



STATE OF WASHINGTON
BOARD OF PILOTAGE COMMISSIONERS

2901 Third Avenue, Suite 500 | Seattle, Washington 98121 | (206) 515-3904 | www.pilotage.wa.gov

Meeting Minutes – Oil Transportation Safety Committee (OTSC)

May 6, 2020, 10:00am – 12:00pm

Conference Call/Skype

Attendees via Skype: Jaimie Bever (Chair/BPC), Sara Thompson (Ecology Alternate/BPC), Blair Bouma (Pilot/PSP), Eleanor Kirtley (Marine Environment/BPC), Charlie Costanzo (Tug Industry/AWO), JD Leahy (Ecology Alternate), Brian Kirk (Ecology Alternate), Sheri Tonn (Ex-officio/BPC), Bettina Maki (Staff/BPC),)

Attendees via Phone: Jason Hamilton (Other/BPC), Bob Poole (Oil Industry/WSPA), Fred Felleman (Environment/Friends of the Earth), Mark Homeyer (Tug Industry Alternate/Crowley), Blair Englebrecht (Environment Alternate/Puget Soundkeeper), Keith Kridler (Pilot Alternate/PSP)

1. Welcome

Chair Bever welcomed everyone. She prefaced the meeting by reminding the group that this was the last meeting before the Board would meet to consider the OTSC's recommendations for the Interpretive Statement.

2. Review and Approval of April 21, 2020 Meeting Minutes

The OTSC received a draft of the April 21, 2020 meeting minutes prior to the meeting. Chair Bever acknowledged minor adjustments to grammar/spelling pointed out by OTSC members via email. She then asked for additional input from those present at the meeting. Blair Bouma (Pilot/PSP) had no additional comments. Bob Poole (Oil Industry/WSPA) had no comments. He added that he had offered to research the transits of fuel product, but has not completed that task. Charlie Costanzo (Tug Industry/AWO) had no specific amendments. Fred Felleman (Environment/Friends of the Earth) pointed out some typos and requested some language clarification regarding his statements. Sheri Tonn (Ex-officio/BPC) had no comments. Sara Thompson (Ecology Alternate/BPC) had no comments. JD Leahy (Ecology Alternate/BPC) had no comments. Brian Kirk (Ecology Alternate/BPC) had no comments. Eleanor Kirtley (Marine Environment/BPC) had no additional comments. Jason Hamilton (Other/BPC) had no further comments. Keith Kridler (Pilot Alternate/PSP) had no comments. Mark Homeyer (Tug Industry Alternate/Crowley) had no comments. Blair Englebrecht (Environment Alternate/Puget Soundkeeper) had nothing to add.

Chair Bever will make the requested changes and finalize the minutes, making them available to the public on the website and providing them to the Board for the May meeting as a part of the OTSC update.

3. Finalize Interpretive Statement for Recommendation to BPC

Chair Bever reminded everyone that this meeting was the final consideration of the Interpretive Statement by the OTSC before it goes before the Board at the May 21, 2020 Board meeting. She added that if any OTSC members wanted to speak to the Board about the Interpretive Statement, they would be given time on the agenda to do so. She added that the Board will be making their final decision at the June 18, 2020 meeting, giving them the opportunity to spend some time reflecting on the proposals before making a decision. Sheri Tonn (Ex-officio/BPC) clarified that there would be opportunity for OTSC and public comment at the May 21, 2020 Board meeting. Chair Bever also recognized that there may not be full consensus from the OTSC on the definitions and that it will ultimately be up to the Board to make the final decision based on the information provided. Bob Poole (Oil Industry/WSPA) asked if a draft Interpretive Statement would be provided prior to the May meeting in order for input from his members, which Chair Bever confirmed.

Chair Bever spoke to the final draft Interpretive Statement provided to the OTSC. She added references to several of the definitions per prior OTSC recommendations and had previously asked for input regarding citation revisions, if necessary. She heard nothing back and confirmed at the meeting that there were no comments or suggested changes. Jason Hamilton (Other/BPC) voiced that the footnote format was appropriate and said he would review the citations closer before the May 21, 2020 Board meeting.

Intro/Disclaimer

This section was previously approved and considered complete with full OTSC consensus.

“Under the Escort of a Tug or Tugs”

This section was previously approved and considered complete with full OTSC consensus.

“Rosario Strait”

This section was previously approved and considered complete with full OTSC consensus.

“Connected Waterways East”

This section was previously approved and considered complete with full OTSC consensus.

“Oil”

This section was previously approved and considered complete with full OTSC consensus, with the minor revision of changing the word “dilbit” to “diluted bitumen”.

“Laden/Unladen (In Ballast)”

Chair Bever informed the group that Blair Bouma (Pilot/PSP) pointed out that the Pilotage Act, Chapter 88.16 RCW, states that gas carriers should be treated the same as oil tankers per

88.16.190. Blair Bouma suggested that the OTSC keep the language referencing gas carriers, which was previously removed, in this definition to be consistent with the statute. He added that the existing RCW 88.16.200 makes it clear that gas carriers are to be treated the same as oil tankers. Mark Homeyer (Tug Industry Alternate/Crowley) had no questions, but pointed out that the pilots use the term "in-ballast" not laden/unladen. Blair Bouma (Pilot/PSP) responded that that was why "in ballast" was added in parenthesis to the title, adding that combining terms covered all the scenarios. Chair Bever added that both terms are in the statute and that the terms were combined in this particular definition to avoid redundancy of multiple definitions in the Interpretive Statement all saying the same thing.

Charlie Costanzo (Tug Industry/AWO) suggested that it made sense but that it was the central crux around operator concern regarding this particular definition as it applies to those vessels below 40K, that was very important. Chair Bever reminded the group that in the previous meeting there was a suggestion to break up this definition to capture two categories: vessels 40,000 deadweight tons or greater would continue to be subject to the proposed language while vessels below 40,000 deadweight tons would have different description and potentially a different percentage. She inquired about Charlie Costanzo's suggestion at the last meeting that he provide industry feedback and suggested language at this meeting. Charlie responded that he has spoken with his members and suggested that there were some general parameters around where the percentage could exist, but that he did not have that number to share. He asked for the opportunity to connect with Bob Poole (Oil Industry/WSPA) to align thinking due to the concern that while the "3,000 barrels" language works, the "0.5% or whichever is less" language was problematic for barges. There was also interest in the California definition of long tons, which is a different metric, but perhaps more appropriate. Chair Bever reminded Charlie of the May 21, 2020 Board meeting deadline and wondered what to put in front of the Board regarding this definition. Bob Poole (Oil Industry/WSPA) offered to meet with Charlie ASAP, but wasn't sure how that would work if the OTSC couldn't meet again before the Board meeting. Bob asked if there was an opportunity for OTSC to provide comments by email. Chair Bever asked the OTSC for their thoughts on an email response. Sheri Tonn (Ex-officio/BPC) was not in favor of that approach. She asked Charlie Costanzo how far apart the opinions of his members were. He responded that they were not far apart at all. Fred Felleman (Environment/Friends of the Earth) vocalized that he thought the conversation was going to start with the California definition. Charlie Costanzo (Tug Industry/AWO) responded to Fred by stating that his members would feel very content with California's definition and that it would work for them. Chair Bever expressed concern over using "long tons" like California because it is not a metric referenced in any part of the Pilotage Act. Charlie Costanzo (Tug Industry/AWO) brought up the addendum in the Standards of Care in the pilotage guidelines in that they use a certain amount of discretion in definitions. Fred Felleman (Environment/Friends of the Earth) asked if long tons could be converted to metric tons, suggesting that they were the same number, or pretty close to the same number. Both Blair Bouma (Pilot/PSP) and Sheri Tonn (Ex-officio/BPC) responded no. Sheri Tonn added that there was a 35lb difference between long tons and metric tons. Metric tons are based on kilograms and long tons are 2,240 pounds. That was the difference, 2,240 pounds vs. 2,205 pounds. It seemed to

her that the group needed to stick to metrics and that it was too late in the process to try switching to long tons. Blair Bouma (Pilot/PSP) suggested that it was a consequential difference. The proposed definition has a maximum number of barrels at 3,000. The California regulation is 5,000 tons, not barrels. 5,000 tons is in the 30,000-barrel range. It is a significantly different way of looking at it. He added that he was not advocating one way or the other; he just wanted to make sure everyone understood the difference in philosophy of which vessels require an escort.

Chair Bever reiterated that this was the last opportunity for the OTSC to provide real time input as a group on the Interpretive Statement before it went to the Board. Mark Homeyer (Tug Industry Alternate/Crowley) wondered if it was possible to increase the percentage to a number that would give the tug and barge operators some flexibility. Charlie Costanzo (Tug Industry/AWO) agreed with Mark Homeyer's suggestion and added a higher percentage for just the under 40,000 deadweight ton vessels and that 2% would satisfy operator's concerns. Mark Homeyer (Tug Industry Alternate/Crowley) reminded everyone that the underlying issue is that the barge operators don't have the necessary equipment to pump like tankers. Chair Bever proposed, based on this conversation, that the definition would read "any tank vessel below 40,000 deadweight tons whose clingage, residue, or other applicable cargo on board is greater than 2% of the vessel's maximum cargo carrying capacity, or 3,000 barrels, whichever figure is less, shall be considered laden and therefore not in ballast".

Chair Bever then went around the table for consensus regarding the proposed definition. Blair Bouma (Pilot/PSP) was okay with that, adding that the volume difference on a small vessel was minimal, thus there was no significant downside to that approach. Bob Poole (Oil Industry/WSPA) said he would go along with the definition and that if there were any concerns from his members he could add them as part of comments to the Board. Charlie Costanzo (Tug Industry/AWO) was on board with it, reserving the right to recognize WSPA member's concerns. Fred Felleman (Environment/Friends of the Earth) asked for clarification of the language and was fine with it as long as the 3,000 barrels or less wording was included. Sara Thompson (Ecology Alternate/BPC) thought the 2% made sense. She suggested some rationale regarding the pump capacity between the larger and smaller vessels to explain the two definitions. She also wanted to make sure that including the LPG language would not lead to a potential expansion of ESHB 1578 by including gas carriers. Fred Felleman asked for clarification that LPG was currently being escorted, to which Blair Bouma replied yes. Eleanor Kirtley (Marine Environment/BPC) was fine with the proposed definition. Jason Hamilton (Other/BPC) had no concerns. Keith Kridler (Pilot Alternate/PSP) had no concerns. Sheri Tonn (Ex-officio/BPC) was okay with the proposed language. JD Leahy (Ecology Alternate/BPC) was okay with the definition. Brian Kirk (Ecology Alternate/BPC) had no concerns but noted that in California, the requirements vary by port. tank barges in San Diego, they use 5%. Fred Felleman (Environment/Friends of the Earth) responded that he was wondering about San Francisco. Brian Kirk (Ecology Alternate/BPC) read the language, that "vessels carrying 5,000 long tons of oil shall be required to comply with the requirements in this sub-chapter", which are the escort requirements. Fred wondered if they could do the math to determine the different in volume between the numbers. Blair Bouma (Pilot/PSP) answered that

5,000 long tons was somewhere in the 30,000 barrel range, reiterating that it was an entirely different way of looking at it. At this point Chair Bever suggested the group had a good approach for moving forward and asked Fred Felleman if it was okay to move on. He suggested that it would be informative to know what they were agreeing to. He then asked for confirmation that if a vessel had 3,000 barrels on board or less, the vessel would be considered unladen regardless of the size of the vessel. This was confirmed and he agreed to move on. Mark Homeyer (Tug Industry Alternate/Crowley) was good with the language. Blair Englebrecht (Environment Alternate/Puget Soundkeeper Alliance) asked for confirmation that the language would read “2% or 3,000 barrels, whichever figure is less”. This was confirmed and she was okay with the language.

“A Vessel Providing Bunkering or Refueling Services”

Chair Bever, based on the conversation at the last meeting, looked for an existing state definition of bunkering. She proposed language found in a WAC, which was specific to the bunkering operation. She added that the majority consensus at the last meeting was that bunkering service would include both the transfer and the transit. She asked for OTSC perspectives regarding this approach.

Blair Bouma (Pilot/PSP) suggested keeping the heading the same as what was initially proposed, including the term “vessel”. He had no other suggestions at that time. Bob Poole (Oil Industry/WSPA) concurred with the proposed language and Blair Bouma’s suggestion. Charlie Costanzo (Tug Industry/AWO) had nothing further to add. Fred Felleman (Environment/Friends of the Earth) wondered if a vessel was capable of carrying fuel during one transit and another product during a different transit, suggesting that bunker barges may not only carry bunkers. Mark Homeyer (Tug Industry/Crowley) responded that operators engaging in the business of bunkering don’t go back and forth between products being transported on the barges. He added that it was possible that an operator could leave the bunkering business and choose to transport something else entirely, but they do not go back and forth because they have to be able to clean their tanks effectively, which is costly. Fred Felleman (Environment/Friends of the Earth) responded that he was trying to distinguish between the vessel and the service. He asked if, regardless of what they are doing, this type of vessel would be exempt from the escort requirement. Blair Bouma (Pilot/PSP) responded that a literal reading of the proposed definition of a vessel providing bunkering points to the action of the vessel taking bunkers to or from a ship. Fred suggested that the vagueness about the location of the exemption was separate from what the exemption actually is. He also wanted to see a discussion regarding enforcement and how enforcement will be used, as the majority of the smaller vessels are unpowered, removing the eyes of the pilots. He suggested that the way the proposed language would work was that a vessel bunkering in Rosario Strait would be escorted, but a vessel transiting through Rosario Strait to bunker a cruise ship in Elliott Bay would not. He didn’t understand how the BPC was going to confirm compliance with such an untenable interpretation of a rule that is supposed to protect the waterway. Sheri Tonn (Ex-officio/BPC) asked Sara Thompson (Ecology Alternate/BPC) if Advanced Notice of Transfer (ANT) would provide useful notification in terms of where the barge was going and what it was doing. Sara responded that it could be helpful, but that she assumes

the Board will make some decisions regarding the Interpretive Statement and once that's done, the Board and BPC staff will have to discuss enforcement with their Assistant Attorney General. She acknowledged that there were many ideas of how that might be done including spot-checking using existing resources (include ANT). She did not necessarily see how the OTSC had a major role in that process. Chair Bever agreed with Sara's statement. Fred Felleman (Environment/Friends of the Earth) responded that the OTSC did have some responsibility if they are putting forth a recommendation that is arbitrary. He also returned to the question of the number vessels this would apply to. He suggested again that Ecology's spreadsheet, which separated out Rosario Strait transits, points to the necessity to considering the bunkering transits in Rosario Strait separately. The other column regarding Bellingham transits coming from the north, do not apply. Sara Thompson (Ecology Alternate/BPC) answered that they do apply and are part of what the OTSC is describing as Rosario Strait and connected waterways east. Fred then when back to his question of why, if all bunkering transits are exempted, were Rosario Strait bunker transits separated out. Chair Bever answered that the column was broken out due to an early request from an OTSC member. Fred responded that he would write a minority opinion regarding this definition for the Board if the OTSC decided to proceed with the definition as proposed. Chair Bever asked that the minority opinion be submitted to Board staff by May 14th for distribution to the Board in preparation for the May 21, 2020 meeting. Sara Thompson (Ecology Alternate/BPC) wondered if there was a time limitation for OTSC comments at the Board meeting. Sheri Tonn (Ex-officio/BPC) answered 10-15 minutes.

Chair Bever continued to check with OTSC members regarding the proposed language. Sheri Tonn (Ex-officio/BPC) was fine with the language. Sara Thompson (Ecology Alternate/BPC) agreed with Blair Bouma's edits and the proposed language. JD Leahy (Ecology Alternate/BPC) wondered if anyone was concerned about the 300 gross tons language regarding vessel size, which was added by referencing the WAC. Sara Thompson (Ecology Alternate/BPC) confirmed that 300 gross tons was the cutoff for much of Ecology's work. Fred Felleman (Environment/Friends of the Earth) didn't see any reason to limit the size of the vessel based on Ecology's jurisdiction. Sara suggested the language "self-propelled vessel with bunkers used to propel the vessel", and to take out the 300 gross tons. Eleanor Kirtley (Marine Environment/BPC) suggested referencing the WAC, as with other references in the document, and then put in the language the OTSC wants to see. She also expressed concern with leaving too much room for interpretation in the definition. Jason Hamilton (Other/BPC) concurred that language could be revised to remove the quotations and including the language the OTSC would like to see with a footnote reference. Brian Kirk (Ecology Alternate/BPC) proposed "It is also the interpretation of the Board that vessels providing bunkering or refueling services means tank vessels that are conducting bunkering which includes the transit of the tank vessel to the bunker location, the oil transfer operation, and the return transit of the tank vessel" to follow the first sentence referencing the WAC and footnote citation. Mark Homeyer (Tug Industry Alternate/Crowley) suggested adding for "propulsion and ship services" to the first sentence. Chair Bever then read the full-proposed definition. Fred Felleman (Environment/Friends of the Earth) again brought up his concern about bunker barges carrying cargo other than bunkers being exempted by the proposed language. Mark Homeyer (Tug

Industry Alternate/Crowley) explained that there were thousands of different grades of petroleum, all of which required special handling. The operators were not going to load product without preparing the tank. In the bunker trade, they are loading bunkers. The tanks are designated for bunkers. He also added that the cost to clean a bunker tank in order to carry different cargo would be enormous. Blair Bouma (Pilot/PSP) suggested that a likely case would be a barge might load at the refinery or the tank farm and maybe have three different parcels for different ships. They might go fuel one ship and then anchor the barge for a day, then go to another ship, then maybe to a dock in Seattle for a day, then go to the last ship. That would be the most likely scenario where the barge would not be empty when leaving a vessel. At this point, Fred Felleman (Environment/Friends of the Earth) suggested moving on.

Chair Bever continued checking with OTSC members regarding the proposed language. Brian Kirk (Ecology Alternate/BPC) had no additional comments. Eleanor Kirtley (Marine Environment/BPC) was good with the latest version. Jason Hamilton (Other/BPC) agreed that the language looked good. Mark Homeyer (Tug Industry Alternate/Crowley) was good with the language as written. Blair Englebrecht (Environment Alternate/Puget Soundkeeper Alliance) explained that Puget Soundkeeper felt the exemption was against the original intent of the law and that Ecology had gone behind their backs at the time the language was being developed to cut a deal with industry. However, they recognize that the way the language is written makes the current conversations very difficult. She had no changes, but was generally disappointed with how it turned out.

Hearing no other comments, Chair Bever informed the OTSC that she would make the requested changes to the Interpretive Statement and redistribute the final draft to the committee as information. She thanked the committee for the thoughtful conversations and the hard work that went into developing the document. She also recognized that the process had been difficult at times but felt they had done good work and looked forward to presenting it to the Board.

4. Identification of Geographic Zones

Chair Bever, previously sent additional chartlets for Haro Strait, Boundary Pass, and the Strait of Georgia, as well as the subzones, all prepared by Blair Bouma (Pilot/PSP). She explained that the chartlets for the entire Puget Sound area would be available to the committee by the June meeting. The zones will be combined into one document for final OTSC review and comment before they are presented to the Board. Fred Felleman (Environment/Friends of the Earth) wanted to provide a contrast to the areas proposed by Blair Bouma. Fred then emailed to the committee a visual depiction of the areas he verbally proposed earlier to the OTSC. Unfortunately, the email did not come through instantly. Blair Bouma (Pilot/PSP) proceeded to explain his proposed zones while the group waited for Fred's email. He started from the Rosario zone heading north, pointing out the Ferndale refineries and the open area, as well as the traffic lanes that continue up to Vancouver, B.C. He pointed to a few hazards in that area with Matia Island, Puffin Island, etc. He suggested those were control points that could be relevant for vessels on that route. He suggested that North of Patos Island was mostly open water. He did point out that the NW section of the zone followed the international border.

Moving to Haro Strait and Boundary Pass, it was the same process looking at distances from hazards and traffic density. He added that Haro is generally more open with a few challenging spots, like Turn Point, which can be tricky due to traffic and current rips. The area transitioning out of Boundary Pass into the Strait of Georgia has similar challenges. He suggested those areas would be the major control points in that zone to determine tug escorting requirements. The other peculiarity in Haro and Boundary is the same international border issue. In practicality, the pilots have a functional relationship between Americans and Canadians in that waterway. He established the zone and the subzones on both sides of the border with the understanding that the Board can't regulate the Canadian side but functionally, the entire waterway has to be considered. He acknowledged that he didn't know how that would play out in future rulemaking, but that for this particular exercise it was important to consider both.

Chair Bever inquired if the Department of Ecology needed further explanation of how the zones or subzones were being established other than the visual provided by Blair Bouma. Brian Kirk (Ecology Alternate/BPC) responded that the visuals were a good start but it would be more helpful to be able to export the actual points. Blair Bouma (Pilot/PSP) offered to add written definitions as well, which could then be plugged into Ecology's model. Chair Bever suggested that the final document for OTSC review could contain both the visual of the zones and subzones, as well as the written description of each. Blair Bouma also offered to do some zoomed-in visuals of the subzones.

Fred Felleman (Environment/Friends of the Earth) suggested that points and waterways could be found in notices to mariners, for the sake of reference. He asked about two boxes before the Turn Point and what they referred to. Blair Bouma (Pilot/PSP) prefaced his answer by stating that there is a difference in hazards depending on which way the vessel is traveling, adding that the box at Kellett Bluff is a close point approach when transiting, particularly northbound, indicating that that area might end up driving the type of escort in that zone. The box above Kellett Bluff indicates concern with reefs on the west side, suggesting a control point for vessels southbound. Fred Felleman (Environment/Friends of the Earth) said this was one of the reasons why, when he was looking at the waterways, the north half of Haro Strait was distinct from the wider waters to the south. He expressed concern regarding overtaking in this area and suggested that it was perhaps beyond an escort question. He added that the shape of the subzone at Turn Point was of interest and wanted to more info about it. Blair Bouma (Pilot/PSP) replied that the official Special Area, which was part of the cooperative vessel traffic services between the U.S. and Canada, can be seen within the zone and is pretty small, which he did not feel was adequate for escort considerations. Therefore, the subzone is shaped the way it is because it includes the approaches from both directions at Turn Point. Fred Felleman added that there were three zones pretty close together and for the purposes of the model, it's more or less the north half of Haro Strait. It seemed to him that the line could be drawn further south to include Kelp Reef Light. Blair Bouma (Pilot/PSP) suggested that the subzones probably wouldn't come back into play until rulemaking, when the Board/OTSC takes the analysis from the model and applies it to tug escort zones. Ultimately, the subzones are just a tool for pilots, masters,

or rule makers to help identify the part of the transit that will end up controlling how the vessels are escorted. Fred Felleman then asked to hear from Ecology.

Sara Thompson (Ecology Alternate/BPC) responded that the model was currently in development, therefore there were no specifics to share at that time. But that it would be a higher fidelity than what was being depicted, believing that Blair Bouma's proposed zones would work really well for that purpose. She added that the idea of subzones for additional info will be very helpful as they build the model. Brian Kirk (Ecology Alternate/BPC) reiterated that the actual coding and development of the model, as well as outreach and communication, were still in planning. They do anticipate the model to be no closer than half a nautical mile, which seemed reasonable to him in order to do the work it needs to do, adding that the subzones were good information from an operational standpoint but that the model was going to look at what risk reduction benefits tug escorts provide and whether or not those benefits vary geographically across the areas. The model will be able to provide info on those questions. Fred Felleman (Environment/Friends of the Earth) responded by stating that there were two different questions: characterizing the traffic in the waterway and characterizing how effective a tug escort would be. He concluded that he was glad to see that Blair Bouma could break it down to the resolution presented and thought the model exercise sounded good.

5. Next Steps

Next Meeting

The next meeting is targeted for the first couple weeks of June in order to prepare for the June 18, 2020 Board meeting. Jolene Hamel from the BPC will be sending out a Doodle Poll. The meeting will likely continue through Skype/Conference Call.

Interpretive Statement

Chair Bever will make the suggested revisions and send the document to the OTSC via email prior to the May 21, 2020 Board meeting.

Geographic Zones

Chair Bever and Blair Bouma will work to finalize a document containing visual depictions and verbiage of the all the zones in Puget Sound for consideration at the June OTSC meeting.