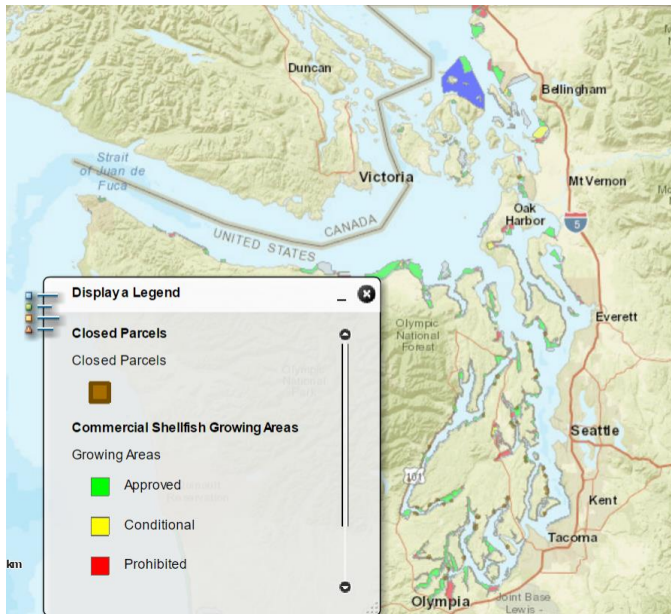


Figure 1. Washington State commercial shellfish harvest areas identified by Department of Health (<https://fortress.wa.gov/doh/eh/maps/OSWPViewer/index.html>), accessed December 20, 2016.

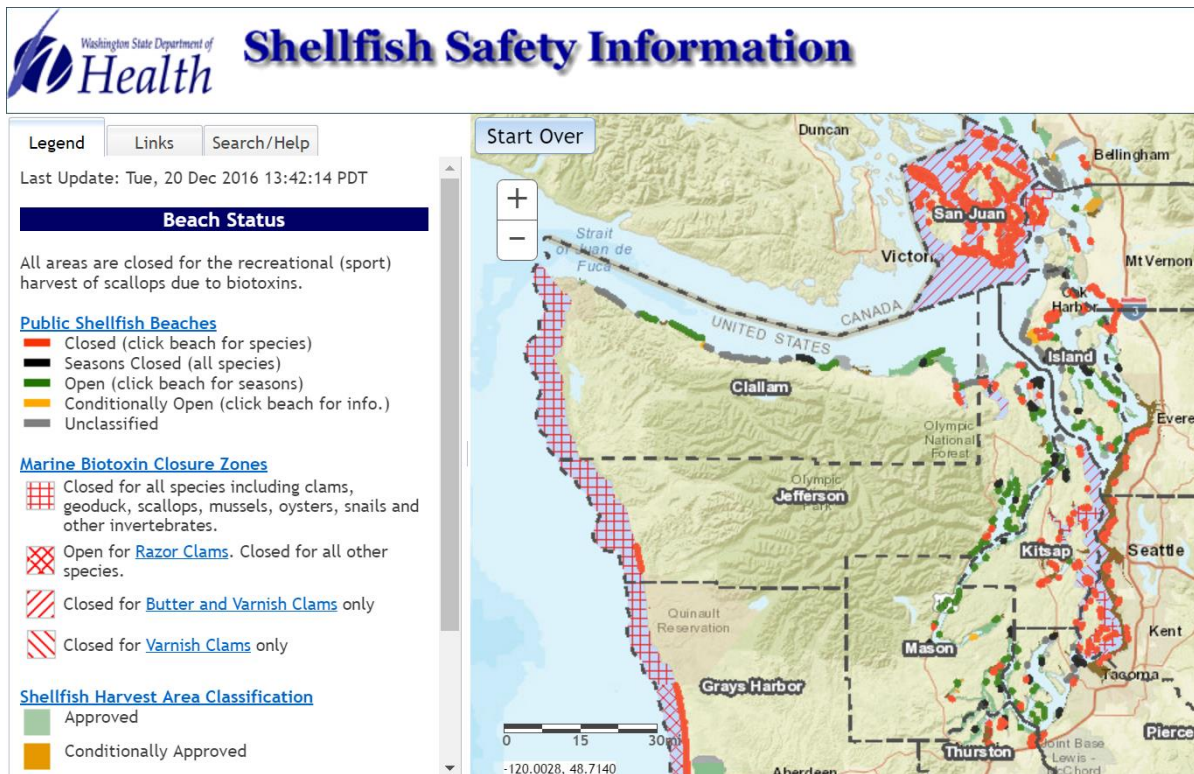


Figure 2. Washington State recreational shellfish beaches identified by Department of Health (<https://fortress.wa.gov/doh/eh/maps/biotoxin/biotoxin.html>), accessed December 20, 2016

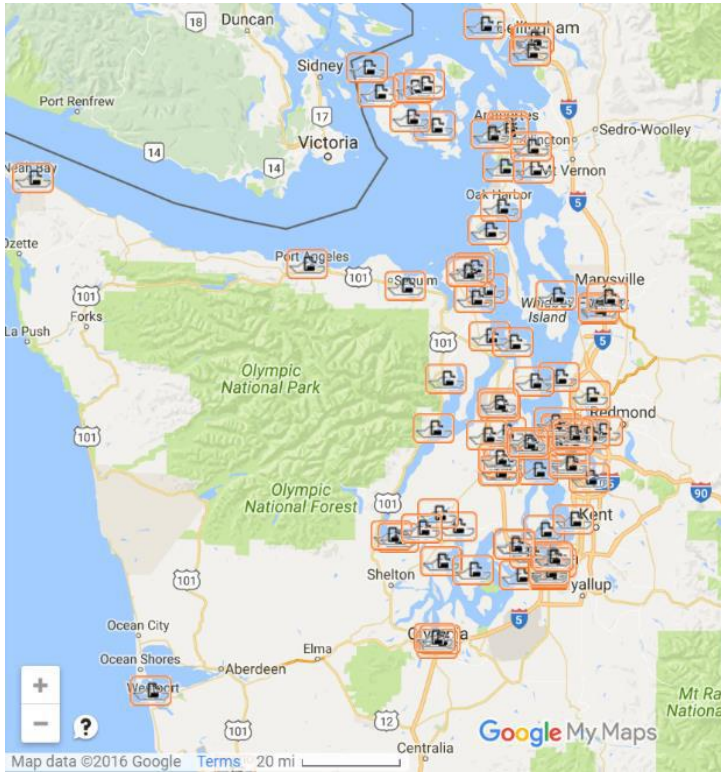


Figure 3. Pumpout facilities identified through www.pumpoutwashington.org, accessed December 20, 2016.

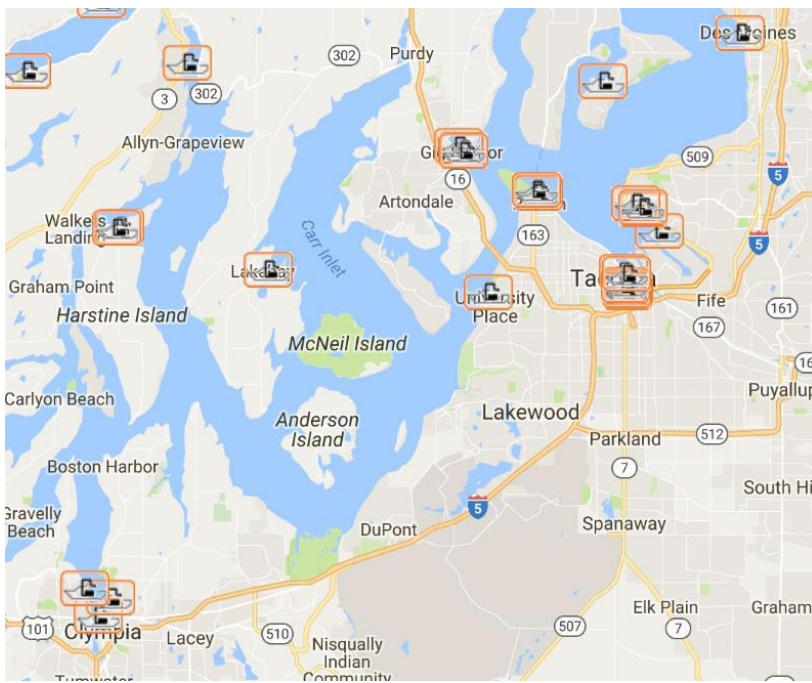


Figure 4. South Puget Sound and Puget Sound-wide pumpout facilities through www.pumpoutwashington.org, accessed November 2017.

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ATTACHMENTS



Attachment 1 – Page 1

March 1, 2017

Mr. Scott Pruitt
Administrator
U.S. EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Ave, NW
Mail Code: 1101A
Washington, DC 20460

Re: EPA's Final Affirmative
Determination notice for the Washington
State Department of Ecology Prohibition of
Discharges of Vessel Sewage (82 FR 11218)

Dear Administrator Pruitt:

We are writing as representatives of the maritime industry in Washington State and around the country to petition the Environmental Protection Agency for reconsideration of the Region 10 Acting Regional Administrator's affirmative determination that sufficient pumpout capacity exists to allow the Washington State Department of Ecology to enact a regulation creating a No-Discharge Zone (NDZ) for all of Puget Sound, published in the *Federal Register* on February 21. As the agency's chief executive, the EPA Administrator has the right and responsibility to review the actions of his subordinates or predecessors. We believe that your reconsideration is appropriate in this case as the Acting Regional Administrator's determination contravenes the White House's *Regulatory Freeze Pending Review* memorandum of January 20, 2017, instructing federal agencies not to send new regulations to the Office of the Federal Register until they can be reviewed by Trump Administration appointees.

The new Administration's review is particularly crucial considering EPA's timeline for review and action on this matter. The public comment period closed on December 23, 2016, and the decision to move forward was made by former Region 10 Regional Administrator Dennis McLerran on January 19 – his last day in office and one day before the inauguration of President Trump. We believe that the determination was made in haste and without consideration of well-articulated stakeholder concerns regarding the availability of adequate pumpout capacity, a precondition for establishment of an NDZ. Furthermore, the determination was noticed in the February 21, 2017 *Federal Register*, just days after your confirmation as EPA Administrator. The timing of the notice seems designed to avoid giving you or your staff the opportunity to review the determination carefully before it was finalized, in direct opposition to the objectives of the President's regulatory freeze.



Attachment 1 – Page 2

The Honorable Scott Pruitt

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The Acting Regional Administrator's determination is significant – and entirely at odds with the Administration's regulatory philosophy – because it authorizes Washington State to create the largest NDZ in the United States by promulgating a regulation that has no scientific basis, provides no measurable environmental benefit, and imposes substantial and unnecessary costs. In order to authorize Washington State to designate Puget Sound an NDZ, the Clean Water Act requires EPA to attest that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available in Puget Sound. However, the Acting Regional Administrator's determination that such facilities exist fails to acknowledge many of the legitimate and long-held concerns of Washington's maritime interests. It also relies on an inaccurate representation of shoreside pumpout capacity, and inadequate understanding of vessel operations and logistics.

Region 10's *Puget Sound No Discharge Zone Response to Comments* indicates that the regional staff justified its determination by seeking additional input only from entities that would support its preliminary affirmative determination of November 7, 2016, and failed to seek additional input from maritime industry commenters with concerns. For instance, although EPA acknowledged that of the 16 facilities mentioned in Ecology's NDZ petition, "there are currently two functioning shore-based stationary pumpout facilities in Puget Sound for use by the general community of commercial vessels," EPA's determination does not account for the fact that these facilities are six hours' travel time from where most commercial vessels typically operate and cannot be accessed by vessels over 70 feet in length. EPA also failed to articulate any standard of adequacy to support the final determination.

We respectfully request that EPA rescind the February 21 determination to allow for a thorough review of Ecology's petition by you and your staff. The final determination was hastily promulgated and disregarded legitimate stakeholder concerns in favor of an expedited review designed primarily to avoid scrutiny by the Trump Administration. We respectfully request that you publish in the *Federal Register* a notice rescinding EPA's February 21 determination and provide direct notice to the Washington Department of Ecology to cease any NDZ rulemaking pending EPA's reconsideration.

Thank you for your attention to this matter. We remain fully committed to the protection of Puget Sound and to science-based policies that protect and preserve our vital marine ecosystems. We would be pleased to provide further information or to meet with you or your staff to discuss this matter further. Please contact Charles Costanzo at The American Waterways Operators at (206) 257-4723 or ccostanzo@americanwaterways.com with any questions or to schedule a meeting.

Sincerely,

Charles Costanzo
The American Waterways Operators

Susan Hayman
Foss Maritime

Peter Schrappen
Northwest Marine Trade Association

Deborah Franco
Harley Marine Services



Attachment 1 – Page 3

The Honorable Scott Pruitt
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Vince O'Halloran
Puget Sound Ports Council
Maritime Trades Department, AFL-CIO

Ross McDonald
Sause Bros.

John Veentjer
Marine Exchange of Puget Sound

Erik Hansen
Dunlap Towing Company

Jill Mackie
Vigor Industrial

Rich Berkowitz
Transportation Institute

Terri Mast
Inland Boatmen's Union

Captain Dan Blanchard
UnCruise Adventure

Bruce Reed
Tidewater Transportation and Terminals

Greg Wirtz
Cruise Lines International Association

Jason Strassel
W & O Supply

Everett Billingslea
Alaska Marine Lines, Inc.

CC: Mr. Reince Priebus
Mr. Mick Mulvaney
Mr. Michael Shapiro
Mr. David Schnare
Rep. Dave Reichert
Mr. Don Benton
Sen. Doug Ericksen

Christina Villiott
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Jeff Slesinger
Western Towboat Company

Roy Sarrafian
American Cruise Lines

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Washington Maritime Federation

Steve Sewell
S² Strategy LLC

Chris Peterson
Crowley Maritime Company

Wayne Gilham
Recreational Boating Association of
Washington

Rear Admiral John W. Lockwood
USCG, ret.
Seattle Marine Business Coalition

Dan Zandell
Brusco Tug & Barge, Inc.

Edmund Welch
Passenger Vessel Association

Mike Curry
Global Marine Transportation, Inc.

Doug Dixon
Pacific Fishermen Shipyard

Matt Lewis
Kirby Offshore Marine

Attachment 2 – Page 1



May 26, 2017

Mr. Scott Pruitt, Administrator
U.S. EPA Headquarters, William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Mail Code: 1101A
Washington, DC 20460

Re: EPA's Final Affirmative Determination Notice for the Washington State Department of Ecology Prohibition of Discharges of Vessel Sewage (82 FR 11218)

Dear Administrator Pruitt:

We the undersigned are writing to correct inaccurate and incomplete information provided to your office in a March 1, 2017 letter¹ from Charlie Costanzo of American Waterways Operators and its partners. The letter related to EPA Region 10's affirmative determination that sufficient pumpout capacity exists to support a No Discharge Zone (NDZ) for Puget Sound. Mr. Costanzo's letter urged you to rescind the Final Determination that was published in the Federal Register on February 21, 2017. His letter contains several factual errors or selectively presents information to you, and this letter provides critical corrections.

Together our organizations represent over 100,000 concerned voices in the Puget Sound region and beyond. We are writing to you to ask that you maintain the fair and transparent state-led process so that the State of Washington can establish a No Discharge Zone in Puget Sound. When enacted, this would prohibit the discharge of raw or partially treated sewage from vessels in Puget Sound and the Strait of Juan de Fuca landward of Dungeness Spit. Simple technology already exists to eliminate the discharge of sewage by requiring vessels to store waste in onboard holding tanks for later pump out to land-based treatment facilities. The program has been very successful across the nation, with over 90 NDZs across the U.S.

Mr. Costanzo's letter claims that EPA's Final Determination is a new regulation and cites the White House's *Regulatory Freeze Pending Review* memorandum of January 20, 2017 as evidence that EPA had erred in finalizing the determination. However, the Washington State Department of Ecology (Ecology) has regulatory responsibility for this program and will appropriately begin rulemaking following EPA's February 21, 2017 determination published in the Federal Register. The ongoing regulatory process, which is now in the state-led rulemaking phase, provides Mr. Costanzo continued opportunities to comment. To date, Mr. Costanzo has fully engaged throughout the five-year period that resulted in

¹ 2017. Charles Costanzo. Letter to Mr. Scott Pruitt, Administrator, Re: EPA's Final Affirmative Determination notice for the Washington State Department of Ecology Prohibition of Discharges of Vessel Sewage (82 FR 11218).



Ecology's July 2016 Final Petition to Designate the Waters of Puget Sound as a No Discharge Zone². EPA does not have a rulemaking or regulatory approval role in this process. Therefore, EPA Region 10 did not err in finalizing its determination that sufficient pumpout capacity exists.

Mr. Costanzo erroneously states that "the determination was made in haste and without consideration of well-articulated stakeholder concerns regarding the availability of adequate pumpout capacity." This statement fails to mention that his stakeholder concerns were fully addressed by EPA prior to publishing the Final Determination³, and also through Ecology's earlier five-year process⁴. He also fails to mention that this 5-year process has been the most robust of any NDZ approval process to date. He leaves out that 98.6% of the 66,478 comments submitted in the draft petition released for comment by Ecology and the preliminary final determination released for comment by EPA support establishing a Puget Sound NDZ. Again, EPA Region 10 did not err in moving forward with its determination that sufficient pumpout capacity exists.

Moreover, Mr. Costanzo and his partners met with EPA Region 10 staff to air their concerns directly in December, and their supporters submitted letters to EPA during the public comment period. Most of those comment letters simply expressed their desire not to have a No Discharge Zone and remained silent on any facts that would contradict whether sufficient pumpout capacity exists. EPA's determination is solely limited to considering pumpout capacity.

Mr. Costanzo's letter states that the determination "relies on an inaccurate representation of shoreside pumpout capacity" yet fails to identify specific facts that contradict the assessment of shoreside pumpout capacity. Further, Mr. Costanzo fails to mention that mobile pumpout facilities are adequate and available to serve commercial vessels throughout the geographic extent of the proposed No Discharge Zone.

In preparation for our December 2016 comment letters to EPA on 82 FR 11218, we independently verified that numerous mobile pumpout companies exist and already provide sewage service for a variety of commercial vessels including barges, tugs, fishing vessels, smaller cruise ships, ferries, oil tankers, bulk carriers, etc. in the Puget Sound region. Nowhere in the March 1 letter does he mention the existence of these mobile pumpout facilities or that they already serve the sewage needs of vessels in the region through a combination of trucks and barges. In fact, in our December 2016 communications with existing companies, several expressed interest in expanding their sewage pumping services and would welcome more business hauling sewage. Other NDZs around the country successfully rely on mobile pumpouts to provide sufficient capacity. In Puget Sound, mobile pumpouts combined with shoreside pumpouts provide more than adequate capacity as the state and EPA have certified.

Mr. Costanzo continues to express his opinion that there is no scientific basis or measurable environmental benefit to a No Discharge Zone. This opinion has been effectively refuted on numerous

² Washington State Department of Ecology Publication No. 16-10-020.

<https://fortress.wa.gov/ecy/publications/SummaryPages/1610020.html>

³ <https://www.federalregister.gov/documents/2017/02/21/2017-03353/washington-state-department-of-ecology-prohibition-of-discharges-of-vessel-sewage-final-affirmative>

⁴ <http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/nodischarezone.html>



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occasions within the state regulatory process. Moreover, EPA's determination is solely based on pumpout capacity.

The Clean Water Act Section 312(f)(3) gives EPA 90 days to determine "... that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition [of discharging sewage] would apply." Mr. Costanzo incorrectly states that the review was "designed primarily to avoid scrutiny by the Trump Administration." The process has been underway well in advance of the November election.

Ecology's petition was transmitted to Regional Administrator Dennis McLerran on July 21, 2016. American Waterways Operators, Mr. Costanzo's employer, then caused a delay by appealing⁵ Ecology's petition to the Washington State Pollution Control Hearings Board in August 2016. Ecology filed a motion to dismiss, which was granted by the Pollution Control Hearings Board on October 10, 2016. American Waterways subsequently filed a Petition for Judicial Review of the Board's Order Granting Ecology's Motion to Dismiss, which was denied on November 22, 2016. During that time, EPA Region 10 staff requested further clarification from the state on the pumpout capacity, which was transmitted to EPA by Ecology on September 22, 2016 with a follow-up letter on October 14, 2016, immediately following the motion to dismiss by the Pollution Control Hearings Board on October 10.

We remain concerned that Mr. Costanzo caused the delay and yet erroneously cites the delay as evidence that EPA was hiding a regulation from the Administration. In fact, at his request, EPA extended the comment period from December 6 to December 23, 2016.

In summary, Mr. Costanzo has demonstrated a well-established pattern of incorrectly identifying facts, selectively leaving other relevant information out of his communications, and actively working to delay this five-year process. He has successfully negotiated with the Department of Ecology for a 5-year phase in compliance period for certain classes of vessels, which we oppose as far longer than necessary.

We agree with the part of Mr. Costanzo's September 9, 2016 letter to former Regional Administrator Dennis McLerran that states that the U.S. tugboat, towboat and barge industry is a vital segment of America's transportation system. These are sophisticated mariners and maritime companies that perform vital tasks in keeping our waters safe. Modern vessels are marvels of technology and engineering, and the small crew generates manageable amounts of waste onboard. Many companies clearly value the health of Puget Sound. We expect these industries to comply with best practices, particularly when sufficient pumpout capacity exists in the Puget Sound region to serve their sewage hauling needs.

We urge you to continue a fair and transparent process as the proposed rule moves forward at the state level in the spirit of cooperative federalism. Significant regional support exists for this action, and federal, state, and local entities have invested deeply in the process. To disrupt this existing federal determination would be arbitrary and clearly favoring a specific stakeholder over many others and stands in contradiction of the facts. We are prepared to legally intervene to support the state-led process, as well as the process and content of EPA's February 21, 2017, Final Determination.

⁵ Case No. 16-093 in http://www.eluho.wa.gov/Decision/Search_Cases



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Thank you for your consideration of this important issue and for this opportunity to comment. We look forward to working with your staff and state staff as the process moves forward.

Please contact Mindy Roberts (mindy@wecprotects.org) for further information.

Sincerely,

Marcie Kever
Friends of the Earth

Heather Trim
Futurewise

Chris Wilke
Puget Soundkeeper Alliance

Stephanie Hillman
Sierra Club

Mindy Roberts
Washington Environmental Council

Cc:

Senator Patty Murray
Senator Maria Cantwell
Representative Denny Heck
Representative Derek Kilmer
Representative Suzan DelBene
Representative Pramila Jayapal
Representative Rick Larsen
Representative Dave Reichert
Representative Adam Smith
Governor Jay Inslee
Director Maia Bellon, Washington State Department of Ecology
Director Sheida Sahandy, Puget Sound Partnership



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