



Section 9409

Managing Impacts to Commercial, Recreational, and Tribal Fisheries

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9409.1 Washington State Waters: Process Guide for Shellfish Growing Area Closure and Opening Due to Oil Contamination

In Washington State waters, the Washington State Department of Health (WDOH) is responsible for evaluating commercial and recreational shellfish growing areas to determine if shellfish are safe to eat, if a shellfish growing area will be closed due to an oil release or potential for release, and when the shellfish growing area will be opened again.

This document is not meant as a comprehensive guide for all the steps of a closure and opening of a shellfish growing area due to oil contamination, but as a quick reference to assist during an oil spill response. The guide should also be scalable to the size of the event; thus, when an On-Scene Coordinator is mentioned, a representative may be sufficient. This document is intended to provide a rudimentary understanding of the authorities governing the closure and re-opening of shellfish harvest, roles of involved agencies, the general process, and guidance on best management practices for the process during the threat of, or actual, petrochemical spill event in shellfish growing areas in Washington State waters.

9409.2 Roles Specific to Shellfish Closures and Reopening during a Spill or Potential Spill, Response

9409.2.1 Washington State Department of Health

WDOH is the state agency responsible for ensuring minimum performance standards for the growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption. WDOH will temporarily close shellfish growing areas when it is determined that there is an actual or imminent threat to public health during an oil spill or threat of an oil spill. Shellfish growing areas are either closed preventatively for an imminent threat or closed for actual contamination; in both situations, the main objective is to protect public health. WDOH is the only agency that can re-open a growing area closed by them. The decision to close a shellfishery for human health-related concerns is WDOH's; it is not a Unified Command decision. It is important to note that WDOH only regulates bivalve molluscan shellfish. Other fisheries are regulated by the

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Washington Department of Fish & Wildlife (WDFW), but only on the basis of stock condition, not human health. Note that WDFW regulates recreational shellfish harvests as well, although based on stock assessments. Although WDOH decisions are outside of Unified Command, effective communication between WDOH and the Unified Command is essential.

For reopening the shellfish growing areas following oil contamination, WDOH generally follows criteria from the National Oceanic and Atmospheric Administration (NOAA) document, “Managing Seafood Safety after an Oil Spill.” This document has been used following oil spills in Oregon, Washington, and Alaska. The document outlines the following reopening criteria:

- The risk of oil further contaminating the growing area must be abated.
- There must be no visible oil sheen on the water throughout the commercial growing areas.
- Shellfish tissue samples must meet the risk-based criteria for all analytes (substance that is of interest in an analytical chemistry test) of concern in the source oil relative to the potential health risk posed by certain cancer-causing polycyclic aromatic hydrocarbons.
- Tissue samples must pass an independent sensory test conducted by a panel of experts from the NOAA Seafood Inspection Program.

New guidelines may be jointly developed by NOAA and the Food and Drug Administration (FDA) following oil spills affecting seafood safety, and WDOH may apply new guidelines where appropriate. WDOH will use the best available guidance for reopening shellfish growing areas and will consult with the FDA and NOAA if specific questions arise.

9409.2.2 Washington Department of Health Operating Authorities

For the safe and sanitary control of the growing, processing and shipping of shellfish, WDOH follows FDA guidance and is monitored by the FDA and audited annually.

9409.2.3 Commercial Shellfish Rules

The following regulations apply to oil spills in relation to commercial shellfish:

- Chapter 246-282 Washington Administrative Code (WAC), Sanitary Control of Shellfish:
 - The National Shellfish Sanitation Program Guide to the Control of Molluscan Shellfish national rule is adopted by reference in WAC 246-282-005.
 - In the National Shellfish Sanitation Program, there is no specific reference to oil spills; however, Chapter 2, @.05, “Presence of Toxic Substances in Shellfish Meats,” addresses toxic substances more generally.

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- Chapter 69.30 Revised Code of Washington (RCW), Sanitary Control of Shellfish.

Recreational shellfish rules are addressed in:

- WAC Chapter 246-280, Recreational Shellfish Beaches; and
- RCW Chapter 43.20.050, State Board of Health Delegation of Authority.

9409.2.4 Closure Notification

For notification of closures, WDOH manages a listserv of growers, local health authorities, and stakeholders. WDOH also manages a tally for which growing areas are closed or open. WDOH will individually notify growers to inform them of closure affecting their shellfish growing area.

9409.2.5 Enforcement of Closure

WDOH has an agreement with the WDFW to patrol commercial harvest areas during closures to ensure no harvesting occurs. WDOH has the authority under WAC 246-282 to confiscate and/or recall unapproved shellfish for sale and issue penalties.

WDFW sets seasons and issues permits for recreational shellfish and can only implement closures based on the conservation of the resource. WDFW does not implement closures based on temporary human health concerns.

9409.2.6 Local Health Authority Role

Local health departments, through their public health authority, can close recreational beaches of their own accord and usually follow WDOH recommendation on beach status. WDOH also contracts with local health departments to perform certain tasks in managing recreational shellfish beaches, which include water quality monitoring, pollution source identification and correction, and public notification.

**9409.2.7 National Oceanic and Atmospheric Administration
Seafood Inspection Safety Program Role: Sensory Testing**

WDOH may decide to do sensory testing for affected shellfish. Even when seafood samples from the spill area pass the standard chemical-analytical tests (the levels of polycyclic aromatic hydrocarbons are below the limits permitted as determined by human health risk assessment), flavor or odor still may be affected, known as taint. Taint in seafood renders it adulterated and unfit for human consumption according to U.S. law (Federal Food, Drug, and Cosmetics Act, United States Code 21, Chapter IV, Section 402 [342], a.3) (NOAA 2001). The NOAA Seafood Inspection Program (SIP) has trained expert seafood assessors that use their sense of smell and taste to detect any unusual odors or flavors in seafood.

In the event that WDOH decides to use sensory testing for the monitoring of taint in shellfish, WDOH would contact the NOAA Scientific Support Coordinator (SSC) for connection to NOAA's SIP. The SSC would then contact the Chief Quality Officer at NOAA SIP headquarters. The SSC would act as a facilitator

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between the SIP and WDOH on a sampling procedure and timeline to test the affected shellfish.

NOAA SIP works together with the FDA on sensory testing, and NOAA sensory testers may be augmented with FDA sensory testers. Testing would most likely happen at the Seattle offices for a Washington oil spill. NOAA SIP is organized nationally, and results from a sensory analysis are not final until cleared through the Chief Quality Officer at NOAA SIP headquarters. The results are then shared with WADOH, which then makes the final decision on the shellfishery status.

9409.3 Best Management Practice Particular to Shellfishery Closures during an Oil Spill or Potential Oil Spill Incident

Although WDOH is the authority on the closing and opening of shellfisheries in Washington State waters, there are best management practices that can be followed during a spill event impacting shellfisheries that will aid in good communication and information transfer. These “best management practices” are supplemented by a flowchart on page 9406-6.

9409.3.1 Initial Washington Department of Health Notification

In the event of an oil spill or potential oil spill near a shellfish growing area, the Washington State Department of Ecology has an early recognition program to notify WDOH of a potential threat to shellfish. WDOH should be notified immediately by the Unified Command if there is an imminent threat to shellfish growing areas or if a major event happens during the response that could lead to contamination, or further contamination, of a shellfish growing area.

9409.3.2 Communications

To stay informed of on-scene observations and operations, WDOH should be included on daily briefings through the Incident Command Structure.

As applicable, the NOAA SSC will act as a liaison between WDOH and NOAA SIP and can help facilitate the creation of a sampling and procedure plan for sensory testing. The NOAA SSC will keep NOAA SIP informed of on-scene observations and operations.

9409.3.3 Communicating the Closure to the Unified Command and Other/Stakeholders

After the WDOH decides that a shellfishery should be closed due to oil contamination, or threat of oil contamination, then the State On-Scene Coordinator should convene a conference call for all stakeholders and subject matter experts. This will ensure that all stakeholders in the response have the same information about the shellfish closure. This call will most likely include representatives from:

- WDOH,
- United States Coast Guard,

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- NOAA,
- Washington State Department of Ecology,
- WDFW,
- Local health department,
- Local shellfish grower(s), and
- Identified subject matter experts.

This call should generally cover the following:

- WDOH will cover when and why the shellfishery was closed;
- What the best available guidance is for opening procedures;
- How WDOH will stay informed of on-scene observations of the situation, including observations of sheen, oiling, etc., and any major events that may lead to contamination or further contamination;
- Discuss the best available guidance for opening procedures; and
- Answer, or attempt to answer, any questions that arise having to do with shellfish testing and reopening procedures.

9409.3.4 Strategizing the Closing/Opening of a Shellfishery

Outside of the overall communication call, a separate call between WDOH, FDA and NOAA (and any other subject matter experts) will likely occur to determine the sampling plan, organize a sensory panel, and organize any other testing that may need to occur for reopening. This communication will likely be an ongoing process throughout the reopening of a shellfish growing area.

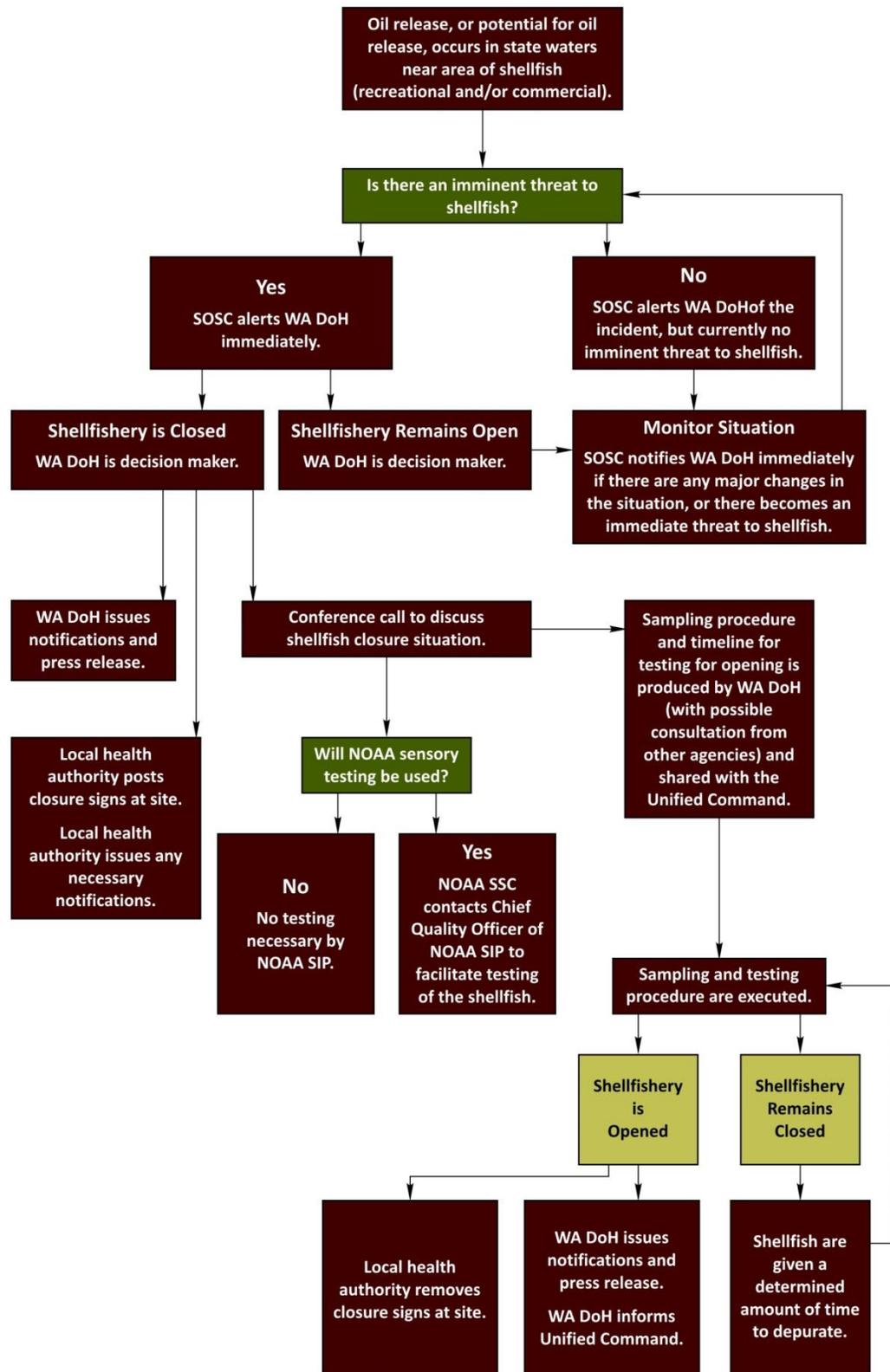
The NOAA SSC is a resource for connecting to subject matter experts within NOAA for seafood safety concerns post oil contamination.

After the first sampling and testing has occurred, the test results may indicate that the shellfish are either unsafe to eat, or are tainted. The shellfishery may not be opened after the first round of testing. Shellfish need time to depurate, i.e., filter out the petrochemicals. The shellfishery will remain closed until the opening standards have been met.

9409.3.5 Opening of the Shellfish Growing Area

Once it has been determined that the shellfish growing area will be opened, WDOH will perform their routine notifications and press release. The Unified Command should also be informed. In some instances, a partial reopening may occur if contamination is persistent in a well-defined portion of the growing area. If this occurs, notifications shall include enough detail (map illustration, landmarks, coordinates or beach names) for ready identification of areas that are open and areas that will remain closed.

9409.4 Flowchart of Shellfishery Closure and Opening Process in Washington State



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9409.5 Contact List

- Washington State Emergency Management Division (this number will trigger internal notifications): (800) 258-5990
- WDOH contact for notifying of threat to shellfish growing areas:
 - Working hours: (360) 236-3330.
 - Emergency 24/7 pager: (360) 789-8962
- NOAA Scientific Support Coordinator: (206) 526-4911

9409.6 References

Washington State Legislature

Washington Commercial Shellfish Rules

Chapter 246-282 WAC, Sanitary control of shellfish

<http://apps.leg.wa.gov/WAC/default.aspx?cite=246-282>

Chapter 69.30 RCW, Sanitary control of shellfish

<http://apps.leg.wa.gov/RCW/default.aspx?cite=69.30>

Washington Recreational Shellfish Rules

Chapter 246-280 WAC, Recreational shellfish beaches

<http://apps.leg.wa.gov/WAC/default.aspx?cite=246-280>

RCW 43.20.050, Powers and duties of state board of health—Rulemaking—Delegation of authority—Enforcement of rules.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.20.050>

U.S. Food and Drug Administration

National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish 2013 Revision

This document is intended to provide guidance and shall supersede the 2007 National Shellfish Sanitation Program Model Ordinance. It represents the agency's current thinking on the safe and sanitary control of the growing, processing, and shipping of molluscan shellfish for human consumption. It does not create any rights for any persons and does not operate to bind FDA or the public under federal law. However, through their participation in the National Shellfish Sanitation Program and membership in the Interstate Shellfish Sanitation Conference, states have agreed to enforce the Model Ordinance as the requirements which are minimally necessary for the sanitary control of molluscan shellfish.

<http://www.fda.gov/downloads/Food/GuidanceRegulation/FederalStateFoodPrograms/UCM505093.pdf>

National Oceanic and Atmospheric Administration

Managing Seafood Safety after an Oil Spill

This 2002 guide was written to help seafood managers and other spill responders determine appropriate seafood management actions in response to a spill.

<http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/resources/seafood-safety-after-oil-spill.html>

Guidance on Sensory Testing and Monitoring of Seafood for Presence of Petroleum Taint Following an Oil Spill

This 2001 guidance document describes how to conduct sensory testing on seafood suspect of petroleum taint. In addition, it also contains the following useful information:

- Explanation of sensory evaluation protocols, including flowcharts of the testing sensory testing process
- Normative References—Existing Guidelines, Standard Practices, and Sampling Plans for Sensory Testing
- Definitions, Terminology, and References used in Sensory Training for Petroleum Taint

<http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/resources/seafood-safety-after-oil-spill.html>

NOAA Seafood Inspection Program: Memorandum of Understanding with the U.S. FDA regarding cooperation and information sharing in seafood inspection

http://www.seafood.nmfs.noaa.gov/2009_FDA-NOAA_MOU_seafood%20inspection.pdf