

Section IV. Guidance Documents**Chapter II. Growing Areas**

Page 1 of 2

.09 Control of Shellfish Harvesting

Requirements for the Authority. Other portions of this section of the Guide have described the public health reasons for limiting shellfish harvesting to areas free of contamination and shellfish toxins. For a full discussion of control activities, see the NSSP guidance document, *Growing Area Patrol and Enforcement of Growing Area Restrictions* (ISSC/FDA, 2001).

For the most part, control of illegal harvesting depends upon the patrol activities as described in this chapter @.01.B. Adequate delineation of closed areas is fundamental to effective patrol. The type of area identification will be determined by the structure of the local shellfish industry and the legal requirements for each State to permit successful prosecution. Posting a warning sign is one method of informing shellfish harvesters that an area is closed to the taking of shellfish for public health reasons.

Other methods for identification of closures include telephone, maps issued at checkpoints, or with harvesting licenses, direct mail, and news media. It is recommended that the advice of the State's legal counsel be obtained to insure that the marking of closed areas and notifications to shellfish harvesters are such that persons harvesting from closed areas can be successfully prosecuted.

However, if local shellfish harvesters are not convinced of the need for restrictions, shellfish may be harvested surreptitiously from closed areas. *Thus, the patrol element of the NSSP is important to ensure compliance with the public-health safeguards resulting from the sanitary survey.* The fact that the law prohibits the removal of shellfish from certain areas will deter the majority of the population from attempting to harvest such shellfish, provided they are aware of the law and of the areas which are closed.

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 should be such that the officers can apprehend persons illegally harvesting shellfish in a closed area. Equipment that has proven effective for apprehension of illegal harvesters includes: small, high-speed, readily transportable boats capable of operating in open waters; 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, undercover and surprise patrols. Various patrol methods may be used depending on the nature of the area to be patrolled and the type of industry.

Complete removal of shellfish from polluted areas provides a safeguard against contaminated shellfish reaching the market. In some cases, depletion may be the method selected to eliminate an irresistible temptation for harvesters. Depletion may be more economical and effective than patrol of closed areas and will serve to protect public health.

Educational programs should be developed for both industry and the public describing the public health necessity for eliminating shellfish harvesting from closed areas. Programs developed specifically for participation of key industry people may be especially helpful in eliciting cooperative efforts of the entire

industry. Such programs should focus on incentives to eliminate harvesting and marketing of shellfish from closed areas.

The adequacy of state laws as a basis for prosecution is an important component of this activity. Shellfish patrol will be ineffective and or compromised if State laws are so written or interpreted that violators can not successfully be prosecuted and if penalties are so small that they are economically unimportant. It is important that periodic assessments are made by the State control or patrol agency of the degree of success of court actions taken in response to illegal harvesting. Information of this nature is necessary for both the analysis of the effectiveness of the program and for education purposes. Prosecution will be difficult where courts are not fully aware of the public-health hazards associated with the crime.