

Washington Conservation Action

Please find attached updated comment letter that includes Evergreen Islands. Comments from Friends of the Earth, Washington Conservation Action, Friends of the San Juans, Re Sources, Communities for a Healthy Bay, Washington Physicians for Social Responsibility, and Evergreen Islands. Thank you.

**Friends of the Earth • Washington Conservation Action
Washington Physicians for Social Responsibility
Friends of the San Juans • Communities for a Healthy Bay •
Re Sources • Evergreen Islands**

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RE: Scoping Comments

Washington State Board of Pilotage Commissioners (BPC) and the Washington State Department of Ecology on Rulemaking to Amend Pilotage Rules Chapter 363-116 WAC

The following comments are written on behalf of the undersigned organizations whose mission is dedicated to the protection and restoration of the Salish Sea and all those dependent on it.

These comments are in response to the initiation of a rulemaking to amend Pilotage Rules Chapter 363-116 WAC, by Board of Pilotage Commissioners (BPC), in consultation with the Washington State Department of Ecology (Ecology). Chapter 363-116 WAC describes the training, licensing, and regulation of Washington State maritime pilots to ensure safe pilotage. Chapter 363-116 also describes tug escort requirements for oil tankers in Washington waters.

Through Engrossed Substitute House Bill (ESHB) 1578, codified in RCW 88.16, the Legislature established tug escort requirements for certain oil tankers, articulated tug barges (ATB), and towed waterborne vessels in Rosario Strait and connected waterways to the east.

ESHB 1578 directs the BPC, in consultation with Ecology, to adopt rules regarding tug escorts in Puget Sound for oil tankers, ATBs (as defined in RCW 88.16.260), and towed waterborne vessels or barges by December 31, 2025.

In their Preproposal Statement of Inquiry (October 2017) the BPC stated, “A catastrophic oil spill in the Puget Sound could cause damage to endangered Southern Resident Killer Whales and other species, damage tribal, commercial, and recreational fishing, and cause economic and public health consequences in Washington State. The escort requirements addressed by this rulemaking are intended to provide preventative measures to reduce the risk of a major oil spill.”

However, as co-lead agencies, Ecology and the BPC have determined that this rulemaking to potentially modify the use of tug escorts or other measures to prevent a catastrophic oil spill in the US waters east of Port Angeles, may also have the potential to have a “significant adverse impact

on the environment.” This determination requires an Environmental Impact Statement (EIS) be prepared under RCW 43.21C.030 (2)(c). The EIS will evaluate potential environmental impacts of the potential rule amendments. The EIS will be used to guide development of proposed rule language. It is for this reason we are providing the following comments to inform the scope of the analysis for the EIS to fully consider the implications of any proposed rule changes.

As further clarified on the Department of Ecology’s [website](#), the rulemaking will amend WAC 363-116-500 and, if needed, add new sections to Chapter 363-116 WAC.

The rules will be designed to achieve best achievable protection, as defined in RCW 88.46.010, and will be informed by other considerations in ESHB 1578. 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.

The co-lead agencies have already identified the following areas for scoping in the EIS to determine if there are any significant environmental impacts:

Air Quality, Water Quality, Plants and Animals, Energy and Natural Resources, Environmental Health, Noise, releases or potential releases to the environment affecting public health, Light and Glare, Aesthetics, Recreation, Historic and Cultural Resources, Transportation.

While it might appear ironic to some that measures designed to increase maritime safety are determined by the co-lead agencies to potentially increase the potential for environmental impacts, we do not dispute that poorly implemented safety measures could in fact reduce safety or have some other unintended environmental impact.

However, as our following comments will attempt to elucidate, it is incumbent on the co-lead agencies to evaluate whatever potential incremental increase in environmental impact associated with this rule-making be made in comparison with the well-established long-term impacts of a catastrophic oil spill to the rich but increasingly vulnerable entities dependent on the Salish Sea.

We appreciate the co-leads formation of the Oil Transportation Safety Committee (OTSC) and the various workshops the agencies have held to provide the public with opportunities to understand and participate in the development of the model that will be used to inform the development of this rule as well as to evaluate the efficacy of stationing an Emergency Response Towing Vessel (ERTV) in the Salish Sea. It is unfortunate that there will only be four days between the time the preliminary results from the modeling exercise will be shared and the opportunity to provide scoping comments. The following comments could have benefitted from more time to analyze those results.

We stress the importance of providing a robust analysis of the benefits associated with enhanced use of tug escorts to minimize the probability of catastrophic impacts of a major oil spill. This consideration is most important for species which are particularly vulnerable to extirpation such as the endangered population of Southern Resident Killer Whales, (SRKWs) due to their small population size, and close proximity to each other when traveling through key feeding areas. It is well-established that the core area of their critical habitat significantly overlaps the primary shipping lanes within the Salish Sea.

Another foundational consideration that must underly all findings from this rulemaking is the challenge of modeling low probability events that have the potential for very high consequences. We understand that very intentional efforts were made to address this issue which has plagued many other efforts to characterize risk, especially in a region which has not had many oil spills on which to calibrate the model. Despite efforts to address this challenge, it is essential that a precautionary approach is taken when interpreting the results from the model during the rule making process.

This point is well illustrated by the results of the various studies undertaken during the protracted process that occurred during the evaluation of the need to station an ERTV in Neah Bay. Despite various findings that an ERTV would be of minimal value, during its time on station, between 1999 and as recently as February 2023, it has been called out 84 times. It is also important to note that the beginning of the trial period the ERTV was only on station seasonally.

Some of the potential collateral impacts associated with this rulemaking can be seen as subjective, such as aesthetics, but others can mostly be attributed to and mitigated by, how professional mariners implement the new rules.

While we recognize the expertise of the mariners who have successfully guided tank vessels through these waters for many years, they are still subject to human error and mechanical failures. One of the foundational questions is which vessel or mariner is more prone to suffer the casualty, the tank vessel/operator or the escort? Such considerations must include recognition that a towed tank barge is far less maneuverable and subject to line parting and interaction with recreational boats (due to the catenary) than the escort and the few operators on a slow-moving barge that has traveled long distances are more likely to suffer fatigue than those on an escort tug.

When evaluating other potential impacts, it is not sufficient to evaluate how existing impacts may increase as a result of the rule. It is critical that the geographic extent, duration of the impact, relative

proportion that impact contributes to similar existing impacts as well as those impacts likelihood to affect particularly sensitive species must also be considered.

To evaluate the relative extent any existing vessel traffic-related impacts may increase, it must be recognized that increment is primarily limited to when the tug returns to port without a vessel to escort. However, there is a high degree of incentive for the tug operator to minimize the cost and crew hours due to deadheading.

This consideration must be included when evaluating all potential impacts which are likely to significantly reduce the relative change in magnitude of existing impacts associated with operating high horsepower tugboats within the Salish Sea. One issue that may not be readily apparent when evaluating incremental increases in underwater noise is that the underwater noise generated by two vessels is not additive, so it is not twice as loud when a vessel is under escort.

However, issues such as increased greenhouse gas emissions and conventional pollutants associated with the operation of an additional vessel are minor when considered in context of the incremental increase to the existing background.

Then there is also the question as to whether those relatively minor increases are likely to occur in proximity to or have significant impact on highly sensitive species such as endangered SRKWs? While the movements of the whales have been quite predictable during much of the 50 years they have been studied by the Center for Whale Research and others, there have been significant shifts in their dispersion in the recent past, including fewer days around the San Juan Islands and more time in the Strait of Juan de Fuca, Washington Coast and Puget Sound. While it is unclear how long these patterns may persist, it is fair to say that the size of the area covered and duration of persistence of a major oil spill creates a far greater likelihood of significantly impacting the SRKWs than the episodic and relative narrow geographic extent of the other impacts being scoped in this analysis.

One of the earliest studies evaluating the relative value of increased use of tug escorts was conducted following the *Exxon Valdez* oil spill. While the results of that study did identify increased impacts associated with escorting laden tankers through Prince William Sound, the amount of a reduction in the probability of another oil spill, (the impacts on various species, including resident and transient killer whales persist), more than justified the institution of the new requirement which remains in place to this day. It is also worthy to note that while the federal Oil Spill Pollution Act (OPA '90) required two tug escorts for tankers over 125,000 dwt in Prince William Sound and Puget Sound, the rule remains in place in Alaska while only one tug escort is required for Washington waters and that is only due to state regulations being considered for modification in this rulemaking. The elimination of one tug escort, along with the advent of crude oil being sourced by rail, has resulted in the reduction of the availability of tugs of opportunity.

Another impact that must be considered is the cost associated to the oil industry associated with increasing the use of tug escorts. Clearly the relative impact on the oil industry's bottom line or even the value of the cargo in the tank vessel being escorted is negligible. The degree to which the oil industry passes on this negligible additional cost cannot be assumed. Similar to the other

considerations listed above, the economic benefits associated with training and employing more professional mariners as well as building and maintaining the tug fleet must also be considered to evaluate the relative value of the rulemaking.

One existing issue which the incremental impact of this rulemaking needs further consideration, is the amount of time the presence of additional tugs could impact other vessel operators, especially those exercising their treaty fishing rights. Concerns about this issue were brought to our attention by the tribal representatives serving on the OTSC.

We recognize the importance for Treaty Tribes to reserve access to their fisheries and believe there are steps which can and should be taken by the co-lead agencies, the Coast Guard, and Puget Sound Pilots to minimize the existing interactions between commercial vessel operators and Tribal fishers. New measures to reduce existing vessel traffic conflicts with fishing vessels or gear could go a long way to address the potential incremental increase in interactions associated with this rulemaking. Clearly, the identification of such measures can only be determined through consultation with treaty fishers, regulators, and pilots.

Finally, it is also critical that as public agencies you must recognize the public's risk tolerance varies widely based on their background, experience, and values. This obligation, along with the uncertainties associated with such modeling exercises, underscores the importance that a precautionary approach is taken when interpreting the results for the draft rule.

Once again, we appreciate your efforts to address these concerns and intention to maintain a transparent process by hosting additional workshops prior to issuing the draft rule in 2025.

Thank you for your consideration,

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