

Transcript

March 20, 2025

BJ Bever, Jaimie (WSF-Pilotage) 0:16

Tonn, Sheri (in-person)

OK. The next item on the agenda was one that was added, which is implementation of RCW 88.16.180 and 180 is about oil tankers and state licensed pilot required.

I'm just going to read it first. Notwithstanding the provisions of 88.16.070, any registered oil tanker of 5000 gross tons or greater shall be required to take a Washington state licensed pilot while navigating Puget Sound and adjacent waters and shall be liable for and pay pilotage rates pursuant to 88.16.030.

This was recently brought to our attention. In US waters for ships that have been normally going to Canadian ports, it's been a Canadian pilot on board, not a US pilot.

The Canadian Statute specifically says conduct of ship subject to compulsory pilotage, that in Canadian waters a US pilot is allowed. So that's the Canadian statute, but it's clear that the Washington state statute said we should have a Washington pilot on board in US waters. As you can tell, we've been debating this long and hard for the last in a couple of closed sessions. And, Guy, could you just state your review of this issue? Guy Bowman was the previous Assistant Attorney General for the Board of Pilotage.

He got promoted and Albert Wang has been our Assistant Attorney General and Albert is out of the country. So, we drafted Guy in and had him also do a review of this. Guy?

G Guy 3:22

OK, I again, I don't want to talk about the merits of the statute so much as the statute itself, and you know, it appears that this statute may have some technical problems, but it is very clear in its current law and good law in our state that 88.16.180 is in fact a statute, and therefore, we believe, you know, it sounds silly to say, but I mean, it's a statute that should be enforced. You know that's our, that's the, you know, legal interpretation is statutes are, you know, enacted by our legislature are done for a reason. And the reason is that they should be followed.

BJ Bever, Jaimie (WSF-Pilotage) 4:25

Sheri Tonn (in-person)

What this board has discussed is some of the complications that have existed out there because of other kinds of potential federal agreements between the US and the Canadians or international issues and with regard to rules and navigation.

And we, I think, would all agree that one this was a surprise, and two, it's a shock to the

system. And three that I want to invite or comment, and then we'll get public comment and see if there's any kind of a motion. And Guy, I would like you to also reiterate the liability to the board if something was to happen and we were not to imply this.

G **Guy** 5:23

Well, I don't really believe it's appropriate to discuss the legal, you know, to further our legal discussion in the public here that was held in, you know, closed session. What I can say though is that I think that it's pretty clear that the law of Washington is that the state is, is jointly and severally liable for any damages that may occur as a result of its alleged or impossible improper conduct.

BJ **Bever, Jaimie (WSF-Pilotage)** 6:13

Andrew Drennen (in-person)

Yeah, I'll go. I mean, I think the challenge here for me is that there are several federal laws, agreements, international treaties in place that apply to the unique waterway, that Boundary and Haro are, these being transboundary waterways, vessels get right of innocent passage. There's a lot of treaties that have been done over the years to specify what the rules of that are. Specifically, classifying these transboundary waterways as territorial seas as the United States and Canada has claimed them as internal waters, and therefore one of my points is that I believe that under that definition, since the territorial sea that this statute is not applicable here. Washington state law, when it comes to navigation in this particular boundary water stops at the low tide line.

Additionally, there's Ports at Waterway Safety Act, which was passed by Congress, which gives the Coast Guard the authorization to carve out specific rules and regulations and make exceptions. And they have done that in that cooperative vessel traffic management system that they signed from Canada with the reciprocal agreement that's in there that says that if a vessel's going to Canada and not stopping in the US, as long as it's following Canadian law then it's considered in compliance. So I think there's some, I think the term I heard was preemption here with federal a law. So I think there's a lot of things to consider, not just one statute.

I agree with what the statute says I'm just not sure it's applicable here. So. And I think before any action is taken, we actually get the right people in the room and have the discussion. There are people who spend their entire careers with maritime law, and I think those are the type of people that we need to have in the room.

Mike Anthony (in-person)

Are you saying then if Washington State pilots don't reflect in this waterway because of what

you call a trans...

Andrew Drennen (in-person)

It's a trans. Excuse me. Can't talk so much, transboundary waterway.

Mike Anthony (in-person)

Is that saying that they won't need a Canadian pilot, then?

Andrew Drennen (in-person)

No, if you, if you, that's the thing, we have that cooperative agreement between the Coast Guard and we put that agreement in place, right. If we didn't have that agreement in place, it gets real muddy. That's why that was put in place because of the unique characteristics of this waterway. So and there. This isn't the only waterway around the world that has this challenge. So, they're very specific rules that affect these waterways. So I think we need to be very careful about what we do if for nothing else, we don't embarrass ourselves by saying you have to do this and it comes back. No, we don't. So because I think it's going to be a shock to the system by taking Puget Sound Pilots trying to figure out how to get them on ships going to and from Canada and never mind the delay it's going to cause throughout the entire rest of the Puget Sound. Because we're already seeing delays, like I said, with the way the system is now.

Sheri Tonn (in-person)

Are there other comments from the board?

TF **Tim Farrell** 9:21

Yes. This is a, I see the complexities here. And I see the pickle that we're in. My instinct is to make a public statement. That we have identified a conflict in law.

And that if we enforce one, we'll be in conflict with the other. And that we are going to seek a, we're going seek further legal analysis and legislative correction if needed.

And probably put a timeline on that so that if that takes a long time, we're going have to comply with state law.

BJ **Bever, Jaimie (WSF-Pilotage)** 10:30
Sheri Tonn (in-person)

If it takes a long time, what does that mean to you?

TF **Tim Farrell** 10:38

Well, we, we're in a situation now where we haven't been enforcing a state regulation. So,

tomorrow is no different from today. But now that we know that we have this situation and we don't, the exact bounds of it because we don't have the complete legal analysis. But now that we know that at a minimum we are not enforcing a state law. I think it's incumbent upon us to correct that. But not Willy nilly. In other words, give us some window of time to determine whether the existing situation is covered by federal preemption.

BJ

Bever, Jaimie (WSF-Pilotage) 11:41

Mike Anthony (in-person)

Sheri, when we have a chance...

Jaimie Bever (in-person)

Two seconds, we're just looking at something really quick here.

TF

Tim Farrell 11:55

And just while I'm, while I've got the mic, Jason, I'd love to hear your thoughts on the matter as well.

BJ

Bever, Jaimie (WSF-Pilotage) 12:04

Sheri Tonn (in-person)

Oh. This is also the conflict that is internal in...This is 88.16.070 "vessels exempted and included under the chapter fee and penalty provided that any vessel inbound to or outbound from Canadian ports is exempt from provisions of this section if said vessel actually employs pilots licensed by the Pacific Pilotage Authority and if it is communicating with the vessel traffic system and appropriate navigation charts and if said vessel uses only those waters east of the international boundary line" etc. But the issue is that this is the part that then says in 180 notwithstanding the provisions that I was just reading and this is what Albert actually took a look at as well. So, to say it's complicated is an understatement.

Jaimie Bever (in-person)

Yeah, because it's very like clearly laid out and even references specifically Pacific Pilotage Authority.

Sheri Tonn (in-person)

Right, in 070, yes.

Mike Anthony (in-person)

Can I make a request that we allow Clay Diamond to speak on this?

Severin Knutsen (in-person)

Or anyone with knowledge of the federal preemption, I would imagine.

Sheri Tonn (in person)

Yeah, we'll take public comment in just a second. And yeah, absolutely.

Eleanor Kirtley (in-person)

Can I ask if I'm like interpreting? I'm looking at the online RCWs.

Sheri Tonn (in-person)

Correct.

Eleanor Kirtley (in-person)

And the vessel exempted section the 070 it says effective date 2018 and then the notwithstanding 180 was affected back to 1991, so after the notwithstanding was when the were adopted?

Jaimie Bever (in-person)

That exemption statute was changed in 2018, but it was specific to yachts.

Eleanor Kirtley (in-person)

OK.

Severin Knutsen (in-person)

And 180 was also revisited in 2019.

Jaimie Bever (in-person)

Oh yeah, it's part of the tug Escort rulemaking, yes.

Sheri Tonn (in-person)

OK. Is there any other board comment? And if not, then let's move to...Clay isn't with us, is he?

Mike Anthony (in-person)

Brendan is.

Sheri Tonn (in-person)

Brendan. OK, Brendan.

TF **Tim Farrell** 15:03
I want to add one more thing which is I think we need to take a little bit more time to complete a legal analysis before we take action.

BJ **Bever, Jaimie (WSF-Pilotage)** 15:14
Sheri Tonn (in-person)
Yeah. Thank you.

HJ **Hamilton, Jason** 15:15
And I would just echo what Tim has said from the standpoint of I, we, as in most of us, have only had a couple of days to review and begin to look at this. Some of us a day and it is a complicated matter that is a potential conflict of law. I think the state statute, I see, I think we see, the issue there. But you know, I think the state statute arguably, well, not arguably, is clear, but I haven't had the opportunity to really look at the international or federal preemption piece. And I think that as a board, it would be worthwhile for us to consider those. And we also should look at policy implications. We talked about what that might look like but it's also a weird and interesting place with our neighbors to the north at the moment and, you know, I think considering being thoughtful is worthwhile.

BJ **Bever, Jaimie (WSF-Pilotage)** 16:29
Sheri Tonn (in-person)
Thank you, Jason.
Brendan.

BO **Brendan O'Shea** 16:43
Hi, good afternoon all. Thanks for the opportunity to speak. I appreciate and understand the federal preemption issue that was really recently raised. Just for my clarity, is that issue going back to UNCLOS or an international treaty? Is that what that theory is premised on?

BJ **Bever, Jaimie (WSF-Pilotage)** 17:05
Andrew Drennen (in-person)
So there's the portion of the Waterways Safety Act that gives the Coast Guard to carve out exemptions.

BO **Brendan O'Shea** 17:11
Yeah.

BJ Bever, Jaimie (WSF-Pilotage) 17:14

Andrew Drennen (in-person)

And they have done so in the cooperative vessel traffic management system.

So by saying there's a reciprocal agreement in there that says it's always a ship bound to/from Canada's fleet, Canadian law is considered in compliance with US standards.

BO **Brendan O'Shea** 17:32

OK. Thank you. That would be new for us and I think that's worth studying. That's not something that we were tracking that the Coast Guard had that authority in law.

I know the Coast Guard's got a lot of broad authorities, especially when it comes to safety and security over the water. We always point back to 46.85.01, which has been codified from the 1st Congress delegating this to the states unless otherwise determined. We did review. I had a chance to review with Clay and I know he made a submission on what the black letter state law says, and so that's our position as far as that. We think that's pretty clear and this is the first time I've ever heard of PWSA or some other say Coast Guard or other federal agency being able to do that on their own, for example in the Great Lakes, that system is done through international treaty.

And that's not a Coast Guard authority, generally speaking. Again, I would defer to the Coast Guard to speak on that, but from my knowledge as APA Council, that's not a Coast Guard authority.

BJ Bever, Jaimie (WSF-Pilotage) 18:42

Andrew Drennen (in-person)

Correct. And there are existing treaties that that are in place that govern the law to sea and these transboundary waterways are very unique within those treaties and it establishes where the boundary line is between what was considered internal waters and territorial seas. And in this case neither the US nor the Canada has claimed Boundary or Haro Pass as an internal sea. Therefore, the territorial sea rules apply, providing the vessels with innocent passage. And so there's a question in my mind about where the jurisdiction even for the statute is.

BO **Brendan O'Shea** 19:22

Right. And these are treaties that we were signatories to?

BJ Bever, Jaimie (WSF-Pilotage) 19:25

Andrew Drennen (in-person)

That is correct.



Fred Felleman 19:26

Yes, we are not signatory to UNCLOS.



Bever, Jaimie (WSF-Pilotage) 19:29

Andrew Drennen (in-person)

That is correct, Fred. We are not signatory to UNCLOS, but the three previous ones we still are and we haven't passed any rules that have superseded or suspended those.

Sheri Tonn (in-person)

OK. Brendan, do you have anything else to add right now?



Brendan O'Shea 19:55

No I don't. I agree with Tim's earlier comment that I would point back to what the existing clear black letter state law and regulation is. But understand the delicate situation that the Commission is in.



Bever, Jaimie (WSF-Pilotage) 20:07

Sheri Tonn (in-person)

Yes. Next, Lovel.



Lovel Pratt 20:13

Hi. Thank you for letting me speak. I'm Lovel Pratt. I'm the marine protection and policy director at Friends of the San Juans, and just for those of you who don't know me or the organization I work for, our mission is to protect the San Juan Islands and Salish Sea for people and nature and the San Juan Islands are surrounded by Haro Strait, Boundary pass and Rosario Strait and the Eastern Strait of Juan de Fuca and the major shipping channels in those waterways. And I just want to acknowledge it's a little challenging to provide public comment on an conversation that's obviously been underway and I'm kind of stepping into it without knowing like the full back story here. But I just wanted to reference concerns about if, if somehow the discussion here relates to the vessel traffic service and the cooperative agreement between the US and Canadian coast Guards with regard to vessel traffic management, it's always been a concern of mine that while I understand the reason for that agreement and that it makes sense for one entity to be managing traffic on both sides of the border in a given waterway, I've always, my observation has been that Haro Strait and Boundary Pass and Lower Georgia Strait, which are managed by Canadian Vessel Traffic service, that there's a lot of deference given to Canada, even though these waterways include US, Washington State, San Juan County waters and we are very concerned about the

significant increase in tanker traffic. Because of the completion of the Trans Mountain pipeline expansion project, it's my understanding that there's been a 930% increase in heavy crude oil that's been exported from Canada by tanker through those routes. So one question I have for your consideration is, is there any difference in whether these tankers are transiting to Asia versus transiting to ports in the US, whether that be Washington state refineries or refineries in California or the offshore area of California where they do reverse lightering. And then also just to acknowledge that even tankers that are transiting westbound through Haro, Lower Georgia, Boundary, that it appears to me just looking at the marine traffic app, which obviously isn't accurate, but it appears that they're transiting through the US, Washington State, San Juan County waters going in both directions at different places along that route. So I just wanted to share those concerns and hope to become better informed about the situation and the decision before a vote about how to and whether or not to enforce the state law. Thank you.

BJ

Bever, Jaimie (WSF-Pilotage) 23:29

Sheri Tonn (in-person)

And Lovel, this has been a rapidly emerging issue. So, we're kind of at the same point you are to a great degree. Fred had his hand up, but I think Fred is gone now.

FF

Fred Felleman 23:44

No, I'm still here. I'm still here. Alright, well, it may be recent to the part of this Commission, but I've been a student of this issue for decades and in fact it goes back to the Pig War and I've been in the Pig War Museum at Friday Harbor and had a look at the committee report language that went into the Treaty of Oregon and this term "innocent passage" is inappropriate in this application. It's about, if you were British at that time, you're not going sign a treaty that doesn't allow your flag vessels to get to your port. It's like for the military and, you know, Coast Guard and things like that, that they would have truly innocent passage warships. As far as you know, we're not talking about stopping passage. We're talking about conditioning passage. And in this, in this case, we know that Canada has declared, they are signatories of UNCLOS, they have declared their side of the Strait as internal to Canada. And in fact, they kept our fishing vessels from transiting to Alaska, that they had to give a waiver to the pilot's requirement for ATB's going to Alaska. But the requirement was there that Canada could require pilotage. So it, by definition, shows that the passage isn't innocent if they have something they have to waive.

I would agree that this has been going on for a long time and I would not recommend you making a final decision today and that it is a hugely encumbered legal issue. I actually had the Senate require the Coast Guard to update their comparability analysis, which is the underpinning to the vessel traffic agreement, which is, I believe, a

treaty. And in fact, you know, it says all these things are different. But for all intent purposes, they're comparable. That's the comparability analysis.

I don't know that that then expressly says because they're comparable. You don't have to do anything different on the other side of the border. They are in our waters, something like 2/3 of the time on this northbound transit at least. So the idea that the Coast Guard could be giving them a waiver, that is a possibility through the VTS agreement and it's something that I believe needs to be looked at. But I feel strongly though that the term innocent passenger has a very specific legal meaning.

And it is bantered around irresponsibly. I believe in this context of these waters, but I would totally concur that this is a bit of a rat's nest, and it's not something that the Commission should be making a final determination of at this moment. But do hope that you can run it down because it is as many implications will be for tug escorts or any other number of matters about passage through this area. Thank you.

BJ

Bever, Jaimie (WSF-Pilotage) 26:49

Sheri Tonn (in-person)

Thank you. Sheree.

CS

Carson, Sheree S. (BEL) 26:56

Yes, thank you very much. I'm Sheree Strom Carson with Perkins Coie. I represent the Puget Sound Pilots and I just wanted to reiterate some of the things that we've heard. But first of all I want to thank you for the opportunity to speak here and for putting this agenda item on the open public meeting. We appreciate that. Obviously, the goal of the pilots is to follow the law. And as we've heard, RCW.

88.16.180 is clear. It requires Puget Sound pilots on registered tankers of 5000 gross tons or greater and Puget Sound and adjacent waters. You know, there's been talk about the treaty, the Oregon Treaty, and whether that prevents the states from imposing such requirements. But the Washington State Attorney General has ruled that there is no Treaty of the US that regulates pilotage in the Haro Straits/Boundary Pass area. So, I think that's an important legal point to note. There's also has been questions about language in the Oregon Treaty about this free and open passage, but courts have interpreted that to be more in the nature of an easement. The 9th Circuit in fact said that it's more in the nature of an easement. It doesn't preclude the jurisdictions Canada and the US from imposing safety regulations or economic regulations. So, the language of the Treaty itself does not preclude this. And the preemption discussion is really interesting because this has already been looked at by the federal courts. This very statute was struck down back in the 70s by the Federal District Court. At that time it required both the enrolled and coastwise vessels, as well as the registered vessels to have a Washington pilot. And so, it was struck down in its entirety. It

went up to the Supreme Court and Ray versus Atlantic Richfield and The Supreme Court said what the District Court did was overly broad.

While it was true for the enrolled coastwise vessels that Washington pilots couldn't be required. The state did have the ability to require them on registered tanker vessels. The judgment was overly broad for just as it is clear that states may not regulate the pilots of enrolled vessels, it's equally clear they are free to impose piloted requirements on registered vessels. So this issue has been looked at by the Supreme Court and they ruled. So you know, what do we have here? We have a state law that was revised after parts of it were struck down. The legislature has looked at it since then and it remains in effect. And it's very clear that Washington pilots are required on these transits. And so I would just encourage you, for whatever reason, you know, this has been overlooked for many years. That is true, but it's a state law that's in effect, and until it's struck down or the legislature changes it, a state agency and Puget Sound pilots have an obligation to follow it. So I would encourage you and I understand that you want to look at it a little bit closer. I would encourage you to act with all haste, and we did ask that this be decided in a formal determination as soon as possible no later than the April meeting, and we stand by that. We request that you act as quickly as possible. Thank you.

BJ

Bever, Jaimie (WSF-Pilotage) 31:06

Sheri Tonn (in-person)

Thank you Sheree. Pat Gallagher.

PG

Patrick Gallagher 31:13

Hi, thank you. And I just want to just extend, you know, some gratitude for allowing me to speak today and putting this on the agenda like others have as well. So there's a few things I want to address. Number one, I'm not a lawyer. I'm just an old Coast Guard boarding officer and I'm also the executive director of the Marine Exchange. So, I'm here really for the concern for our members and also this is a matter of safety.

And I'm the chair of the Puget Sound Harbor Safety committee, so that's the context in which I speak. So, there's just a few things that I want to ask more as a matter of record. I'm not really expecting an immediate response necessarily unless it becomes a discussion point. But. A couple of things came out of this discussion that I wrote down. Number one was Tim said something about improper conduct. And I'm wondering what improper conduct means exactly. And I'm also arriving late to this, so that that's just in my notes also right in beginning surprise and shock.

So I knew that this was an issue, but I'm sort of wondering what the surprise and shock is exactly. And then also I want to ask are we referencing the Oregon Treaty of 1846 without specifically referencing it within the first part of it and then lastly.

I want to challenge this 930% increase. Numbers you know, we count ships for a living and I'm not sure where that comes from, so I'd like to see more contacts and data for I've heard 700% increase, I've heard 1600% increase and now today I heard 930% increase. So, I need a starting point and I need an ending point for the math on that. So that's really all I got. Again, thank you so much for allowing me a few minutes to speak and I just want to commend this board for bringing it on the public agenda. That's very bold. Thank you.

FF **Fred Felleman** 33:40

I'm sorry if I could just interrupt. I believe Lovel was talking about the volume of oil and not the number of ships.

BJ **Bever, Jaimie (WSF-Pilotage)** 33:46

Sheri Tonn (in-person)

Right, right. Correct. Lovel was talking about...

PG **Patrick Gallagher** 33:50

All right, that's helpful. I would love to see some of those numbers, Fred.

I yeah, I appreciate that.

BJ **Bever, Jaimie (WSF-Pilotage)** 33:59

Sheri Tonn (in-person)

Well, I'll let Lovel...

LP **Lovel Pratt** 33:59

Yeah.

BJ **Bever, Jaimie (WSF-Pilotage)** 34:01

Sheri Tonn (in-person)

I'll let you guys take that conversation offline between Patrick, you and Lovel and we'll move on to Brendan.

PG **Patrick Gallagher** 34:09

Thank you.

LP **Lovel Pratt** 34:10

Thanks.

BJ Bever, Jaimie (WSF-Pilotage) 34:12

Sheri Tonn (in-person)

Thank you.

BO Brendan O'Shea 34:16

All right. Thanks again. I appreciate the chance for a follow up comment. Thank you, Sheree for your comments. I did have a question. So is it, I believe it was Mr. Bowman. So, is it the state attorney general's position now that there is a treaty that is applicable here and that would preempt state law or the normal operation of 8501?

BJ Bever, Jaimie (WSF-Pilotage) 34:35

Sheri Tonn (in-person)

No, no. No, Brandon, that's not what Guy Bowman was saying. I think he's still there. I'll let guy speak for himself.

G Guy 34:54

Yeah, I'm still here. I just turned the camera off because I was having some transmission issue there. No, I did not. My position is pretty clear in that I think that the state law is on the books. It's a valid law, OK? And that's my position on it.

BJ Bever, Jaimie (WSF-Pilotage) 35:26

Sheri Tonn (in-person)

Thank you.

I saw Fred and then he disappeared. He does not have his hand up currently.

No one, OK? OK, nobody has their hand up at this point in time.

We've had some lively discussion here and well, let me ask the board, given everything you've heard, is there any kind of motion at this point in time?

Mike Anthony (in-person)

Yes, I'd like to make a motion. Like to make a motion to follow the AG's office recommendation of implementing 88.16.180 rule as soon as safely possible.

Eleanor Kirtley (in-person)

Practical or practicable? I'm more comfortable with practicable.

Mike Anthony (in-person)

I'll go with that.

Sheri Tonn (in-person)

Safely practicable?

Mike Anthony (in-person)

Practical. Safely practical. Yes, practicable.

Sheri Tonn (in-person)

Ok. It's been moved to follow the recommendation of the AG's office to implement 88.16.180 as soon as safely practicable, is there a second?

Severin Knutsen (in-person)

I'll second that.

Sheri Tonn (in-person)

It's been moved and seconded. Is there any further discussion?

Jaimie Bever (in-person)

Do we want to implement it or do we want to enforce it?

Nhi Irwin (in-person)

Yeah, it's not new, so it would be enforce.

Sheri Tonn (in-person)

You'll accept that to enforce?

Mike Anthony (in-person)

Yeah.

Sheri Tonn (in-person)

And will you accept that as the second, to enforce?

Severin Knutsen

Yeah.

Sheri Tonn (in-person)

OK. Is there a discussion?

Andrew Drennen (in-person)

I've said my bit. Yeah, I just. I just preach caution here. I think it's a complicated issue and I don't want to go too fast on this.

TF

Tim Farrell 38:19

All right, going back to prior comments before we are to vote on this particular motion, I'd like to have more specificity about what as soon as practical means. What are the steps that will be taken or would have to be taken prior to that implementation?

BJ

Bever, Jaimie (WSF-Pilotage) 38:59

Mike Anthony (in-person)

Well, there has been discussion between Puget Sound Pilots and the Canadian pilots about this possibility, so there would be steps involved in that. And then there's just the timing of the ships changing their routes.

Sheri Tonn (in-person)

Tim, we've not been a part of any of those discussions between Puget Sound Pilots and BC pilots. It has been strictly between those two pilotage groups. We have talked briefly with Pacific Pilotage Authority. I don't know if PPA is with us at all today or if they have anything to add.

TF

Tim Farrell 39:49

Well, I guess my question is who makes the determination as to whether as quickly practical? Because we're the ones that are responsible.

BJ

Bever, Jaimie (WSF-Pilotage) 40:04

Sheri Tonn (in-person)

We could ask for a report back from PSP within a certain time period.

TF

Tim Farrell 40:14

I mean, I'd want to see what the steps are and see that they've been accomplished as part of the motion. You know, before I would vote anything like that.

HJ

Hamilton, Jason 40:27

And I would just second when we talk about practicability. I like Eleanor's substitution of that word, because when we're looking at that, it is not only the steps operationally, but then that

also hopefully would give us the time to clarify some of these other questions that we have been talking about to at least be better informed before we completely move out on this.

BJ Bever, Jaimie (WSF-Pilotage) 41:00

Sheri Tonn (in-person)

Ivan.

IP **Ivan Carlson - President** 41:02

Well, I'm just curious, when you say you'd like to report back, are you talking about a report back before the April meeting? Because in case it's not voted in the affirmative in this meeting, or are you talking about, I mean, some more specificity on report back would be nice as well.

BJ Bever, Jaimie (WSF-Pilotage) 41:30

Sheri Tonn (in-person)

Umm, the motion was to follow the attorney General Office recommendation to enforce as soon as safely practicable. So that falls to you with regard to how long would it take you.

IP **Ivan Carlson - President** 41:50

Well, I think we can be relatively quick about this, Captain Hannuksela and myself and a few other pilots have looked at some alternatives, transportation alternatives. Operational alternatives, boarding and deboarding alternatives, round trip alternatives. We've looked at a number of issues, but there is still the issue of these ships are coming and there are and they're on their way and their intent is to go to Canada. So, there's the rerouting that would need to take place. I'd say probably a couple weeks max and we'd be all geared up and ready to go.

BJ Bever, Jaimie (WSF-Pilotage) 42:45

Sheri Tonn (in-person)

Well, do we want to say by the April meeting?

IP **Ivan Carlson - President** 42:49

Well. Maybe we just wait. I can tell you by the April meeting. Yeah, but that's... what would you like by April? My exact game plan or what would you want?

BJ Bever, Jaimie (WSF-Pilotage) 43:13

Mike Anthony (in-person)

Tim, that's you.

TF **Tim Farrell** 43:15

OK. Well, it's somehow, we need, we're flying blind right now. Or at least I am.

BJ **Bever, Jaimie (WSF-Pilotage)** 43:21

Sheri Tonn (in-person)

Yeah.

TF **Tim Farrell** 43:21

We would need to know. How? How safely practicable is defined in one of the steps that need to be taken to implement that. Right now we don't know what the steps are or what the criteria are to determine that those steps have been successfully taken. So you know it's we're relying on your expertise, but we need to know what it is.

IP **Ivan Carlson - President** 43:53

What we want to do, if we're ordered on there, we want to work with the Canadian pilots the very best we can and I'm sure they want to work with us. And so it's the coordination that would take place and until we're told you need to be on there, there's no need for them to want to coordinate with us. And it's kind of spinning our wheels if we don't know where this board's going to come down, we could just be spinning our wheels for nothing.

BJ **Bever, Jaimie (WSF-Pilotage)** 44:35

Sheri Tonn (in-person)

Well, Ivan, there's a motion on the floor right now.

IP **Ivan Carlson - President** 44:39

Well, he asks a question, but yeah.

BJ **Bever, Jaimie (WSF-Pilotage)** 44:40

Sheri Tonn (in-person)

To enforce as soon as safely practicable. That's the motion on the floor. We've not yet voted on that motion, but what we're asking is what is safely practicable. Are you saying safely practicable is no later than the April? The Board meeting on the 20th?

Eleanor Kirtley (in-person)

I think it engages BC Coast Pilots and USCG.

IP **Ivan Carlson - President** 45:02
Yes. Yes.

HJ **Hamilton, Jason** 45:13
I'm sorry I missed the conversation in the room of what Eleanor said.

BJ **Bever, Jaimie (WSF-Pilotage)** 45:13
Eleanor Kirtley (in-person)
I throughout the acronyms for Canadian pilotage and U.S. Coast Guard.

HJ **Hamilton, Jason** 45:22
OK.

BJ **Bever, Jaimie (WSF-Pilotage)** 45:23
Andrew Drennen (in-person)
You want the pilots to engage them and get their agreement in place?

Eleanor Kirtley (in-person)

I'm not saying we need their agreement to follow our states directive. But under the condition of safely practicable, we don't want to be doing this necessarily against anyone's cooperation. Is there any question still remaining around federal preemption or do we need an amendment to say pending further legal review?

Mike Anthony (in-person)

I think that'll just keep going on anyhow, one way or the other, don't you?

Eleanor Kirtley (in-person)

Yes, we do need an amendment?

Andrew Drennen (in-person)

I think we should state as a board that it this passes, that we'll, we're still going to continue to look at it regardless of the lawsuits and everything else that's coming our way.

Eleanor Kirtley (in-person)

Yeah. I would put forward that idea of an amendment. Secondly, under the kind of guise of a multi-pronged approach, add in some sort of monitoring that would allow us to consider

impacts on efficiency such that we could then make a decision of trying to take more of a legislative route to change 88.16.180.

BJ Bever, Jaimie (WSF-Pilotage) 46:45

Sheri Tonn (in-person)

Well, right now, are you proposing an amendment?

Eleanor Kirtley (in-person)

I'm assessing the appetite for such an amendment.

TF Tim Farrell 47:00

And the amendment specifically, if you could boil it back down for us would be great.

BJ Bever, Jaimie (WSF-Pilotage) 47:05

Eleanor Kirtley (in-person)

To, it would be pending further legal review, specifically federal preemption. And monitoring of impacts such that that would inform a potential legislative revision.

Severin Knutsen (in-person)

Then would you suggest that we don't follow the state law?

Eleanor Kirtley (in-person)

No, I'm not following that we don't follow the state law. I'm following that as we enforce the state law we don't do it blindly.

Sheri Tonn (in-person)

Well, but that would take place after the change in pilotage.

Eleanor Kirtley (in-person)

Yeah, it's kind of like the trust, but verify. We will trust that we will follow the state law. And we will, because this is so rushed, continue our due diligence with the legal review and monitoring of impacts.

Sheri Tonn (in-person)

So it's separate sentence? The BPC will continue legal review...

Eleanor Kirtley (in-person)

Do we want to continue legal review, or do we want this pending legal review?

BJ **Bever, Jaimie (WSF-Pilotage)** 48:17

Sheri Tonn (in-person)

I don't know. I'm asking you.

Andrew Drennen (in-person)

I would prefer we don't implement anything until we've done a complete legal review of federal and international treaties. But that's my...

Sheri Tonn (in-person)

OK. So, we have a motion on the floor right now that's been moved and seconded. Which right now has no dates associated with it nor anything about implementation. It just says follow the AG office recommendations to enforce 88.16.180 as soon as safely practicable. That's the motion on the floor stands right now. That's been moved and seconded. Is there anything to be added to that motion? Are there any amendments to that motion?

Jaimie Bever (in-person)

Isn't that what Eleanor was doing?

Sheri Tonn (in-person)

She hasn't made that motion.

Eleanor Kirtley (in-person)

I was discussing amendments. I don't think like even short of an amendment, the BPC can still choose to monitor NSS legal context.

Sheri Tonn (in-person)

But is that an amendment or not? If it's not an amendment, let's move to motion.

Eleanor Kirtley (in-person)

I'm not formally adding to the motion.

Sheri Tonn (in-person)

OK. That's what I was asking. It looks like there's a comment on the motion. Right, Brendan?

BO **Brendan O'Shea** 49:42

No. If there's no amendment. I was just going ask about the amendment and the legal

review, but if there's no amendment, I don't have a comment. I would defer to any comment Captain Carlson has.

BJ Bever, Jaimie (WSF-Pilotage) 49:55

Sheri Tonn (in-person)

OK. So there's a motion on the floor. Do I hear any amendments? Ivan.

IP **Ivan Carlson - President** 50:01

Well, I'm not entitled to offer an amendment, but. But I would say that anything, well, I want to make a comment, and I know this is... I want to say these Canadian pilots are our friends and this is complicated and this is the most stressful part of my job. My career here as a pilot, this is the most stressful position I've been put in.

But my comment and it could be that Mike or somebody to amend it would be to say that we can't order the vessels down to Puget Sound Pilot Station. This would need to come from the pilot Commission. Thank you.

BJ Bever, Jaimie (WSF-Pilotage) 50:58

Mike Anthony (in-person)

I don't think it's applicable to the motion. I think something to follow up.

Sheri Tonn (in-person)

Yeah, yeah. OK. So, as it stands right now, there's no timeline. There's just safely practicable. And I hear no amendments.

HJ **Hamilton, Jason** 51:19

Well, when we talk about no timeline and practicability. Do we want to have something like no sooner than our next board meeting so that we at least have something where we're reviewing?

BJ Bever, Jaimie (WSF-Pilotage) 51:40

Sheri Tonn (in-person)

Is that an amendment? Safely practicable, no sooner than April 17, 2025 BPC board meeting?

HJ **Hamilton, Jason** 51:52

Yes.

BJ Bever, Jaimie (WSF-Pilotage) 51:54

Sheri Tonn (in-person)

Is there a second to that motion?

TF **Tim Farrell** 52:02
2nd.

BJ **Bever, Jaimie (WSF-Pilotage)** 52:04
Sheri Tonn (in-person)

It's been seconded by Tim. Any further discussion on that motion? Hearing none. All those in favor of adding the amendment no sooner than April 17, 2025 BPC Board meeting please raise your hand. OK, 1,2,3,4,5,6 and all those opposed 1,2,3. The motion passes so that the motion is amended to say no sooner than April 17, 2025 BPC board meeting.

FF **Tim Farrell** 53:14
Can we, hang on one second. Can we make that after the meeting on that?

BJ **Bever, Jaimie (WSF-Pilotage)** 53:26
Sheri Tonn (in-person)
I'm sorry I didn't understand.

TF **Tim Farrell** 53:28
In other words, after the completion of the meeting. Rather than midnight.

BJ **Bever, Jaimie (WSF-Pilotage)** 53:38
Andrew Drennen (in-person)
He's asking for clarification. So, is it the start of the meeting, the completion of the meeting?

Eleanor Kirtley (in-person)
We can say as soon as safely practicable following the April meeting.

HJ **Hamilton, Jason** 53:58
That's better language.

BJ **Bever, Jaimie (WSF-Pilotage)** 54:00
Sheri Tonn (in-person)
OK, following.

TF **Tim Farrell** 54:01
Yep.

BJ Bever, Jaimie (WSF-Pilotage) 54:05

Sheri Tonn (in-person)

OK. Are we? Let's vote on this revised amendment: following the April 17th, 2025 BPC board meeting, all those in favor of that amendment, please indicate by raising your hand 1,2,3,4,5,6, opposed 2. OK it says following. The main motion is that we'll follow the Attorney General's Office recommendation to enforce 88.16.180 as soon as safely practicable, following the April 17th, 2025 BPC board meeting. Any further discussion? Oh, go ahead.

HJ Hamilton, Jason 54:59

And Sheri, the only other thing I was going to say is I think all of the conversation that, particularly Eleanor, Tim, others were having about, you know, continued review during this period. I agree we don't necessarily need that in the motion, but I would hope that we're all agreeing that that's what we're going to be working on during this period. You know the review and the practicability to make sure that we feel comfortable as a Commission.

TF Tim Farrell 55:31

Mm hmm.

BJ Bever, Jaimie (WSF-Pilotage) 55:32

Sheri Tonn (in-person)

Can't imagine that won't happen. Yes, I agree. Anybody have any contrary thoughts? OK, then to the main motion, is there any further discussion or any public comment? OK, hearing none.

FF Fred Felleman 55:56

I have...my hand is raised.

BJ Bever, Jaimie (WSF-Pilotage) 55:59

Sheri Tonn (in-person)

Fred.

FF Fred Felleman 56:00

All right. Thank you very much and I've really enjoyed the conversation and the thoughtfulness that goes into this. I'm very concerned that the state will get sued or the Pilotage Commission will get sued upon the announcement just on principle, without even having to get to the detail. And I do believe that, I'm very glad that you know Perkins Coie is on it and I think there is good grounds for supporting the pilot's authority. But it's going to

probably take more than April is what I'm thinking.

And then like for one example is Lovel brought up that question about if the vessel's bound to a US port from the moment it declares its destination, it's no longer an innocent passage. So, but if it's going to China, it could be different. And so there's going to be nuances here that are going to have to be tweaked out. Well, I am fully desiring of the pilots to be able to assert authority and to do this. I am at the same time don't want to lose a lawsuit because we weren't fully prepared. So I would give it some more wiggle room because I assume the Coast Guard is going to declare preemption right out of the gates. In fact, I'm sure they will. And I'm sorry, Mike Moore's on this call, I'm surprised I'm not hearing from Mike, but there's no question I've had this debate about what we can assert on Canadian bound traffic with the Coast Guard for years. And so that you're going to have an uphill battle to make this argument on a on a legal basis, regardless of the safety. I think the fact that you're currently doing this dual pilotage through Georgia Straight is a great example of how it can be done, but this is going to take some working out and so I just want to protect the state's authority for the long run. That's all I have to say.

BJ

Bever, Jaimie (WSF-Pilotage) 58:12

Sheri Tonn (in-person)

Thank you. Any further discussion? OK. All those in favor of the main motion, please raise your hand. Let's see. Six in favor. I must not be able to count. 123456. Oh, Nhi stepped out. Opposed? OK, motion carries. OK. I will call us done with this agenda item for right now, unless somebody has anything else to bring up. And we will not lose track of this, I promise. And we're going to follow on with the rest of the agenda.