



**Antonio Machado**

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Sent via upload to: <https://sppr.ecology.commentinput.com/?id=drNJk>

Ms. Kim Morley  
Washington State Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
PO Box 47600  
Olympia, WA 98504-7600

Re: WSPA Comments on EIS Scoping for Proposed WAC 363-116 (Pilotage Rules) Amendments

Dear Ms. Morley,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the scoping of the Environmental Impact Statement (EIS) for the Board of Pilotage Commissioners (BPC), in consultation with the Department of Ecology (Ecology), rulemaking to amend WAC 363-116, Pilotage Rules (rulemaking hereinafter referred to as "Tug Escort Rule"). WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the west, including Washington. This includes the transporting and marketing of petroleum, petroleum products, natural gas, and other energy supplies.

WSPA's comments are based on the "*State Environmental Policy Act (SEPA) Determination of Significance and Request for Comments on Scope of Environmental Impact*"<sup>1</sup> and the BPC/Ecology (as co-lead agencies) presentation<sup>2</sup> during the EIS scoping meeting held on March 21, 2023 (March EIS Scoping Meeting). BPC/Ecology has indicated that the rulemaking will:

- Describe tug escort requirements for the following vessels operating in the waters east of the line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area:
  - Oil tankers of between 5,000 and 40,000 deadweight tons.
  - Articulated tug barges (ATB) and towed waterborne vessels or barges greater than 5,000 deadweight tons that are designed to transport oil in bulk internal to the hull.
- Specify operational requirements for tug escorts, where they are required.
- Specify functionality requirements for tug escorts, where they are required.
- Consider the existing tug escort requirements applicable to Rosario Strait and connected waterways to the east, established in RCW 88.16.190(2)(a)(ii), including adjusting or suspending those requirements, as needed.
- Describe exemptions to tug escort requirements, including whether certain vessel types or geographic zones should be precluded from the escort requirements.
- Make other changes to clarify language and make any corrections needed.

<sup>1</sup> <https://apps.ecology.wa.gov/separ/Main/SEPA/Record.aspx?SEPANumber=202300768>.

<sup>2</sup> <https://ecology.wa.gov/DOE/files/78/78928e77-ccc1-4765-b489-2fa167962f83.pdf>.

During the March EIS Scoping meeting, BPC/Ecology requested feedback from stakeholders on not only the elements to be included in the EIS but also suggested alternatives to the proposed rule approach. Provided below is WSPA's feedback regarding both of these BPC/Ecology requests.

## **Elements of the EIS**

In general, WSPA agrees with the EIS elements presented by BPC/Ecology during the March EIS Scoping Meeting. The following is additional input regarding the elements to be considered in the EIS.

### **Air Quality**

WSPA appreciates that BPC/Ecology acknowledged during the March EIS Scoping Meeting that the additional emissions resulting from the proposed rule amendment (specifically, emissions due to an increase in the number of tug escorts in use) will be assessed in the EIS. WSPA believes that the evaluation of this incremental environmental impact is an important aspect of the EIS effort.

### **Environmental Health**

It is WSPA's understanding that it is BPC/Ecology's intent to assess the underwater noise impacts resulting from the proposed rule amendment. The National Oceanic and Atmospheric Administration (NOAA) has highlighted the concern with effects of underwater noise to Southern Resident Killer Whale behavior.<sup>3</sup> WSPA encourages the assessment of the incremental increase underwater noise and its potential impact on marine mammals (particularly, the Southern Resident Killer Whale).

Another sub-element under Environmental Health identified by BPC/Ecology is "Releases or potential releases to the environment affecting public health." WSPA requests that this sub-element of the EIS includes a risk assessment analyzing increased risk for fuel spills and collisions due to the increase of escort tug volume. The consideration of the potential impact (risk of fuel spills and/or vessel collisions due to increased escort tug use) must be included along with the potential benefit (reduced risk of an oil spill) for this rulemaking through the risk assessment process.

-It is WSPA's understanding that an assessment similar to the Ecology-sponsored DNV-GL report entitled "*Columbia River Vessel Traffic Evaluation and Safety Assessment (CRVTSA)*"<sup>4</sup> is being completed for this rulemaking. Specifically, Ecology presented preliminary results from the "*Tugs Escort and ERTV Analyses*" during a webinar held on April 4, 2023. According to the Ecology presentation, the purpose of the analyses was to inform rulemaking and was to be completed by the summer 2023. WSPA supports this type of study for the area covered by the rulemaking as a necessary element of the rulemaking. Given the proposed timeline, WSPA encourages Ecology to allot sufficient time for the appropriate peer review by stakeholders.

### **Cumulative Impacts**

One element not identified by BPC/Ecology in the Determination of Significance or during the March EIS Scoping Meeting was Cumulative Impacts. As noted in Ecology's *State Environmental Policy Act Handbook*<sup>5</sup>, SEPA rules direct agencies to "[i]dentify and evaluate probable impacts,

<sup>3</sup> <https://www.fisheries.noaa.gov/species/killer-whale#spotlight>

<sup>4</sup> <https://apps.ecology.wa.gov/publications/documents/1708019.pdf>

<sup>5</sup> <https://ecology.wa.gov/DOE/files/4c/4c9fec2b-5e6f-44b5-bf13-b253e72a4ea1.pdf>

alternatives, and mitigation measures, emphasizing important environmental impacts and alternatives (including Cumulative...).” WSPA suggests that cumulative impacts be included as an element of the Tug Escort Rule EIS.

### **Suggested Alternatives**

#### **No-Action Alternative**

Because SEPA requires the evaluation of the no-action alternative<sup>6</sup>, WSPA assumes that BPC/Ecology will include a no-action element in the Tug Escort Rule EIS to provide a benchmark from which the other alternatives can be compared. The no-action alternative is of particular interest in situations where the potential impact of a proposed action (i.e., increased tug escort traffic) outweighs the potential benefit (i.e., reduced oil spill risk). WSPA requests that BPC/Ecology verify that the no-action alternative will be part of the EIS scope.

#### **Limited Area Alternative**

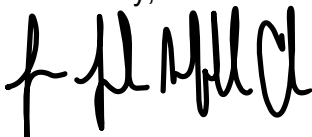
As described in the “*State Environmental Policy Act (SEPA) Determination of Significance and Request for Comments on Scope of Environmental Impact*”, BPC/Ecology is proposing that the Tug Escort Rule amendment apply to waters east of the line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area. It is further noted that the rule will describe exemptions to tug escort requirements, including whether certain vessel types or geographic zones should be precluded from the escort requirements. WSPA suggests that to help inform the exemption concept or to directly exclude areas from the rule amendment, BPC/Ecology consider a limited areas alternative which would focus on a reduced boundary for rule applicability.

#### **ATB Exclusion Alternative**

The previously-referenced CRVTSA found “[t]ug escorts for articulated tug barges (ATBs) would offer a relatively small reduction in risk in the study area, because ATBs have partially redundant steering and propulsion systems, and they have shallow drafts that allow them to safely navigate outside of the ship channel.” With this finding in mind, WSPA suggests that BPC/Ecology consider an alternative that excludes ATBs. Similar to the no-action alternative, assessment of this alternative would address whether the potential impact of additional tug escorts for ATBs would outweigh the potentially marginal oil spill reduction risk.

WSPA appreciates the opportunity to provide comments on this important proposed rule amendment and the EIS process. If you have any questions regarding this submittal, please contact me at (360) 594-1415 or via email at [amachado@wspa.org](mailto:amachado@wspa.org).

Sincerely,



Antonio Machado  
Sr. Manager, Northwest Technical



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<sup>6</sup> *Id.*, p. 37.