

SENATE BILL REPORT

SB 5578

As Reported by Senate Committee On:
Environment, Energy & Technology, February 7, 2019

Title: An act relating to reducing threats to southern resident killer whales by improving the safety of oil transportation.

Brief Description: Reducing threats to southern resident killer whales by improving the safety of oil transportation.

Sponsors: Senators Van De Wege, Lias, Carlyle, Frockt, Billig, Conway, Hunt, Pedersen, Palumbo, McCoy, Dhingra, Keiser, Kuderer, Saldaña and Wilson, C.; by request of Office of the Governor.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/29/19, 1/31/19, 2/07/19 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Specifies tug escort requirements for oil tankers of a certain size.
- Requires tug escorts for certain sized oil tankers and articulated tug barges transited through Rosario Strait and connected waterways.
- Requires the Board of Pilotage Commissioners to adopt rules for tug escorts in Puget Sound.
- Authorizes the Department of Ecology to adopt rules for an emergency response towing vessel to be situated in the San Juan Islands area.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5578 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Lias, McCoy, Nguyen and Wellman.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment; Brown, Rivers and Short.

Staff: Jan Odano (786-7486)

Background: Oil Spill and Response. The Legislature enacted oil spill prevention and response measures in 1990 to promote the safety of marine transportation and protect state waters from oil spills. The director of the Department of Ecology (DOE) has the primary authority to oversee prevention, abatement, response, containment, and clean-up efforts for oil spills in state waters. The oil spill program requires oil spill prevention plans, contingency response plans, and documentation of financial responsibility for vessels and facilities that may discharge oil into navigable waters.

Oil Spill Prevention Plans and Oil Spill Contingency Plans. DOE administers an oil spill preparedness, prevention, and response program. Among other statutes administered by DOE's Oil Spills Program, state law directs facilities including railroads, oil refineries, terminals, pipelines, and vessel operators involved in the bulk transfer of oil to put in place oil spill contingency plans outlining containment and remediation responses to potential oil spills from the vessel.

Disclosure of Information about Oil Transportation. Vessel operators and railroads are also required to provide an advance notice to DOE including time, location, and volume information prior to certain transfers of oil. Facilities receiving crude oil from railroads must include in the advance notice route taken to the facility, the scheduled time, location, volume, gravity of crude oil, and originating region of crude oil received. This advance notice must be provided once per week to DOE for receipts scheduled for the following week. Pipelines must report to DOE twice per year on the volume of crude oil they transported through the state or province of origination of the crude oil.

Oil Vessel Maritime Safety Regulations. Federal law prohibits oil tankers larger than 125,000 deadweight tons from entering Puget Sound. Oil tankers greater than 40,000 deadweight tons (dwt), when not in ballast, must have a tug escort when entering Puget Sound. The Board of Pilotage Commissioners (Board) has adopted rules regarding the applicability of oil tanker tug escort requirements.

Oil tankers greater than 5,000 gross tons operating in Puget Sound are subject to compulsory pilotage, which requires a licensed pilot to assist with vessel navigation.

The Board of Pilotage Commissioners. The board consists of nine part-time members, consisting of members appointed by the Governor, the director of DOE, and the assistant secretary of the Department of Transportation's Ferry Division. The Board trains, tests, licenses, and regulates marine pilotage in Puget Sound and Grays Harbor. The Board also sets tariff rates and takes disciplinary action against pilots and vessel owners who violate state pilotage laws. Generally, most foreign-flagged vessels are required to use a licensed marine pilot when in Puget Sound or Grays Harbor waters.

Puget Sound Harbor Safety Committee. The Puget Sound Harbor Safety Committee is a non-profit organization originating in 1997. Through its stakeholders, the Puget Sound Harbor

Safety Committee provides a forum for identifying, planning, communicating, and implementing operational and environmental measures to promote safe, secure, and efficient use of Puget Sound and, in general, navigable waters of northwest Washington State.

Neah Bay Rescue Tug. In 2009 the Legislature required owners and operators of covered vessels transiting to or from a Washington State port through the Strait of Juan de Fuca to establish and fund an emergency response system. The system provides an emergency response towing vessel (ERTV) stationed at Neah Bay. The tug is capable of being underway within 20 minutes, deploy 24 hours per day to provide emergency assistance.

2018 Strengthening Oil Transportation Safety Legislation. In 2018, the Legislature established the Salish Sea Shared Waters forum (forum) to report on and provide recommendations for vessel traffic and safety within Puget Sound. The forum, which must meet at least annually, addresses common issues in the shared waterways of Washington State and British Columbia such as reducing oil spill risk, navigational safety, and data sharing. The forum expires July 1, 2021.

The Legislature also required DOE, in consultation with the Puget Sound Partnership and the Pilotage Commission, to complete a report and make recommendations on vessel traffic and safety within the Strait of Juan de Fuca, Puget Sound area including the San Juan archipelago. DOE's 2019 Report of Vessel Traffic and Vessel Safety: Strait of Juan de Fuca and Puget Sound included recommendations to:

- develop rules for tug escorts for oil laden tank vessels between 5000 and 40,000 dwt when traveling into Puget Sound, including requiring tug escorts for Rosario Strait and waterways to the east; and
- expand requirements for reporting oil movement and oil transfer information.

Coast Salish Gathering. The Coast Salish Gathering facilitates transboundary discussions between United States tribal leaders and First Nation Chiefs, the United States Environmental Protection Agency, and Environment Canada. Its purpose is to lead discussions on environmental issues, identify priority environmental concerns, issues, and projects in the shared transboundary region of the Puget Sound in the United States, the Georgia Basin in Canada, and the Straits of Juan de Fuca.

Southern Resident Orca Task Force. The task force was established by executive order in March 2018. The purpose of the task force is to identify, prioritize, and support the implementation of a long-term action plan for the recovery of the Southern Resident Orca. The task force prepared a report that included a recommendation for reducing the threat of oil spills in Puget Sound.

Summary of Bill (First Substitute): Oil tankers of 40,000 to 125,000 metric dwt operating in Puget Sound must be escorted by a tug with an aggregate shaft horsepower equivalent to at least 5 percent of the metric dwt of a 40,000 metric dwt tanker.

Beginning October 1, 2019, oil tankers less than 40,000 dwt, articulated tug barges (ATBs), and waterborne barges greater than 5000 metric dwt must be escorted by a tug to operate in Rosario Strait and connected waterways to the east. The tug must have an aggregate shaft horsepower equivalent to at least 5 percent of the metric dwt of a 40,000 metric dwt tanker.

Oil tankers, ATBs, and waterborne vessels or barges that are in ballast, and vessels providing bunkering or refueling services are not required to have tug escorts.

By December 31, 2025, the Board, in consultation with DOE must adopt rules for tug escorts. When developing rules, the Board must consider the most recent completed vessel traffic risk assessments, DOE's 2019 Vessel Traffic and Vessel Safety report, recommendations from any potentially affected federally recognized Indian tribes, and recommendations from the Southern Resident Orca Task Force Report. Additionally, the Board must conduct an analysis of tug escorts using models developed by DOE to inform rulemaking. The Board may enter into interagency agreements with DOE to assist with the rulemaking and analyses. The Board must consult with the Puget Sound Harbor Safety Committee, US Coast Guard, any potentially affected federally recognized Indian tribes, ports, local governments, state agencies, and other appropriate entities.

The Board must make decisions regarding risk protection based on geographic zones when adopting rules. The initial rulemaking must focus on and equally prioritize the geographic zones encompassing Rosario Strait and connected waterways to the east and Haro Strait and Boundary Pass. The rules must address:

- the peculiarities of Puget Sound for oil tankers less than 40,000 dwt, ATBs, and waterborne vessels or barges greater than 5000 metric dwt; and
- tug escort requirements applicable to Rosario Strait and connected waterways.

Additionally, the rules must specify operational as well as functional requirements for tug escorts. The rules must be designed to:

- achieve best achievable protection;
- avoid or minimize impacts of underwater noise from vessels, focused on vessel traffic in established shipping lanes; and
- avoid or minimize impacts of vessel traffic to established treaty fishing areas, and respecting and preserving the treaty protect fishing rights of any potentially affected federally recognized Indian tribes

To complete rulemaking by December 1, 2025, the Board must:

- identify and define zones within Puget Sound to inform an analysis of tug escorts by September 1, 2020; and
- complete an analysis of tug escorts using the model developed by DOE and consult with stakeholders by September 1, 2023.

By October 1, 2028, and every ten years thereafter, the Board and DOE must consider the effects of rules established for tug escorts on vessel traffic patterns and oil spill risks in the Salish Sea. The Board must take into consideration DOE's oil spill risk model and may include factors, such as vessel traffic, accident and incident data, and consultation with the US Coast Guard, any potentially affected federally recognized Indian tribes, and stakeholders. The Board and DOE must consider if experienced or forecasted changes to vessel traffic patterns or oil spill risk requires updated rules for tug escorts or emergency response towing vessels.

DOE is authorized to adopt rules to require owners and operators of covered vessels transiting to or from a port in Washington State through Rosario Strait, Haro Strait or

Boundary pass to fund and establish an emergency response system to provide an emergency response towing vessel, similar to the Neah Bay ERTV system. The rules must be developed in consultation with the Puget Sound Harbor Safety Committee, US Coast Guard, any potentially affected federally recognized Indian tribes, ports, local governments, state agencies, and other appropriate entities. The rulemaking must be informed by input from the forum and analysis of DOE's oil risk model.

The rules must require the ERTV be stationed in the vicinity of the San Juan Islands and have the capability to immediately respond to emergencies in Rosario Strait and connected waterways, Haro Straits, and Boundary Pass. The rules must be designed with the goal of minimizing or avoiding the impacts of underwater noise from vessels, focused on vessel traffic in established shipping lanes, as well as avoiding or minimizing the impacts of vessel traffic to established treaty fishing areas, and respecting and preserving the treaty protect fishing rights of any potentially affected federally recognized Indian tribes. The rules must:

- establish minimum deployment and equipment standards for an ERTV;
- allow private organizations or nonprofit cooperatives providing umbrella coverage under contract to single or multiple vessels to fulfill the requirements for an ERTV system; and
- allow DOE to contract with the ERTV to respond to a maritime emergency or as a precautionary measure during severe storms.

An ERTV may not be prohibited from responding to non-covered vessels in distress. An owner or operator of a vessel that has received assistance must submit a report to DOE regarding deployment of the ERTV. The ERTV rules must be periodically reviewed and updated.

DOE must take into consideration whether the adoption of the rules establishes the perverse effect of encouraging the development or mitigating the impacts of oil infrastructure in British Columbia, or discouraging Canada from establishing maritime safety requirements for vessels operating in international boundary waters.

DOE must develop and maintain a model to assess current and potential future risks of oil spills from covered vessels in Washington State waters. To determine model assumptions and develop scenarios regarding the impacts of the assumptions, DOE must consult with the US Coast Guard, any potentially affected federally recognized Indian tribes and stakeholders. By September 1, 2023, DOE must submit to the Legislature a summary of the analysis of tug escorts.

DOE must partner with the Coast Salish Gathering prior to the 2019 forum meeting to discuss funding of San Juan Island area ERTV. The 2019 forum meeting must continue the discussion of funding for a San Juan Island area ERTV.

Facilities must include in the advance notice provided to DOE the type of crude oil received from a rail tank car. Pipelines must add to their twice per year reports the gravity and type of crude oil. Prior notice of the transfer of oil from a vessel must include the region per bill of lading, gravity, and type of crude oil.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Clarifies that tug escorts are not required for vessels providing bunkering or refueling services.
- Clarifies tribal representation for rulemaking and Salish Sea Share Waters Forum.
- Makes clarifying grammatical revisions.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is a measured approach to addressing the safety of vessels carrying oil. There is a lot of data showing increasing traffic increases the risk of spills. This bill looks at existing risks that the marine side has not caught up with. The risks continue to get higher and the impacts of an oil spill in Puget Sound would be catastrophic to aquatic lands, orcas, and the ecosystem.

CON: The last oil spills occurred during moorage. DOE's report has been fast tracked and there has not enough time for stakeholder process. However, the report does not support dedicated recuse tug. The benefit of tug would be for those transiting to Canada, it is less certain about the efficacy in Washington State.

Persons Testifying: PRO: Joanna Eide, Department of Natural Resources; Jamie Stephens, San Juan County; Robert Duff, Governor Inslee's Policy Office; Dale Jensen, Washington State Department of Ecology; Jaimie Bever, Board of Pilotage Commissioners; Darcy Nonemacher, WEC; Eric von Brandenfels, President, Puget Sound Pilots; Bruce Wishart, Puget Soundkeeper, Sierra Club.

CON: Greg Hanon, WSPA; Charles Costanzo, American Waterways Operators.

Persons Signed In To Testify But Not Testifying: No one.