

# Concise Explanatory Statement

## Office of Environmental Health and Safety Fees



### WAC 246-282-990 for Commercial Shellfish

Comment Received	Department of Health Determination
<p>Multiple commenters expressed strong opposition to the fees and urged the Department to reconsider the fee increase.</p> <ul style="list-style-type: none"><li>• Stated the proposed fee increases are excessive, unfair, and unrealistic.</li><li>• Fees are already among the highest in the country.</li><li>• Stated that the fees will significantly and disproportionately affect small businesses, potentially forcing them out of operation.</li><li>• Proposed fee increases creates a significant disadvantage for Washington state shellfish industry when competing for both domestic and international market share.</li><li>• Believes a fee increase of this magnitude threatens individual businesses and the state's economic and food diversity.</li><li>• The benefits extend beyond growers to the public, retail outlets, and restaurants, and that costs should be shared accordingly.</li></ul>	<p>The Department appreciates all the comments received and we understand that fee increases will have impact on businesses. It is also vital to consider that commercial shellfish operations must comply with the federal NSSP Model Ordinance, state laws, and rules to operate, export, and ship interstate. Our services help to ensure shellfish will be safe for consumption.</p> <p>The Department put fee increases on hold for State Fiscal Year 2025 due to the 2024 Legislative proviso. This delay coupled with reduced agency funding and increased expenses from this recent 25-27 biennial budget have created a new level of urgency for the Department's Shellfish Program to increase fees. Fee increases are necessary to avoid significant program reductions, loss of services to the commercial shellfish industry, and risk to public health.</p> <p>The Department is required by law to set fees at a level that covers the cost of administering each license and regulation of professions, occupations, or businesses. The fee must also be fully borne by the members of that profession, occupation, or business. Historically, we have used General Fund State funding to keep the fees lower. These funds have been reduced, and we can no longer supplement in this manner.</p> <p>The Department will continue to evaluate program efficiencies and cost-containment measures while ensuring that licensing fees remain aligned with the statutory requirement that regulatory fees recover, but not exceed, the cost of administering the program.</p> <p>The Department will continue to assess and monitor staffing needs in relation to administering the program.</p> <p>While the department is adopting the commercial shellfish fees as proposed without change, the department is also filing a CR101 and is considering exploring</p>

	<p>and amending structure options for annual shellfish operation license fees and annual biotoxin testing fees to minimize impacts on small businesses. The department will consider additional information to further refine fees. The department will also engage with the legislature during legislative session about the fees and potential funding sources.</p>
<p>Multiple commenters strongly recommend the Department should fully align with the recommendations from the Greene Economics Fee Assessment Report. Pause rulemaking to provide the industry and Legislature time to respond to the report. They highlighted two key findings from the report:</p> <ul style="list-style-type: none"> <li>• Biotoxin testing should be considered a public service, with costs covered entirely by state general funds, a similar practice in other states.</li> <li>• It does not recommend a full cost recovery program due to the potential financial strain on the industry.</li> </ul>	<p><b>No change to proposed rule.</b> The Department put fee increases on hold for State Fiscal Year 2025 due to the 2024 Legislative proviso. This delay coupled with reduced agency funding and increased expenses from this recent 25-27 biennial budget have created a new level of urgency for the Department's Shellfish Program to increase fees. Fee increases are necessary to avoid significant program reductions, loss of services to the commercial shellfish industry, and risk to public health.</p> <p>To address this, the Department proposed a phased fee increase in line with the Greene Economics Report, which recommended that the Licensing and Certification (L&amp;C) program should be 100% funded by fees, while the Biotoxin program should be a mix of fees and General Fund State (GFS) support. The phased proposal has the biotoxin fee unchanged in the first year. The Department's Shellfish Program does not currently have enough GFS allotted to cover all the Biotoxin testing costs as recommended in the Greene Economic Report.</p> <p>The phased fee proposal outlines a two-year plan:</p> <ul style="list-style-type: none"> <li>• Year 1 - 50% cost recovery for L&amp;C; no changes to biotoxin fees</li> <li>• Year 2 - 100% cost recovery for L&amp;C; 50% cost recovery for biotoxin</li> </ul> <p>This phased approach allows the Legislature time to review the report and allocate GFS where desired. If the Legislature provides funding, the Department will adjust fee amounts accordingly, and intends to regularly analyze costs and fee structures.</p> <p>While the department is adopting the commercial shellfish fees as proposed without change, the department is also filing a CR101 and is considering exploring and amending structure options for annual shellfish operation license fees and annual biotoxin testing fees to minimize impacts on small businesses. The department will consider additional information to further refine fees. The</p>

	<p>department will also engage with the legislature during legislative session about the fees and potential funding sources.</p>
<p>Commenter recommended that fees should be based on B&amp;O tax and actual revenue.</p>	<p><b>No change to proposed rule.</b> The Department appreciates the recommendation, but we do not have access to any operation's revenue and tax information. If operations voluntarily provide the information, the Department does not have a way to verify it.</p>
<p>Commenter expressed concern about the proposed fee increases, noting that shipper fees would rise 1,214% and biotoxin fees over 200%.</p>	<p><b>No change to proposed rule.</b> To clarify, shellstock shippers with 0-49 acres and 3 or more harvest sites are proposed to see a licensing fee increase of 607% for the 2026 renewal season and another 607% increase for the 2027 renewal season. Biotoxin fees are not changing for the 2026 renewal season, but will increase 202% for the 2027 renewal season.</p> <p>While the department is adopting the commercial shellfish fees as proposed without change, the department is also filing a CR101 and is considering exploring and amending structure options for annual shellfish operation license fees and annual biotoxin testing fees to minimize impacts on small businesses. The department will consider additional information to further refine fees. The department will also engage with the legislature during legislative session about the fees and potential funding sources.</p>
<p>Commenter recommended that fees be based on a poundage threshold or similar adjustment to help protect micro shippers from disproportionate financial impact.</p>	<p><b>No change to proposed rule.</b> The Department appreciates the recommendation, but we do not have a way to verify production data that is reported from operations right now. It can be considered for future fee analysis.</p> <p>While the department is adopting the commercial shellfish fees as proposed without change, the department is also filing a CR101 and is considering exploring and amending structure options for annual shellfish operation license fees and annual biotoxin testing fees to minimize impacts on small businesses. The department will consider additional information to further refine fees. The department will also engage with the legislature during legislative session about the fees and potential funding sources.</p>
<p>Commenter recommended a sliding scale for fees based on farm size or revenue, and reduced fees for companies harvesting wild-set shellfish on leased private beaches.</p>	<p><b>No change to proposed rule.</b> The Department appreciates the recommendation, and it will be considered for future fee analysis. Annual licensing fees were calculated based on the direct inspection time associated with each type of commercial operation and the costs associated with the Department's Shellfish Program.</p> <p>While the department is adopting the commercial shellfish fees as proposed</p>

	<p>without change, the department is also filing a CR101 and is considering exploring and amending structure options for annual shellfish operation license fees and annual biotoxin testing fees to minimize impacts on small businesses. The department will consider additional information to further refine fees. The department will also engage with the legislature during legislative session about the fees and potential funding sources</p>
<p>Commenter asked for clarification on whether Tribes will only be affected by the proposed biotoxin fee increases and asked if the State decided not to fund biotoxin monitoring through GFS revenue, as recommended in Greene's report.</p>	<p><b>No change to proposed rule.</b> Yes, tribal operations will only be impacted by the revisions to the Biotoxin Fees and PSP Biotoxin Fees.</p> <p>The Department's Shellfish Program does not currently have enough General Fund State funding allotted to cover the Biotoxin costs as recommended in the Greene Economic Report.</p>
<p>Commenter stated that fees should only cover actual program costs and requested a Small Business Economic Impact Statement (SBEIS). Suggests suspending the fee increase until an SBEIS analysis is completed, considering tiered or employee size-based fees, publishing a detailed breakdown of administrative costs, and extending the public comment period.</p>	<p><b>No change to proposed rule.</b> The Department appreciates the commenter's feedback and recommendations.</p> <p>Rules that set or adjust fees are not subject to a small business economic impact statement under chapter <a href="#">34.05 RCW</a> and chapter <a href="#">19.85 RCW</a>, because these do not meet the definition of a significant legislative rule. These fees arise from the mandates of the NSSP Model Ordinance, RCW, and WAC. Both chapters specifically exclude rules that set or adjust fees from the obligations of cost-benefit analysis and small business economic impact statements, indicating that the SBEIS is not designed to assess fees.</p> <p>The Department does not have a way to verify any operation's number of employees and verify production data that is reported right now. We can consider this idea for future fee analysis.</p> <p>While the department is adopting the commercial shellfish fees as proposed without change, the department is also filing a CR101 and is considering exploring and amending structure options for annual shellfish operation license fees and annual biotoxin testing fees to minimize impacts on small businesses. The department will consider additional information to further refine fees. The department will also engage with the legislature during legislative session about the fees and potential funding sources</p>
<p>Multiple commenters expressed this is an unwarranted shift in the relationship between the Department of Health and shellfish producers. They do not support the industry covering the majority of government operating expenses to administer the program. Raised concerns about potential legal and policy implications.</p>	<p><b>No change to proposed rule.</b> <a href="#">RCW 43.70.250</a> authorizes the Secretary of Health to establish various fees associated with licensing and regulation of professions, occupations, or businesses. These fees must be set at a level that covers the costs of administering each program or license and be fully borne by the members of that profession, occupation, or business. This is not unique to the Shellfish Program.</p>

	General Fund State funding has been used to supplement the gap. These funds have been reduced and we can no longer supplement in the same manner.
For the biotoxin fees and shucker packer, commenter asked why it seems as if the Harvest sites drive the cost more than the square acres?	<p><b>No change to proposed rule.</b> Annual licensing fees were calculated based on the direct inspection time associated with each type of commercial operation and the costs associated with the Department's shellfish program. The changes to the fee schedule include distinguishing the various operation types for the annual operation licenses to align with how operations are structured by the number of harvest sites and acreage. The effect of harvest sites and square acres are the same on the current fees as the increased fees.</p> <p>While the department is adopting the commercial shellfish fees as proposed without change, the department is also filing a CR101 and is considering exploring and amending structure options for annual shellfish operation license fees and annual biotoxin testing fees to minimize impacts on small businesses. The department will consider additional information to further refine fees. The department will also engage with the legislature during legislative session about the fees and potential funding sources</p>
With Export Fee increases going into effect December 1, commenter asked if we foresee a lot of operations needing to pay the increased amounts before the end of legislative session?	<b>No change to proposed rule.</b> Yes, the Department anticipates some shellfish operations will pay the increased fee amounts for export certificates, as well as correction and follow up inspections before the end of the next legislative session.
Commenter expressed concerns and confusion about the increase to the export certificate fee and asked the Department to justify the numbers.	<b>No change to proposed rule.</b> The Department appreciates the comment and the opportunity to clarify the export certificate fee increase. The fee was determined by the price per certificate based on the average number of annual certificates issued without subsidy from General Fund State funding. The export certificate average expenses total \$358,768 per year and the Department on average processes 2,262 certificates. This results in \$159 per export certificate, rounded to the nearest whole dollar.
Multiple commenters expressed appreciation for the work that the Department's Shellfish Program does and acknowledged that the state is currently dealing with a substantial budget deficit and needs to ensure programs charge fees to cover their costs they are required to.	<b>No change to proposed rule.</b> We appreciate the comment and wish we were not in the current financial position that we are in. The shellfish work and culture are very important to us.

Note: Under notice filed as **WSR 25-22-068** on October 31, 2025, the department adopted amendments to fees for the following Office of

Environmental Health and Safety programs:

- WAC 246-205-990 for Decontamination of Illegal Drug Manufacturing or Storage Sites
- WAC 246-260-9901 for Water Recreation Facilities
- WAC 246-262-990 for Recreational Water Contact Facilities
- WACs 246-272-2000 through 246-272-6000 for Onsite Sewage Systems
- WAC 246-272-3000 for Large Onsite Sewage Systems
- WAC 246-358-990 for Temporary Worker Housing
- WAC 246-360-990 and 246-360-020 for Transient Accommodations
- WAC 246-380-990 for Food Service



**CES WSR [WSR #]**

To request this document in another format, call 1-800-525-0127. Deaf or hard of hearing customers, please call 711 (Washington Relay) or email [doh.information@doh.wa.gov](mailto:doh.information@doh.wa.gov).