

19 August 2024

Jaimie C. Bever, Executive Director
Washington State Board of Pilotage Commissioners

Dear Jaimie –

We greatly appreciate your successful efforts to guide the discussions of the Oil Transportation Safety Committee (OTSC) on behalf of the Board of Pilotage Commission (BPC). We have found it to be a very transparent and productive process. However, we believe there is important work still to be done in this rulemaking process and would like you to reconsider your decision to cancel the September meeting as we were just notified in your August 14th email to the OTSC.

This significant effort follows the legislative direction in Engrossed Substitute House Bill (ESHB) 1578 - directing the Board of Pilotage Commissioners, in consultation with the Department of Ecology to adopt rules regarding tug escorts in Puget Sound for oil tankers, articulated tug barges (ATBs) (as defined in RCW 88.16.260), and towed waterborne vessels or barges by December 31, 2025.

The importance of undertaking this rulemaking process is reflected by the changes in oil spill risk based on the numbers and types of vessels transiting through the Salish Sea and the protection of the critically endangered Southern Resident Killer Whales which was central to the purpose of the legislation. For example, there has been major, though inadequate, efforts by the Canadian government to address the risk posed by the significant increase in tanker traffic calling on its ports associated with the completion of the Transmountain pipeline expansion project.

However, not only do those tankers also call on Washington refineries but the refineries also receive oil from around the world as well as from the Bakken and other regions in the US by rail. Since the refineries continue to expand their capacity to process oil there has been an increase in the number of smaller tank vessels (product tankers, barges and ATBs) carrying refined fuel as well as crude oil. These vessels have not been required to have tug escorts like larger tankers, until the passage of ESHB 1578. However, we are concerned that this significant added safety measure may be discontinued in December 2025 based on the results of this rulemaking.

Essential to the environmental community's participation on the OTSC was the Department of Ecology's willingness to re-analyze the results of its oil spill risk model. We would like to have confirmation that the State Environmental Policy Act (SEPA) and rulemaking process will use the updated analysis limiting the evaluation of the degree to which expanding the use of tug escorts reduces the likelihood of an oil spill to the zones in which the tugs are deployed.

In contrast, the modeling results in the report to the legislature and those originally presented to the OSTC, evaluated the degree to which the expanded use of tug escorts in a specific zone reduced the likelihood of an oil spill throughout the entire study area (from Point Roberts to Olympia). That report significantly underrepresented the benefit of extending the tug escort requirement to smaller tank vessels within a specific waterway zone. Without Ecology updating its analysis, such misleading use of the data would have precluded our further participation.

Recognizing the limitations of modeling vessel traffic, we strongly support the recommendation of the Puget Sound Pilot representative on the OTSC that the BPC include in its SEPA analysis

the experience gained since September 2020 when the interim rule was first implemented as required by ESHB 1578. This should include the number of times when tug escorts on tank vessels between 5,000 and 40,000 dwt have either helped or hindered the transit of those vessels as well as if there had been any impacts on fishing along their transits.

More recently we have sought clarity if/how the benefits of expanding the use of tug escorts would be incorporated in the SEPA analysis or if only the negative impacts would be evaluated in the Environmental Impact Statement (EIS).

In your July 23, 2024 email to us you wrote, *Under SEPA, we are **required** (emphasis added) to identify and evaluate probable adverse environmental impacts to consider environmental consequences associated with our selected rule alternatives. The EIS does not include a detailed assessment of the benefits of the proposed action, nor does it weigh the impacts against benefits. Simply put, the EIS is an analysis and disclosure of adverse impacts.*

You went on to state, *The EIS will include a description of the proposed alternatives. This will include a summary of information used by the OTSC and the BPC to select alternatives, including outputs from the model that describe risk reduction benefits. In addition, comparisons of the SEPA results for Alternative 1 (removal) and Alternative 2 (No Action) will provide insight into areas where there is no adverse impact.*

While WAC 197-11-450 does not **require** SEPA to include a formal cost benefit analysis, it clearly allows for it and even suggests it, “If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered by an agency for the proposal, it **may be** incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. For purposes of complying with SEPA, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations (emphasis added).”

Furthermore, WAC 197-11-402 (4) states, “Agencies shall prepare environmental impact statements as follows: EISs **need** analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. **Beneficial** environmental impacts or other impacts **may be discussed** (emphasis added).”

We expect that environmental benefits will be enumerated in the Preliminary Regulatory Analysis (PRA) and Final Regulatory Analysis (FRA) as you have assured us. However, the law also clearly affords the BPC the discretion to incorporate such information in the SEPA analysis as well as documented above.

Expanding the use of tug escorts will likely have some unintended consequences such as increased fuel use and underwater noise which the EIS clearly needs to evaluate. However, those impacts need to be at least qualitatively evaluated in context with the impacts an oil spill would have given the increased likelihood one would occur without the added safety benefits of tug escorts as documented in Ecology’s updated model results.

While the EIS does not need to include the quantification of the cost of spilling oil, the BPC clearly has the discretion to outline what would be impacted by a spill thereby documenting the benefits of decreasing the risk of one from occurring. Under the direction of the BPC, the OTSC spent considerable time accounting for the negative implications associated with extending the use of tug escorts - from fisheries interactions to fuel consumption for evaluation in the EIS.

In contrast, the OTSC has not been tasked with providing the BPC any guidance as to what level of impacts could be avoided by preventing an oil spill as a result of additional tug escorts. The identification and prioritization of those considerations should include at minimum, impacts to commercial and recreational fishing, whale and wildlife watching, recreation and tourism, property values, etc. not to mention treaty-protected tribal fishing rights and cultural values.

As we have previously asserted, you have the discretion to include the benefits of not having an oil spill in the SEPA documents and we believe it is incumbent that the OTSC be tasked with providing input on what impacts could be avoided by keeping one from occurring.

In this way we can be assured the legislative intent of reducing oil spill risk by expanding the use of tug escorts to smaller tank vessels are as thoroughly characterized as the negative impacts the OTSC has already identified. As a result, the EIS and rulemaking could more clearly reflect the tradeoffs associated with this important and timely effort.

In order to provide you with this input in a timely manner, **we ask that you don't cancel the September OTSC meeting** as proposed so that this information could be discussed at that time. This letter is also being submitted to the [online public comment form](#). We hope that all comments submitted in this manner will be made publicly accessible.

Sincerely,

Environmental Caucus representatives to the OTSC:

Fred Felleman, NW Consultant, Friends of the Earth

Rein Attemann, Puget Sound Senior Campaign Manager, Washington Conservation Action

Lovel Pratt, Marine Protection and Policy Director, Friends of the San Jans

Cc Sheri Tonn, Chair, Board of Pilotage Commission
JD Leahy, Maritime Risk Modeling Specialist, Department of Ecology
Senator Lovelett, 40th LD
Senator Shewmake, 42nd LD
Representative Ramel, 40th LD
Representative Lekanoff, 40th LD
Carrie Sessions, Governor Inslee's Senior Policy Advisor, Environment and Water