

ESHB 1578 - S COMM AMD  
By Committee on Ways & Means

ADOPTED AND ENGROSSED 4/12/19

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that a variety of  
4 existing policies designed to reduce the risk of oil spills have  
5 helped contribute to a relatively strong safety record for oil moved  
6 by water, pipeline, and train in recent years in Washington state.  
7 Nevertheless, gaps exist in our safety regimen, especially deriving  
8 from shifts in the modes of overwater transportation of oil and the  
9 increased transport of oils that may submerge or sink, contributing  
10 to an unacceptable threat to Washington waters, where a catastrophic  
11 spill would inflict potentially irreversible damage on the endangered  
12 southern resident killer whales. In addition to the unique marine and  
13 cultural resources in Puget Sound that would be damaged by an oil  
14 spill, the geographic, bathometric, and other environmental  
15 peculiarities of Puget Sound present navigational challenges that  
16 heighten the risk of an oil spill incident occurring. Therefore, it  
17 is the intent of the legislature to enact certain new safety  
18 requirements designed to reduce the current, acute risk from existing  
19 infrastructure and activities of an oil spill that could eradicate  
20 our whales, violate the treaty interests and fishing rights of  
21 potentially affected federally recognized Indian tribes, damage  
22 commercial fishing prospects, undercut many aspects of the economy  
23 that depend on the Salish Sea, and otherwise harm the health and  
24 well-being of Washington residents. In enacting such measures,  
25 however, it is not the intent of the legislature to mitigate, offset,  
26 or otherwise encourage additional projects or activities that would  
27 increase the frequency or severity of oil spills in the Salish Sea.  
28 Furthermore, it is the intent of the legislature for this act to  
29 assist in coordinating enhanced international discussions among  
30 federal, state, provincial, first nation, federally recognized Indian  
31 tribe, and industry leaders in the United States and Canada to  
32 develop an agreement for an additional emergency rescue tug available

1 to vessels in distress in the narrow Straits of the San Juan Islands  
2 and other boundary waters, which would lessen oil spill risks to the  
3 marine environment in both the United States and Canada.

4 **Sec. 2.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read  
5 as follows:

6 (1) Any oil tanker, whether enrolled or registered, of greater  
7 than one hundred (~~and~~) twenty-five thousand deadweight tons shall  
8 be prohibited from proceeding beyond a point east of a line extending  
9 from Discovery Island light south to New Dungeness light, unless  
10 authorized by the United States coast guard, pursuant to 33 C.F.R.  
11 Sec. 165.1303.

12 ~~(2) ((An oil tanker, whether enrolled or registered, of forty to~~  
13 ~~one hundred and twenty-five thousand deadweight tons may proceed~~  
14 ~~beyond the points enumerated in subsection (1) if such tanker~~  
15 ~~possesses all of the following standard safety features:~~

16 ~~(a) Shaft horsepower in the ratio of one horsepower to each two~~  
17 ~~and one-half deadweight tons; and~~

18 ~~(b) Twin screws; and~~

19 ~~(c) Double bottoms, underneath all oil and liquid cargo~~  
20 ~~compartments; and~~

21 ~~(d) Two radars in working order and operating, one of which must~~  
22 ~~be collision avoidance radar; and~~

23 ~~(e) Such other navigational position location systems as may be~~  
24 ~~prescribed from time to time by the board of pilotage commissioners:~~

25 ~~PROVIDED, That, if such forty to one hundred and twenty-five~~  
26 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~  
27 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~  
28 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~  
29 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~  
30 ~~horsepower equivalencies may be required under certain conditions as~~  
31 ~~established by rule and regulation of the Washington utilities and~~  
32 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~

33 ~~FURTHER, That))~~ (a) (i) An oil tanker of forty to one hundred twenty-  
34 five thousand deadweight tons may operate in the waters east of a  
35 line extending from Discovery Island light south to New Dungeness  
36 light and all points in the Puget Sound area, including but not  
37 limited to the San Juan Islands and connected waterways and the  
38 waters south of Admiralty Inlet, to the extent that these waters are  
39 within the territorial boundaries of Washington, only if the oil

1 tanker is under the escort of a tug or tugs that have an aggregate  
2 shaft horsepower equivalent to at least five percent of the  
3 deadweight tons of the escorted oil tanker.

4 (ii) Effective September 1, 2020, the following may operate in  
5 Rosario Strait and connected waterways to the east only if under the  
6 escort of a tug or tugs that have an aggregate shaft horsepower  
7 equivalent to at least five percent of the deadweight tons of a forty  
8 thousand deadweight ton oil tanker: (A) Oil tankers of between five  
9 thousand and forty thousand deadweight tons; and (B) both articulated  
10 tug barges and towed waterborne vessels or barges that are: (I)  
11 Designed to transport oil in bulk internal to the hull; and (II)  
12 greater than five thousand deadweight tons.

13 (iii) The requirements of (a)(ii) of this subsection: (A) Do not  
14 apply to vessels providing bunkering or refueling services; (B) do  
15 not apply to a towed general cargo deck barge; and (C) may be  
16 adjusted or suspended by rule by the board of pilotage commissioners,  
17 consistent with section 3(1)(c) of this act.

18 (b) An oil tanker, articulated tug barge, or towed waterborne  
19 vessel or barge in ballast or when unladen is not required to be  
20 under the escort of a tug.

21 (c) A tanker assigned a deadweight of less than forty thousand  
22 deadweight tons at the time of construction or reconstruction as  
23 reported in Lloyd's Register of Ships is not subject to the  
24 provisions of RCW 88.16.170 ((through 88.16.190)) and 88.16.180.

25 (3) The definitions in this subsection apply throughout this  
26 section unless the context clearly requires otherwise.

27 (a) "Articulated tug barge" means a tank barge and a towing  
28 vessel joined by hinged or articulated fixed mechanical equipment  
29 affixed or connecting to the stern of the tank barge.

30 (b) "Oil tanker" means a self-propelled deep draft tank vessel  
31 designed to transport oil in bulk. "Oil tanker" does not include an  
32 articulated tug barge tank vessel.

33 (c) "Towed general cargo deck barge" means a waterborne vessel or  
34 barge designed to carry cargo on deck.

35 (d) "Waterborne vessel or barge" means any ship, barge, or other  
36 watercraft capable of traveling on the navigable waters of this state  
37 and capable of transporting any crude oil or petroleum product in  
38 quantities of ten thousand gallons or more for purposes other than  
39 providing fuel for its motor or engine.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 88.16  
2 RCW to read as follows:

3        (1) (a) By December 31, 2025, the board of pilotage commissioners,  
4 in consultation with the department of ecology, must adopt rules  
5 regarding tug escorts to address the peculiarities of Puget Sound for  
6 the following:

7        (i) Oil tankers of between five thousand and forty thousand  
8 deadweight tons; and

9        (ii) Both articulated tug barges and towed waterborne vessels or  
10 barges that are: (A) Designed to transport oil in bulk internal to  
11 the hull; and (B) greater than five thousand deadweight tons.

12        (b) The requirements of this section do not apply to:

13        (i) A towed general cargo deck barge; or

14        (ii) A vessel providing bunkering or refueling services.

15        (c) The rule making pursuant to (a) of this subsection must be  
16 for operating in the waters east of the line extending from Discovery  
17 Island light south to New Dungeness light and all points in the Puget  
18 Sound area. This rule making must address the tug escort requirements  
19 applicable to Rosario Strait and connected waterways to the east  
20 established in RCW 88.16.190(2)(a)(ii), and may adjust or suspend  
21 those requirements based on expertise developed under subsection (5)  
22 of this section.

23        (d) To achieve the rule adoption deadline in (a) of this  
24 subsection, the board of pilotage commissioners must adhere to the  
25 following interim milestones:

26        (i) By September 1, 2020, identify and define the zones,  
27 specified in subsection (3)(a) of this section, to inform the  
28 analysis required under subsection (5) of this section;

29        (ii) By December 31, 2021, complete a synopsis of changing vessel  
30 traffic trends; and

31        (iii) By September 1, 2023, consult with potentially affected  
32 federally recognized Indian treaty fishing tribes, other federally  
33 recognized treaty tribes with potentially affected interests, and  
34 stakeholders as required under subsection (6) of this section and  
35 complete the analysis required under subsection (5) of this section.  
36 By September 1, 2023, the department of ecology must submit a summary  
37 of the results of the analysis required under subsection (5) of this  
38 section to the legislature consistent with RCW 43.01.036.

39        (2) When developing rules, the board of pilotage commissioners  
40 must consider recommendations from potentially affected federally

1 recognized Indian treaty fishing tribes, other federally recognized  
2 treaty tribes with potentially affected interests, and:

3 (a) The results of the most recently completed vessel traffic  
4 risk assessments;

5 (b) The report developed by the department of ecology as required  
6 under section 206, chapter 262, Laws of 2018;

7 (c) The recommendations included in the southern resident orca  
8 task force report, November 2018, and any subsequent research or  
9 reports on related topics;

10 (d) Changing vessel traffic trends, including the synopsis  
11 required under subsection (1)(d)(ii) of this section; and

12 (e) For any formally proposed draft rules or adopted rules,  
13 identified estimates of expected costs and benefits of the rule to:

14 (i) State government agencies to administer and enforce the rule;  
15 and

16 (ii) Private persons or businesses, by category of type of person  
17 or business affected.

18 (3) In the rules adopted under this section, the board of  
19 pilotage commissioners must:

20 (a) Base decisions for risk protection on geographic zones in the  
21 waters specified in subsection (1)(c) of this section. As the initial  
22 foci of the rules, the board of pilotage commissioners must equally  
23 prioritize geographic zones encompassing: (i) Rosario Strait and  
24 connected waterways to the east; and (ii) Haro Strait and Boundary  
25 Pass;

26 (b) Specify operational requirements, such as tethering, for tug  
27 escorts;

28 (c) Include functionality requirements for tug escorts, such as  
29 aggregate shaft horsepower for tethered tug escorts;

30 (d) Be designed to achieve best achievable protection, as defined  
31 in RCW 88.46.010, as informed by consideration of:

32 (i) Accident records in British Columbia and Washington waters;

33 (ii) Existing propulsion and design standards for covered tank  
34 vessels; and

35 (iii) The characteristics of the waterways; and

36 (e) Publish a document that identifies the sources of information  
37 that it relied upon in developing the rules, including any sources of  
38 peer-reviewed science and information submitted by tribes.

39 (4) The rules adopted under this section may not require oil  
40 tankers, articulated tug barges, or towed waterborne vessels or

1 barges to be under the escort of a tug when these vessels are in  
2 ballast or are unladen.

3 (5) To inform rule making, the board of pilotage commissioners  
4 must conduct an analysis of tug escorts using the model developed by  
5 the department of ecology under section 4 of this act. The board of  
6 pilotage commissioners may:

7 (a) Develop scenarios and subsets of oil tankers, articulated tug  
8 barges, and towed waterborne vessels or barges that could preclude  
9 requirements from being imposed under the rule making for a given  
10 zone or vessel;

11 (b) Consider the benefits of vessel safety measures that are  
12 newly in effect on or after July 1, 2019, and prior to the adoption  
13 of rules under this section; and

14 (c) Enter into an interagency agreement with the department of  
15 ecology to assist with conducting the analysis and developing the  
16 rules, subject to each of the requirements of this section.

17 (6) The board of pilotage commissioners must consult with the  
18 United States coast guard, the Puget Sound harbor safety committee,  
19 potentially affected federally recognized Indian treaty fishing  
20 tribes, other federally recognized treaty tribes with potentially  
21 affected interests, ports, local governments, state agencies, and  
22 other appropriate entities before adopting tug escort rules  
23 applicable to any portion of Puget Sound. Considering relevant  
24 information elicited during the consultations required under this  
25 subsection, the board of pilotage commissioners must also design the  
26 rules with a goal of avoiding or minimizing additional underwater  
27 noise from vessels in the Salish Sea, focusing vessel traffic into  
28 established shipping lanes, protecting and minimizing vessel traffic  
29 impacts to established treaty fishing areas, and respecting and  
30 preserving the treaty-protected interests and fishing rights of  
31 potentially affected federally recognized Indian tribes.

32 (7) Rules adopted under this section must be periodically updated  
33 consistent with section 5 of this act.

34 (8) The definitions in this subsection apply throughout this  
35 section unless the context clearly requires otherwise.

36 (a) "Articulated tug barge" means a tank barge and a towing  
37 vessel joined by hinged or articulated fixed mechanical equipment  
38 affixed or connecting to the stern of the tank barge.

1 (b) "Oil tanker" means a self-propelled deep draft tank vessel  
2 designed to transport oil in bulk. "Oil tanker" does not include an  
3 articulated tug barge tank vessel.

4 (c) "Towed general cargo deck barge" means a waterborne vessel or  
5 barge designed to carry cargo on deck.

6 (d) "Waterborne vessels or barges" means any ship, barge, or  
7 other watercraft capable of traveling on the navigable waters of this  
8 state and capable of transporting any crude oil or petroleum product  
9 in quantities of ten thousand gallons or more for purposes other than  
10 providing fuel for its motor or engine.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46  
12 RCW to read as follows:

13 (1) The department must develop and maintain a model to  
14 quantitatively assess current and potential future risks of oil  
15 spills from covered vessels in Washington waters, as it conducts  
16 ongoing oil spill risk assessments. The department must consult with  
17 the United States coast guard, potentially affected federally  
18 recognized Indian treaty fishing tribes, other federally recognized  
19 treaty tribes with potentially affected interests, and stakeholders  
20 to: Determine model assumptions; develop scenarios to show the likely  
21 impacts of changes to model assumptions, including potential changes  
22 in vessel traffic, commodities transported, and vessel safety and  
23 risk reduction measures; and update the model periodically.

24 (2) Utilizing the model pursuant to subsection (1) of this  
25 section, the department must quantitatively assess whether an  
26 emergency response towing vessel serving Haro Strait, Boundary Pass,  
27 Rosario Strait, and connected navigable waterways will reduce oil  
28 spill risk. The department must report its findings to the  
29 legislature by September 1, 2023.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46  
31 RCW to read as follows:

32 (1) By October 1, 2028, and no less often than every ten years  
33 thereafter, the board of pilotage commissioners and the department  
34 must together consider:

35 (a) The effects of rules established under RCW 88.16.190 and  
36 section 3 of this act on vessel traffic patterns and oil spill risks  
37 in the Salish Sea. Factors considered must include modeling developed  
38 by the department under section 4 of this act and may include: (i)

1 Vessel traffic data; (ii) vessel accident and incident data, such as  
2 incidents where tug escorts or an emergency response towing vessel  
3 acted to reduce spill risks; and (iii) consultation with the United  
4 States coast guard, potentially affected federally recognized Indian  
5 treaty fishing tribes, other federally recognized treaty tribes with  
6 potentially affected interests, and stakeholders; and

7 (b) Whether experienced or forecasted changes to vessel traffic  
8 patterns or oil spill risk in the Salish Sea necessitate an update to  
9 the tug escort rules adopted under section 3 of this act.

10 (2) In the event that the board of pilotage commissioners  
11 determines that updates are merited to the rules, the board must  
12 notify the appropriate standing committees of the house of  
13 representatives and the senate, and must thereafter adopt rules  
14 consistent with the requirements of section 3 of this act, including  
15 the consultation process outlined in section 3(6) of this act.

16 **Sec. 6.** RCW 88.46.240 and 2018 c 262 s 204 are each amended to  
17 read as follows:

18 (1) The department must establish the Salish Sea shared waters  
19 forum to address common issues in the cross-boundary waterways  
20 between Washington state and British Columbia such as: Enhancing  
21 efforts to reduce oil spill risk; addressing navigational safety; and  
22 promoting data sharing.

23 (2) The department must:

24 (a) Coordinate with provincial and federal Canadian agencies when  
25 establishing the Salish Sea shared waters forum; and

26 (b) Seek participation from each potentially affected federally  
27 recognized Indian treaty fishing tribe, other federally recognized  
28 treaty tribes with potentially affected interests, first nations, and  
29 stakeholders that, at minimum, includes representatives of the  
30 following: State, provincial, and federal governmental entities,  
31 regulated entities, and environmental organizations~~((tribes, and~~  
32 ~~first nations)).~~

33 (3) The Salish Sea shared waters forum must meet at least once  
34 per year to consider the following:

35 (a) Gaps and conflicts in oil spill policies, regulations, and  
36 laws;

37 (b) Opportunities to reduce oil spill risk, including requiring  
38 tug escorts for oil tankers, articulated tug barges, and ~~((other))~~  
39 towed waterborne vessels or barges;



1 (c) Enhancing oil spill prevention, preparedness, and response  
2 capacity; (~~and~~)

3 (d) Beginning in 2019, whether an emergency response system in  
4 Haro Strait, Boundary Pass, and Rosario Strait (~~, similar to the~~  
5 system implemented by the maritime industry pursuant to RCW  
6 88.46.130,) will decrease oil spill risk (~~and how to fund such a~~  
7 ~~shared system~~). In advance of the 2019 meeting, the department must  
8 discuss the options of an emergency response system with all  
9 potentially affected federally recognized Indian treaty tribes and,  
10 as relevant, with organizations such as, but not limited to, the  
11 coast Salish gathering, which provides a transboundary natural  
12 resource policy dialogue of elected officials representing federal,  
13 state, provincial, first nations, and tribal governments within the  
14 Salish Sea; and

15 (e) The impacts of vessel traffic on treaty-protected fishing.

16 (4) The definitions in this subsection apply throughout this  
17 section unless the context clearly requires otherwise.

18 (a) "Articulated tug barge" means a tank barge and a towing  
19 vessel joined by hinged or articulated fixed mechanical equipment  
20 affixed or connecting to the stern of the tank barge.

21 (b) "Waterborne vessel or barge" means any ship, barge, or other  
22 watercraft capable of traveling on the navigable waters of this state  
23 and capable of transporting any crude oil or petroleum product in  
24 quantities of ten thousand gallons or more for purposes other than  
25 providing fuel for its motor or engine.

26 (5) This section expires July 1, 2021.

27 **Sec. 7.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to  
28 read as follows:

29 (1)(a) A facility that receives crude oil from a railroad car  
30 must provide advance notice to the department that the facility will  
31 receive crude oil from a railroad car, as provided in this section.  
32 The advance notice must include the route taken to the facility  
33 within the state, if known, and the scheduled time, location, volume,  
34 region per bill of lading, type, and gravity as measured by standards  
35 developed by the American petroleum institute, of crude oil received.  
36 Each week, a facility that provides advance notice under this section  
37 must provide the required information regarding the scheduled arrival  
38 of railroad cars carrying crude oil to be received by the facility in  
39 the succeeding seven-day period. A facility is not required to

1 provide advance notice when there is no receipt of crude oil from a  
2 railroad car scheduled for a seven-day period.

3 (b) Twice per year, pipelines that transport crude oil must  
4 report to the department the following information about the crude  
5 oil transported by the pipeline through the state: The volume of  
6 crude oil, gravity of the crude oil as measured by standards  
7 developed by the American petroleum institute, type of crude oil, and  
8 the state or province of origin of the crude oil. This report must be  
9 submitted each year by July 31st for the period January 1st through  
10 June 30th and by January 31st for the period July 1st through  
11 December 31st.

12 (2) The department may share information provided by a facility  
13 through the advance notice system established in this section with  
14 the state emergency management division and any county, city, tribal,  
15 port, or local government emergency response agency upon request.

16 (3) The department must publish information collected under this  
17 section on a quarterly basis on the department's internet web site.  
18 With respect to the information reported under subsection (1)(a) of  
19 this section, the information published by the department must be  
20 aggregated on a statewide basis by route through the state, by week,  
21 and by type of crude oil. The report may also include other  
22 information available to the department including, but not limited  
23 to, place of origin, modes of transport, number of railroad cars  
24 delivering crude oil, and number and volume of spills during  
25 transport and delivery.

26 (4) A facility providing advance notice under this section is not  
27 responsible for meeting advance notice time frame requirements under  
28 subsection (1) of this section in the event that the schedule of  
29 arrivals of railroad cars carrying crude oil changes during a seven-  
30 day period.

31 (5) Consistent with the requirements of chapter 42.56 RCW, the  
32 department and any state, local, tribal, or public agency that  
33 receives information provided under this section may not disclose any  
34 such information to the public or to nongovernmental entities that  
35 contains proprietary, commercial, or financial information unless  
36 that information is aggregated. The requirement for aggregating  
37 information does not apply when information is shared by the  
38 department with emergency response agencies as provided in subsection  
39 (2) of this section.

1 (6) The department shall adopt rules to implement this section.  
2 The advance notice system required in this section must be consistent  
3 with the oil transfer reporting system adopted by the department  
4 pursuant to RCW 88.46.165.

5 **Sec. 8.** RCW 88.46.165 and 2006 c 316 s 1 are each amended to  
6 read as follows:

7 (1) The department's rules authorized under RCW 88.46.160 and  
8 this section shall be scaled to the risk posed to people and to the  
9 environment, and be categorized by type of transfer, volume of oil,  
10 frequency of transfers, and such other risk factors as identified by  
11 the department.

12 (2) The rules may require prior notice be provided before an oil  
13 transfer, regulated under this chapter, occurs in situations defined  
14 by the department as posing a higher risk. The notice may include the  
15 time, location, and volume of the oil transfer, as well as the region  
16 per bill of lading, gravity as measured by standards developed by the  
17 American petroleum institute, and type of crude oil. The rules may  
18 not require prior notice when marine fuel outlets are transferring  
19 less than three thousand gallons of oil in a single transaction to a  
20 ship that is not a covered vessel and the transfers are scheduled  
21 less than four hours in advance.

22 (3) The department may require semiannual reporting of volumes of  
23 oil transferred to ships by a marine fuel outlet.

24 (4) The rules may require additional measures to be taken in  
25 conjunction with the deployment of containment equipment or with the  
26 alternatives to deploying containment equipment. However, these  
27 measures must be scaled appropriately to the risks posed by the oil  
28 transfer.

29 (5) The rules shall include regulations to enhance the safety of  
30 oil transfers over water originating from vehicles transporting oil  
31 over private roads or highways of the state.

32 NEW SECTION. **Sec. 9.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected."

**ADOPTED 4/12/19**

1        On page 1, line 2 of the title, after "transportation;" strike  
2 the remainder of the title and insert "amending RCW 88.16.190,  
3 88.46.240, 90.56.565, and 88.46.165; adding a new section to chapter  
4 88.16 RCW; adding new sections to chapter 88.46 RCW; and creating a  
5 new section."

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