



# MAKAH TRIBAL COUNCIL

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*The Makah Tribe is an equal opportunity employer.*



Jaimie Bever  
Board of Pilotage Commissioners  
2901 Third Avenue, Suite 500  
Seattle, WA 98121

July 30, 2025

*Re: The Makah Tribal Council comments on the Board of Pilotage Commissioners Tug Escort Rulemaking (Chapter 363-116 WAC)*

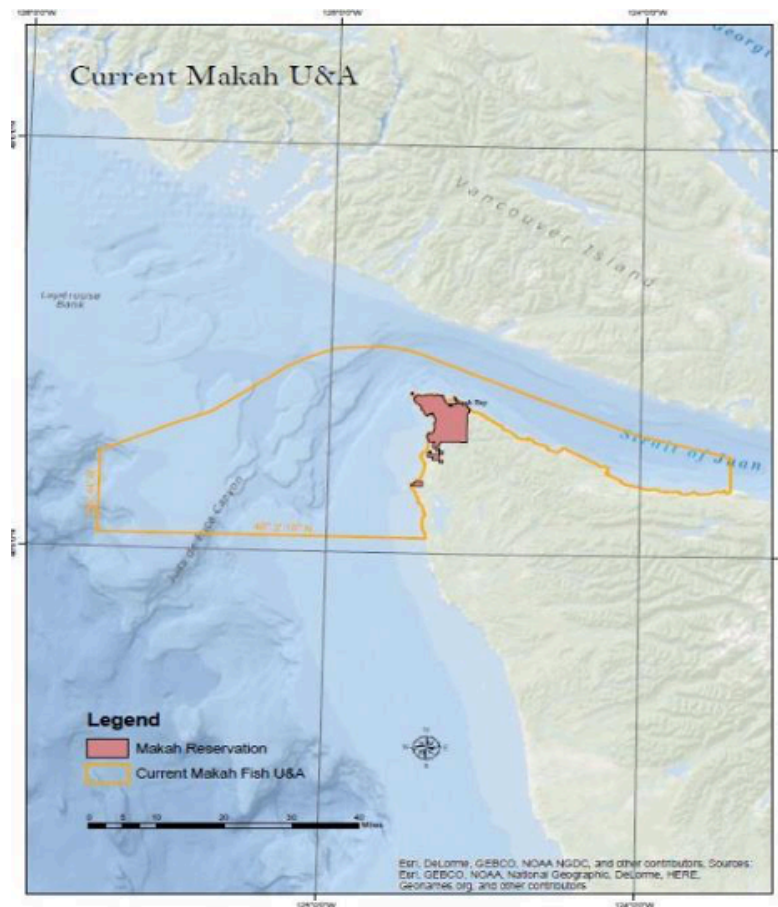
Dear Jaimie Bever,

The Makah Tribal Council (MTC) is writing to provide comments to the Board of Pilotage Commissioners' (BPC) proposed language for the rulemaking to amend Chapter 363-116 WAC, Pilotage Rules. The Makah community has witnessed firsthand the devastating effects of oil pollution, with over two million gallons of oil spilled in the Makah treaty area since 1970. The MTC strives to protect Makah treaty rights and resources as they were understood and handed down by Makah leaders at the signing of the 1855 Treaty of Neah Bay. As such, the MTC has invested significant resources in strengthening the Tribe's oil spill prevention, preparedness, and response capacities, including developing close working relationships with the US Coast Guard (USCG), Environmental Protection Agency, and Washington State Department of Ecology (ECY). **The MTC supports the proposed rule language as it raises the protection standard of Makah treaty resources from the threat of oil pollution, even if only marginally.** Below, we provide more details on the Makah Tribe and our history with oil spills, our support for the proposed rule language, and our appreciation for the tribal engagement offered in this process.

## 1. The Makah Tribe

The ancestral homeland of the Makah Tribe, who are known as the "People of the Cape," is located at the Northwest point of the Olympic Peninsula in Washington State. The Makah Reservation is approximately 47 square miles and the Makah Usual and Accustomed Treaty Fishing Area (U&A) extends north to include La Perouse and Swiftsure Banks, west approximately 40 nautical miles offshore into the Pacific Ocean, east into the Strait of Juan de Fuca to Tongue Point, and south along the State of Washington Outer Coast to the Norwegian Memorial, or 48° 02' 15" S, approximately 21 miles south of Cape Flattery, covering

approximately 1,550 square miles of marine territory in US waters (Figure 1). However, Makah traditional use of the ocean extends north through the Bering Sea, south to the Columbia River, and into Puget Sound. The overall health of our treaty resources depends upon the interconnected ecosystems of the California Current, Alaska Current, and the Strait of Juan de Fuca, which come to a confluence in our Treaty U&A.



*Figure 1: Map of present-day Makah Usual and Accustomed Fishing Area (U&A)*

The cultural and traditional existence and well-being of the Makah people have always been closely tied to our relationship with the natural environment, especially the ocean. The Makah hold a spiritual reverence and have inexorable ties to the ocean and its bountiful natural resources. The Makah relationship to the ocean continues today, in part through our robust and valuable treaty fisheries, which directly support over 60% of our local economy, nutritional security, cultural practices, and the overall health of our community. Makah's extensive treaty fisheries include commercial, ceremonial, and subsistence harvest of a wide range of species including salmon, halibut, sablefish, hake, rockfish, and other groundfish. Community surveys indicate that 99% of the Makah community rely on fishing, harvesting shellfish, or hunting for a portion of their diet.

The 1855 Treaty of Neah Bay reserves the Makah's right to retain and exercise inherent sovereign authority over our treaty-protected area and ownership of the resources therein. The Treaty is the legal agreement between the Makah Tribe and the United States that recognizes the Makah Tribe's status as a sovereign nation and therefore a resource trustee. It reserved inherent sovereign rights to natural resources, cultural practices, and other services and benefits in exchange for the cession of 469 square miles of territory to the United States. Explicitly, the Treaty reserves the Makah Tribe's perpetual rights to hunt, fish, whale, seal, and gather within our U&A. These rights have repeatedly been confirmed and interpreted in federal court decisions. *See, e.g., United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

Unfortunately, the Makah Tribe has experience with the devastating impacts of oil spills on treaty-protected resources and important places. Over two million gallons of oil have been spilled within the Makah U&A since the 1970s, primarily from the 1972 *USS General MC Meigs* spill, the 1988 *Nestucca* spill, and the 1991 *Tenyo Maru* spill. Previous studies have indicated that the entrance to the Strait of Juan de Fuca is a particularly high-risk area for vessel traffic,<sup>1</sup> and inclement weather and ocean conditions have contributed to major spills (e.g., 1972 *USS General MC Meigs* spill) and complicated responses (e.g., 2024 Tug *Luther* and Barge *Lafarge Trader* response). The history of oil spills in this region, as well as the frequency and location of deployments of the Emergency Response Towing Vessel from Neah Bay, continue to confirm this risk profile.<sup>2</sup> In 1994, in recognition of this risk, NOAA and the USCG established an Area to be Avoided adjacent to the Makah Reservation to protect sensitive ecological resources and prevent maritime casualties. However, the Canadian government continues to invest in maritime infrastructure projects that will increase vessel traffic and associated risk in our transboundary waters. The Trans Mountain Pipeline Expansion Project, now active, increased tanker traffic in or adjacent to the Makah U&A approximately seven-fold.<sup>3</sup>

## **2. The MTC supports the proposed rule language**

While we recognize that industry and oil spill contingency planning requirements have improved since the catastrophic spills that the Makah Tribe endured in the 1970s-1990s, we remain concerned about oil spill risk due to our valuable resources and the response challenges associated with the remote Washington Outer Coast region. For example, although the US oil spill contingency plan framework is based on *planning* standards, the MTC continues to look for opportunities to develop *performance* standards, as doing so would heighten the protection

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<sup>1</sup> Van Dorp, J.R., Merrick, J. (2015), Final Report: Vessel Traffic Risk Assessment 2015. Prepared for the Washington State Department of Ecology. Retrieved May, 2020.  
<https://fortress.wa.gov/ecy/publications/documents/1708009.pdf>

<sup>2</sup> Washington State Department of Ecology, Spills Maps – Neah Bay Emergency Response Towing Vessel Call Outs. Retrieved May, 2020. [https://fortress.wa.gov/ecy/coastalatlas/storymaps/spills/spills\\_sm.html?&Tab=nt2](https://fortress.wa.gov/ecy/coastalatlas/storymaps/spills/spills_sm.html?&Tab=nt2)

<sup>3</sup> Trans Mountain projected that their Pipeline Expansion Project at the Westridge Marine Terminal would increase the number of partially laden or laden tankers from 60 to 408 per year. The Pipeline Expansion Project is now operational. See more details at [https://docs.transmountain.com/314-Enhanced-Tug-Escort-Fact-Sheet-12\\_20\\_18-four-page-HR.pdf](https://docs.transmountain.com/314-Enhanced-Tug-Escort-Fact-Sheet-12_20_18-four-page-HR.pdf)

standard for Makah treaty-protected resources. Additionally, we remain concerned that some response assets stationed in our area to meet planning requirements are not fit for the operating environment, specifically for open ocean conditions and inclement weather. We continue to research response assets in areas with harsh operating environments (e.g., Alaska) to identify assets that may be better suited for operations on the Outer Coast of Washington. While the area directly impacted by the proposed rulemaking is located outside the Makah U&A, it is inside the Makah area of interest. Pursuant to Makah Ocean Policy,<sup>4</sup> the Makah area of interest includes all areas that Makah treaty resources migrate through. This includes the Alaska and California Current Ecosystems, Strait of Juan de Fuca, and the Puget Sound area including the San Juan Islands region. Ultimately, the Makah Tribe is interested in any opportunity to raise the protection standard for Makah treaty resources from the threat of oil pollution.

The MTC is concerned about the impacts of underwater noise on Makah natural and cultural resources, including the Southern Resident Killer Whales (SRKW), and understands that the proposed rule language will create only minimal increases in underwater noise in the expansion area in the Strait of Georgia. The MTC has partnered closely with the Enhancing Cetacean Habitat and Observation Program as well as Quiet Sound to reduce underwater noise in and near the Makah U&A. However, the MTC views the threat of oil pollution to SRKW (and other Makah cultural and natural resources) as a more significant threat than underwater noise, with longer-lasting and potentially more widespread impacts. The MTC provided similar input to Transport Canada on their study investigating potential changes to the Strait of Juan de Fuca Traffic Separation Scheme to reduce underwater noise impacts to foraging SRKW.<sup>5</sup>

The MTC supports the proposed rule language because it raises the protection standard against the threat of oil pollution in the Makah area of interest, even if only marginally. After reviewing the Draft Environmental Impact Statement associated with the rule and other materials, the MTC considers the benefits of extending the tug escort requirements for target vessels (i.e., tankers weighing 5-40K deadweight tons, articulated tug and barges and towed vessels or barges weighing 5K deadweight tons) northward 28.9 square miles and adding functional and operational requirements for tug escorts to be greater than the costs.

### **3. The MTC appreciates the tribal engagement provided throughout this rulemaking**

We extend our appreciation for the tribal engagement provided by BPC and ECY on this rulemaking and the consideration of impacts to tribal rights and resources in the EIS. Tribal workshops began early and occurred often enough that our staff were informed and able to review documents and ideas with sufficient time. BPC and ECY staff made themselves available for staff-level meetings with Makah in addition to their tribal workshop series throughout this

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<sup>4</sup> Makah Ocean Policy, (2017).

<sup>5</sup> Makah Tribal Council (2023), *Re: Makah Tribal Council comments on the Traffic Separation Scheme Feasibility Study for Southern British Columbia (electronically submitted). Comment letter to Transport Canada.*

process, adding needed flexibility for Makah participation. Additionally, we appreciated that the EIS documented the impact of vessel traffic, including tug transits, on treaty fishing even if outside the Makah U&A. The Makah Tribe is a participant in the ad hoc Tribal Fisheries Lost Gear Subcommittee of the Puget Sound Harbor Safety Committee that aims to explore these impacts and potential solutions.

Thank you for the opportunity to provide comments on the proposed rule language for the tug escort rulemaking. The MTC supports the proposed rule language and appreciates the early, continuous, and flexible tribal engagement provided throughout the rulemaking from BPC and ECY. We look forward to further partnership to raise the protection standard for Makah treaty resources against the threat of oil pollution. Please contact Chris Martinez, Makah Tribal Council Chief of Staff ([cos@makah.com](mailto:cos@makah.com) or 360-645-2080), with any questions or for any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy J. Greene, Sr.", is positioned above the printed name.

Timothy J. Greene, Sr.  
Chairman  
Makah Tribal Council

CC

Sarah Thompson, Department of Ecology Rulemaking Lead  
Haley Kennard, Department of Ecology EIS Lead  
Tyson Oreiro, Department of Ecology Tribal Liaison