



STATE OF WASHINGTON  
**BOARD OF PILOTAGE COMMISSIONERS**

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**Meeting Minutes – Oil Transportation Safety Committee (OTSC)**

October 20, 2020, 1:00pm – 3:00pm

Conference Call/MS Teams

**Attendees via Teams:** Jaimie Bever (Chair/BPC), JD Leahy (Ecology Alternate/BPC), Blair Bouma (Pilot/PSP), Eleanor Kirtley (Marine Environment/BPC), Charlie Costanzo (Tug Industry/AWO), Sheri Tonn (Ex-officio/BPC), Senator Joseph Williams (Tribal/Swinomish), Tom Ehrlichman (Tribal/Swinomish), Bettina Maki (Staff/BPC), Laird Hail (Advisor/USCG), Jason Hamilton (Other/BPC), Bob Poole (Oil Industry/WSPA), Mark Homeyer (Tug Industry Alternate/Crowley), and Blair Englebrecht (Environment Alternate/Puget Soundkeeper).

**Attendees via Phone:** Fred Felleman (Environment/Friends of the Earth)

**1. Welcome and Update**

Chair Bever went over the purpose of the meeting, which was for the committee to touch base after the September 1, 2020 implementation of the tug escort laws, discuss any definitions that need further interpretation or clarification, and to talk about next steps.

She mentioned that she and JD Leahy (Ecology Alternate/BPC) presented at the 2020 Salish Sea Shared Waters Forum last week and were joined in their session by Senator Joseph Williams (Tribal/Swinomish), who delivered an important presentation regarding Tribal perspectives. Senator Williams will provide that same presentation to the OTSC next on the agenda.

**2. Tribal Perspectives**

Senator Williams (Tribal/Swinomish) began by acknowledging that the Swinomish Tribe highly values its partnership with the marine industry, the agencies, and the public groups working together to address the daily challenges of oil transport by vessel in the Salish Sea. His presentation provided a look at what safety on the water means to the Swinomish and identification of key issues moving forward.

Senator Williams reiterated that fishing and shellfish gathering is a combination of subsistence diet, a cultural and spiritual practice, and an economic support. Because of this, Swinomish are especially

concerned about the cumulative impacts of:

- increased size and numbers of ATBs carrying oil;
- increased used of anchorages at Anacortes, Vendovi, Jack Island, and Samish Island;
- intensification of the use of Rosario Strait; and
- increase of tugs in Rosario Strait and waterways east resulting from the new laws.

Senator Williams then went over five recommendations for moving forward:

1. Study data – each of the ongoing vessel traffic studies at Ecology and in Canada should input data on US treaty tribe fishing;
2. Anchorage trends – conduct a detailed, multi-year study of annual levels of anchorage use at Vendovi, Bellingham Bay, Anacortes, and Port Townsend;
3. Environmental review – Washington state and BC should conduct a review, with participation of Tribes and stakeholders, of all existing protocol between state and federal governments for sharing information regarding proposals and environmental impacts;
4. Uniform VTS regulations transboundary – USCG and Canadian CG should review agreements to ensure VTS authorities apply a uniform set of laws and regulations throughout main oil transport passages – due to OTSC expertise, perhaps form a subcommittee to make recommendations for BPC or Puget Sound Harbor Safety Committee to review with appropriate federal authorities for further diplomatic consultation, with input from other agencies, pilots, Tribes, First Nations, the marine industry, NGOs, and the public at large; and
5. UN Declaration – embark on same path as BC to implement the UN Declaration on the Rights of Indigenous Peoples, until such time as the US Senate ratifies that convention and the Law of the Sea.

Fred Felleman (Environment/Friends of the Earth) mentioned that ESHB 1578 was championed by Representative Debra Lekanoff, who worked for the Swinomish Tribe at the time. He wondered if the initiatives being worked on now were reflected in her deliberations. Senator Williams responded that while Representative Lekanoff no longer works for Swinomish, she is still a close friend to Swinomish and is sure she has the best interest of all the Treaty Tribes in mind moving forward. Fred observed that one incidental effect of the law has been the change in operation of a high-risk vessel transiting Rosario Strait to change its route to Haro Strait. He wanted to make sure that Senator Williams was aware of that. Senator Williams thanked him and added that the change will help their fisherman.

### **3. September 1, 2020 Tug Escort Implementation and FAQs**

Chair Bever commented that implementation seemed to be going well and that compliance was visible on day one of the new law. BPC has not received any complaints, only a few questions regarding whether a vessel needed an escort. She acknowledged and thanked industry for their compliance. Fred Felleman (Environment/Friends of the Earth) then asked how BPC was able to verify compliance. Chair Bever clarified that she was not stating 100% compliance. They are using AIS, eyes and ears on the water, pilots, and the Tank Vessel Movement Report.

The Committee reviewed a draft FAQ with the questions that had been received so far. Chair Bever asked the group if they had received any other questions or concerns that should be included in

the FAQs. There were no suggestions. Eleanor Kirtley (Marine Environment/BPC) wondered how the FAQs were going to be distributed. Chair Bever responded that they will be posted on the BPC website and blasted out to various distribution lists. Marine Exchange may forward them through their distribution list also. She then wondered how they will be finalized. Chair Bever didn't believe Board action was necessary to distribute them. Eleanor concurred with distributing the FAQs prior to the Board meeting. Jason Hamilton (Other/BPC) and Sheri Tonn (Ex-officio/BPC) agreed as well.

#### **4. Tank Vessel Movement Report and FAQs**

The Committee reviewed a draft FAQ for the report, which was developed to answer questions and concerns about why the BPC is asking for the form and what was going to be done with the information gathered. Chair Bever pointed out that Centerline and Vane Brothers have been turning in the forms. Charlie Costanzo (Tug Industry/AWO) commented that while Vane and Centerline are reporting, they are not reporting every movement, only when certain conditions are met. He added, while scanning the proposed questions and answers, that Industry's concerns regarding the cumulative impact of administrative work on safe vessel operations was not being addressed in the proposed FAQs. He continued that there were still ways to get the needed information that were not dependent on a mariner filling out a form while working on a boat.

Fred Felleman (Environment/Friends of the Earth) responded that the fundamental question was whether the form will be used and whether the BPC has any verification to whether it is being used. He said he was interested in hearing about alternate ways to gather the data, adding that he had his own ideas as well. Charlie Costanzo (Tug Industry/AWO) then wondered if the report only applied to the new tug escort laws in Rosario Strait and connected waterways east. Chair Bever responded that the original intention was to capture movement all over Puget Sound, including vessels over 40,000 deadweight tons. Blair Bouma (Pilot/PSP) concurred, because the value of the data was diminished without the full data set. Fred Felleman (Environment/Friends of the Earth) asked for clarification that the intent was to get all the vessels, whether they were under escort and whether they were unladen. Blair Bouma responded yes. Fred then mentioned that Ecology appeared to be dismissive when he brought using the Advanced Notice of Transfer (ANT) process to capture the missing data, adding that the only thing ANT wouldn't capture would be vessels transiting in Rosario that do not transfer in Rosario. He added that he believed 99% of the missing data would be available through ANT. He suggested that an alternative would be for the BPC to adopt an Emergency Rule to require the report. He concluded his thoughts by stating that he didn't understand why, since Ecology was charged with providing the data, they wouldn't use what was already available to them, which industry was required to provide to Ecology.

Chair Bever responded by pointing out that key Ecology members who typically respond to these questions were not present at the meeting to respond. She added that the BPC was trying to stay in the realm of what BPC currently has control over. Sheri Tonn (Ex-officio/BPC) responded that determining laden/unladen was not necessarily something Ecology could do with the current information they receive. Fred Felleman (Environment/Friends of the Earth) argued that he was talking about using data that industry is already required to provide. Chair Bever suggested focusing on the

BPC form for today's meeting. Fred continued that the question of the data had already been posed to the BPC a few meetings ago. Sheri responded that they were aware of that, and at present did not have an answer. She then suggested the Committee move on in the agenda.

Blair Bouma (Pilot/PSP) wondered if it was possible to get the information from VTS, since they receive the data every time a vessel moves. Chair Bever responded that VTS only has the data when the vessel is actively transiting. Laird Hail (Advisor/USCG) concurred and added that without getting ahold of the actual data dictionary and delving in behind the scenes in the database, that info was unavailable. The VTS system is managed by the C5i department back east and accessing the data would take a programming effort to change the national VTS software of one area on the part of the C5i team, which is unlikely due to budget constraints.

Charlie Costanzo (Tug Industry/AWO) offered that industry was thinking along the lines of marrying up ANT data with AIS data. He did recognize that AIS had some errant data that may need additional focus. Chair Bever acknowledged that more work was needed on the data issue and that it wasn't going to be solved at that meeting. She said that that BPC would continue to request the Tank Vessel Movement Report. Charlie Costanzo (Tug Industry/AWO) asked how important it was for the report to be submitted in real time. He explained that part of shifting the responsibility from operators to perhaps shoreside personnel could be considered. Chair Bever answered that the BPC asks for the report within 7 days after the transit but that could be extended if more time was beneficial to build a better system. Tom Ehrlichman (Tribal/Swinomish) asked if the discussion about the ANT data related to the Synopsis of Changing Vessel Traffic Trends. Chair Bever answered that the form was not originally designed to provide data specifically for the synopsis. It was a modest accountability mechanism for the Board regarding their statutes. However, data received could inform the synopsis. Charlie Costanzo (Tug Industry/AWO) added that he saw it as integral to the overall effort, regardless of the intent. Eleanor Kirtley (Marine Environment/BPC) added that it could at least inform trends, as opposed to being an exhaustive data set.

Fred Felleman (Environment/Friends of the Earth) expressed concerns that critical data that should inform the risk model was already being lost. JD Leahy (Ecology Alternate/BPC) responded that, regarding the synopsis, Ecology was working off the BPC approved Scope of Work and that they are trying to determine laden/unladen. He added that they were not going to ignore any data that is helpful in those determinations. Fred questioned why, since Ecology was collecting the data and doing the analysis, it did not include ANT. JD responded that it did include ANT. Fred reiterated that the question of laden could be determined by the trackline before and after a transfer. JD expressed concerns that there was a miscommunication occurring. The vessel trends project was one thing, the Tank Vessel Movement Report was another, confirming that the trends project will include the ANT data. Fred argued that the compliance question was fundamental for both projects. Sheri Tonn (Ex-officio/BPC) tried to clarify Fred's intention by asking him if he was looking for live data versus data included in the synopsis due to the Legislature in a year from now. He answered that he wanted BPC to answer the question posed by the Legislature. When pressed on when he would have an answer on how BPC was going to proceed gathering data, Chair Bever answered that it

would need to come down to a recommendation by the OTSC to the Board, because it was ultimately the Board's decision now to move forward. She reminded the group that they don't make decisions; they provide majority consensus recommendations to the Board.

Charlie Costanzo (Tug Industry/AWO) attempted to bring clarity to the discussion by suggesting that one solution was for the Board to adopt a rule to make the report mandatory. Another option would be a rational collaboration between Ecology data, AIS data, and what the BPC needs. Fred Felleman (Environment/Friends of the Earth) offered to draft a recommendation, informed by multiple perspectives on the question. Charlie mentioned that industry is trying to develop a clear picture of a system that is more comprehensive. Sheri Tonn (Ex-officio/BPC) suggested that the OTSC have a presentation of what the synopsis will show in one year from now. Chair Bever, at this point, suggested moving to the next topic, adding that next steps would be to go to the Board for direction. Fred indicated that he would write a letter to the Board with recommendations for data collection. Tom Ehrlichman (Tribal/Swinomish) suggested that a conversation happen with Marine Exchange regarding the feasibility of gathering the missing data before the next OTSC meeting. Charlie Costanzo (Tug Industry/AWO) offered to have that conversation with Marine Exchange.

## **5. Interpretive Statement Updates and Definition of Oil**

Chair Bever informed the Committee that the Board, at the September regular meeting, adopted a note of clarity regarding the definition of oil, adding that "biological oils" included fats, oils, or greases of animals, fish, or marine mammal origin, vegetable oils including oils from seeds, nuts, or kernels, in alignment with federal regulations, per CFR 40. Since the meeting, it has been suggested that there might be a more appropriate CFR to align the Board's interpretation with. The Committee reviewed definitions in other West Coast districts. Chair Bever asked for OTSC input. She pointed out that the Board already took action. However, if there is strong consensus from the Committee to re-examine the definition, she could take that back to the Board for reconsideration.

Fred Felleman (Environment/Friends of the Earth) questioned the intent of reconsidering the definition. Chair Bever responded that the definition could align with the on-the-water considerations in the USCG CFR as opposed to the shore-side considerations in the EPA CFR. Blair Bouma (Pilot/PSP) emphasized that the CFR's in Ecology's definition of oil, which is the one the Board adopted, are not USCG CRFs. They were shore-based CFRs. The existing definition works for Ecology because they are responsible for many activities, not just waterborne activities. The CFRs related to shipping are in a different title, 46 CFR, which has a different list of products related directly to waterborne transportation. Fred thanked him for that clarification and then questioned whether the goal of the discussion was to limit or remove biological oils from the definition. Chair Bever responded that the idea was to determine if the OTSC should recommend to the Board that the committee re-examine the definition. Fred supported the definition in its current form, adding that the USCG was not the proper authority to determine environmental impacts of chemicals. Mark Homeyer (Tug Industry/Crowley) commented that 46 CFR was more appropriate. Blair Bouma (Pilot/PSP) offered to prepare a comparison list. JD Leahy (Ecology Alternate/BPC) clarified that the list of cargo in 46 CFR wasn't broken down by whether they were oil or not and that the OTSC would

have to determine which ones would count as oil.

Chair Bever asked to go around the group to determine if there's consensus to recommend to the Board that the OTSC research this topic further. Blair Bouma (Pilot/PSP) Yes. Tom Ehrlichman (Tribal/Swinomish) felt more information was needed to formulate a position and had no comment at that time. JD Leahy (Ecology Alternate/BPC) Ecology had a neutral position. Sheri Tonn (Ex-officio/BPC) Yes. Mark Homeyer (Tug Industry Alternate/Crowley) Vessels predetermined authorization as which cargos they can carry. Therefore, harmonizing with USCG regulations for what a vessel can carry makes sense. Bob Poole (Oil Industry/WSPA) Yes. Fred Felleman (Environment/Friends of the Earth) Yes, interested in looking at this further, especially if it potentially expanded chemicals being transported. Blair Engelbrecht (Environment Alternate/Puget Soundkeeper Laird Hail had no opinion. Eleanor Kirtley (Marine Environment/BPC) and Jason Hamilton (Other/BPC) had left the call by this time.

Chair Bever concluded that there was majority consensus to recommend to the Board that OTSC look into the definition further. She will bring it to the Board at the November 12, 2020 regular monthly meeting.

## **6. Next Steps**

Chair Bever will get back to the OTSC after the November Board meeting. Chair Bever will add an agenda item for data collection per Fred Felleman's request.