

From: [Carson, Sheree S. \(Perkins Coie\)](#)
To: [Tonn, Sheri](#); [Bever, Jaimie \(WSF-Pilotage\)](#)
Cc: [Ivan Carlson - President](#); [Scott Brewen](#)
Subject: [EXTERNAL] Response to BPC Request to PSP Regarding 88.16.180 RCW Enforcement
Date: Monday, March 31, 2025 5:10:25 PM
Attachments: [image001.png](#)

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Chair Tonn,

This email responds to the March 27, 2025 letter you sent on behalf of the Board of Pilotage Commissioners (BPC), requesting input from the Puget Sound Pilots (PSP) on the enforcement and compliance with RCW 88.16.180. This email response is sent on behalf of the Puget Sound Pilots. As a preliminary matter, it is the goal and intention of the Washington State pilots to follow the laws of Washington State. We also believe the pilots are required to do so by law (RCW 88.16.100). PSP relies on the BPC, as advised by their AAG, for direction in carrying out those laws, or in the case where a law is no longer valid, direction on what action, if any, the pilots are to take. We have heard from the AAG attending the BPC meeting in March that the law at issue here, RCW 88.16.180, is clear on its face and the BPC and pilots should follow the law. If the BPC has received contrary guidance from the Washington State Attorney General that the law is not valid, or the BPC determines that the Puget Sound Pilots are not required to follow the law, then PSP requests that information in writing to protect its members from potential liability. We understand there are ambiguities in international law and its potential application to the waters involved here for tankers that are not transiting between U.S. and Canadian ports or places. PSP has asked Clay Diamond, Executive Director of the APA, to update his opinion regarding this and we expect him to submit an updated opinion before the BPC meets on Thursday. However, there are no federal or state court interpretations that we are aware of that have adopted a specific position to give clear guidance in this situation involving tankers in Haro and Boundary Pass.

With these caveats, we provide the following response to the questions raised in your letter, and we respectfully request the BPC issue a formal determination regarding this issue.

- 1. How does enforcing 88.16.180 RCW by requiring US pilots on Canada-bound tankers in US waters, thus eliminating a 50-year practice, address each of these critical components of the BPC's mission: Safety, Environmental Protection, and Efficiency?**

The Washington Legislature has determined that Washington licensed pilots shall be required on registered oil tankers of forty thousand dead weight tons or greater while navigating Puget Sound and adjacent waters. See RCW 88.16.180; RCW 88.16.190(c). As discussed below, following the law will address safety and environmental protection—two critical components of the BPC mission.

The law was passed to protect against the danger of spills and to protect important natural resources of the state. This is expressly stated in RCW 88.16.170 Oil Tankers—Intent and Purposes, which states that the intent and purpose of the law is to decrease the likelihood of oil spills on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ licensed pilots while navigating on certain areas of Puget Sound and adjacent waters. The law further states that because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers on Puget Sound and adjacent waters creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources. See RCW 88.16.170. The BPC will further its mission of promoting safety and environmental protection as defined by the Legislature by following the law and employing Washington licensed pilots on large tankers.

A failure to follow the law for 50 years does not justify a continued failure to follow the law. Regarding the validity of the law, the U.S. Supreme Court upheld RCW 88.16.180 with regard to registered tankers in *Ray v. Atlantic Richfield*, 435 U.S. 151 (1978).

2. What are the risks PSP is generating by requesting the BPC enforce the statute as written?

PSP is not generating any risks. The question implies that the statute might be generating risks. PSP does not view following the law as generating risks. Rather, a *failure* to follow the law generates far greater risks including the risk of damage to important natural resources of the state as well as liability for damages associated with oil spills. Such liability would be faced both by the BPC, as well as by the oil tankers who failed to use Washington licensed pilots. PSP is concerned that in the event there is a disaster after 50 years of safe practice, the pilots could face penalties under RCW 88.16.100 for failure to comply with state laws or regulations intended to promote marine safety or to protect navigable waters.

3. How can PSP meet the requirement of additional pilotage assignments without negatively impacting the pilotage system, including delays in Puget Sound?

The impact on delays cannot be predicted, but it is true that adding these assignments would increase the workload on an undersized pilot corps. PSP is committed to work with the Board to bring new pilots on board at the earliest possible opportunity in order to alleviate any delays that result from compliance with the law.

Thank you for your consideration of the above. We will be available at the Special Meeting on April 3, 2025 to discuss this further.

Sheree Strom Carson
BELLEVUE OFFICE MANAGING PARTNER

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From: Bever, Jaimie (WSF-Pilotage) <jaimie.bever@wsdot.wa.gov>
Sent: Thursday, March 27, 2025 5:10 PM
To: Ivan Carlson - President <president@pspilots.org>
Cc: Scott Brewen <sbrewen@pspilots.org>; Tonn, Sheri <sheri.tonn@wsdot.wa.gov>
Subject: BPC Request to PSP Regarding 88.16.180 RCW Enforcement

Hi Ivan,

Please see the attached letter from Chair Tonn.

Best,
Jaimie

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