

MEETING MINUTES
STATE OF WASHINGTON ~ BOARD OF PILOTAGE COMMISSIONERS
May 21, 2020

PUBLIC HEARING - Call to Order

A public hearing of the Board of Pilotage Commissioners was convened at 10:00 a.m. by Chair Sheri Tonn in both the Agate Conference Room, 2901 Third Avenue, Seattle, Washington and virtually via conference call and Skype.

Present via Phone or Skype:

Chair: Sheri Tonn Vice Chair: Eleanor Kirtley
Commissioners: Dale Jensen, Jason R. Hamilton, John Scragg, Mike Anthony, Timothy J. Farrell, Rik Krombeen and Phil Morrell
Administration: Jaimie Bever, Bettina Maki, Jolene Hamel
Assistant Attorney General: Albert Wang
Linda Styrk, Eric vonBrandenfels, Ivan Carlson, Jim Kearns, Travis McGrath: Puget Sound Pilots
JD Ross Leahy: Department of Ecology
Mike Folkers and Gary Nelson: Port of Grays Harbor
Mike Moore: Pacific Merchant Shipping Association
Lou Paulsen: Northwest Seaport Alliance
Rick LaBlond: Shell
Bob Poole: WSPA/OTSC
Fred Felleman: WAVE Consulting/OTSC
Severin Knutsen: PSP Trainee
Peter Mann: PSP Candidate
John Wright: Polar Tankers
Laird Hail, Nate Menefee: USCG
Monique Webber: Pacific Yacht Management
Tom Ehrlichman, Joseph Williams: Swinomish Indian Tribal Community

WAC 363-116-082: Limitations on New Pilots. The proposed rule revisions are due to limited training opportunities in the Puget Sound Pilotage District. The revised WAC language will prohibit first-year pilots from piloting vessels greater than 3,000 gross tons in the Duwamish Waterway. The restriction will be lifted through the license upgrade program developed by the Trainee Evaluation Committee (TEC) for second year pilots. This change was previously adopted by the Board under emergency provisions at the December 16, 2019 regular meeting. No oral or written comments were received. The public hearing was closed by Chair Tonn at 10:05 a.m.

REGULAR MEETING – Call to Order

The regular meeting of the Board of Pilotage Commissioners was convened at 10:05 a.m. by Chair Sheri Tonn telephonically via Skype.

Present:

Chair: Sheri Tonn Vice Chair: Eleanor Kirtley
Commissioners: Dale Jensen, Jason R. Hamilton, John Scragg, Mike Anthony, Timothy J. Farrell, Rik Krombeen and Phil Morrell
Administration: Jaimie Bever, Bettina Maki, Jolene Hamel
Assistant Attorney General: Albert Wang
Linda Styrk, Eric vonBrandenfels, Ivan Carlson, Jim Kearns, Travis McGrath: Puget Sound Pilots
JD Ross Leahy: Department of Ecology
Mike Folkers and Gary Nelson: Port of Grays Harbor
Mike Moore: Pacific Merchant Shipping Association
Lou Paulsen: Northwest Seaport Alliance
Rick LaBlond: Shell
Fred Felleman: WAVE Consulting/OTSC
Severin Knutsen: PSP Trainee
Peter Mann: PSP Candidate
John Wright: Polar Tankers
Laird Hail, Nate Menefee: USCG

Monique Webber: Pacific Yacht Management

Tom Ehrlichman, Joseph Williams: Swinomish Tribal Community

Meeting Minutes.

Motion: Jensen/Kirtley – approve the April 16, 2020 Meeting Minutes as written – Carried.

BPC Staff Report.

- Jaimie Bever reported that with the 2901 office building still closed to the public, Board staff continues to telework with the exception of BPC Program Analyst Bettina Maki, who works in the office 3-days per week. Both Jaimie and Jolene Hamel will only be going in for special projects. She also reported that WSF will not likely be returning employees to full time work at the 2901 building until Phase 3 of the Governor's Safe Start program.
- The Washington State transportation revenue budget has taken a significant hit from the COVID pandemic. State agencies have been directed to prepare for a 15% budget reduction. However, to date, BPC has not yet received that directive. In addition, Cabinet and Executive Agencies are not currently allowed to enter service contracts. Staff is working to get clarity on how that directive affects the upcoming contract for the 2021 Marine Pilot Exam.
- Many thanks to WSF for helping BPC staff obtain PPE for pilot trainees. Staff received surgical masks, N95 masks, gloves, and hand sanitizer this morning and are working out how to disburse them to the trainees in both Puget Sound and Grays Harbor.
- BPC staff is working on the 2019 Annual Report and will have a draft available for Board and stakeholder review and comment for the July meeting. The final report is due to the Legislature by September 1, 2020.
- Jaimie Bever is planning to be on vacation next week. She will occasionally be checking email. Bettina Maki and Jolene Hamel will be available for assistance, if needed.

Commissioner Scragg asked how BPC staff was handling the workload with increased responsibilities of ESHB 1578 and the OTSC. Jaimie Bever responded that although there is more work, she feels that it has been seamless with no slower response times and asked if any commissioners felt differently. There were no responses. Commissioner Hamilton then asked when the BPC might return to in-person public meetings. Jaimie Bever responded maybe June or July, but likely in phases, with the first meeting including just the commissioners in person and public on the phone, to maintain social distancing. However, in-person public meetings will not resume until the Governor lifts the ban.

BPC Chair Report.

- Chair Tonn thanked BPC staff, stakeholders, trainees, pilots, U.S. Coast Guard, Washington State Ferries, and everyone else along the way for forbearance with the current meeting process, adding that she thought it was working well. She did not think that in-person meetings were likely until at least July.
- Chair Tonn reminded everyone that meeting materials are available on the website before each meeting.

Activity Reports. Mike Moore representing Pacific Merchant Shipping Association (PMSA), Mike Folkers representing the Port of Grays Harbor (PGH), Lou Paulsen representing The Northwest Seaport Alliance (NWSA), Captain Eric vonBrandenfels representing Puget Sound Pilots (PSP), and Nate Menefee and Laird Hail representing the United States Coast Guard (USCG) offered current and projected statistical data as well as updates on current maritime issues and activities.

NEW BUSINESS

Consideration of Preceding Hearing: WAC 363-116-082 Limitations on New Pilots.

Motion: Anthony/Jensen – Adopt the revised WAC language as proposed – Carried.

Approval of Pilot License Upgrade Programs: Captains Brad Lowe, Jim Carstensen, Phil Hunter, Keith Kridler, David Melin, and Sandy Bendixen: Captains Lowe and Carstensen are nearing completion of their fifth license year, Captain Hunter his third, and Captains Kridler and Melin are nearing completion of their first license year. All the letters have been updated to reflect the new license levels.

Motion: Scragg/Farrell – approve the license upgrade programs for Captains Lowe, Carstensen, Hunter, Kridler, and Melin as drafted by the TEC – Carried.

Captain Bendixen is nearing completion of her second license year. She is currently on maternity leave and the TEC recommends freezing her license level until she returns to duty.

Motion: Scragg/Jensen – approve license freeze on upgrade program for Captain Bendixen as drafted by the TEC – Carried.

Discussion Regarding PSP 2019 Financial Statement. PSP President Captain Eric vonBrandenfels explained that the financial statement would be submitted to the Board tomorrow, with a presentation and discussion at the June meeting.

Appointment of Tribal Representative to the Oil Transportation Safety Committee (OTSB)

Chair Tonn introduced Senator Joseph Williams from the Swinomish Indian Tribal Community, who has been appointed by the Swinomish Tribal Senate to sit on the Oil Transportation Safety Committee (OTSB.) She invited Senator Williams to introduce himself. He informed the Board that his Indian name, S'Kwai-Kwi, came from the Chief of the Lower Skagit Tribe, who was one of the original signers of the 1855 Point Elliott Treaty. He said he came from a long line of mariners and that everything about him is tied to the water. He acknowledged that the Swinomish have not had a voice at this particular table regarding their treaty rights and that he felt very blessed to be appointed to the OTSC. Due to increased vessel traffic and bunkering, he recognized the frustration for pilots and the USCG to have to maneuver around their treaty fishing grounds. However, he added that they did not view treaty fishing rights as a gift from the government. It is something they have practiced since time immemorial. They are excited to be a part of the conversation regarding changing vessel traffic trends. He also brought up the issue of obtaining records of how many vessels are bunkering north of Samish Island without having to do an official public records request. He added that it has been difficult to see that information for an area that is in their backyard and affects their treaty fishing rights. They lose crab gear every year due to that bunkering site. He again reiterated his excitement to be a part of the committee and the conversations.

Motion: Jensen/Scragg – appoint Senator Joseph Williams to the Oil Transportation Safety Committee (OTSC) as the Tribal representative – Carried.

ESHB 1578 – Consideration of Scope for Changing Vessel Trends Synopsis. The purpose of the synopsis is to look at how vessel traffic patterns change after the September 1, 2020 implementation of the tug escort requirements on laden oil tankers, ATBs, and towed barges between 5,000 - 40,000 deadweight tons in Rosario Strait and connected waterways east. JD Leahy from the Department of Ecology presented to the Board the revised scope for the Synopsis of Changing Vessel Traffic Trends based on their feedback at the May meeting. A Q&A with Board members followed.

Commissioner Kirtley shared her appreciation for how thoughtful and thorough the revisions to the scope were. Tom Ehrlichman, representing the Swinomish Tribe in support of Senator Williams, stated that their review had been very short. However, they supported establishing a baseline of current tug traffic in addition to the risk analysis. The Swinomish are particularly interested in the changing trends for tug escorts. The Tribe supports good, robust data based on current traffic levels in those sensitive areas and are concerned how the changes will affect Tribal fishing grounds. He also wanted to verify that the BPC will be looking at non-escorting tugs as well. JD responded that Ecology will be able to establish a baseline for comparison and that the vessels they will look at will be the ones affected by the new statute. He did mention that the information gathered for this year will be unique given the current circumstances. Commissioner Jensen responded that the question from the Swinomish highlights the importance of having Tribal partners at the table during these discussions. He then gave a shoutout to the Swinomish because they have been very involved in Ecology's risk assessment work for years and in the development of this legislation. He also, again, shared appreciation for JD Leahy and his Ecology team, as well as Chair Tonn and Jaimie Bever for their hard work on the scope. Chair Tonn thanked Commissioner Jensen for his leadership. Commissioner Scragg expressed concern using the 2020 data due to the COVID-19 pandemic resulting in zero cruise ships and traffic slowdowns. He wondered if there was any value to utilizing September 2018 to August 2019 data instead. JD replied that it was an interesting question. He added that the intent was, primarily, to see if vessels are avoiding Rosario due to the new requirements. Additionally, they would look at some other ancillary questions. Ultimately, he suggested the data analysis was more focused on the traffic that is there and what routes it is taking. Commissioner Scragg wondered if there was any downside to analyzing the earlier year. JD suggested

that one thing about using 2019/2020 data is that operating companies may make adjustments prior to September 1, 2020 leading up to the rule, which would not be seen in earlier years. Commissioner Farrell said that he was not sure the actual beginning and end dates were the critical feature so much as having a longer timeframe on the dataset, adding that the longer timespan would produce better data for analysis. JD agreed, but pointed out that there would be a manual component to the data to incorporate information that's not readily available for input in the model, such as vessels that don't carry AIS, further suggesting that adding time could be problematic in that regard. However, he did think Commissioner Scragg's suggestion of shifting the timeframe was interesting. Chair Tonn suggested that the Board approve the Scope of Work, reminding the Board that it could be adjusted. It would allow Ecology to have some time to think about whether or not to adjust the data year and to keep the Board informed at further meetings.

Motion: Farrell/Kirtley – approve the scope for the Changing Vessel Traffic Trends Synopsis – Carried.

ESHB 1578 – Consideration of Interpretive Statement

Jaimie Bever, Chair of the Oil Transportation Safety Committee (OTSC), explained that the Interpretive Statement was the result of several OTSC meetings. It was determined early on, after the passage of ESHB 1578, that terms in the legislation needed clarification. These terms were discussed and debated by the OTSC, with mostly unanimous consensus by OTSC members. The Interpretive Statement is the result of those meetings and conversations. It will require Board action at the June 18, 2020 meeting. The Board, OTSC, and the public asked questions and shared opinions. Commissioner Scragg expressed confusion with the definition of "a vessel providing bunkering or refueling services" and suggested that it needed more clarity. Commissioner Jensen responded to Commissioner Scragg that the challenge had been in clarifying the terms. He suggested that it was clear in statute and in the conversations surrounding the legislation that bunkering operations were exempt from tug escort requirements. He offered that at the time the legislation was crafted, southern resident killer whale recovery was one of the main goals. But as it went through the legislative process, because the legislation covered such a huge geographic area, there was a lot of effort to identify a specific area where tug escort requirements could start, and that was Rosario Strait. The thought behind that approach was that by laying out the process through the Board of Pilotage Commissioners over several years, it allowed for continual evaluation of the impacts of the change through Ecology's model. He concluded by reminding everyone that nothing is off the table as far as future rules. For now, bunkering is exempt in Rosario, but that did not necessarily mean that won't change through future rulemaking after the risk model has been evaluated.

At this point, Fred Felleman asked to give his statement as the environmental representative on the OTSC. He testified that he will be submitting a written statement to the Board prior to the June 18, 2020 meeting. He started off by stating that he felt the OTSC acted very collaboratively and constructively, and gave a shout out to Captain Blair Bouma, who provided his objective insights in a very generous fashion. Fred added that he was glad to see that the lack of Tribal representation on the committee had been resolved today. He then spoke to four points he had previously outlined in an email to the Board members. The first was regarding legislative intent. He then read the language directly from the first section of the bill, where the intent stated was to prevent a catastrophic spill and maximize safety. It underscores the importance of the BPC to interpret the intent as it considers actions. Second was regarding the definition of "a vessel providing bunkering or refueling services". He stated that coming to a decision regarding the services of bunkering was relatively easy. However, the challenge was where the services were to be exempted from escort requirements. He expressed frustration at the lack of data regarding how many vessels were transiting this area, even though he had been requesting it all the way back to the hearings for the bill. Based on various ways he tried to interpret the data that had been received, it appeared to him that in the category of between five and forty thousand deadweight tons, there would be 2-3 additional escorts per day, if bunkers were escorted in Rosario. He brought up the issue that, under the proposed definition, if a barge was transiting Rosario to bunker in Rosario and another was transiting Rosario to bunker a cruise ship in Elliott Bay, one would require a tug escort and one would not. He added that this made no sense and was an enforcement nightmare. And lastly, regarding the Synopsis of Changing Vessel Traffic Trends, he questioned if the ATBs going out to sea would move to Haro Strait to avoid the tug escort requirements, which would be contrary to Canada's ECHO Program mission to assist in the recovery of the southern resident killer whales. He questioned the data ranges proposed by Ecology, using the past 5 years of data and a full year after the change. He

wanted to make it clear that whatever was decided at the Board level for the interpretations, the view going forward regarding future steps did not bind future interpretations. He also reiterated that he did not believe the legislative intent was clear in the legislation or in Ecology's interpretation and that he is counting on the Board to look at it from a practical and safety perspective. He then thanked commissioners for their time. Chair Tonn thanked him and assured him that the proposed revised scope addresses some of his concerns.

Jaimie Bever offered that the OTSC conversations around the Interpretive Statement terms was extensive and that those conversations were well documented in the committee's meeting minutes. She encouraged the Board to review those minutes before the June 18, 2020 Board meeting.

Chair Tonn asked Senator Williams if he had any comments. He responded that he thought the proposed definition for bunkering was straight forward. He added that the main concern for the Swinomish was increased vessel traffic up near Vendovi.

Chair Tonn then asked if any other OTSC or Board members had comments. Commissioner Jensen shared his appreciation to the OTSC and everyone involved to interpret the bill language. He said that while reading the committee meeting minutes, he was reminded how difficult and cumbersome it was to get the legislation passed. He then confirmed that there was agreement among the legislature at the time that a bunker barge heading to fuel a vessel in Seattle was exempt from a tug escort. He also stated that there just was not enough time in the 2019 Legislative Session to add the clarity to the bill language that the OTSC was attempting to work through now.

Commissioner Hamilton thanked Commissioner Jensen for providing that clarifying statement, which was discerned by the vast majority of the OTSC members who were looking at the legislation. He also thanked OTSC Chair Jaimie Bever for facilitating difficult discussions with individuals who are advocates for their organizations and industries, as well as pilots, mariners, and Board members, and for keeping the committee members on task. He also thanked Captain Blair Bouma for his contribution to the committee. There were no other comments.

Pilot's Report of Marine Safety Occurrence: *Selina*, 04-22-2020

Outbound VTS lane – North of Protection Island	Leak in main engine fuel pump. VTS instructed to proceed to anchor in PA for repairs.	<u>Motion:</u> Farrell/Scragg File as a Marine Safety Occurrence – Carried.
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Consideration of Request for Vessel Exemption:

Sailing Yacht *Chimera* – 148', 241gt, Cayman Islands registry, Captain Jonathan Whitley.

Motion: Farrell/Hamilton – concur with Chair Tonn's granting of an annual exemption – Carried.

Motor Yacht *St Eval* – 114', 217gt, Cayman Islands registry, Captain Orlando Millia.

Motion: Farrell/Jensen – concur with Chair Tonn's granting of an annual exemption – Carried.

Motor Yacht *Triton* – 163', 527gt, Marshall Islands registry, Captain Shaun Falconer.

Motion: Farrell/Anthony – grant an annual exemption renewal – Carried.

Motor Yacht *Aquarius* – 151', 302gt, Malta registry, Captain Christopher Callahan.

Motion: Kirtley/Farrell – grant an annual exemption renewal – Carried.

Motor Yacht *Marama* – 124', 456gt, Cook Islands registry, Captains Paul Lawrence & Justin Lloyd.

Motion: Hamilton/Jensen – grant an annual exemption renewal based on BPC past practices – Carried with Commissioners Scragg and Anthony opposed.

Motor Yacht *Arrowhead* – 115', 193gt, Marshall Islands registry, Captain Michael St. Pierre.

Motion: Anthony/Jensen – grant an annual exemption renewal – Carried.

Motor Yacht *Mea Culpa* – 130', 302gt, Cayman Islands registry, Captain Christopher Grant.

Motion: Farrell/Morrell – grant an annual exemption renewal – Carried.

Motor Yacht *Tess* – 120', 244gt, Grand Cayman registry, Captains Orlando Milla and Harley Hagedorn.

Motion: Farrell/Jensen – grant an annual exemption renewal – Carried.

Motor Yacht *Calex* – 164', 492gt, Cayman Islands registry, Captain Christopher Clemens.

Motion: Farrell/Jensen – grant an annual exemption renewal – Carried.

Motor Yacht *Wonderland* – 122', 280gt, Jamaica registry, Captain Kevin Nauta.

Motion: Kirtley/Farrell – grant an annual exemption for PA only, otherwise will need orientation trip – Carried.

Motor Yacht *Samsara* – 101', 224gt, Marshall Islands registry, Captain Ian Paxton.

Motion: Farrell/Hamilton – grant an annual exemption once have taken an orientation trip, no locks and no Deception Pass – Carried.

Motor Yacht *Celtic Pride*– 76', 126gt, Marshall Islands registry, Captains Robert Petrina & Gary Colebank.

Motion: Anthony/Morrell – grant a 3-month exemption once have taken an orientation trip – Carried.

During the vessel exemption discussion, a question about foreign licenses and vessel size authorization arose. It was decided that BPC staff would research the issue and bring answers to next meeting. Monique Webber, Pacific Yacht Management, stated that she could provide some contacts in the international yacht licensing community who may be of assistance.

Committee Reports.

Trainee Evaluation Committee (TEC):

- The TEC met yesterday and discussed at length the best way to bring the trainees back into the training program amid the COVID Stay Home-Stay Healthy directive, considering time constraints of needing to bring in the remaining candidates before the next exam. It was decided to allow 3 Puget Sound Trainees to resume training today (Captains McGourty, Knutsen and Gartner) and the remaining trainees to return to active training starting June 1, 2020.
- The TEC reviewed all 9 current PSP trainees and 1 GH trainee trip reports.
- The 2021 Marine Pilot Exam RFP has been acknowledged by Pacific Maritime Institute (PMI) and they are working on submitting a proposal by the RFP deadline of June 15th.
- The Exam Qualifications Work Group has been meeting throughout the last quarter and have identified some areas where minor changes could broaden requirements while maintaining the Board's high standards. Draft language was presented to the Board and TEC Chair Commissioner Scragg walked the Board through the highlights.

BPC/PSP Joint Diversity Committee (JDC):

- The JDC is preparing for the next exam and spending time on expanding qualifications of the candidate pool in partnership with the TEC. They are also working on how to best highlight committee efforts for the BPC's upcoming 2019 Annual Report.
- JDC member Emily Reiter, Saltchuk, has been a great help in reviewing and streamlining the Diversity Program documents. Chair Tonn added that the documents are significantly improved thanks to Emily's assistance.

Commission Investigative Committee (CIC):

- The committee met and has submitted the revised Investigative Procedures draft for Assistant Attorney General review. It will be presented to the Board at the June or July meeting.

Oil Transportation Safety Committee (OTSC):

- Two sets of committee-approved meeting minutes were provided to the Board for review.
- The OTSC had a meeting in early May in preparation for presenting the draft Interpretive Statement for Board consideration. Next, they will focus on geographic zones.
- OTSC Chair Jaimie Bever thanked PSP Captain Blair Bouma for the countless hours he has dedicated to the committee.

Pilot Safety Committee (PSC):

- The first meeting was held on May 19, 2020.
- Topics discussed included PPE, Grays Harbor Pilot Boat, and the WAC language regarding rest rules. Future topics include defining "assignment", harbor areas, 13-hour rule, night assignments, non-revenue activities, and the effects of repositioning on fatigue.
- The committee is hoping for an in-person meeting in July.

Review of Pilot/Trainee Physical Examination Reports.

Due to the shutdown of many physicians' offices, there were no physical examinations to review this month.

Confirmation of Next Regular Meeting Dates. The next regular meeting dates are set for:

- June 18 – Remote or Agate Conference Room - TBD
- July 16 – Remote or Agate Conference Room - TBD

There being no further public business to come before the Board, Chair Tonn again thanked everyone for their patience with a virtual meeting and apologized for no breaks and no food and adjourned the meeting at 1:30pm.

Respectfully submitted,

Jaimie C. Bever, Executive Director

Sheri J. Tonn, Chair

Eleanor Kirtley, Vice Chair

Commissioner Timothy J. Farrell

Commissioner Philip Morrell

Commissioner Rik Krombeen

Commissioner John Scragg

Commissioner Michael Anthony

Commissioner Jason R. Hamilton

Commissioner Dale Jensen