Section 9409

Managing Impacts to Commercial, Recreational and Tribal Fisheries

Table of Contents

Section **Page**

9409 Managing Impacts to Commercial, Recreational and Tribal Fisheries 9409-1

9409.1 Washington State Waters: Process Guide for Shellfish Growing Area Closure and Opening Due to Oil Contamination 9409-1

9409.2 Roles Specific to Shellfish Closures and Reopening During a Spill or Potential Spill, Response 9409-1

9409.2.1 Washington State Department of Health (WA DoH) 9409-1

9409.2.2 WA DoH operating authorities 9409-2

9409.2.3 Commercial Shellfish Rules 9409-2

9409.2.4 Closure notification 9409-3

9409.2.5 Enforcement of closure 9409-3

9409.2.6 Local health authority role 9409-3

9409.2.7 NOAA Seafood Inspection Safety Program role: Sensory testing 9409-3

9409.3 Best Management Practice Particular to Shellfishery Closures during an oil spill, or potential oil spill, incident 9409-4

9409.3.1 Initial WA DoH notification 9409-4

9409.3.2 Communications 9409-4

9409.3.3 Communicating the closure to the Unified Command and other stakeholders 9409-4

9409.3.4 Strategizing the closing/opening of a shellfishery 9409-5

9409.3.5 Opening of the shellfish growing area 9409-5

9409.4 Flowchart of shellfishery closure and opening process in Washington State 9409-6

9409.5 Contact List 9409-7

9409.6 References 9409-7

9409 Managing Impacts to Commercial, Recreational and Tribal Fisheries

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 (WA DoH) 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 intends 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 to 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 (WA DoH)

WA DoH 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. WA DoH 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 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. The WA DoH 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 WA DoH's; it is not a Unified Command decision. It is important to note that WA DoH only regulates bivalve molluscan shellfish. Other fisheries are regulated by the Washington Department of Fish and Wildlife, but only on the basis of stock

condition, not human health. Note that the Washington Department of Fish and Wildlife regulates recreational shellfish harvests as well, although based on stock assessments. Although WA DoH decisions are outside of Unified Command, effective communication between WA DoH and the Unified Command is essential.

For reopening the shellfish growing areas following oil contamination, WA DoH generally follows criteria from the 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:

- Abatement of the risk of oil further contaminating the growing area
- Lack of 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 FDA following oil spills affecting seafood safety, and WA DoH may apply new guidelines where appropriate. WA DoH will use the best available guidance for reopening shellfish growing areas, and will consult with FDA and NOAA if specific questions arise.

9409.2.2 WA DoH operating authorities

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

9409.2.3 Commercial Shellfish Rules

Chapter 246-282 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, in Chapter 2, @.03 there is the "Presence of Toxic Substances in Shellfish Meats" section.

Chapter 69.30 RCW, Sanitary Control of Shellfish

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

9409.2.4 Closure notification

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

9409.2.5 Enforcement of closure

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

Washington Department of Fish and Wildlife (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 WA DoH recommendation on beach status. WA DoH 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 NOAA Seafood Inspection Safety Program role: Sensory testing

WA DoH 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, US Code 21, Chapter IV, Sec. 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 and flavors in seafood.

In the event that WA DoH decides to use sensory testing for the monitoring of taint in shellfish, WA DoH 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 between the SIP and WA DoH 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 WA DoH, 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 WA DoH 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 WA DoH notification

In the event of an oil spill, or potential oil spill, near a shellfish growing area the WA Department of Ecology (WA ECY) has an early recognition program to notify WA DoH of a potential threat to shellfish. WA DoH should be notified immediately by the Unified Command if there is an eminent 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, WA DoH should be included on daily briefings through the Incident Command Structure.

As applicable, the NOAA SSC will act as a liaison between WA DoH and NOAA SIP, and can help facilitate the creation of a sampling and procedure plan for sensory testing. 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 WA DoH decides that a shellfishery should be closed due to oil contamination, or threat of oil contamination, then a conference call should be convened by the SOSC for all stakeholders and subject matter experts. This will ensure all stakeholders in the response have the same information about the shellfish closure. This call will most likely include representatives from:

- WA DoH
- USCG
- NOAA
- WA ECY
- WDFW
- Local health department
- Local shellfish grower(s)
- Identified subject matter experts

This call should generally cover the following:

- WA DoH will cover when and why the shellfishery was closed
- What the best available guidance is for opening procedures
- How WA DoH 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
- 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 WA DoH, 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 probably be an on-going process throughout the reopening of a shellfish growing area.

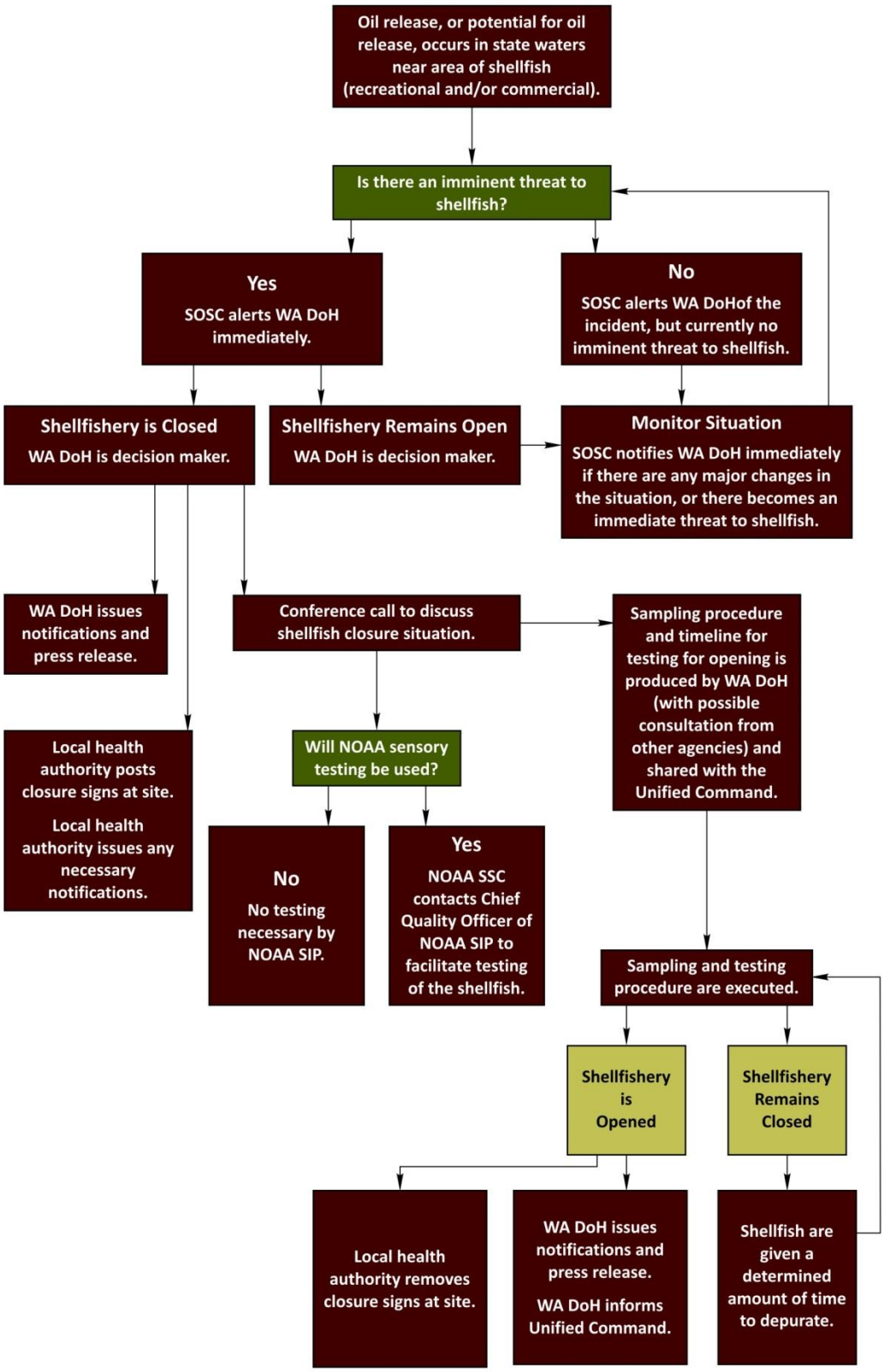
The NOAA SSC is a resource for connecting to subject matter experts within NOAA for seafood safety concerns post oil contamination.

After the first sampling and testing has occurred the test results may reflect 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, or, in other words, shellfish need time to 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 the shellfish growing area will be opened WA DoH 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



9409.5 Contact List

Washington State Emergency Management Division (this number will trigger internal notifications): (800) 258-5990

Washington State Department of Health 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

Chatper 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 2009 Revision

This document is intended to provide guidance and shall supersede the 2007 NSSP 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 or on 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/food/guidanceregulation/federalstatefoodprograms/ucm2006754.htm

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