

From October 2022 through April 2023, the Department of Health (DOH) conducted an analysis on the Commercial Shellfish program's fees. Before finalizing a draft fee schedule, we paused the analysis to share the findings with the commercial shellfish fee payers. These findings were communicated through four 2-page documents, 1 shellfish funding summary and a meeting presentation.

From July through October 2023, we took the feedback received and finalized a draft fee schedule. This fee schedule is our first step towards full cost recovery to work towards alignment with [RCW 43.70.250](#). This RCW requires that the cost of the operations and activities shall be borne by the persons who hold licenses. We have finalized our 2-page documents and Q&A based on all feedback received and final proposed decision making. Additional documents and information can be found online [here](#).

Below is an updated response to questions and comments we received during this process. We have grouped these questions into the categories below.

1. Timelines
2. Costs & Services
3. Cost Allocation Methods
4. Small Business Impacts
5. Funding Considerations
6. Programmatic & Other

1. Timeline Questions/Comments

- a. Question: What is the timeline for this fee adjustment to be fully implemented.
 - i. Answer: Our target effective date for fee adjustment is February 1, 2024. We expect to send final updated documents summarizing these changes and file a CR-102 in November. More information about the rule making process can be found [online](#).
- b. Question: Why did the department take so long to complete a fee analysis?
 - i. Answer: We did not have staffing support to provide in-depth fee analysis. In fiscal year 2021, we requested funding for a position to provide in-depth fee analysis. This request was not approved. A second request was made and funded in FY 2022. The cost for the position, which coordinates the analysis, is not funded by fee programs.
 - ii. Supporting information: With this increase in staff, we intend to provide a fee analysis every two to three years. Regular and consistent review and analysis will ensure the industry gets adequate time to prepare for any cost adjustments.
- c. Question: Will fees be reviewed every 2-3 years?

- i. Answer: Yes, our policy states that we will review fees every 2-3 years and provide regular and routine cost adjustments, so the industry has time to prepare for any adjustments.
 - d. Question: How long will fees be locked in for?
 - i. Answer: it is estimated that fees will be locked in for 2-3 years. It is possible that circumstances could require a program to be reviewed sooner than 2-3 years. In that case a fee study would occur and possibly inform a more urgent timeline for changes.
 - e. Question: Who instigated this need to update fees? DOH? OFM? Governor's office?
 - i. Answer: This was initiated by DOH to become compliant with the legislative requirement and state law RCW 43.70.250. The Commercial Shellfish Program is a cost recovery fee program regulated under RCW 43.70.250. We establish and adjust fees as necessary to meet the actual costs of conducting business. The Commercial Shellfish fee program has additional complexities that require an intensive and in-depth analysis to understand the required services (WAC 246-282), associated costs and applicable and allowable fees for the industry. Staffing support was not available to provide this in-depth analysis and resulted in this delay.

2. Services & Cost Questions/Comments

- a. Update: We have paused the implementation of harvest site fees. We will complete a program audit on this service and may implement fees for this service in a future fee analysis. The following comments/questions on harvest sites were asked prior to this decision being made.
 - i. Comment: Concerns were expressed that operations will get “double hit” by paying a license fee and annual harvest site fees, essentially paying the same costs twice.
 - 1. Response: No costs are charged to more than one account, i.e., double charged. The fee analysis process evaluated all costs and compared those costs to the public health service provided.
 - 2. Harvest site costs are not included in license fees. Costs for annual licenses include staffing and related costs to perform inspections and annual licensing services. Those costs are recovered based on direct inspection time by operation type.
 - 3. Annual biotoxin costs include staffing responsible for coordinating and conducting various sampling efforts, beach closures, and tracking biotoxin data, as well as all commercial biotoxin testing costs from our Public Health Lab. These costs are proposed to be recovered based on an across-the-board increase to the previous biotoxin fee structure. We intend to evaluate potential growing area and harvest site methods for cost allocation in the next fee analysis. However, we did not have enough information to update the biotoxin fee schedule currently.
 - 4. Costs of harvest sites are not included in annual licensing or biotoxin fees.
 - ii. Other Harvest Site Questions/Comments:

1. Comment: The department has had issues with harvest sites and should address the concern of database administration and be responsible for any resulting costs.
 - a. Response: We have paused implementation of the harvest site fee to perform a program audit on this service.
 2. Question: We have harvest sites certified that we don't harvest from for 5 years, growing geoducks. But we would be charged for each site.
 - a. Answer: We have paused implementation of the harvest site fee to perform a program audit on this service.
 3. Question: What work is required for harvest sites to justify cost? What is the benefit of doing this work?
 - a. Answer: Harvest sites are updated frequently with landowner changes, lease updates, and species updates. Every harvest site is evaluated annually during renewal season. It is important to have updated harvest site certificates for the department to notify the correct grower in case of an imminent health threat (such as illness outbreak, sewage spill, etc.). Reports from our data system are pulled to provide any necessary data to regulate the program.
- b. Question: If this fee increase shuts down farms does the fee increase even further on those left?
- i. Answer: Fee analysis will be conducted every 2-3 years. The costs for each service would be reviewed and the best available cost allocation methods would be applied to make necessary adjustments to the fee schedule.
 - ii. Question: Are these services required by RCW? WAC? MO?
 1. Answer: All fees that have been presented are for services required by the MO, WAC 246-282, and/or RCW 69.30. We have prepared the chart below to better understand how fees relate to requirements.

Fee	Authority
Annual Licensing & New/Expired License Fees	WAC 246-282-012 (2)(d) Inspections required per Chapter 1 MO
Harvest Site Fee	WAC 246-282-012 (3)(g)
Permit Fee	Relay: WAC 246-282-032(1)(f); Chapter V MO Bait: WAC 246-282-036(1)(e) Wet Storage: WAC 246-282-042(3)(e); Chapter VII MO
Non-Compliance Fee	WAC 246-282-092 Allowance for non-compliance follow up in Chapter 1 MO

Biotoxin Fee	Testing required per Chapter IV@.04 MO
PSP Geoduck Fee	Testing required per Chapter IV@.04 MO
Export Certificate Fee	WAC 246-282-082(6)

- c. Question: If the Model Ordinance is the guide, and is nationally applicable, how can WA be so much more costly than other states' regulatory process.
 - i. Answer: Without an in-depth analysis including all cost, revenue, and program data it is not possible to explain why fee rates are different state to state.
- d. Question: Has there been a DOH shellfish program budget that is visible to the public with the department's notes on the costs it intends to reduce and cut?
 - i. Answer: Yes, the budget is further demonstrated and described in the Economic Impact Analysis Report found online. No, we do not intend to reduce or cut costs. We do intend to perform a program audit on services and costs. It is possible that during this audit costs covered by the state general fund could be identified as fee eligible costs.
- e. Question: Is there a discount method for Export Certificates that can be applied for multiple certificates or if certificates are ordered differently?
 - i. Answer: No, there is no discount method or way to decrease costs for Export Certificates currently. We currently always have 1 member of staff available to process Export Certificates. This full FTE is the cost of this program. The cost allocation method is the total cost of the program divided by the number of certificates requested. When or how the certificates are issued does not affect the cost of the program. We are completing a program audit of all services and will review current services and associated costs.

3. Cost Allocation Method Questions/Comments

- a. Question: Why are harvest sites charged annually?
 - i. Answer: Update: We have paused the implementation of harvest site fees. We will complete a program audit on this service and may implement fees for this service in a future fee analysis.
 - ii. Answer: Costs for harvest site applications include staff time to add new sites and update existing sites. Updates include lease changes or extensions, species, additions, and withdrawals and/or removal of a site. The cost also includes harvest site database upkeep to store and communicate harvest site data. Harvest site fees are calculated by dividing harvest site costs by the number of average annual projected harvest sites. This is the most predictable and consistent way to recover harvest site costs and maintain accurate records as required for the program. Harvest site cost will be invoiced annually calculated based on the current number of harvest sites by operation.
- b. Comment: The licensing cost allocation using annual inspection time is not a fair distribution for small growers.
 - i. Response: The Commercial Shellfish program is a cost recovery program. We must use cost allocation methods that most reasonably and fairly assign costs based on the cost driver of that service. Annual Inspection time from

our data system combined with estimated average travel time is the most reasonable and fair cost allocation method at this time. This method assigns costs based on the main cost driver of the service. This is a standard method for cost allocation inspection programs.

- ii. Response: There have been suggestions to use production or revenue as a cost allocation tool. Currently direct inspection time is the best cost allocation method for annual license and inspection costs.
 - iii. Response: We have heard that a sliding scale should be used to support small business. We do not have the authority to subsidize small business fees with large business fees. We must review our costs and use the most reasonable and fair method to allocate those costs. Inspection time data is a strong and reasonable method to allocate our annual registration and inspection regulation costs.
 - iv. Response: There have been suggestions to use acres data to allocate licensing renewal and inspections costs to fee payers. We reviewed using only acres as a method to allocate costs and found that operation type, acres and harvest site info in our data system was a strong and consistent method to allocate costs for fee rate setting.
 - v. Response: Based on industry feedback we explored the option to keep the current fee structure and apply an across-the-board increase to allow time to evaluate other licensing cost allocation methods. This option distributes more cost to small operations, and we believe onsite inspection time is a valid and appropriate way to recover fee costs for licensing services.
- c. Comment: Biotoxin and PSP fees should be charged by size of operation. We harvest 10 days a year where a larger farm, 365. The cost should be allocated by the user.
- i. Response: We did not have sufficient data to update the biotoxin fee structure at this time. We applied an 89% increase to the current fee schedule to cover these costs. This 89% includes a 50% subsidy on this fee increase. In the upcoming years we will work to update the biotoxin fee structure to better align with biotoxin testing factors and data. We will explore potential growing areas and harvest site methods to allocate costs. We are open to hearing other suggestions that might work well to equitably distribute these costs based on testing cost drivers.
- d. Question: Can we have access to the raw data?
- i. Answer: The Economic Impact Analysis report describes the program revenue, expenditures, cost drivers and fee balance health in detail.
 - ii. Answer: Inspection data is explained through Economic Impact Analysis Report. For further information you may contact the public records center.
- e. Question: Why does it take three and a half hours to manage a bait permit annually?
- i. Answer: Our full-time equivalent (FTE) positions have 1,500 available productive hours after factoring in available leave, training, and other required activities annually. Bait permits fund 0.03 FTE or 45 hours annually to input and manage all bait applications and permits. This allows 2.5 hours per permit annually to ensure permit data and actions are properly regulated. Update: We have paused implementation of permit fees. The permit services will go through a program audit to evaluate services and associated costs. Based on the results of this analysis the program may implement permit fees in a future fee analysis.

- f. Comment: Taxing fee culture has tiered bases, low income pays less and usually takes more time, how can we have this tiered basis in these fees?
 - i. Answer: This program is a cost recovery program authorized by [RCW 43.70.250](#). The department must allocate fees based on the cost of the service being provided. The department does not have the authority to assign small grower costs to large growers or tax grower revenue.

4. Small Business Impact & Policy Questions/Comments

- a. Comment: Huge increases like these will be hard for small growers, a small-business impact analysis is strongly recommended.
 - i. Response: We take these fees very seriously and hear these concerns regarding the impact on small growers. We have worked hard to ensure our fee costs are paid by the appropriate fee payer. Annual license fees are allocated based off direct inspection time and harvesters will pay lower fees than other operation types. This is because it takes us less time to inspect these operations. Other costs associated with permits, harvest sites and other non-direct service time are allocated to general fund state dollars and will go through a program audit and therefore not impact small operations' annual license fees. We have also included a 50% subsidy on this increase to both annual license and biotoxin fees.
 - ii. Response: Washington state has many communities and resources for small businesses. More resources and information can be found on [business.wa.gov](#).
- b. Comment: The state general fund should be brought in to deal with the impact on smaller operations. The department should explore a policy change to prioritize industry feedback.
 - i. Response: The department's Shellfish program is currently funded by 3 funding sources: 72% state general fund, 12% recreational, and 16% commercial. More detail on these costs has been provided in our Shellfish funding summary and Economic Impact Analysis Report found online.
 - ii. Response: RCW 43.70.250 requires the cost of this program to be borne by the business. 49% of Commercial Shellfish costs are covered by the State General fund. This includes potential fee costs that will undergo a program audit to evaluate services provided and associated costs. The fee schedule proposed is the first step towards full cost recovery. Fee costs could increase because of the program audit findings.
- c. Comment: These fees will put small growers out of business. Example: grower sells 50K per year, fee and said fee comes out to 5K 10% of annual revenue and isn't possible.
 - i. Response: The proposed fee schedule has been updated and various costs have been removed from fees. These services for these costs will go through a program audit and depending on the findings could increase fees in the future.
- d. Comment: Based on the regulatory fairness act and the size of the growers in our industry it would trigger an economic impact statement to be prepared by the state. The costs are more than the .3% to businesses.
 - i. Response: The Small Business Economic Impact Statement (SBEIS) requires us to consider the impact of the six categories below to reduce the impact on small business.

1. Reducing, modifying, or eliminating substantive regulatory requirements.
 2. Simplifying, reducing, or eliminating recordkeeping and reporting requirements.
 3. Reducing the frequency of inspections.
 4. Delaying compliance timetables.
 5. Reducing or modifying fine schedules for noncompliance.
 6. Any other mitigation techniques including those suggested by small businesses or small business advocates.
- ii. This fee schedule rule affects the cost of the service and not the service itself. Therefore, the SBEIS is not a good fit for this rule making. Furthermore, fee rules are categorized as exception rule making and exempt from SBEIS and the CR-101 process. We voluntarily elected to file a CR-101. The department has solicited input from industry to understand the impact of rulemaking.
- e. Comment: This is a policy change; you are changing the way you implement fees.
- i. Response: This is not a policy change. We are changing our fees for services in accordance with established policy - state law. Examples of policy changes that commonly affect this program are changes to the Model Ordinance required inspection frequencies, and WAC changes that affect the tasks the program is required to perform.

5. Funding Considerations Questions/Comments

- a. Question: What options are being considered to fully fund the fee program?
- i. Answer: We will not update fees related to harvest sites, permits, and other miscellaneous costs. We have also included a 50% subsidy on the increase for annual license and biotoxin fees. We will perform a program audit on all services. The results of this audit could inform future fee adjustments.
 - ii. Supporting information: Several services are provided at no cost to fee payers. These costs are not included in the fees paid by the industry. Examples of these costs are:
 1. Growing Area Program (marine water monitoring, growing area restoration, and more)
 2. Vibrio Program
 3. Testing Instruments
 4. Harvest Site & Permit Work
 5. Dedicated Consent Decree Staffing Support
 6. Consent Decree Fee Costs
 7. Other miscellaneous staffing costs
 - iii. Supporting information: We also focus on ways to reduce costs whenever possible. Examples of cost reduction actions are:
 1. Overnight travel requires advanced approval to ensure each trip is beneficial and cost efficient. Travel is grouped by geographical location to decrease travel time and costs.
 2. Staff apply for federal grants to cover supplies and training.

- b. Comment: Biotoxin testing provides broader public health benefits beyond what the industry gets out of testing. A portion of testing fee costs could be argued to be covered with state general funds.
 - i. Response: Biotoxin testing is prioritized by areas that are commercially harvested. If an area isn't harvested, we don't routinely test in that area. This is required by the NSSP Model Ordinance. Because of this, biotoxin testing will be a part of commercial shellfish fees and not funded by general fund dollars.
 - ii. Supporting information: Recreational biotoxin testing costs are funded by recreational shellfish surcharge fees from recreational licenses.
- c. Question: How are consent decree costs funded?
 - i. Answer: Due to a long-standing legal agreement between state government and tribal entities to establish a cooperative intergovernmental shellfish sanitation program, it was agreed that the tribal entities would not pay licensing fees. The licensing costs for tribal operations are covered by state general funds. Private commercial licensees do not cover those costs.
- d.

6. Programmatic & Other Questions/Comments

- a. Question: I will not keep my shellfish license if costs increase. Would I still be able to lease my beach to another grower?
 - i. Response: Yes. You do not need to have a DOH license if you are a broker or landowner. You can create a harvest or lease agreement with a licensed DOH operation. When DOH receives a harvest site application, we are required to report it to the tribes for their 30-day review period per the consent decree.
- b. Costs of regulatory compliance: WRAC effects of regulations findings can help understand how regulation and fees affect the industry.
 - i. Response: We are grateful for the industry's collaboration in sharing the infographic on The Effects of Regulations on the U.S. Shellfish Industry. We value the exchange of information and resources and are open to continuing discussions and partnerships to enhance our support for the industry.
- c. Question: Is the state planning to adopt the Model Ordinance allowance for only 3 inspections for a SP license when the new MO is released?
 - i. Answer: We review changes to the Model Ordinance as they are adopted and will address any changes at that time.