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NSSP 2007 Section IV Chap II .08 Growing Area Patrol and Enforcement

National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish 2007

Section IV. Guidance Documents Chapter II. Growing Areas

.08 Growing Area Patrol and Enforcement

NSSP guidance documents provide the public health principles supporting major components of the NSSP and its Model Ordinance, and summaries of the requirements for that component. NSSP Model Ordinance requirements apply only to Interstate commerce although many states apply the requirements intrastate. For the most up to date and detailed listing of requirements, the reader should consult the most recent edition of the Model Ordinance

The primary objective of the NSSP is to ensure that shellstock is only harvested from areas free of excessive concentrations of pathogenic microorganisms and poisonous or deleterious substances. Under the NSSP, growing areas, based on their public-health suitability for shellstock harvesting, are placed in one of five shellstock harvesting classifications. Information obtained from sanitary surveys sets the basis to determine the appropriate growing area classification. All classifications, except for the approved classification, place some type of restriction on harvesting. For more information concerning growing area classification, see the NSSP Guidance Document, *Sanitary Survey and the Classification of Growing Waters* (ISSC/FDA, 2002).

If harvesters are not convinced of the need for the restrictions, shellstock may be harvested surreptitiously from areas in the closed status or the in prohibited classification. Therefore, the patrol element of the NSSP is vital to ensure compliance with the public-health safeguards resulting from the classification of growing waters. The fact that the law prohibits the removal of shellstock from contaminated areas will deter the majority of the population from attempting to harvest the shellstock.

Patrol Activity

Control procedures are necessary in a comprehensive shellfish sanitation program to assure that shellstock are harvested only from growing areas in the approved classification or the open status of the conditionally approved classification. Under special permits and close supervision of the Patrol Authority, shellstock may also be harvested from growing areas in the restricted or conditionally restricted classification for cleansing treatment through relay or depuration prior to sale to the consumer.

The Patrol Authority is responsible to provide sufficient personnel and equipment that will act as a deterrent to illegal shellstock harvesting from growing areas in the closed status or in the prohibited classification. In addition, the Patrol Authority must have sufficient legal authority to apprehend and to effectively prosecute persons apprehended harvesting shellstock illegally. Penalties for such violations must be sufficient to discourage illegal harvesting.

Specific patrol requirements applicable to technical and administrative situations vary from state to state. Consequently, the NSSP requires each Patrol Authority to develop a patrol policy document and to keep it current. This policy document must fully describe the Patrol Authority's organization and its activities to deter illegal harvesting. In addition, it must include information concerning the Patrol Authority's legal basis and the laws and regulations to be enforced, personnel, equipment, training in shellfish patrol techniques, patrol activities and record keeping. The NSSP requires the policy document to be updated and reviewed annually.

The type of patrol needed for any particular situation cannot be specified and is determined by the nature of areas to be patrolled, means of access, methods of harvesting, and species. Patrol equipment allows the officers to apprehend persons illegally harvesting shellstock. Equipment that has proven effective for apprehension of illegal harvesters includes: small, high-speed, readily transportable boats; automobiles; aircraft; communications for coordinating patrol activities; radar surveillance systems; and night scopes. Organization of the patrol activity must take into consideration the need for night, weekend, holiday, and undercover patrols. Various patrol methods may

be used depending on the nature of the area to be patrolled and the type of industry.

Adequate delineation of growing areas in the closed status or prohibited classification is fundamental to effective patrol enforcement. The type of growing area identification used will be determined by the structure of the local shellfish industry and the legal requirements that permit successful prosecution in each state or local jurisdiction. Posting a warning sign is one method of informing shellstock harvesters that an area is off-limits to the taking of shellstock for public health reasons. Other identification methods for off-limit growing areas include information access through toll free or other telephone systems, maps issued at checkpoints or with harvesting licenses, direct mail, and news media. The Patrol Authority or other appropriate Authority should seek the advice of the state's legal counsel to ensure that the marking of growing areas in the closed status or prohibited classification and notifications to shellstock harvesters are sufficient to provide for the successful prosecution of persons harvesting from these areas.

Application of legal penalties sufficient to defer the taking of shellstock from growing areas in the closed status or the prohibited classification is a necessary component for effective enforcement in a shellfish sanitation program. The adequacy of state or local laws as a basis for prosecution is important to this activity. The Patrol Authority will be ineffective or compromised if state or local laws are written or interpreted so that violators can not successfully be prosecuted and if penalties are so small that they are economically unimportant. Periodic assessments, by the Patrol Authority or another appropriate Authority, of the degree of success of court actions taken in response to illegal harvesting is necessary for both the analysis of the effectiveness of the program. Prosecution will be difficult if the courts are not fully aware of the public-health hazards associated with the crime. Written policies or guideline that are used to recommend penalties on specific cases to the courts must be developed by the Patrol Authority or another appropriate Authority. Courts should be encouraged to apply effective penalties, and records should be kept to determine the effectiveness of the penalty system.

Licensing shellstock harvesters is an important control measure to help protect against illegally harvested shellstock. The appropriate Authority shall license each person who harvests shellstock. In the case of leased land, either the lessee or the person who harvests from the lease must be licensed. The appropriate Authority must maintain a record of all licenses granted. Special permits must be issued to licensed harvesters for taking shellstock from contaminated growing areas for use in relay or depuration operations.

Depletion of prohibited areas can be an effective deterrent to illegal harvesting, and may be more economical and effective in protecting public health than patrol of prohibited areas. Complete removal of shellstock from prohibited areas provides a safeguard against contaminated shellstock reaching the market and eliminates a temptation for harvesters. In a depletion operation, all market sized shellstock and as many of the smaller sized shellstock as can be gathered by reasonable methods are removed from the growing area. To be effective, depletion operations should be conducted at sufficient intervals to keep growing areas free of commercial quantities of market-sized shellstock. When commercial harvesters conduct depletion operations, the Authority or the Patrol Authority must provide effective supervision.

All relay operations must be under the effective supervision of the Patrol Authority or other appropriate Authority. Supervision must ensure that shellstock harvested for relay cannot be illegally diverted to the market and only shellstock that have completed the required period of treatment are marketed. The supervising official must be authorized and equipped to enforce the relay operation procedures and to supervise the harvest, transport, and re-deposition of the shellstock. The Patrol Authority must also provide effective supervision of the relay area until completion of the relaying operation. For additional information concerning relay operations, see the NSSP Guidance Document, *Shellstock Relay* (ISSC/FDA, 2002).

All shellstock harvested for depuration must also be under the effective supervision of the Patrol Authority or other appropriate Authority so that the shellstock cannot be illegally diverted to the market before depuration. The supervising official must be authorized and equipped to enforce the depuration operation procedures and to supervise the harvest and transport of shellstock to the depuration operation. For a complete discussion of depuration, see the NSSP Model Ordinance Public Health Reasons and Explanations Chapter XV Depuration (ISSC/FDA, 2002).

Recommendations for FDA Evaluation of State Program Patrol Element

The NSSP requires the FDA to evaluate the patrol of growing areas and its enforcement component on an annual basis. Technical assistance may be provided to FDA by a representative of a patrol agency(ies) through use of the procedures that have been agreed to by the FDA and the ISSC. Both FDA and the ISSC have agreed that these procedures do not apply to special investigations by either party.

The following procedures should be used in conducting patrol evaluations:

- A. The person in charge of the patrol agency must be advised of the intent to conduct patrol evaluations, approximate patrol dates desired, recommended patrol areas or districts, and other pertinent information.
- B. If requested by the state shellfish patrol agency, FDA will meet with the person in charge or his designee prior to participating in patrols to gain a better understanding of patrol program activities.
- C. Agency patrol documents and past FDA reports of areas to be evaluated should be reviewed.

- D. The FDA Standardized Patrol Evaluation Format must be used in conducting patrol evaluations.
- E. FDA evaluators must allow adequate time in the field with primary patrol officers to fully evaluate an area.

Following individual patrol evaluations, the FDA evaluator must:

- A. Prepare draft reports for the individual patrol areas evaluated and an overall draft patrol evaluation report and promptly send them for review to the technical advisor who participated in the evaluation.
- B. Send copies of draft reports to the person in charge of the patrol agency for comment prior to finalizing evaluation reports.
- C. Meet with the person in charge of the Patrol Authority, if requested by the Patrol Authority to further qualify the accuracy of the final report.

When an FDA evaluator, in the field and unaccompanied by a patrol officer, observes an alleged violation, the FDA evaluator must immediately report the alleged violation to the Patrol Authority.

FDA Standardized Patrol Evaluation

When an FDA evaluator conducts an evaluation of a patrol area, the following information must be collected:

1. Background information such as:
 - * Patrol evaluation date and time
 - * Accompanying officer(s)
 - * Patrol area name and/or number
 - * Weather, tide, and other pertinent information
 - * Type of harvest (recreational or commercial)
2. Agency and patrol area organization including identification of:
 - * Laws, regulations and policies which apply to shellfish control activities
 - * Number and positions of personnel within the region and within the patrol area
 - * Supervision for that patrol area and region
3. Patrol area information including:
 - * An officer's or officers' knowledge of the area and experience within the agency and related agencies
 - * Variations in patrol area coverage (days, nights, weekends, and holidays)
 - * Transplants, relay, or aquaculture operations in the patrol area (if appropriate)
 - * Coverage of adjacent areas, and back-up to primary officer(s) for this patrol area
 - * Equipment used for patrolling the area including the primary vehicle, boats and motors, radios, visual assisting tools and other equipment.
4. Coverage of markets and retail stores as appropriate.
5. Other responsibilities of officer or officers while on patrol.
6. Records of enforcement activities for the area during the last year.
7. Problems unique to the patrol area.

To comply with Standardized Evaluation Criteria, the authority shall:

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| 1. Have a patrol policy document | CRITICAL item |
| 2. Update patrol policy document every year. | KEY item |
| 3. Meet the NSSP patrol training requirements. | KEY item |
| 4. Patrol all areas that require patrol | CRITICAL item |
| 5. Meet NSSP requirements for frequency of patrol | KEY item |
| 6. Have formalized MOA with other agency per Chapter VIII@.01.B(5). | KEY item |
| 7. Have a risk management plan per Chapter VIII@.01.B(3)(b)(c)(d). | CRITICAL item |
| 8. Have a complete risk management plan per Chapter VIII@.01.B(3)(b)(c)(d). | Other item |

The authority shall ensure the following COMPLIANCE CRITERIA procedures are implemented when an FDA evaluation identifies deficiencies with NSSO MO criteria.

- (a) During the closeout meeting for patrol evaluation, the Shellfish Specialists shall identify any patrol deficiency to the state patrol agency;
- (b) Within 15 days of the closeout meeting, the Shellfish Specialist should provide a written Program Element Evaluation Report (PEER), including supporting documentation, to the State patrol agency;

(c) Within 30 days of receiving the PEER, the State patrol agency should provide a written response that indicates:

- o The item(s) was corrected;
- o A correction plan has been developed with a completion date; or,
- o The reasons why the State disagrees with FDA's finding(s).

(d) Within 15 days of receipt FDA should review the State response, and respond to the State;

(e) Any CRITICAL item deficiency should be corrected within 30 days of acceptance by FDA of the correction plan;

(f) Any KEY item deficiency should be corrected within one year of acceptance by FDA of the correction plan.

(g) An OTHER item deficiency should be corrected within 60 days of acceptance by FDA of the correction plan

FDA shellfish specialists shall be responsible for monitoring the progress of state action plans.

References

1. Interstate Shellfish Sanitation Conference (ISSC). 2002. Sanitary Surveys and the Classification of Growing Waters. In ISSC (ed), NSSP Guide for the Control of Molluscan Shellfish. Interstate Shellfish Sanitation Conference, Columbia, S.C.
2. Interstate Shellfish Sanitation Conference (ISSC). 2002. Shellstock Relay. In ISSC (ed), NSSP Guide for the Control of Molluscan Shellfish. Interstate Shellfish Sanitation Conference, Columbia, S.C.

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