



Board of Pilotage Commissioners Tug Escort Rulemaking (Chapter 363-116 WAC)

SEPA EIS Scoping Summary Report

For the

**Spills Prevention, Preparedness, and Response Program and the Board
of Pilotage Commissioners**

Washington State Department of Ecology
Olympia, Washington

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Contact Information

Spills Prevention, Preparedness, and Response Program

Department of Ecology Headquarters
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-7455

Website¹: [Washington State Department of Ecology](http://www.ecology.wa.gov)

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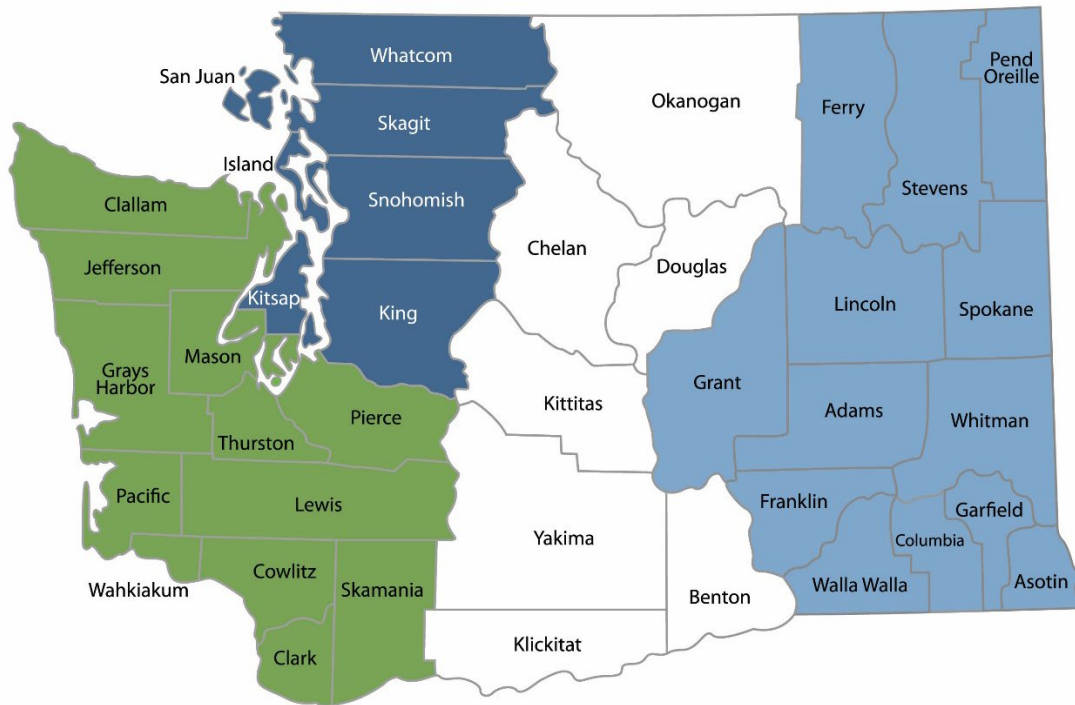
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Northwest Region
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Central Region
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Eastern Region
509-329-3400

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Headquarters	Statewide	P.O. Box 46700 Olympia, WA 98504	360-407-6000

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DEPARTMENT OF
ECOLOGY
State of Washington

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Introduction

Overview and Purpose of the Scoping Summary Report

The Board of Pilotage Commissioners (BPC) in coordination with the Washington State Department of Ecology (Ecology) are co-lead agencies on a rulemaking to amend Chapter 363-116 WAC, Pilotage Rules. This rulemaking could potentially increase the number of required tug escorts in Puget Sound. Because of this potential increase in vessel traffic, the co-lead agencies determined that the rulemaking may have significant adverse impacts on the environment. The co-lead agencies issued a Determination of Significance (DS, see Appendix B), and opened a comment period on the scope of the proposed State Environmental Policy Act Environmental Impact Statement (SEPA EIS) for this rule on February 22, 2023. The rulemaking will consider tug escorts in the waters east of Discovery Island Lighthouse south to New Dungeness Lighthouse, and all points in the Puget Sound Area for oil tankers (5,000-40,000 deadweight tons (DWT)) and articulated tug barges (ATBs) and towed waterborne vessels (greater than 5,000 DWT).

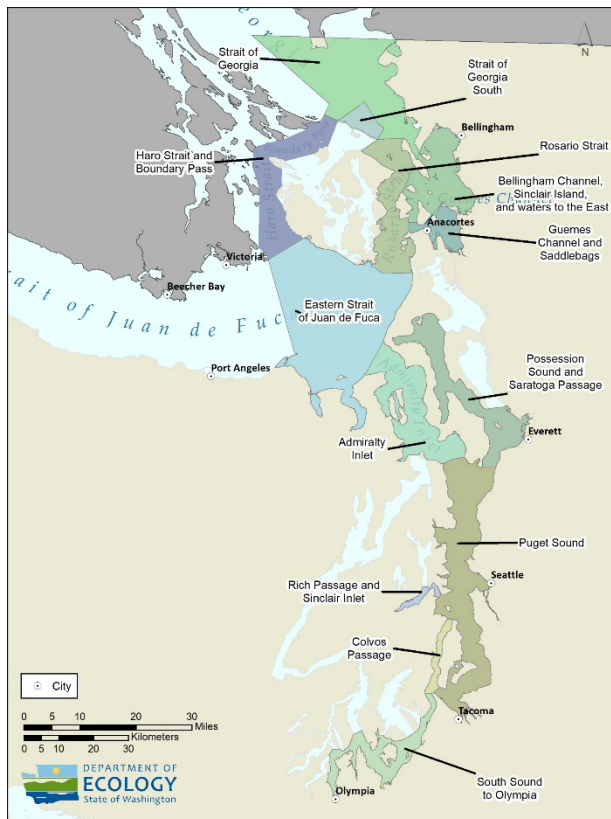


Figure 1. Map of study area and BPC Zones.

Ecology determined that, due to this potential increase in tug traffic, the rulemaking is likely to have a significant adverse impact on the environment. This requires an EIS under Revised Code of Washington (RCW) 43.21C.030 (2)(c) to be prepared pursuant to Chapter 197.11 Washington Administrative Code (WAC) procedures. The DS and Scoping Notice for the EIS initiated Ecology's environmental review process. The scoping comment period started February 22, 2023, and ended on April 8, 2023. The comment period included one online public meeting held on March 21, 2023. Rule development workshops continued throughout 2023 and the beginning of 2024 with additional SEPA-related comments recorded. A second (informal) scoping workshop was held on March 5, 2024.

This Scoping Summary Report provides an overview of the rulemaking scope, the environmental review and scoping processes, and a summary of the scoping comments received. It also includes preliminary research conducted by Ecology to support scoping decision-making where relevant, as well as records of preliminary recommendations and decisions made by the Oil Transportation Safety Committee

(OTSC) and the BPC. Copies of relevant notices, letters to Tribes and the public, and scoping decision-making documents are included as appendices.

EIS Process Overview

SEPA requires agencies to consider environmental factors before taking action on state and local government decisions, such as rulemaking or issuing permits for projects. The SEPA review process helps agency decision-makers and the public understand how the entire proposal will affect the environment. In this case, the co-lead agencies are conducting a SEPA review for this rulemaking and will be developing a *non-project* EIS. The co-lead agencies are also complying with the Administrative Procedures Act (APA) requirements for a rulemaking concurrently with the EIS development.

An EIS is not a decision document. An EIS contains an unbiased and scientifically based analysis, which provides a comprehensive and objective evaluation of probable environmental impacts, reasonable alternatives, and mitigation measures that would avoid or minimize impacts. The EIS prepared by Ecology for the tug escort rulemaking will be used to inform final rule language.

Scoping is the first step in the EIS process. Additional formal public involvement and comment opportunities will be available once the Draft EIS is available for public review. Workshops and informal opportunities for input will continue throughout the Draft EIS development.

Scoping Process and Purpose

Scoping is designed to establish and confirm the focus of the EIS by seeking input from Tribes, agencies, members of the public, and stakeholders on the content of the EIS. For scoping, these parties are notified that an EIS is being prepared, thus initiating their involvement.

The co-lead agencies conducted an EIS scoping period in accordance with SEPA requirements pursuant to WAC 197.11.408. More information about the scoping process is provided below in Section 3. Ecology invited Tribes, agencies, members of the public, and stakeholders to provide input on the scope of the EIS related to the following:

- Alternatives
- Mitigation measures
- Probable significant adverse impacts

After considering comments received so far, inputs from the [Ecology Rescue Tug Analysis Model](#) (Ecology Model), and initial research, the BPC voted on the preliminary scope of the EIS on March 21, 2023, based on a recommendation from the OTSC. The BPC decision document is included in Appendix A. Not all elements of the environment outlined in WAC 197.11.444 will be included in the EIS.

Rulemaking Background

Description of Rulemaking

The BPC, in consultation with Ecology, announced a rulemaking in February 2023 to amend Chapter 363-116 WAC, Pilotage Rules. Chapter 363-116 WAC describes the training, licensing, and regulation of Washington State maritime pilots to ensure safe pilotage. Chapter 363-116 WAC also describes tug escort requirements for oil tankers in Washington waters.

The rulemaking will amend WAC 363-116-500 and, if needed, add new sections to Chapter 363-116 WAC. The rulemaking will consider 2019 legislative changes made to Chapter 88.16 RCW (Pilotage Act) through the passage of Engrossed Substitute House Bill (ESHB) 1578. 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 Lighthouse south to New Dungeness Lighthouse and all points in the Puget Sound area:
 - Oil tankers of between 5,000 and 40,000 DWT.
 - 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 2019 Legislature passed The Reducing Threats to Southern Resident Killer Whales (SRKW) by Improving the Safety of Oil Transportation Act, ESHB 1578. The Act provides a measured approach to preventing a catastrophic oil spill in the Puget Sound by closing important safety gaps related to vessels carrying oil in bulk. The bill also directs the co-lead agencies to consider the following in developing the rule:

- Avoiding or minimizing additional underwater noise from vessels in the Salish Sea,
- Focusing vessel traffic into established shipping lanes,
- Protecting and minimizing vessel traffic impacts to established treaty fishing areas, and
- Respecting and preserving the treaty-protected interests and fishing rights of potentially affected federally recognized Indian Tribes.

Determination of Significance

Scoping under SEPA began with issuance and publication of the DS and Scoping Notice (Appendix B). The DS and Scoping Notice included a description of the rulemaking and made the determination that the rulemaking is likely to have a significant adverse impact on the environment and would require an EIS under RCW 43.21C.030 (2)(c). The DS and Scoping Notice also announced public scoping meeting dates and the duration of the scoping comment period.

Probable project impacts and areas of proposed study for the EIS were identified by Ecology to include (but not be limited to) the following:

- Air Quality
- Water Quality
- Plants and Animals
- Environmental Health: Noise
- Environmental Health: Releases or potential releases to the environment affecting public health
- Energy and Natural Resources
- Light and glare
- Aesthetics
- Recreation
- Historic and Cultural Resources
- Transportation

Note that considerations for threatened and endangered species, including SRKW, are included the “Plants and Animals” element. See Appendix B for a copy of the DS.

Rulemaking Objectives for the EIS

Under SEPA, the objectives of the action (proposal, rulemaking, plan, etc.) are linked to the determination of reasonable alternatives for the EIS. Chapter 197-11-786 WAC (Reasonable Alternatives) defines reasonable alternatives as “an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable Alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures.”

Because this EIS is assessing a rule, rather than a project, the co-lead agencies reviewed the rulemaking scope and ESHB 1578 to define the objectives that will be used in the EIS, as described below.

Draft Rulemaking Objective for Use in the EIS: Reduce the risk of a major oil spill through potential tug escort requirements for oil tankers 5,000-40,000 DWT, and barge and ATBs over 5,000 DWT. Design requirements in a way that minimizes underwater noise, focuses vessel traffic into the established shipping lanes, and minimizes impact to treaty fishing areas.

Scoping Process

Overview

Ecology conducted a formal EIS scoping period from February 22, 2023, through April 8, 2023. During the scoping period, Ecology held one online public scoping meeting on March 21, 2023, for the public to provide oral comments. A variety of scoping materials were available for public review throughout the entire length of the scoping period on the rulemaking website².

The Ecology project website was developed to provide information through the duration of the rulemaking process, including the SEPA process. During the formal scoping period, the website included a link to an online comment form.

Ecology also hosted an additional informal scoping workshop on March 5, 2024, which included a second round of direct outreach to Tribes and interested parties. Rulemaking workshops were held throughout 2023 and early 2024, and will continue through Spring of 2025. SEPA-related comments were captured and recorded and will continue to be throughout this process.

Tribes, agencies, members of the public, and stakeholders were invited to participate in the scoping process and provide comments, as described in the following sections.

Ways to Provide Comments

During the scoping period, Ecology provided multiple ways to submit scoping comments, including using the online comment form, by mail, and orally during the public hearings.

Scoping Notifications

Ecology conducted the following public notice and outreach activities to notify Tribes, agencies, members of the public, and stakeholders of the scoping period and announce upcoming public scoping meeting dates. Ecology also offered translation services, if requested. A variety of outreach and notification methods were used to communicate information about scoping to reach the largest audience possible:

- Published legal notices (Appendix B):
 - The DS and Request for Comments on the Scope of the EIS, including a description of the rulemaking, how to submit comments, and scoping meeting announcements, was issued on February 22, 2023.
 - Ecology's SEPA Register published the DS and Scoping Notice on February 22, 2023.

² <https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response/Legislative-work/BPC-tug-escort-rulemaking>

- Public and media notifications (Appendix C)
 - Information was published on Ecology’s Public Input and Events Listing website.
 - Consistent with the rulemaking requirements under the APA, Ecology developed a detailed outreach list which included regulated businesses, Tribal Governments, OTSC representatives, ports, cities, counties, Clean Air Agencies, State Emergency Response Commissions and Local Emergency Planning Committees, environmental non-profits, federal and state agencies, and other interested parties. A notification of the scoping period was sent February 22, 2023. A second email to this broader outreach list specifically announcing the second informal scoping workshop (on March 5, 2024) was sent on February 13, 2024.
 - Announcements regarding the EIS scoping process have been made periodically at rulemaking workshops, the Puget Sound Harbor Safety Committee, the BPC meetings (open to the public), Regional Response Team/Northwest Area Committee meetings, and Affiliated Tribes of Northwest Indians (ATNI) events.
- Website
 - Ecology developed and published a project-specific website at [BPC tug escort rulemaking - Washington State Department of Ecology](#)
- Tribal Government notifications (Appendix D)
 - Email notifications with an invitation to Government-to-Government Consultation were sent to Northwest Tribal Governments (Chairs and Natural Resource Directors)
 - Announcing the formal EIS Scoping Period (2/22/2023)
 - Announcing the informal Scoping Workshop (2/12/24)
 - The BPC Executive Director presented on this rulemaking at the ATNI Meeting in September 2023.
 - Prior to the finalization of this report, two emails and a phone call were made to natural resources staff at Tribes that have engaged in the rulemaking process at any time and/or those Tribes identified as potentially interested/affected based on the geographic scope of the rule. Additional staff-staff meetings were held with the following tribal staff:
 - Makah Tribe
 - Swinomish Indian Tribal Community
 - Jamestown S’Klallam Tribe
- Agency notifications
 - State agencies were notified by email, listserv, and SEPA register notices.

Public Scoping Meetings

As mentioned previously, one online public scoping meeting was held during the formal scoping period on March 21, 2023.

The meeting included a presentation and an opportunity for the public to provide verbal comment. The PowerPoint presentation from the scoping meeting is available on the [rulemaking website](#).

OTSC Recommendations and BPC Vote

Ecology and the BPC have an inter-agency agreement which supports and outlines coordination on this rulemaking. However, the BPC remains responsible for decision-making. The BPC's OTSC makes formal recommendations to the BPC to support their voting process. The rule team has built in several interim decision-making steps where we will work with the OTSC to develop a recommendation for a BPC vote to support the EIS development and rulemaking decisions.

After three two-hour OTSC meetings (February 13 and 24, and March 11, 2024) specifically focused on preliminary EIS scope, the OTSC made a recommendation to the BPC regarding alternatives to be assessed in the EIS and elements of the environment to be included. The BPC reviewed and voted on preliminary EIS scope at their meeting on March 21, 2024. The BPC meetings are open to the public and there is time for public comment on BPC agenda items. The formal record of the BPC vote is included as Appendix A.

Summary of Scoping Comments

During the formal scoping period, a total of six comments were received via the online form and two additional formal comments were received during the public scoping meeting. As of the finalization of this report, the rule team has received 77 comments specific to the SEPA process, which are considered in this summary below.

All formal comments received during the scoping period are recorded and tracked consistent with the requirements of the APA. This section *summarizes* the key themes of the comments received during the scoping period and is not a comprehensive or detailed listing of all comments.

Comments on Reasonable Alternatives to be Assessed

See the section on Preliminary Scope below, for the BPC vote on alternatives to be assessed in the EIS. Comments received regarding alternatives are summarized below:

No Action Alternative:

(Note: The No Action Alternative is the status quo, no change from current conditions. In the case of this rulemaking, the No Action alternative includes the tug escort requirements as implemented by ESHB 1578)

- Support a no action alternative, which provides a good benchmark for comparison.

Limit or Reduce Scope:

- Ecology should consider a limited area alternative which focuses on a reduced boundary for rule implementation.
- The 2023 Tug Escort Analysis Report³ developed by Ecology do not support expanding the current tug escort requirements; do not recommend an expansion.
- Possible benefits of removing existing requirements would be less greenhouse gas emissions, less vessel congestion in those waterways, and less underwater noise that can impact echolocation by SRKW.
- The 2023 Summary of Tug Escort Analysis Report⁴ shows negligible (zero percent) reduction in spill risk from additional tug escorts. Without clear benefit, additional tug traffic only has drawbacks for SRKW. Consider adverse effects of underwater noise and physical disturbance to SRKW if tug escorts are to be expanded beyond status quo.
- Removing 2020 requirements would be a negative, as it would not cover all the critical habitat (for SRKW). Idea 4, escorts for all vessels in all zones, would provide better protection.
- Dangerous to reduce or eliminate tug escorts from the current rulemaking. Enough damage is done to the environment with existing traffic. Don't increase spill risk also.

All Vessels, All Zones (Maximum Expansion):

- Removing 2020 requirements would be a negative, as it would not cover all the critical habitat (for SRKW). Escorts for all vessels in all zones would provide better protection.
- Idea 4 (All Vessels All Zones): This would increase vessel congestion, air emissions, and underwater noise throughout the region. (Note: The OTSC reviewed this alternative idea and decided not to proceed with it).

Other Alternatives/General Comments on Alternatives:

- Consider an alternative that excludes ATBs.
- Consider requiring tugs to be available within 30 minutes as an alternative to escort tugs.
- Recommendation to tailor the rule to location-specific risks of each geographic area.
- Recommendation to describe the Ecology Mode results for each alternative.
- Recommendations for escort scenarios should be developed with consideration of both impacts and benefits. Drift groundings are rare (2023 Tug Escort Analysis Results), and the Ecology Model is not based on actual data.

³ [Summary of Tug Escort Analysis Results \(wa.gov\)](#)

⁴ [Summary of Tug Escort Analysis Results \(wa.gov\)](#)

Comments on Elements of the Environment to Include

The final BPC vote, based on a recommendation from the OTSC, identified six priority elements, which will be the focus of resources and capacity for the EIS. These six priority elements are listed first below. The remaining elements will be included, but at a higher level of assessment based on anticipated likelihood of significant impact.

Plants and Animals (Priority Element)

By far, the primary focus of comments on this element has been regarding SRKW and marine mammals.

- Underwater noise and physical disturbance of increased traffic to SRKW
- Risk of oil spills to SRKW
- Risk of SRKW extirpation
- Underwater noise and risk to marine life (especially marine mammals and SRKW)
- Consider fisheries studies

Noise: Underwater and Operational (Priority Element)

It is clear to the rule team that there are conflicting views of the science of underwater noise and potential impacts to SRKW and other species. This highlights the need for careful assessment through the EIS process.

- EIS should fully examine the potential for underwater noise impacts to SRKW (including spatial and temporal interactions).
- Slowing tugs down does not reduce their underwater radiated noise. Mitigating noise impacts of tugs on SRKW is not easy.
- Important to consider ambient noise, noise from operations, vessel horns or sound signals. It's a safety issue, especially in foggy conditions. Foghorns, generators, engines. Important to consider above-ground noise.
- Noise is not additive when tugs are escorting a larger vessel.
- Noise is additive. Especially if sound is being emitted at similar frequencies. Constructive interference.

Vessel Traffic (Priority Element)

- Vessel disturbance impacts to SRKW from additional vessels (including spatial and temporal interactions).
- Overall reduction in oil spill incidents is negligible while significantly increasing vessel traffic.
- Increase in vessel traffic, vessel casualties, and spill risk from additional tugs (see recent ARTEMIS collision as example).

- Using more tugs in escort service will reduce the number of tugs available to be redirected as tugs of opportunity in an emergency.
- Expanding tug escort requirements could result in more collisions and spills, risks to navigation in congested waterways.
- Need to study where the additional traffic will be. Where the transits will be, how much of the time will be within shipping lanes, and the interaction with tribal fishing or general commercial fishing.
- BPC and Ecology should further evaluate impact of increased tug escorts on tightening navigation channels and increased collision risk.
- Potential increase in underway time represents a significant increase in vessel traffic.

Oil Spill Risk (Priority Element)

- Consider potential for spill risk reduction.
- Consider potential increases in risk from additional vessel traffic and congestion.
- Consider spill risk when fueling and bunkering.
- Should include an assessment of oiling risk to historic and cultural resources from a spill.

Air Quality (Priority Element)

- GHG emissions/pollutants are incremental compared to existing background emission levels.
- Air emissions are a concern: increase in transits and increased idling time.
- Consider the State's and NW Sea Port Alliance sustainability goals for emissions.
- The main impact is likely diesel emissions/diesel particulate matter, but it's worthwhile to consider if there are other pollutants of concern.
- Starting with port communities is a good idea as they are already overburdened with exposure to diesel emissions. You could also look at the other communities that Ecology has identified as overburdened by air pollution within the CCA framework.
- Consider the public health impact. Diesel exhaust is a carcinogen, and that means we have to think about chronic exposure. If the dispersion modeling suggests a non-trivial increase in diesel emissions, or if we think it will be a long term even small increase, in port or other communities, it might be worthwhile to do an assessment of the projected increase in cancer outcomes.
- Not sure that air quality/emissions is a significant impact. Dispersion modeling is not that common.

Tribal Natural and Cultural Resources (Priority Element)

- Importance of consulting with Tribes.
- Consider impacts to treaty fishing, vessel interaction with Tribal fishers.
- All of these ideas (alternatives) have impacts to Tribes in the region. In particular, maintaining tug escorts in Rosario and waters east impacts Tribes that fish in these

areas. The U.S. Coast Guard has received complaints of tug activity and tug wakes, this is a real issue that is impacting people.

- Need to understand spatial and temporal distribution of additional vessel traffic in order to understand impacts.

Water Quality

- There is the no-discharge zone in Puget Sound so they wouldn't be allowed to discharge there. (<https://ecology.wa.gov/Water-Shorelines/Puget-Sound/No-discharge-zone/Resources-studies>). Unsure of other information on other kinds of water quality impacts from boat traffic.
- Limited pump out availability for additional tugs to meet the NDZ standards.
- NPDES/VIDA-related discharge (hydraulic fluid spills, chain locker, effluent, deck runoff, gray water discharges, etc.) should be considered.

Energy and Natural Resources

- For industry, there has been a fuel increase with the 2020 rule implementation, but may not be hugely significant delta from what they already have.
- Consider alternative fuel use/transition to alternative fuels and whether that would be an important consideration.
- More alternative fuels will be transported in the Salish Sea.

Light, Glare, Aesthetics

- Check with USCG on where they get light and glare and noise complaints with existing tug levels.
- Normal anchorages are fine. More complaints are made when they're in smaller, more unusual places like Blake Island or Quartermaster Harbor or Indianola. All legal anchoring zones. Tugs will anchor there and do maintenance, which can be loud.

Recreation

Not a focus of comments during the formal scoping period or the later workshop.

Comments on Mitigation, Process, or Other Topics

Mitigation

- Consider electric tugs as a mitigation option.
- Potential impacts may be mitigated by how professional mariners implement the rule.
- Mitigating noise impacts of tugs on SRKW is not easy. Canada has asked tugs to move away from areas with high SRKW use. Transport Canada may also have additional mitigation strategies to consider.
- Consider Transport Canada's Quiet Vessel Initiative.

- Consider more modern designs of tugs - maybe a lower horsepower would be better for limiting underwater noise even though horsepower and engines are not necessarily the biggest emitter of noise on the vessels. Consider how can we use vessels that are quieter.
- Consider Puget Sound Harbor Safety Committee (PSHSC) standard of care on voluntary vessel speed reduction program and wheelhouse watch stander standard.⁵ BPC and Ecology should consider working with PSHSC to evaluate new protocols or standards that would reduce risk of drift groundings. For example - tug of opportunity. Web of protection without impacts of tug escorts.
- Consider measures that would reduce conflict with treaty fisheries (e.g. refinery lease agreements).
- Consider mitigation measures related to reducing mariner fatigue.

Other/General Comments

- Support for continued transparency and clarity about roles of the co-lead agencies in this process.
- Include cumulative impacts of future projects that would increase ATB and barge traffic.
- Consider challenges of modeling when interpreting model results.
- Impacts are primarily limited to when tugs are returning to port without a vessel to escort.
- Impacts of additional tugs have less impact than a spill (balancing this is outside of SEPA scope).
- Consider costs to the oil industry.
- Request for benefit of escort tugs to be included in the EIS.
- Concerns about previously published Ecology risk model reports.
- Important to consider when impacts are additive and when they are not, nuances of when tugs are escorting vs. when they are transiting to and from an escort job The system is complex. Not sure that the model captures that complexity.
- We cannot conduct maritime operations without impact, but what's important is the change from the baseline. Some of these considerations will be de minimis.
- 2019 Vessel Traffic/Vessel traffic Safety Report uses actual data. Vessel incidents 2008-2017 show that incidents are rare and tug escorts would not likely have been helpful in most of them. Better prevention benefits from other measures such as Facility Oil Handling Standards and Advance Notice of Oil Transfer rules.

⁵ See description in Ecology's 2019 Report of Vessel traffic and Vessel Traffic Safety: Strait of Juan de Fuca and Puget Sound Area (Publication 19-08-002).

Preliminary Scope: OTSC Recommendation and BPC Vote

The OTSC met three times in late February – early March 2024 to develop a recommendation to the BPC for the preliminary scope of the EIS. This recommendation included a list of five reasonable alternatives to be assessed in the EIS, as well as a list of elements of the environment to be included. A record of the BPC decision is included as Appendix A, as well as summarized below.

Reasonable Alternatives to be Assessed

The OTSC made a recommendation to the BPC for the inclusion of five alternatives for assessment in the EIS scope. To support this preliminary decision-making, Ecology provided information to the OTSC including model outputs and queries and review of relevant literature. The OTSC and the BPC relied on both the information provided and professional and lived expertise in determining these preliminary alternatives for analysis.

Table 1. List of OTSC recommendations and BPC vote for alternatives to be assessed.

OTSC Recommendation	BPC Vote
1. Remove Rosario and Waters East requirement (pre-2020)	Include
2. Maintain Rosario and Waters East requirement (no change, no action alternative)	Include
3. Expand 2020 escort requirements to Strait of Georgia South Zone + a corner of Strait of Georgia Zone	Include
4. Expand 2020 escort requirements to Haro Strait and Boundary Pass	Do Not Include
5. Remove requirements in the Bellingham Channel, Sinclair Island, and Waters East Zone	Do Not Include

Elements of the Environment to be Assessed

The OTSC made a recommendation to the BPC for the inclusion of nine elements in the EIS scope. The OTSC also identified six priority elements identified with an asterisk (*) in the table below, which will be the primary focus of the EIS.

To support this preliminary decision-making, Ecology provided information to the OTSC on the basis for the initial DS Scope, themes and priorities identified in early comments, review of other EISs that included a vessel traffic element, and information provided to the co-lead agencies from subject matter expertise where appropriate.

Table 2. List of OTSC recommendations and BPC vote for elements of the environment to be assessed.

Element of the Environment to Assess	OTSC Majority Recommendation	BPC Vote
*Air quality and greenhouse gas emissions	Yes, include	Include
Water quality	Yes, include	Include
*Plants and animals (including SRKW and marine mammals)	Yes, include	Include
Energy and natural resources	Yes, include	Include
*Environmental health: releases (oil spill)	Yes, include	Include
*Environmental health: noise (including underwater noise and ambient/operational noise)	Yes, include	Include
Aesthetics, light, and glare	Yes, include	Include
*Tribal natural and cultural resources	Yes, include	Include
Historic and cultural resources (other, non-tribal)	No, do not include	Do Not Include
*Transportation: vessel traffic	Yes, include	Include

Next Steps

The next step in Ecology’s environmental review process is to begin work on the Draft EIS. This will include gathering data, conducting studies, and analyzing information. Scoping comments will continue to be considered in refining the EIS scope and alternatives, and while developing the environmental analysis. We will continue to hold SEPA-focused workshops for the OTSC, Tribes, and stakeholders. Once a Draft EIS is published, Tribes, agencies, members of the public, and stakeholders will be invited to review and formally comment on the document and participate in public hearings.

The Ecology rulemaking-specific website (<https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response/Legislative-work/BPC-tug-escort-rulemaking>) will be maintained and updated through the environmental review process. Interested parties can receive updates on this SEPA process by sending a request to Haley Kennard, Tug Escort Environmental Analysis Coordinator at the Department of Ecology Spills Program at haley.kennard@ecy.wa.gov or 564-233-5178.

Appendix A. Record of BPC Decision-Making



STATE OF WASHINGTON
BOARD OF PILOTAGE COMMISSIONERS

**TUG ESCORT IDEAS
AND
ENVIRONMENTAL ELEMENTS
FOR
SEPA ANALYSIS**

ESHB 1578 *Reducing the threat to southern resident killer whales by
improving the safety of oil transportation*
and
Chapter 88.16 RCW Pilotage Act
[88.16.190](#) *Oil Tankers-Restricted Waters-Requirements*

ESCORT IDEAS EVALUATED (Reasonable Alternatives WAC 197-11-786)

Notes on the approved Escort Ideas (Reasonable Alternatives):

The Board's vote to include an alternative was NOT necessarily a vote in support of that alternative as the final rule language.

A vote in support of an alternative says that:

- A. There is information that we can learn to support decision-making by comparing this alternative to other alternatives and
- B. This alternative should remain under consideration.

Alternatives should be those that "could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable Alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures" ([WAC 197-11-786](#)).

1. Remove Rosario and waters east requirement (Pre-2020):

Remove escort requirement for laden tank barges and ATBs over 5,000 DWT and oil tankers between 5,000 and 40,000 DWT, while not engaged in bunkering, in Rosario Strait and connected waters east.

Considerations:

- a. Could result in an increase in oil spill risk
- b. Could reduce tug escort traffic and related impacts



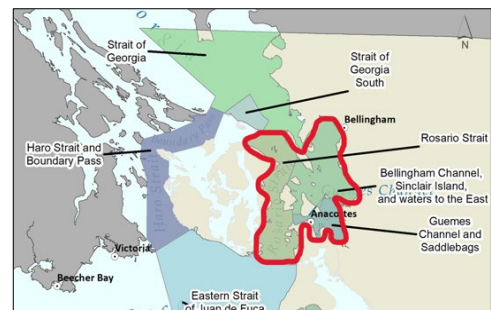
Motion: Kirtley/Drennen - Yes, include in analysis – Carried unanimously	To inform the baseline.
---	-------------------------

2. Maintain Rosario and waters east requirement (no change):

Maintain escort requirement for laden tank barges and ATBs over 5,000 DWT, and oil tankers between 5,000 and 40,000 DWT, while not engaged in bunkering, in Rosario Strait and connected waters east.

Considerations:

- a. No action alternative.
- b. BPC is required to consider this alternative in the EIS.



Motion: Farrell/Anthony - Yes, include in analysis – Carried unanimously

It is required.

3. Expand 2020 escort requirements to the waters of Strait of Georgia South, and a corner of Strait of Georgia:

Expand current escort requirement for laden tank barges and ATBs over 5,000 DWT and oil tankers between 5,000 and 40,000 DWT, while not engaged in bunkering, to the waters of Strait of Georgia South, and a corner of Strait of Georgia.

Considerations:

- a. Strait of Georgia South zone is adjacent to current escort area.
- b. The model showed this zone to have a high escort efficiency.
- c. OTSC pilot representative agreed that the characteristics of this zone make it a good candidate for an escort requirement.



Motion: Drennen/Firth – Yes, include in analysis – Carried with abstention
from Commissioner Bendixen.

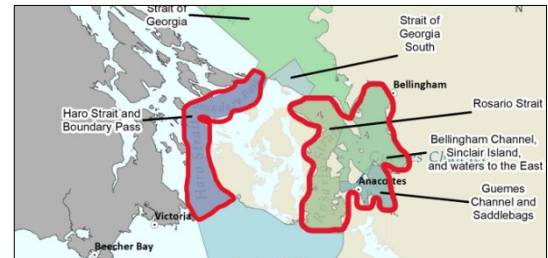
Helpful to include.

4. Expand 2020 escort requirements to Haro Strait and Boundary Pass:

Expand current escort requirement for laden tank barges and ATBs over 5,000 DWT and oil tankers between 5,000 and 40,000 DWT, while not engaged in bunkering, to Haro Strait and Boundary Pass.

Considerations:

- a. Any BPC expansion of escort requirements to Haro/Boundary would apply within the territorial boundaries of Washington and to the extent provided by law and treaty.
 - i) Escorting of vessels not inbound or outbound for a US port would only be possible if the United States Coast Guard agreed to consult with Canada before such requirement were made.
 - ii) Escorting of vessels inbound or outbound from US ports would be possible but would be a smaller subset of vessels and would bring a level of implementation complexities.
- b. The model found Haro/Boundary had the highest risk reduction in oil volume at risk and escort efficiency. Escorts here also have indirect benefits.



Motion: Anthony/Farrell - Yes, include in analysis – Failed with 6 opposed and 3 in favor.

Motion: Kirtley/Drennen – Revisit this idea during the 2028 rule reconsideration as directed by ESHB 1578 – Carried unanimously.

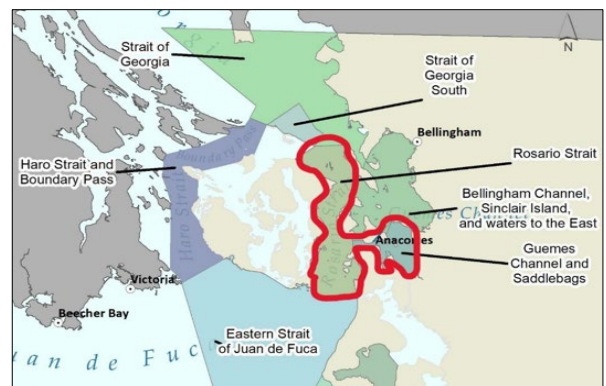
Concerned with complication of transboundary implementation. Reevaluate in a couple years after the rule has been in place.

5. Remove requirements in Bellingham Channel and waters east:

Remove escort requirements in Bellingham Channel and waters east for laden tank barges and ATBs over 5,000 DWT, and oil tankers between 5,000 and 40,000 DWT.

Considerations:

- a. Out of the three zones that make up Rosario and connected waters, the Bellingham Channel and waters east zone shows the lowest benefit from escorts.



Motion: Farrell/Anthony – No, don't include in the analysis – Carried unanimously.

Following the recommendation of the pilot OTSC member as the subject matter expert.

ELEMENTS OF THE ENVIRONMENT (for inclusion in EIS scope)

Element of the Environment Under Consideration	OTSC Recommendation
*Air quality and greenhouse gas emissions	Yes, include
Water quality	Yes, include
*Plants and animals (incl. SRKW and marine mammals)	Yes, include
Energy and natural resources	Yes, include
*Environmental health: releases (oil spill)	Yes, include
*Environmental health: noise (incl. underwater noise and ambient/operational noise)	Yes, include
Aesthetics, light, and glare	Yes, include
*Tribal natural and cultural resources	Yes, include
Historic and cultural resources (other, non-tribal)	No, do not include
*Transportation: vessel traffic	Yes, include

Motion: Kirtley/Hamilton – Include the elements as recommended by the OTSC (listed above) – Carried unanimously.

Appendix B. Determination of Significance and Scoping Notice



STATE ENVIRONMENTAL POLICY ACT (SEPA)
DETERMINATION OF SIGNIFICANCE AND
REQUEST FOR COMMENTS ON SCOPE OF ENVIRONMENTAL IMPACT STATEMENT

February 22, 2023

Lead agency: The Washington State Board of Pilotage Commissioners (BPC) and the Washington State Department of Ecology (Ecology) have agreed to act as co-lead agencies under SEPA and will share lead agency responsibilities.

Description of proposal: The Board of Pilotage Commissioners (BPC), in consultation with the Department of Ecology, is beginning a rulemaking to amend Chapter 363-116 WAC, Pilotage Rules. The rulemaking will consider 2019 legislative changes made to Chapter 88.16 RCW (Pilotage Act) through the passage of Engrossed Substitute House Bill (ESHB) 1578. 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.

Location of proposal: The waters east of the line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area.

Proponent: Washington State Board of Pilotage Commissioners

Determination of Significance and EIS required: The co-lead agencies have determined that the rulemaking may have a significant adverse impact on the environment. An environmental impact statement (EIS) is required under RCW 43.21C.030 (2)(c) and will be prepared. This EIS will evaluate potential environmental impacts of the potential rule amendments. The EIS will be used to guide development of proposed rule language.

The co-lead agencies have identified the following areas for possible discussion 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

Elements of the environment are listed in the SEPA rules (WAC 197-11-444). Not all elements of the environment outlined in WAC 197-11-444 will be included in the study.

Scoping: Scoping is the first formal step in preparing an EIS and initiates public involvement. Through scoping, the co-lead agencies seek public input on identifying the areas that require in-depth analysis, and those areas for which a more limited discussion is appropriate.

Agencies, affected tribes, and members of the public are invited to comment on the scope of the EIS. You may comment on alternatives, mitigation measures, probable significant adverse impacts, and licenses or other approvals that may be required.

Scoping comment period: February 22, 2023 through April 8, 2023

Scoping comments may be submitted:

- **Online at:** <https://sppr.ecology.commentinput.com/?id=drNJk>
- **By mail to:** Kim Morley
Washington State Department of Ecology
Spill Prevention, Preparedness, and Response Program
PO Box 47600
Olympia, WA 98504-7600

Appendix C. Public and Media Notifications

Kennard, Haley (ECY)

From: Bever, Jaimie (WSF-Pilotage) <BeverJ@wsdot.wa.gov>
Sent: Wednesday, February 22, 2023 11:46 AM
To: Bever, Jaimie (WSDOT)
Cc: Morley, Kim (ECY); Thompson, Sara (ECY); Hamel, Jolene (WSF-Pilotage); Maki, Bettina (WSDOT)
Subject: Rulemaking Announcement and SEPA Environmental Impact Statement (EIS) Scoping Public Comment Period - Board of Pilotage Commissioners for Chapter 363-116 WAC (Pilotage Rules)



Good morning,

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

The rulemaking will amend WAC 363-116-500 and, if needed, add new sections to Chapter 363-116 WAC. The rulemaking will consider 2019 legislative changes made to Chapter 88.16 RCW (Pilotage Act) through the passage of Engrossed Substitute House Bill (ESHB) 1578. 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.

Background information and why it matters:

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 Board of Pilotage Commissioners, 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.

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.

Board of Pilotage Commissioners and Ecology coordination:

The BPC will conduct this rulemaking in consultation with Ecology. The BPC has an Interagency Agreement with Ecology, in which Ecology agreed to lead the rulemaking process and to conduct regulatory analyses required by the Administrative Procedure Act, State Environmental Policy Act, and Regulatory Fairness Act. The BPC has the authority to regulate tug escorts in Washington and will make the final decisions on tug escort requirements.

The rulemaking process has three phases:

- The first phase starts with filing a Pre-proposal Statement of Inquiry (CR-101 form) with the Office of the Code Reviser. This form states the intent of the agency to adopt administrative rules and the purpose of those rules. The CR-101 form is published in the Washington State Register and announces we are starting rule development. We are at this step in the process. You can review the CR-101 form at <https://ecology.wa.gov/DOE/files/5f/5f9150cf-e5bf-4f8f-b012-dcee068e1779.pdf>.
- The second phase begins with filing the Notice of Proposed Rule Making (CR-102 form) with the Office of the Code Reviser, which is published in the Washington State Register and contains the formal proposed rule language. The CR-102 form also provides some background information on the proposal. It is at this time that other documents related to the rulemaking become available. This filing opens the formal comment period during which the BPC will hold at least one public hearing and the public is able to submit comments to the agency. We consider comments we receive and develop a responsiveness summary, then we finalize our recommendation to the Board for adoption.
- For the final phase, the BPC files a Rule-Making Order (CR-103 form) that announces the rule adoption. The rule becomes adopted when the Executive Director signs the form. The updated rule typically takes effect thirty-one days after filing.

State Environmental Policy Act (SEPA) EIS Scoping Comment Period and Scoping Meeting

The BPC and Ecology have agreed to act as co-lead agencies under SEPA and will share lead agency responsibilities. The co-lead agencies have determined that the rulemaking may have a significant adverse impact on the environment. An environmental impact statement (EIS) is required under RCW 43.21C.030 (2)(c) and will be prepared. Agencies, affected tribes, and members of the public are invited to comment on the scope of the EIS. You can review the SEPA Determination of Significance and Scoping Notice at:

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

Scoping comments may be submitted in the following ways:

- **Online at:** <https://sppr.ecology.commentinput.com/?id=drNJk>
- **By mail to:**
Kim Morley
Washington State Department of Ecology
Spill Prevention, Preparedness, and Response Program
PO Box 47600
Olympia, WA 98504-7600
- **As verbal comments during the online scoping meeting:** The purpose of the meeting is to present information about the rulemaking, the SEPA process, and to provide a verbal comment opportunity on the scope of the proposed EIS. You can register in advance by clicking the link in the table below.

Meeting Date	Join online	Join by phone	Access code
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March 21, 2023 10:00am – 12:00pm	https://waecy-wa.gov.zoom.us/join?pwd=ZlZlc-1srTwpHdw8eYgvTgyrLChojw5CvGoS	(253) 205-0468	868 4143 7378
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EIS scoping comments must be received by April 8, 2023. Please note: Any information (e.g., personal or contact) you provide in a comment or in an attachment may be publicly disclosed and posted on the internet.

Proposed Rulemaking Timeline:

February 22, 2023	Rulemaking announcement (CR-101 filing)
May 2023 – December 2024	Rulemaking meetings and workshops
July 2025 (anticipated)	Rule proposal - start of the comment period (CR-102 Filing)
December 2025 (anticipated)	Rule adoption (CR-103 Filing)
Anticipated January 2026 (typically 31 days after filing the CR-103)	Rule effective date

If you have questions about the rulemaking, contact Jaimie Bever, BPC Executive Director, at beverj@wsdot.wa.gov or (206) 515-3887.

More information about the rulemaking will be posted at:

<https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response/Legislative-work/BPC-tug-escort-rulemaking>.

The Department of Ecology and the Board of Pilotage Commissioners are committed to providing people with disabilities access to information and services by meeting or exceeding the requirements of the Americans with Disabilities Act (ADA), Section 504 and 508 of the Rehabilitation Act, and Washington State Policy #188. To request an ADA accommodation, contact Ecology by phone at 360-407-6831 or email at ecyadacoordinator@ecy.wa.gov. For Washington Relay Service or TTY call 711 or 877-833-6341. Visit [Ecology's website](#) for more information.

Spanish

La Junta de Comisionados de Pilotaje, en consulta con el Departamento de Ecología, está empezando el proceso de creación de reglamento para enmendar el Capítulo 363-116 WAC Reglamentos de Pilotaje (Pilotage Rules). Capítulo 363-116 WAC describe el entrenamiento, licenciatura, y regulación de pilotos marítimos del estado de Washington para asegurar pilotaje seguro. El reglamento también describe los requisitos para remolcadores de escolta para naves transportando petróleo en las aguas de Washington.

Para más información, favor de llamar a Jaimie Bever al 206-515-3887 y pida un intérprete.

Russian

Board of Pilotage Commissioners, консультируясь с Department of Ecology, приступает к разработке поправок к главе 363-116 «Правила проводки судов» Административного кодекса штата Washington (Washington Administrative Code, WAC) (Pilotage Rules). В главе 363-116 WAC описываются обучение лоцманов в штате Washington, выдача им лицензий и регулирование их деятельности для обеспечения безопасной проводки судов. Правила также описывают требования к буксирному сопровождению для судов, перевозящих нефть в водах штата Washington.

За дальнейшей информацией обращайтесь к Jaimie Bever по телефону 206-515-3887 и попросите предоставить устного переводчика.

Chinese

在和华盛顿州生态管理署协商之后，领航委员会开始了法规制定流程来修改WAC第363-116章的《领航规则（Pilotage Rules）》。WAC第363-116章描述了华盛顿州海上领航员的培训，许可，和监管以确保安全驾驶。该规则还描述了对在华盛顿水域运载石油的船只的拖船护航要求。

如需要更多信息，请致电206-515-3887与Jaimie Bever联系并要求翻译员服务。

Vietnamese

Với sự tư vấn của Bộ Môi Sinh, Hội Đồng Ủy Viên Hoa Tiêu đang bắt đầu quy trình làm luật để sửa đổi Chương 363-116 WAC Luật Hoa Tiêu (Pilotage Rules). Chương 363-116 WAC mô tả việc đào tạo, cấp phép và quy định cho các hoa tiêu hàng hải của Bang Washington để đảm bảo hoa tiêu an toàn. Luật cũng mô tả các yêu cầu hộ tống tàu kéo đối với các tàu chở dầu trong vùng biển Washington.

Để biết thêm thông tin, vui lòng gọi Jaimie Bever theo số 206-515-3887 và yêu cầu thông dịch viên.

Korean

항만 도선법 위원회는 주환경부와 협의하여 주법 Chapter 363-116 WAC 도선 항해법을 (Pilotage Rules) 개정을 시작하였다. Chapter 363-116 WAC 는 필요한 훈련과정, 와싱턴주 안전한 항만 도선을 위한 항해법등을 기술한 법이다. 또한 유조선을 유도하기위해 필요한 예인선을 조종 필수사항도 기술한다. 좀더 자세한 사항은 Jaimie Bever (206-515-3887) 에 문의후 통역 요청할것.

Jaimie C. Bever (she/her) | *Executive Director*
Washington State Board of Pilotage Commissioners

d: 206.515. 3887 | c: 206.305.2296
2901 Third Ave, Ste 500 | Seattle, WA 98121



Kennard, Haley (ECY)

From: Bever, Jaimie (WSF-Pilotage) <BeverJ@wsdot.wa.gov>
Sent: Tuesday, February 13, 2024 8:53 AM
To: Bever, Jaimie (WSDOT)
Cc: Kennard, Haley (ECY)
Subject: Additional SEPA Scoping Workshop – Board of Pilotage Commissioners Tug Escort Rulemaking (Chapter 363-116 WAC)
Attachments: SEPA Determination of Significance_Scoping Notice_Chapter 363-116 WAC (4).pdf

External Email



Good morning,

On Feb. 22, 2023, we announced the rulemaking to amend [Chapter 363-116 WAC](#), Pilotage Rules. We also issued a [Determination of Significance](#) (DS) and a request for comments on the scope of the Environmental Impact Statement (EIS). Since this time, the Board of Pilotage Commissioners (BPC) and the Washington State Department of Ecology (Ecology) have held a series of rulemaking workshops.

Additional SEPA Scoping Workshop:

We are hosting an additional SEPA scoping workshop on **Tuesday, March 5th from 1:30 – 3:30 PM via webinar**. A copy of the original DS is attached for your reference. Although there is no formal comment period associated with this workshop, we welcome your input at any time throughout this process. This workshop is intended to:

- Discuss and refine the proposed scope of the EIS including impacts, alternatives, and applicable mitigation measures to avoid or minimize potential impacts if appropriate.
- Seek new science and data resources that may be available since the DS was published.
- Provide information about the SEPA timeline, integration with the rulemaking process, and future opportunities to participate.

You can register in advance by clicking the link in the table below. An agenda for the workshop will be sent out ahead of the meeting.

Additional SEPA Scoping Workshop:

March 5th, 1:30 – 3:30 PM PST

Workshop	Register to Join Online	Join by Phone	Access Code
Additional SEPA Scoping Workshop March 5 th , 1:30 – 3:30 PM	https://waecy-wa.gov/zoom.us/meeting/register/tZEucumqT0jGdaXwreDaAkfMLRitJR2BDD7	1-253-205-0468	853 5007 6932

Track our progress and view the rulemaking timeline at: <https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response/Legislative-work/BPC-tug-escort-rulemaking>.

For the SEPA portion of the rulemaking, Haley Kennard (564-233-5178, haley.kennard@ecy.wa.gov) is the lead for Ecology and will be the main point of contact for any SEPA-related questions and outreach.

Thank you for your continued interest in this important work. Please reach out if you have any questions.

Sincerely,
Jaimie

Jaimie C. Bever | (she/her) | *Executive Director*
Washington State Board of Pilotage Commissioners

d: 206.515.3887 | c: 206.305.2296

2901 Third Ave, Ste 500 | Seattle, WA 98121

www.pilotage.wa.gov



Appendix D. Letters to Tribal Governments

Kennard, Haley (ECY)

From: Bolinger, Effie (ECY)
Sent: Wednesday, February 22, 2023 3:18 PM
To: Morley, Kim (ECY); Bever, Jaimie (WSDOT)
Subject: Tribal Letter to Tribal Chairpersons - BOP Tug Escort Rulemaking
Attachments: bulletin_address_report (52).csv

Hi Kim and Jaimie,

Attached is a copy of the Tribal Letter (see below) that was sent out for your rulemaking via Gov Delivery and the listed recipients (attached). Please save both for the rule file.

Thanks!

Effie Bolinger (she/her)
Governmental Relations – Rules & Accountability
Department of Ecology
(360) 628-3900
P.O. Box 47600
Olympia, WA 98504
Effie.bolinger@ecy.wa.gov

From: Washington Department of Ecology <waecy@public.govdelivery.com>
Sent: Wednesday, February 22, 2023 1:00 PM
To: Szczur, Jonathan (ECY) <jszc461@ECY.WA.GOV>; Wineke, Andrew (ECY) <anwi461@ECY.WA.GOV>; Johnson, Amanda (ECY) <amjo461@ECY.WA.GOV>; Bolinger, Effie (ECY) <efbo461@ECY.WA.GOV>; Olegre, Diana (ECY) <DOLE461@ECY.WA.GOV>
Subject: Courtesy Copy: The Washington State Board of Pilotage Commissioners (BPC) is extending this invite for government-to-government consultation to you and other tribal governments.

This is a courtesy copy of an email bulletin sent by Effie Bolinger.

This bulletin was sent to the following groups of people:

Subscribers of Tribal Contacts (32 recipients)



Subscriber Subscriber
No address available
No address available

February 22, 2023

Dear Subscriber Subscriber:

The Washington State Board of Pilotage Commissioners (BPC) is extending this invite for government-to-government consultation to you and other tribal governments. The BPC, in consultation with the Washington State Department of Ecology (Ecology) is beginning a new rulemaking for Chapter 363-116 WAC, Pilotage Rules. This rulemaking is part of a package of efforts passed by the legislature to reduce the risk of oil spills, and to protect Southern Resident Killer Whales.

The BPC will conduct this rulemaking in consultation with Ecology. The BPC has an Interagency Agreement with Ecology, in which Ecology agreed to lead the rulemaking process for BPC and to conduct regulatory analyses required by the Administrative Procedure Act, State Environmental Policy Act, and Regulatory Fairness Act. The BPC has the authority to regulate tug escorts in Washington, therefore, they will be the lead agency on government-to-government consultations and will make the final decisions on tug escort requirements.

The rulemaking will amend WAC 363-116-500 and, if needed, add new sections to Chapter 363-116 WAC. The rulemaking will consider 2019 legislative changes made to Chapter 88.16 RCW (Pilotage Act) through the passage of Engrossed Substitute House Bill (ESHB) 1578. 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.

Why are we doing this rulemaking?

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 Board of Pilotage Commissioners, 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.

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.

Who may be interested in this rulemaking?

Vessels transporting oil in bulk on or over waters of the state east of the line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area could be impacted by this rulemaking. Escort service providers could also be impacted. The regulated industries for this rulemaking include approximately twenty tanker, ATB, or barge operating companies and various escort service providers. There are multiple associations and organizations representing the regulated industries that will be interested in this rulemaking. Additionally, state and federal agencies that regulate this subject may be interested in this rulemaking.

Tribes, environmental advocacy organizations, harbor safety committees, local governments, and the public may be interested in this rulemaking because it affects the health and safety of Washington's natural resources, communities, and waters.

The rulemaking process has three phases:

1. The first phase starts with filing a *Pre-proposal Statement of Inquiry* (CR-101 form) with the Office of the Code Reviser that states the intent of the agency to adopt administrative rules and the purpose of those rules. The CR-101 form is published in the Washington State Register and announces we are starting rule development.

2. The second phase begins with filing the *Notice of Proposed Rule Making* (CR-102 form) with the Office of the Code Reviser, which is published in the Washington State Register and contains the formal proposed rule language. The CR-102 form also provides some background information on the proposal and it is at this time that other documents related to the rulemaking become available. This filing opens the formal comment period during which the BPC will hold at least one public hearing and the public is able to submit comments to the agency. We consider comments we receive as the agency finalizes our recommendation to the Board for adoption.
3. For the final phase the BPC files a *Rule-Making Order* (CR-103 form) that announces the rule adoption. The rule becomes adopted when the Executive Director signs the form and it typically takes effect thirty-one days after filing.

Proposed Rulemaking Timeline

Rulemaking Announcement (CR-101 filing):	February 22, 2023
Rule Proposal - Start of the comment period (CR-102 Filing):	Anticipated July 2025
Anticipated Rule Adoption (CR-103 Filing):	Anticipated December 2025
Rule effective date:	Anticipated January 2026 (Typically, 31 days after filing the CR-103)

More information is available at: <https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response/Legislative-work/BPC-tug-escort-rulemaking>.

We would like to also extend the invite to meet with you on a government-to-government basis to answer any questions, and consult with you on any issues of concern you may have related to this rulemaking. In addition, we encourage your staff to track our progress on the rule and provide input or comments.

If you have questions, or would like to schedule a government-to-government consultation, please contact Jaimie Bever, BPC Executive Director and rulemaking lead at beverj@wsdot.wa.gov or (206) 515-3887, or Jase Brooks, Ecology Spills Program Tribal Liaison at jase.brooks@ecy.wa.gov or (360) 951-9490. In addition, if you or your staff would like to be added to our distribution list for ongoing information about this rulemaking, please contact Jaimie.

Sincerely,



Jaimie Bever

Executive Director

Board of Pilotage Commissioners

A handwritten signature in blue ink, appearing to read "Carlos R. Clements", with a stylized flourish extending to the right.

Carlos Clements

Spill Prevention, Preparedness and Response Program Manager

Department of Ecology

Kennard, Haley (ECY)

From: Wolt, Katie (ECY)
Sent: Monday, February 12, 2024 2:07 PM
To: Flittner, Brittany (ECY)
Cc: Kennard, Haley (ECY)
Subject: Fw: Courtesy Copy: Additional SEPA Scoping Workshop – Board of Pilotage Commissioners Tug Escort Rulemaking (Chapter 363-116 WAC), Invitation to Consult
Attachments: SEPcomment_BOP_Tribal contacts.csv

Please keep for your rule file.

From: Washington Department of Ecology <waecy@public.govdelivery.com>
Sent: Monday, February 12, 2024 11:01 AM
To: Fields, Terrie (ECY) <tfie461@ECY.WA.GOV>; Wineke, Andrew (ECY) <anwi461@ECY.WA.GOV>; Bolinger, Effie (ECY) <efbo461@ECY.WA.GOV>; Masilamani, Senthil (ECY) <sema461@ECY.WA.GOV>; Szczur, Jonathan (ECY) <jszc461@ECY.WA.GOV>; Foster, Laura (ECY) <lfos461@ECY.WA.GOV>; Olegre, Diana (ECY) <DOLE461@ECY.WA.GOV>; Wolt, Katie (ECY) <KAWO461@ECY.WA.GOV>
Subject: Courtesy Copy: Additional SEPA Scoping Workshop – Board of Pilotage Commissioners Tug Escort Rulemaking (Chapter 363-116 WAC), Invitation to Consult

This is a courtesy copy of an email bulletin sent by Katie Wolt.

This bulletin was sent to the following groups of people:

Subscribers of Tribal Contacts (31 recipients)



Subscriber Subscriber
No address available
No address available

February 12, 2024

Dear Chairperson Subscriber:

The Washington State Board of Pilotage Commissioners (BPC) is extending this invitation for government-to-government consultation to you and other Tribal Governments. The BPC, in coordination with the Washington State Department of Ecology (henceforth “co-lead agencies”) announced a new [rulemaking for Chapter 363-116 WAC, Pilotage Rules](#), in February 2023. This rulemaking is part of a package of efforts passed by the Legislature to reduce the risk of oil spills, and to protect Southern Resident Killer Whales. The rulemaking considers increasing the number of required escort tugs throughout the Puget Sound.

Because the rulemaking could result in an increase in vessel traffic, the co-lead agencies determined that it may have significant adverse impact on the environment. We understand that an increase in vessel traffic and associated environmental impacts may also impact the Treaty Rights and interests of federally recognized tribes. A [Determination of Significance \(DS\)](#) under the State Environmental Policy Act (SEPA) was issued in February 2023, along with [the rulemaking announcement \(CR-101 form\)](#), which triggers the development of an Environmental Impact Statement (EIS). The co-lead agencies previously extended an invitation for government-to-government consultation when the rulemaking and EIS scoping was announced.

The co-lead agencies are reaching out again to seek your input on the EIS scope to inform rule development, to keep Tribal Governments updated on our process at each step, and to reiterate our commitment to inviting government-to-government consultation at any time throughout this process. We have scheduled an EIS scoping workshop on **Tuesday, March 5 from 1:30-3:30 PM. Please use this link to register: <https://waecy-wa-gov.zoom.us/meeting/register/tZEucumogT0jGdaXwreDaAkfMLRitJR2BDD7>**

This workshop is intended to:

- Discuss and refine the proposed scope of the EIS including impacts, alternatives, and applicable mitigation measures to avoid or minimize potential impacts if appropriate.
- Seek new science and data resources that may be available since the DS was published.
- Provide information about the SEPA timeline, integration with the rulemaking process, and future opportunities to participate.

There is no formal comment period associated with this meeting, but we welcome Tribal Government input by any method at any time. We anticipate continuing to hold Tribal

Only, in addition to stakeholder workshops, which Tribes are also welcome to attend, throughout the EIS development. Some of the potential environmental impacts that were preliminarily identified in the DS include: air and water quality, plants and animals, energy and natural resources, environmental health (including noise and potential releases into the environment affecting public health), light and glare, aesthetics, recreation, and historic and cultural resources. [Engrossed Substitute House Bill \(ESHB\) 1578](#), which initiated this rulemaking, also directs Ecology and the BPC to consider protecting and minimizing vessel traffic impacts to established treaty fishing areas and respecting and preserving the treaty-protected interests and fishing rights of potentially affected Tribes.

Proposed Rulemaking and EIS Timeline

The EIS process runs concurrently with the rule development.

Rulemaking Action	SEPA Action	Proposed Timeline
Rulemaking Announcement (CR-101 filing):	Determination of Significance / Scoping Comment Period	February 22, 2023
Rule Development Workshops	EIS Development Workshops	March 2023 – December 2024
Rule Proposal and start of comment period (CR-102 Filing)	Issuance of Draft EIS with CR-102 and comment period.	Anticipated July 2025
Rule Adoption (CR-103 Filing)	Final EIS issued at least 7 days before the CR-103	Anticipated December 2025
Rule Effective	N/A	Anticipated January 2026

More information is available at: <https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response/Legislative-work/BPC-tug-escort-rulemaking>

If you have questions or would like to consult, please contact Jaimie Bever, BPC Executive Director and rulemaking lead at beverj@wsdot.wa.gov or (206) 515-3887, or Jase Brooks, Ecology Spills Program Tribal Liaison at jase.brooks@ecy.wa.gov or (360) 951-9490. In addition, if you or your staff would like to be added to our distribution list for ongoing information about this rulemaking, please contact Jaimie.

Sincerely,



Jaimie Bever
Executive Director
Board of Pilotage Commissioners

A handwritten signature in black ink, appearing to read "Carlos R. Clements" with a stylized flourish at the end.

Carlos Clements
Spill Prevention, Preparedness, and Response Program Manager
Department of Ecology