

# SENATE BILL REPORT

## ESHB 1578

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As of April 5, 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:** House Committee on Environment & Energy (originally sponsored by Representatives Lekanoff, Peterson, Doglio, Fitzgibbon, Shewmake, Robinson, Slatter, Valdez, Bergquist, Morris, Stanford, Tharinger, Cody, Jinkins, Kloba, Pollet, Frame, Davis and Macri; by request of Office of the Governor).

**Brief History:** Passed House: 3/07/19, 70-28.

**Committee Activity:** Environment, Energy & Technology: 3/19/19, 3/26/19 [DPA-WM, w/oRec, DNP].

Ways & Means: 4/04/19.

### Brief Summary of Amended 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.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** Do pass as amended 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:** That it be referred without recommendation.

Signed by Senator Fortunato, Assistant Ranking Member, Environment.

**Minority Report:** Do not pass.

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

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*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.*

**Staff:** Jan Odano (786-7486)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jed Herman (786-7346)

**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 (Ecology) 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. Ecology administers an oil spill preparedness, prevention, and response program. Among other statutes administered by Ecology'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 advance notice to Ecology including time, location, and volume information prior to certain transfers of oil. Facilities receiving crude oil from railroads must include in the advance notice the route taken to the facility; the scheduled time, location, volume, and gravity of crude oil; and the originating region of crude oil received. This advance notice must be provided once per week to Ecology for receipts scheduled for the following week. Pipelines must report to Ecology 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 (dwt) from entering Puget Sound. Oil tankers greater than 40,000 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 Ecology, 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, and deploying 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 Ecology, 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. Ecology'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 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 Amended Bill:** Oil tankers greater than 125,000 dwt are prohibited from entering Puget Sound unless authorized by the U.S. Coast Guard. Oil tankers of 40,000 to 125,000 dwt operating in Puget Sound must be escorted by a tug with an aggregate shaft horsepower equivalent to at least 5 percent of the dwt of the escorted oil tanker.

Beginning September 1, 2020, the following may operate in Rosario Strait and connected waterways to the east under tug escort with an aggregate shaft horsepower equivalent to at least 5 percent of the dwt of the 40,000 dwt oil tanker:

- oil tankers between 5000 and 40,000 dwt; and
- articulated tug barges (ATBs) and waterborne vessels or barges of greater than 5000 dwt designed to transport crude oil or petroleum product in quantities of 10,000 gallons or more for purposes other than fueling its motor or engine.

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

By December 31, 2025, the board, in consultation with Ecology must adopt rules to address the peculiarities of Puget Sound for tug escorts for oil tankers between 5000 and 40,000 dwt and ATBs, waterborne vessels and barges designed to transport 5000 dwt of bulk oil, and tug escort requirements for Rosario Strait. Tug escorts for Rosario Strait may be adjusted or suspended based on expertise gained from the modeling developed by Ecology. 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 specify operational as well as functional requirements for tug escorts. The rules must be designed to:

- achieve best achievable protection;
- avoid or minimize additional 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 protected interests and fishing rights of any potentially affected federally recognized Indian tribes

When developing rules, the board must consider recommendations:

- from potentially affected federally recognized treaty fishing and other federally recognized treaty tribes with potentially affected interests;
- the most recent completed vessel traffic risk assessments;
- Ecology's 2019 Vessel Traffic and Vessel Safety report;
- recommendations from the Southern Resident Orca Task Force report and any subsequent related research or reports; and
- changing vessel traffic trends.

The board must include estimated expected costs and benefits for any proposed draft rules or adopted rules to state agencies and private entities and publish a document identifying sources of information, including peer-reviewed science relied upon for rule development.

To inform rulemaking, the board must conduct an analysis of tug escorts using models developed by Ecology and may develop subsets of oil tankers, ATBs, and towed waterborne vessels, and situations that would preclude requirements for given zones or vessels. The board may consider benefits of vessel safety measures in effect on or after July 1, 2019 and

enter into interagency agreements with Ecology to assist with the rulemaking and analyses. The board must consult with the Puget Sound Harbor Safety Committee, U.S. Coast Guard, potentially affected federally recognized Indian treaty fishing and other federally recognized treaty tribes with potentially affected interests, ports, local governments, state agencies, and other appropriate entities.

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

- By September 1, 2020, identify and define zones within Puget Sound to inform an analysis of tug escorts, by September 1, 2020;
- complete a synopsis of changing vessel traffic trends by December 31, 2021; and
- complete an analysis of tug escorts using the model developed by Ecology and consult with stakeholders and potentially affected federally recognized Indian tribes, by September 1, 2023.

Ecology must develop and maintain a model to quantitatively assess current and potential future risks of oil spills from covered vessels in Washington State waters. Ecology must consult with the U.S. Coast Guard, potentially affected federally recognized tribes and stakeholders to determine model assumptions, develop scenarios for potential vessel traffic changes and commodities transported, and vessel safety and risk reduction measures. Ecology must use the model to quantitatively assess whether an ERTV serving Haro Strait, Boundary Pass, Rosario Strait, and connected waterways will reduce oil spill risk. The findings must be reported to the Legislature by September 1, 2023.

By October 1, 2028, and no less than every ten years thereafter, the board and Ecology 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 Ecology's oil spill risk model and may include factors, such as vessel traffic, accident and incident data, and consultation with the U.S. Coast Guard, any federally recognized treaty fishing and other federally recognized treaty tribes with potentially affected interests, and stakeholders. The board and Ecology 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.

For the forum, Ecology must seek participation from potentially affected federally recognized tribes and first nations. In advance of the 2019 forum, Ecology must discuss options for San Juan Island area ERTV with organizations such as the Coast Salish Gathering. Beginning in 2019, the forum must continue the discussions regarding whether the San Juan Island area ERTV will decrease oil spill risk and must consider impacts of vessel traffic on treaty protected fishing.

Facilities must include in the advance notice provided to Ecology 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 ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):**

- Specifies that the tug escort requirements for Rosario Strait may be suspended through rules based on expertise gained through Ecology's models.
- Clarifies ATBs and waterborne vessels or barges
- Clarifies impacted federally recognized Indian tribes.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: Orcas have been here for thousands of years and now they are in trouble because of noise and and too much plastic. An oil spill would make things even worse. We have been slowly killing off the Southern Resident Orcas. This will could help prevent another catastrophe affecting the orcas. We should ensure protection of all oil transport in Puget Sound. The bill is a compromise as the emergency tug has been removed. The spill risk is real. ATBs and barges represent risk as they have no tug escorts. An oil spill is likely to be catastrophic not only to orcas but to the entire Puget Sound ecosystem, including state-owned aquatic lands and shellfish beds. ATBs and barges transport a lot of oil as well but are not required to have the same safety measures as oil tankers. There would not be a lot of time to help a barge should it lose control in the narrow straits. The oil persists for a long time and we need to ensure it does not get into the waters of Puget Sound. It is time to close the gap and seal this loophole.

OTHER: The list of mitigation measures that are better tailored to the existing patterns of spills should be considered. This bill combines cultural interests with safety regime measures. The bill needs to be culturally neutral. Rescue tug issues need further study and the appropriate allocation of costs.

**Persons Testifying (Environment, Energy & Technology):** PRO: Representative Debra Lekanoff, Prime Sponsor; Robert Duff, Governor Inslee Policy Office; Dale Jensen, Washington State Department of Ecology; Jaimie Bever, Washington State Board of Pilotage Commissioners; Anika Lubbers, Mount Vernon Christian School; Darcy Nonemacher, Washington Environmental Council; Cyrilla Cook, Washington Department of Natural Resources, Policy Supervisor, Aquatic Resources Division; Daryl Williams, Tulalip Tribes; Bruce Wishart, Puget Soundkeeper, Sierra Club; Leif Pedersen, Stevens Elementary; Ella Trantum, citizen; Frankie De Plater, citizen; Ezra Cannon, citizen.

OTHER: Greg Hanon, Washington State Petroleum Association; Chad Bowechop, Makah Tribal Council Office of Marine Affairs; Scott Hazlegrove, Pacific Merchant Shipping Association.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):**  
No one.

**Staff Summary of Public Testimony on the Bill as Amended by Environment, Energy & Technology (Ways & Means):** PRO: The Governor's Office strongly endorses this bill. It is a necessary component of the orca recovery strategy as it addresses a safety need regarding oil transport. Millions of gallons pass through the state every year, including our waterways. The bill addresses a safety gap in the rules governing oil transport.

OTHER: Washington State Petroleum Association does not oppose this bill, and supports the changes made in the House. We remain concerned about the delay in mitigation measures listed that are due to be in place in 2025. Where oil spills have occurred, the timing was before double hulls were required.

**Persons Testifying (Ways & Means):** PRO: Robert Duff, Governor's Policy Office; Dale Jensen, Ecology, Program Manager, Spills Program.

OTHER: Greg Hanon, Washington State Petroleum Association.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.