

Chapter 246-282 WAC

SANITARY CONTROL OF SHELLFISH

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

246-282-030	Storage, cleansing and washing and shipping of shellstock. [Statutory Authority: RCW 69.30.030. WSR 92-02-019 (Order 225B), § 246-282-030, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-030, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-020, filed 7/24/78; Regulation 58.020, effective 3/11/60.] Repealed by WSR 01-04-054, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030 and 43.20.030.
246-282-040	Shucking of shellfish. [Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-040, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-030, filed 7/24/78; Regulation 58.030, effective 3/11/60.] Repealed by WSR 01-04-054, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030 and 43.20.030.
246-282-090	Certificate of compliance—Certificate of approval—Suspension for revocation of certificate of approval—Licensure—Revocation of license. [Statutory Authority: RCW 69.30.030. WSR 92-02-019 (Order 225B), § 246-282-090, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-090, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030 and 43.20.050. WSR 85-21-048 (Order 296), § 248-58-080, filed 10/14/85. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-080, filed 7/24/78; Regulation 58.080, effective 3/11/60.] Repealed by WSR 01-04-054, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030 and 43.20.030.

WAC 246-282-001 Scope and purpose. These requirements, as authorized under chapter 69.30 RCW, establish

minimum performance standards for the growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption. These requirements do not apply to persons who conduct activities limited to:

- (1) Retail food service, in compliance with the requirements of chapter 246-215 WAC, Food service;
- (2) Personal use, in compliance with requirements of chapters 77.32 RCW, Licenses, and 77.15 RCW, Fish and wildlife enforcement code; and
- (3) Transporting as a common carrier of freight.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-001, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-001, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-001, filed 7/24/78; Regulation 58.001, effective 3/11/60.]

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (2011) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

[Statutory Authority: RCW 60.30.030 [69.30.030]. WSR 14-09-003, § 246-282-005, filed 4/3/14, effective 5/4/14; WSR 14-01-002, § 246-282-005, filed 12/4/13, effective 1/4/14; WSR 11-17-104, § 246-282-005, filed 8/22/11, effective 9/22/11; WSR 09-08-116, § 246-282-005, filed 3/31/09, effective 5/1/09; WSR 07-20-014, § 246-282-005, filed 9/20/07, effective 10/21/07; WSR 06-01-055, § 246-282-005, filed 12/16/05, effective 1/16/06. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-005, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030. WSR 98-18-066, § 246-282-005, filed 8/31/98, effective 10/1/98; WSR 98-03-096, § 246-282-005, filed 1/21/98, effective 2/21/98; WSR 96-18-096, § 246-282-005, filed 9/4/96, effective 10/5/96; WSR 94-23-026, § 246-282-005, filed 11/8/94, effective 12/9/94.]

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) The Washington state *Vibrio parahaemolyticus* control plan, also known as the control plan, establishes harvest, temperature control, and transportation requirements for oysters intended for raw consumption during the months of May through September. This section does not apply to shucked oyster meats labeled "for cooking only." The requirements of this section are in addition to the NSSP Model Ordinance and consist of:

- (a) Time of harvest to temperature control based on the growing area and month of the year;
- (b) Harvest record requirements;
- (c) *Vibrio* illness response requirements;
- (d) Training requirements; and
- (e) Hazard Analysis Critical Control Point (HACCP) plan and harvest checklist requirements.

(2) All Puget Sound growing areas, including the Strait of Juan de Fuca, are subject to the requirements of this section. Growing areas in Grays Harbor and Willapa Bay where oysters have been epidemiologically associated as the source of any *Vibrio parahaemolyticus* illness are also subject to the requirements of this section.

(3) The department may grant an annual exemption to the control plan for Puget Sound growing areas, including the Strait of Juan de Fuca, where there has been no epidemiologically associated *Vibrio parahaemolyticus* illness after review and approval of a written exemption request.

(a) The written exemption request must include the following information:

- (i) Name of the growing area;
- (ii) Description of the harvesting methods;
- (iii) Description of the temperature control methods; and
- (iv) Description of the transportation methods.

(b) The department shall review the exemption request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the department-approved exemption.

(d) The department-approved exemption expires October 1 of the calendar year for which it is approved. If the growing area is epidemiologically associated as the source of a *Vibrio parahaemolyticus* illness at any time after approval of the exemption, the department shall issue an order revoking the exemption.

(4) Time of harvest to temperature controls are:

Table 1

**Puget Sound Growing Areas
(including the Strait of Juan de Fuca):**

Months of Control	Time of harvest to Temperature Control
May	Twelve hours
June and September	Five hours
July and August	Four hours

**Table 2
Coastal Growing Areas:**

Months of Control	Time of harvest to Temperature Control
July and August	Ten hours

(5) Licensed dealers and harvesters shall maintain harvest records showing the time of harvest and the time oysters are placed under temperature control to demonstrate compliance with the control plan. If ownership of oysters is transferred prior to the time that time of harvest to temperature control requirements must be met, the licensed dealer or harvester shall include in the harvest record date, time, and person or entity to whom the oysters were transferred. If the new owner is a licensed dealer, the dealer shall meet the time of harvest to temperature control requirements established in this section. The harvest times begin as follows:

(a) Intertidal (exposed) time of harvest begins after the first oysters to be harvested are exposed to the air by the receding tide.

(b) Submerged time of harvest begins after the first oysters harvested are exposed to the air and have been placed onto a conveyance, such as a barge or boat. Submerged harvest includes dredge harvesting or retrieval of harvest tubs, bags, baskets, or other containers of oysters previously filled which have been under water for a minimum of one hour for coastal areas and four hours for Puget Sound growing areas.

(c) Temperature control is achieved when harvested oysters are placed in a controlled environment with an ambient temperature of 45°F (7.2°C) or less.

(6) All licensed harvesters and dealers in a growing area shall reduce the time of harvest to temperature control as defined in Table 1 or 2 of subsection (4) of this section by one hour if oysters from the growing area:

(a) Are epidemiologically associated as the probable source of two sporadic *Vibrio parahaemolyticus* illnesses; and

(b) Were harvested within thirty days of each other.

(7) A growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the remainder of the control months for the calendar year when the following conditions are met:

(a) Oysters from the growing area are epidemiologically associated as the probable source of two additional sporadic *Vibrio parahaemolyticus* illnesses;

(b) Oysters from the growing area were harvested in compliance with the reduced time of harvest to temperature control provisions of subsection (6) of this section; and

(c) Oysters from the growing area were harvested within thirty days of the previous illnesses.

(8) If the two additional *Vibrio parahaemolyticus* illnesses specified in subsection (7) of this section are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the NSSP Model Ordinance to determine if the illnesses are the result of harvester or dealer practices or are linked to the growing area as the probable source. If the harvester or dealer practices are reasonably likely to have caused the illnesses:

(a) The harvester or dealer shall retake the training identified in subsection (12) of this section prior to renewal of their next year's license;

(b) The department may take disciplinary action against the harvester or dealer license; and

(c) The department will evaluate whether to associate the illnesses with the growing area.

(9)(a) The department may grant an exemption to closure identified in subsection (7) of this section if the licensed harvester or dealer can demonstrate in a written exemption request that an additional one hour reduction in the time of harvest to temperature control as identified in subsection (6) of this section can be successfully implemented. The written exemption request must include the following information:

- (i) Name of the growing area;
- (ii) Description of the harvesting methods;
- (iii) Description of the temperature control methods; and
- (iv) Description of the transportation methods.

(b) The department shall review the request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the requirements of the department-approved exemption throughout the remainder of the applicable control months for the particular growing area.

(10)(a) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall either:

- (i) Destroy the oysters; or
- (ii) Remove all oysters from containers, disperse them within the original growing area, and allow a minimum of twenty-four hours for purging before reharvesting.

(b) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall record the disposition of the oysters on the harvest record.

(11) In the event of a *Vibrio parahaemolyticus* illness outbreak where oysters from a growing area are epidemiologically associated as the source, the requirements as stated in the NSSP Model Ordinance shall apply.

(12) All licensed harvesters and dealers shall complete an initial department-approved training specific to the requirements of this section prior to harvesting or shipping oysters intended for raw consumption during the months of May through September. All licensed harvesters and dealers shall complete department-approved refresher training following any revision of this section considered significant under RCW 34.05.328. Licensed harvesters and dealers who complete the training shall provide the training to those responsible for the on-site management of harvest activities for their operation, and document the training for responsible employees in their operational records.

(13) Following completion of the training required in subsection (12) of this section:

(a) All licensed harvesters planning to harvest oysters intended for raw consumption from May through September shall develop a harvest plan that describes the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed harvesters shall obtain department approval of the harvest plan prior to harvesting oysters for raw consumption.

(b) All licensed dealers planning to harvest oysters intended for raw consumption from May through September

shall amend their Hazard Analysis Critical Control Point (HACCP) plans to define the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed dealers shall obtain department approval of the amended HACCP plan prior to harvesting oysters for raw consumption.

[Statutory Authority: RCW 60.30.030 [69.30.030]. WSR 14-09-003, § 246-282-006, filed 4/3/14, effective 5/4/14; WSR 09-08-122, § 246-282-006, filed 4/1/09, effective 5/2/09. Statutory Authority: Chapter 69.30 RCW. WSR 08-11-051, § 246-282-006, filed 5/15/08, effective 5/19/08.]

WAC 246-282-010 Definitions. The following definitions, as well as those in the NSSP Model Ordinance, apply in the interpretation and the implementation of these rules and regulations.

(1) "Abatement" means an action or series of actions to eliminate a public health hazard or reduce it to a level acceptable to the secretary.

(2) "Approved" means acceptable to the secretary based on the department's determination as to conformance with appropriate standards and good public health practice.

(3) "Approved laboratory" means a laboratory that is in conformance with requirements of the NSSP Model Ordinance.

(4) "Certificate of approval" means a license issued by the department.

(5) "Civil penalty" means a monetary penalty administratively issued by the secretary. It does not include any criminal penalty; damage assessment; wages, premiums, or taxes owed; or interest or late fees on any existing obligation.

(6) "Commercial quantity" means any quantity exceeding:

- (a) Forty pounds of mussels;
- (b) One hundred oysters;
- (c) Fourteen horse clams;
- (d) Six geoducks; or
- (e) Fifty pounds of other hard or soft shell clams; or
- (f) Fifty pounds of scallops.

(7) "Cultch" means any material, other than live shellfish, used for the attachment of seed shellfish.

(8) "Department" means the state department of health.

(9) "Export certificate" means a certificate issued by the department to a licensed shucker-packer or shellstock shipper for use in the foreign export of a lot or shipment of shellfish.

(10) "Harvest" means the act of removing shellstock from a harvest site and its placement on or in a container for transport.

(11) "Harvester" means a shellfish operation with activities limited to growing shellstock, placing shellstock in a container, harvesting shellstock, transporting shellstock within Washington state, and delivering shellstock to a shellfish dealer licensed by the department within four hours of landing it. A harvester does not process shellfish, ship shellfish outside of Washington state, sell shellfish outside of Washington state, sell shellfish to retail outlets, shuck shellfish, repack shellfish, or store shellfish in any location outside of the approved growing area from where the shellfish is harvested.

(12) "Harvest site" means an area of intertidal or subtidal property within a commercial shellfish growing area, that is described by a unique county parcel number, department of

fish and wildlife tract number, department of fish and wildlife catch area number, tribal identification number, or other government identification.

(13) "Harvest site certificate" means a type of certificate of approval that designates one or more harvest sites approved for the harvesting of shellfish.

(14) "Hatchery" means an operation where shellfish larvae are produced and grown to the first sessile stage of life.

(15) "Notice of correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance and is not subject to civil penalties as provided for in RCW 43.05.110. It is not a formal enforcement action and is not subject to appeal. It is a public record.

(16) "NSSP Model Ordinance" means the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish, as adopted in WAC 246-282-005.

(17) "Nursery" means an operation where shellfish are grown from an early sessile stage of life up to a maximum size meeting the definition of shellfish seed.

(18) "Number of previous violations" means the number of prior violations of the same or a similar nature for which the department has taken a license action or assessed a civil penalty.

(19) "Person" means any individual, firm, corporation, partnership, company, association, or joint stock association, and the legal successor thereof.

(20) "Person in charge" means an individual responsible for the supervision of employees and the management of any shellfish operation.

(21) "Public health threat" is either:

(a) "Low," which means a violation that poses a minor possibility of direct or indirect hazard to public health;

(b) "Intermediate," which means a violation that poses a moderate possibility of direct or indirect hazard to public health; or

(c) "High," which means a violation that poses a known significant hazard or possibility of significant direct or indirect hazard to public health.

(22) "Sale" means to sell; offer for sale; barter; trade; deliver; consign; hold for sale, consignment, barter, trade, or delivery; and/or possess with intent to sell or dispose of in a commercial manner.

(23) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

(24) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:

(a) Thirteen millimeters (1/2 inch) for mussels;

(b) Twenty-five millimeters (1 inch) for scallops;

(c) Nineteen millimeters (3/4 inch) for Olympia oysters;

(d) Nineteen millimeters (3/4 inch) for Kumamoto oysters;

(e) Fifty-one millimeters (2 inches) for other oyster species;

(f) Thirty-eight millimeters (1 and 1/2 inch) for geoducks; and

(g) Thirteen millimeters (1/2 inch) for other clam species.

(25) "Shellfish" means all varieties of fresh or fresh-frozen oysters, clams, scallops or mussels, either shucked or in the shell, and all fresh or fresh-frozen edible products thereof.

(26) "Shellfish dealer" means a person with a shellstock shipper or shucker-packer license.

(27) "Shellfish growing area" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantities or for sale for human consumption.

(28) "Shellfish operation" means growing, placing in a container, harvesting, transporting, processing, culling, shucking, packing, and repacking, storing, shipping, or reshipping of shellfish in commercial quantities or for sale for human consumption.

(29) "Shellfish operation license" means a type of certificate of approval applying to the overall activities of a shellfish operation.

(30) "Shellstock shipper" means a shellfish operation that does not shuck shellfish or repack shucked shellfish.

(31) "Shucker-packer" means a shellfish operation that may shuck and pack shellfish.

(32) "Technical assistance" means information provided by the department to a person regarding chapter 69.30 RCW; this chapter; technologies or other methods to achieve compliance with these rules; assistance in applying for a departmental license or permit required by these rules; or the goals and objectives of these rules. This is not intended to modify the definition of "technical assistance" as provided in RCW 43.05.010(3).

(33) "Violation" means the commission of an act or acts prohibited by the provisions of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance.

(34) "Wet storage" means the temporary storage of shellstock in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

(35) "Wild seed" means naturally set seed shellfish.

[Statutory Authority: RCW 60.30.030 [69.30.030]. WSR 14-09-003, § 246-282-010, filed 4/3/14, effective 5/4/14. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-010, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030. WSR 92-02-019 (Order 225B), § 246-282-010, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030 and 43.20.050. WSR 85-21-048 (Order 296), § 248-58-005, filed 10/14/85. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-005, filed 7/24/78.]

WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates. (1) The department issues two types of certificates of approval to persons who conduct shellfish operations. They are shellfish operation licenses and harvest site certificates.

(2) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid shellfish operation license. To obtain a shellfish operation license, a person must:

(a) Submit to the department a completed application on a form developed by the department;

(b) Submit to the department an acceptable written plan of operations that completely describes the shellfish operation;

(c) Pass a preoperational inspection demonstrating compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance; and

(d) Pay the department any shellfish operation license fee required by this chapter.

(3) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid harvest site certificate. In order for a person to obtain a harvest site certificate, all of the following requirements must be met.

(a) The person possesses a valid shellfish operation license.

(b) The person submits to the department a completed application that describes the following characteristics of the site:

(i) Geographic location;

(ii) Map showing legal boundaries;

(iii) Unique government identification number, such as county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, or tribal identification number; and

(iv) Documentation of legal ownership or lease for shellfish harvesting.

(c) The harvest site is in a growing area that meets the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance for a commercial shellfish growing area.

(d) The harvest site is not impacted by any actual or potential sources of pollution.

(e) The harvest site passes a pollution assessment inspection conducted by the department if necessary to determine if the site is impacted by any actual or potential sources of pollution.

(f) The person signs the current conditionally approved area management plan, if applicable.

(g) The person pays the department any harvest site application fee required by this chapter.

(4) All shellfish operation licenses and harvest site certificates for shellfish dealers expire on the thirtieth day of June each year. All shellfish operation licenses and harvest site certificates for harvesters expire on the thirty-first day of March each year.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 11-19-011, § 246-282-012, filed 9/7/11, effective 10/8/11; WSR 01-04-054, § 246-282-012, filed 2/5/01, effective 3/8/01.]

WAC 246-282-014 Operating provisions. (1) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid shellfish operation license, upon request, to any authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(2) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid harvest site certificate, upon request, to any authorized representative of the department, a fish and wildlife patrol officer, or

an ex officio patrol officer. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(3) Any person who places a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption in containers at a harvest site must do so only at a site for which the person possesses a valid harvest site certificate.

(4) The owner(s) of a shellfish operation must designate an individual as the person in charge of the operation. The owner(s) of a shellfish operation that includes one or more harvest sites may designate a different individual as the person in charge of the operation's harvest site(s) than the individual designated as the person in charge of all other phases of the shellfish operation.

(5) The owner(s) and the designated person in charge of a shellfish operation must:

(a) Ensure that at least one individual harvesting shellfish on behalf of the operation at each harvest site carry a copy of both the operation license and the harvest site certificate designating that the site is approved by the department for harvesting by that operation;

(b) Furnish shellfish tags meeting the requirements of chapter 69.30 RCW, these rules, and the NSSP Model Ordinance to those individuals harvesting on behalf of the operation;

(c) Ensure, by supervision at harvest sites or other adequate means, that those individuals working on behalf of the operation harvest only from harvest sites approved by the department for the operation; and

(d) Notify the department if an owner or person in charge has reason to believe that any individual is using the operation's tags, shellfish operation license, or harvest site certificate for any purpose other than one approved by the department.

(6) The designated person in charge of a shellfish operation must have a functioning telephone message device or service issued by a telephone service provider to the owner(s) or person in charge. The person in charge must:

(a) Monitor the device or service each day that the shellfish operation is active, regarding messages from the department about emergency closure of harvest areas or recall of shellfish products; and

(b) Notify the department whenever the telephone number used for this purpose changes; or

(c) Maintain another equivalent method of contact with the department approved in the plan of operations.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-014, filed 2/5/01, effective 3/8/01.]

WAC 246-282-016 Aquaculture. Any person who conducts an aquaculture operation and is in possession of a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must meet all requirements of this chapter, except such person is exempt from all requirements of this chapter for the purpose of conducting aquaculture activities limited to the following:

(1) A hatchery operation; or

(2) A nursery operation handling only seed that is obtained from a hatchery.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-016, filed 2/5/01, effective 3/8/01.]

WAC 246-282-020 Growing areas. (1) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must do so only from a harvest site that meets one or more of the following conditions:

(a) The department has classified the growing area as "approved" or "conditionally approved," according to provisions of the NSSP Model Ordinance and the harvest site is in open status at the time of harvest;

(b) The department has approved the harvest site according to provisions of a permit for relay, wild seed, or bait;

(c) The harvest site is used for shellfish activities limited to a hatchery or a nursery operation handling only seed obtained from a hatchery; or

(d) The harvest site is used for shellfish activities limited to the initial harvest of seed attached to containerized empty shellfish shells or other cultch material.

(2) The department classifies a shellfish growing area as "restricted" or "prohibited" according to provisions of the NSSP Model Ordinance. However, the department considers classifying a harvest site as "restricted" only when the department has received a valid application for a permit for relay or wild seed harvest from the site.

(3) While a harvest site is in closed status, no person may move shellfish from it to a location outside of the harvest site or above the mean low tide line of the harvest site, unless the department has approved:

(a) Harvesting shellfish by that person from the site according to provisions of a permit for relay, wild seed harvest, or bait harvest; or

(b) Moving shellfish by that person from the site to another site in a natural body of water within the same "conditionally approved" growing area under a written plan of operations.

(4) Harvesting is prohibited from all growing areas unclassified by the department.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-020, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-020, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030 and 43.20.050. WSR 85-21-048 (Order 296), § 248-58-010, filed 10/14/85. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-010, filed 7/24/78; Regulation 58.010, effective 3/11/60.]

WAC 246-282-032 Relay permit. (1) The department will issue a relay permit to a person to move shellfish from a harvest site in a growing area classified as "restricted" or "conditionally approved" in closed status meeting the criteria for "restricted" classification, if all of the following conditions are met.

(a) The person possesses a valid shellfish operation license.

(b) The person possesses a valid harvest site certificate listing both the initial harvest site and the grow-out site.

(c) The initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.

(d) The person submits a completed written application and plan of operations approved by the department com-

pletely describing the procedures and conditions of the relay operation.

(e) The person conducts and documents a separate validation study approved by the department for each of the following periods of time when shellfish will be relayed:

(i) May 1 through October 31; and

(ii) November 1 through April 30.

(f) The person pays the department a relay permit application fee or renewal fee as required by this chapter.

(2) Each validation study for a relay permit must demonstrate that shellfish harvested from a specified initial site do not contain excessive levels of fecal coliform bacteria and when relayed to a specified grow-out site for a specified time period consistently purge themselves of bacteria to approved levels. Each validation study must meet all of the following conditions.

(a) It must document that the geometric mean fecal coliform bacteria level in a minimum of five 100-gram tissue samples, representative of shellfish of the same species in the entire initial harvest site, is equal to or less than 1300, with no sample having more than 2300.

(b) It must document that specified relay procedures, times, and environmental conditions reduce fecal coliform bacteria in a minimum of five 100-gram tissue samples, representative of the entire lot of shellfish relayed, to levels that are equal to or less than:

(i) 330, with no more than two samples having greater than 230; or

(ii) Ten percent greater than the geometric mean of a minimum of five 100-gram tissue samples representative of the same shellfish species grown continuously for a minimum of six months at the grow-out site.

(c) It must be repeated a minimum of once every twelve years for a continuing operation and whenever relay conditions change.

(d) All samples must be analyzed by an approved laboratory.

(3) A person operating under a relay permit must follow all procedures in the plan of operations approved by the department, including:

(a) Staking or marking the grow-out site to be easily identified by the person until the minimum relay period of time is passed;

(b) Considering the beginning of the minimum relay time period for a lot to be the moment that the last part of the lot is added to the grow-out site;

(c) Relaying shellfish to a designated grow-out site for a minimum of seven days, or longer period of time as approved by the department; and

(d) Keeping records for each relayed lot of shellfish that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

(4) For each lot of shellfish relayed to a site for a grow-out period of less than fourteen days, a person must:

(a) Collect at least one sample from the shellfish lot at the initial harvest site and have it analyzed by an approved laboratory to demonstrate that the lot contains no more than 2300 fecal coliform bacteria per 100 grams of shellfish tissue; and

(b) Collect at least one sample from the shellfish lot at the grow-out site at the end of the relay period and have it analyzed by an approved laboratory to demonstrate that the lot contains fecal coliform bacteria within the maximum limits determined by a validation study, as described in subsection (2)(b) of this section, before releasing control of the shellfish lot.

(5) A person is exempt from any fees for an initial application and a validation study conducted by the department for a relay permit for the purpose of relaying shellfish from a growing area that the department downgraded from a classification of "approved" or "conditionally approved" to "restricted" within the previous twenty-four months.

(6) A person's relay permit expires on the same date as the person's shellfish operation license.

(7) A person is exempt from the provisions of subsection (1) (e) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of six months.

(8) A person possessing a valid shellfish operation license may act as an agent for another person possessing a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the permit, provided that the agent conducting the harvest is:

- (a) Documented in the permit;
- (b) In possession of a copy of the permit at the time of harvest; and
- (c) Conducting activities described in the written plan of operations approved by the department for the agent's shellfish operation.

[Statutory Authority: RCW 69.30.030. WSR 11-17-104, § 246-282-032, filed 8/22/11, effective 9/22/11. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-032, filed 2/5/01, effective 3/8/01.]

WAC 246-282-034 Wild seed permit. (1) The department will issue a wild seed permit to a person to move shellfish from a harvest site in a growing area classified by the department as "conditionally approved" in closed status, "restricted," or "prohibited," if all of the following conditions are met.

- (a) The person possesses a valid shellfish operation license.
- (b) The person possesses a harvest site certificate listing both the initial harvest site for the seed and the grow-out site.
- (c) The original harvest site has acceptable levels of poisonous chemicals, is not in an area known to be a hazardous chemical disposal site, and is not in a closure zone of a wastewater treatment plant or marina.
- (d) The grow-out site is in a natural body of water classified by the department as "approved" or "conditionally approved."
- (e) The person submits a completed written application and plan of operations approved by the department completely describing the procedures of the wild seed operation, including the size distribution of the seed.
- (f) The person pays the department a wild seed permit application fee or renewal fee as required by this chapter.

(2) A person operating under a wild seed permit must:

- (a) Follow all procedures in the plan of operations approved by the department;
- (b) Harvest seed from an area classified as "prohibited" only during daylight hours;

(c) Harvest seed from an area classified as "prohibited" only under direct monitoring by a person approved by the department;

(d) Leave seed in a grow-out site for a minimum of six months before final harvest;

(e) Limit harvest of live shellfish larger than seed size attached to, or commingled with, the seed to less than five percent of the total number of the shellfish harvested from the site;

(f) Place any live shellfish larger than seed size attached to, or commingled with, the seed in the grow-out site for a minimum of six months after initial harvest;

(g) Stake or mark the grow-out site to be easily identified by the person for a minimum of six months from the time of moving to the site any seed attached to, or commingled with, shellfish larger than seed size; and

(h) Keep records for each lot of seed harvested that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

(3) A person's wild seed permit expires on the same date as the person's shellfish operation license.

(4) A person is exempt from the requirements of this section for the activity of harvesting seed attached to containerized empty shellfish shells or other cultch material, provided that the person:

- (a) Meets the conditions of subsection (1)(a) through (d) of this section;
- (b) Leaves the seed in the grow-out site for a minimum of six months before final harvest; and
- (c) Fully describes the seed harvest and grow-out activities in a written plan of operations approved by the department for the person's shellfish operation license.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-034, filed 2/5/01, effective 3/8/01.]

WAC 246-282-036 Bait permit. (1) The department will approve and issue a bait permit to a person to harvest shellfish from a harvest site in a growing area classified by the department as "prohibited," "restricted," or "conditionally approved" in closed status if all of the following conditions are met.

- (a) The person possesses a valid shellfish operation license.
- (b) The person possesses a valid harvest site certificate for the site.
- (c) The harvest site is not impacted by biotoxin levels that would cause the department to close it for harvest for human consumption.
- (d) The person submits a completed written application and plan of operations approved by the department completely describing the procedures of the bait operation.
- (e) The person pays the department a bait permit application fee or renewal fee as required by this chapter.

(2) A person operating under a bait permit must:

- (a) Follow all procedures in the plan of operations approved by the department;
- (b) Harvest bait from an area classified as "prohibited" only during daylight hours;

(c) Harvest bait from an area classified as "prohibited" only under direct monitoring by a person approved by the department;

(d) Completely immerse the shellfish in an approved dye that imparts an easily noticeable permanent color to the tissue immediately upon landing the shellfish;

(e) Label each container of shellfish "NOT FOR HUMAN CONSUMPTION - BAIT USE ONLY" prior to removal from the harvest site;

(f) Store the shellfish physically separated from any shellfish intended for human consumption; and

(g) Keep records for each lot of shellfish harvested for use as bait showing a lot identification number, the species, the harvest site, the harvest date, the quantity harvested, the names of all buyers, and the quantity sold to each buyer.

(3) A person's bait permit expires on the same date as the person's shellfish operation license.

(4) Any person possessing a commercial quantity of bait shellfish is exempt from the requirement to obtain a bait permit provided that the person:

(a) Obtains the shellfish from a person with a valid bait permit;

(b) Possesses a sales invoice for the shellfish from a person with a valid bait permit; and

(c) Maintains each container of shellfish prominently labeled "NOT FOR HUMAN CONSUMPTION - BAIT USE ONLY."

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-036, filed 2/5/01, effective 3/8/01.]

WAC 246-282-042 Wet storage permit. (1) Any person who wet stores a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must have a written plan of operations, approved by the department, completely describing the activity.

(2) A person licensed as a harvester may wet store only in a natural body of water that is part of the same growing area as the harvest site of the shellfish.

(3) Any person who operates a recirculating or flow-through wet storage system must possess a wet storage permit issued by the department. A wet storage permit will be issued to a person for a recirculating or flow-through wet storage system if the person:

(a) Possesses a valid shellfish operation license;

(b) Submits a completed written application and plan of operations to the department completely describing the procedures of the wet storage operation;

(c) Documents that the water used for the operation meets the requirements of the NSSP Model Ordinance;

(d) Passes an inspection by the department; and

(e) Pays the department a wet storage application fee or renewal fee as required by this chapter.

(4) If a person uses a natural body of water for a wet storage operation, the person must possess a valid harvest site certificate listing the body of water.

(5) If a person uses artificial seawater for a wet storage operation, the chemicals used to make the seawater must be approved food grade.

(6) A person operating under a wet storage permit must follow all procedures in the plan of operations approved by the department.

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(7) A person's wet storage permit expires on the same date as the person's shellfish operation license.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-042, filed 2/5/01, effective 3/8/01.]

WAC 246-282-050 Packing, handling, and storing of shucked shellfish. (1) Any person who packs, handles, or stores shucked shellfish must maintain it at an internal product temperature of forty-five degrees Fahrenheit or less beginning within three hours after it is shucked.

(2) Any person who operates a shucked shellfish repacking plant must meet all the requirements specified in this chapter and the NSSP Model Ordinance for packing plants.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-050, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-050, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-040, filed 7/24/78; Regulation 58.040, effective 3/11/60.]

WAC 246-282-060 Personal health and cleanliness.

(1) Any person ill with or the carrier of a communicable disease which is transmissible through food and is in the infectious stage may not work in any growing area, shucking, packing or repacking plant in any capacity where that person might contaminate the shellfish or food contact surfaces with pathogenic organisms. The owner, the person in charge, and the employee are all responsible for compliance with the requirements of this section.

(2) Any person who is an owner, a person in charge, or an employee of a shellfish operation must practice good personal cleanliness while handling shellfish. These persons must wash their hands thoroughly with soap and water before starting to handle shellfish and as often as is necessary to remove filth and soil that might contaminate shellfish.

(3) If the department determines by investigation that an owner or employee of a shellfish operation might be the source of a foodborne illness transmitted through shellfish, then the secretary may require medical examination of that person and laboratory examination of clinical specimens from that person to determine presence of infection. Any person failing to obtain an examination required by the secretary may not work for a shellfish operation, for a period of time the department determines that person could be infectious, in any capacity that could result in contamination of shellfish with pathogenic organisms.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-060, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-060, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-050, filed 7/24/78; Regulation 58.050, effective 3/11/60.]

WAC 246-282-070 Construction and maintenance.

(1) All owners and persons in charge of shellfish operations must arrange their physical facilities to aid in the flow of shellfish products through all handling, processing, and storage areas in a manner that will minimize contamination of the shellfish.

(2) Any owner of a shellfish operation must submit to the department for consultation properly prepared plans and specifications of physical facilities for shellfish processing or

sanitation activities at least thirty days before the facilities are:

- (a) Originally constructed;
- (b) Converted from another use; or
- (c) Extensively remodeled to the extent that a plan for a building permit is required by the city or county where located.

(3) The department will review properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities required by subsection (2) of this section within thirty days of receipt and provide technical assistance to the owner of the shellfish operation regarding whether the proposed physical facilities would meet the requirements of this chapter.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-070, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-070, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-060, filed 7/24/78; Regulation 58.060, effective 3/11/60.]

WAC 246-282-080 Identification and records. (1)

Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess a written record documenting that the shellfish came from one or more of the following sources:

- (a) Harvest site(s) for which the person possesses a valid harvest site certificate;
- (b) Another shellfish operation licensed by the department; or
- (c) A shellfish dealer located outside of the state who is in compliance with the requirements of the NSSP Model Ordinance and is eligible for inclusion on the current Interstate Certified Shellfish Shippers List, published by the U.S. Food and Drug Administration.

(2) Any person who possesses a commercial quantity of shellstock or any quantity of shellstock for sale for human consumption must identify the shellstock by an approved tag with permanent marking, according to requirements of the NSSP Model Ordinance, upon removal from the harvest site.

(3) Any person who packs a commercial quantity of shucked shellfish or any quantity of shucked shellfish for sale for human consumption must do so in approved containers that are legibly labeled by permanent marking, in accordance with the requirements of the NSSP Model Ordinance and with:

- (a) Wording equivalent to "keep refrigerated" on containers of fresh shellfish; and
- (b) Wording equivalent to "keep frozen" on containers of frozen shellfish.

(4) The owner or person in charge of a shellfish operation must keep accurate records of all lots of shellfish harvested, received, wet stored, shucked, packed, shipped, or sold by the shellfish operation for a minimum of three years.

(5) Information recorded by the harvester-shipper shall include: (a) Location of harvesting area(s) by name or code, (b) name and quantity of shellfish, (c) date of harvest, (d) date shipped.

(6) All tags for shellstock and labels for containers of shucked shellfish required by this section must be used only

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for the original lot of shellfish for which they were intended and must not be reused.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-080, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030. WSR 92-02-019 (Order 225B), § 246-282-080, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-080, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-070, filed 7/24/78; Regulation 58.070, effective 3/11/60.]

WAC 246-282-082 Export certificate. The department will issue an export certificate to a shellfish dealer for a specific lot of shellfish if the dealer:

- (1) Is exporting the lot to an Asian country that requires a production certificate from a governmental health authority;
- (2) Possesses a shellfish operation license issued by the secretary;
- (3) Is in compliance with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance;
- (4) Completes an application specified by the department;
- (5) Documents use of each export certificate as specified by the department; and
- (6) Pays the department any fee for each export certificate required by this chapter.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-082, filed 2/5/01, effective 3/8/01.]

WAC 246-282-092 Inspection by department. (1) The department enters and inspects any harvest site, physical facility, vehicle or vessel used by a shellfish operation as often as necessary to determine compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance.

- (2) The department inspects each shellfish operation:
 - (a) A minimum of once per year;
 - (b) Before issuing a new shellfish operation license to a person;
 - (c) Before a shellfish operation uses any physical facility for the first time; and
 - (d) Before the shellfish operation uses any extensively remodeled physical facility.

(3) If the department determines by inspection that an owner, person in charge, or any person working on behalf of the shellfish operation is in violation of any of the requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance, then the department may conduct a reinspection of the shellfish operation. If the same violation is identified by the department during the reinspection, then another reinspection may be conducted by the department within one month. The department may charge the owner of a shellfish operation a fee for a second or subsequent reinspection.

(4) If necessary to conduct an inspection, then the department may apply to a court of competent jurisdiction for an administrative warrant in accordance with RCW 69.30.120.

(5) During inspections, the department has free and unimpeded access to any of the following in order to determine whether the operation is in compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance:

- (a) Buildings, yards, warehouses, storage facilities, transportation facilities, vehicles, vessels and other places

reasonably considered to be or to have been used in connection with the shellfish operation;

(b) Ledgers, books, accounts, memorandums, or records reasonably believed to be or to have been used in connection with the shellfish operation;

(c) Shellfish, shellfish products, components, or other materials reasonably believed to be or to have been used, processed or produced by or in connection with the shellfish operation;

(d) Copies of any documents reasonably believed to be or to have been used in connection with the shellfish operation; and

(e) Samples of shellfish to determine whether they are safe for human consumption.

(6) The department may inspect shellfish growing areas at any time of day and will inspect any other aspect of a shellfish operation:

(a) Between 8:00 a.m. and 5:00 p.m. on any weekday that is not a legal holiday;

(b) During any time the shellfish operation has established as its business hours;

(c) During any time the shellfish operation is open for business or is otherwise in operation; and

(d) During any other time with the consent of the owner or the person in charge of the shellfish operation.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-092, filed 2/5/01, effective 3/8/01.]

WAC 246-282-100 Notice of decision—Adjudicative proceeding. (1) The department's notice of a denial, suspension, modification, or revocation of a license is consistent with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(2) The department's notice of imposition of a civil penalty is consistent with RCW 43.70.095. A person upon whom the department imposes a civil fine has the right to an adjudicative proceeding to contest the decision.

(3) A license applicant or holder or a person upon whom the department imposes a civil penalty, may contest a department decision, within twenty-eight days of receipt of the decision by filing a written application for an adjudicative proceeding by a method showing proof of receipt with the administrative hearings unit, department of health. The person must include the following in or with the application:

(a) A specific statement of the issue or issues and law involved;

(b) The grounds for contesting the department decision; and

(c) A copy of the contested department decision.

(4) An adjudicative proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 246-08 WAC. If a provision in this chapter conflicts with chapter 246-08 WAC, the provision in this chapter governs.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-100, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030. WSR 92-02-019 (Order 225B), § 246-282-100, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-100, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 34.05 RCW and RCW 69.30.030. WSR 90-06-049 (Order 040), § 248-58-085, filed 3/2/90, effective 3/2/90.]

WAC 246-282-102 Denial, revocation, suspension of license, certificate, or permit—Civil penalties. (1) The department may deny, revoke, or suspend a shellfish operation license, harvest site certificate, or permit and may assess a civil penalty if a person:

(a) Fails to comply with any of the provisions of chapter 69.30 RCW, these rules, and the NSSP Model Ordinance;

(b) Refuses an inspection by the department;

(c) Harvests shellfish from any harvest site for which the secretary has not issued a harvest site certificate to the person;

(d) Knowingly obtains shellfish from a person who is not in compliance with any requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance;

(e) Makes false statements or misrepresentations to the department during any investigation, inspection, or application for a shellfish operation license or any permit required by these rules;

(f) Makes false statements or misrepresentations to the department during any investigation, inspection, or application for a shellfish harvest site certificate;

(g) Fails to cooperate with the department or the department of fish and wildlife during an investigation;

(h) Aids another person in violating any requirement of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance;

(i) Provides the department with false or fraudulent records of the shellfish operation;

(j) Transfers or reassigns a shellfish operation license to another person without the written approval of the department; or

(k) Fails to comply with the terms of a conditional area management plan, shellfish operation license, harvest site certificate, or any permit required by this chapter.

(2) Violations of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance committed by a person in charge, employee, or agent of a person issued a shellfish operation license may be treated by the department as a violation committed by the licensee.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-102, filed 2/5/01, effective 3/8/01.]

WAC 246-282-104 Penalty assignment—Calculation of penalty and proportionate adjustment—Aggravating and mitigating factors. (1) The department calculates an appropriate penalty based on the following factors:

(a) The level of threat to public health;

(b) The number of previous violations attributed to the violator; and

(c) The presence of aggravating or mitigating factors.

(2) The department determines administrative penalties from the range in the following penalty schedule. The standard penalty is assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present.

Penalty Schedule

NUMBER OF PREVIOUS VIOLATIONS	ADJUSTMENT FACTORS	PUBLIC HEALTH THREAT		
		LOW License Action/ Civil Penalty	INTERMEDIATE License Action/ Civil Penalty	HIGH License Action/ Civil Penalty
0	Mitigated	0 Months/\$150	0 Months/\$300	3 Months/\$350
	Standard	0 Months/\$200	1 Month/\$350	6 Months/\$400
	Aggravated	1 Month/\$250	3 Months/\$400	9 Months/\$450
1	Mitigated	0 Months/\$200	1 Month/\$350	6 Months/\$400
	Standard	0 Months/\$250	3 Months/\$400	9 Months/\$450
	Aggravated	3 Months/\$300	6 Months/\$450	12 Months/\$500
2	Mitigated	0 Months/\$250	3 Months/\$400	12 Months/\$500
	Standard	3 Months/\$300	6 Months/\$450	18 Months/\$500
	Aggravated	6 Months/\$350	9 Months/\$500	24 Months/\$500
3 or More	Mitigated	3 Months/\$300	6 Months/\$450	18 Months/\$500
	Standard	6 Months/\$350	9 Months/\$500	24 Months/\$500
	Aggravated	9 Months/\$400	12 Months/\$500	36 Months/\$500

(3) The department reserves the right to proportionately increase the civil penalty and decrease the license action under certain circumstances. These circumstances include situations where license actions as a deterrent are ineffective and include, but are not limited to, violations by persons who are not licensed.

(4) The department reserves the right to proportionately decrease the civil penalty and increase the license action when circumstances in a particular case demonstrate the ineffectiveness of a civil penalty as a deterrent.

(5)(a) When assessing a civil penalty or license action, the department considers any previous violation(s) for the following period of time, depending on the severity of the previous violation(s):

- (i) Three years for low public health threat;
- (ii) Five years for intermediate public health threat; or
- (iii) No limit for high public health threat.

(b) The time period will begin on the date of adjudication or settlement of the previous violation(s), rather than the date on which the incident or conduct occurred.

(6) The department considers circumstances that increase the seriousness of a violation, including, but not limited to, the following aggravating factors:

- (a) The extent to which the violation is part of a pattern of the same or substantially similar conduct;
- (b) The extent to which previous education, technical assistance, or notice of correction has been provided for the same or substantially similar conduct; and
- (c) The extent to which the violation caused serious and actual injury or death to a person or persons.

(7) If the department determines that one or more aggravating factors are present, then the department may assess the aggravated penalty or may increase the penalty to a level greater than listed in the penalty schedule, including, but not limited to, revocation of the license.

(8) The department will consider circumstances that decrease the seriousness of a violation, including, but not limited to, the following mitigating factors:

- (a) Voluntary disclosure of the violation;
- (b) Complete cooperation and voluntary disclosure during the investigation of the violation; and

(c) Voluntary taking of remedial measures that will result in increased public health protection and that will result in a decreased likelihood that the violation will be repeated and that other violations will occur.

(9) If the department determines that one or more mitigating factors are present, then the department may assess the mitigated penalty or may decrease the penalty to a level less than listed in the penalty schedule.

(10) The maximum civil penalty that may be imposed by the department is five hundred dollars per day for each violation.

(11) The department considers each violation to be a separate and distinct event. Each day a violation is continued is a separate and distinct violation. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties are added together, rather than served concurrently.

(12) Nothing in this section prevents the department from responding to a violation by:

- (a) Declining to pursue an administrative penalty;
- (b) Issuing a notice of correction instead of pursuing an administrative penalty; or
- (c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-104, filed 2/5/01, effective 3/8/01.]

WAC 246-282-110 Administrative provisions. (1) If the department finds during an inspection that any owner or person working on behalf of a shellfish operation fails to comply with any requirements of chapter 69.30 RCW, this

chapter, or the NSSP Model Ordinance, then the department may issue a written statement of deficiencies or notice of correction to the owner, person in charge, or other employee of the operation who is present.

(a) The statement of deficiencies or notice of correction specifies the manner in which the operation fails to comply with chapter 69.30 RCW and these rules. It specifies a reasonable period of time for the owner or person in charge to correct the violation(s).

(b) In the event the owner or person in charge fails to correct the violation(s) specified in the statement of deficiencies, the department may revoke the license and certificate of compliance for that shellfish operation or may initiate any other enforcement proceeding authorized by law.

(2) Any authorized representative of the department, fish and wildlife patrol officer or ex officio patrol officer may, without previously providing a statement of deficiencies, immediately seize shellfish or issue written hold orders prohibiting the disposition or sale of shellfish whenever a commercial quantity of shellfish or any amount of shellfish for sale for human consumption is on the premises of, or in the possession of, any person who:

(a) Fails to display an original or photocopy of a valid shellfish operation license;

(b) Is reasonably expected to have harvested the shellfish and fails to display an original or photocopy of a valid shellfish operation license and a valid harvest site certificate; or

(c) Fails to maintain each container of shellfish properly tagged or labeled as required by chapter 69.30 RCW, these rules, and the NSSP Model Ordinance.

(3) If the department determines during an inspection or investigation that there is reasonable cause to believe that shellfish is potentially unsafe for human consumption, then the department may issue a hold order prohibiting the disposition or sale of the shellfish pending further investigation by the department of the safety of the shellfish.

(a) The department must complete its further investigation within ten days.

(b) At the conclusion of the investigation, the department may release the shellfish for sale or issue a written abatement order regarding the shellfish.

(c) Any person in possession of shellfish for which the department has issued a hold order must store the shellfish in a suitable place prescribed by the department and prevent the shellfish from being offered for human consumption or other use until:

(i) The hold order is lifted by the department or by a court of competent jurisdiction; or

(ii) The person disposes of the shellfish in accordance with an abatement order issued by the department.

(4) Shellfish that the department seizes or places under a hold order and determines are unsafe for human consumption are subject to such abatement as the department considers appropriate. The department may require any one or more of the following measures be taken by a person in possession of shellfish that are the subject of an abatement order:

(a) Permanent prohibition on the disposition of the shellfish for human consumption;

(b) Immediate destruction of the shellfish by measures such as denaturing and placing in a sanitary landfill, wit-

nessed by an authorized representative of the department who provides a record of destruction to the person; or

(c) Temporary prohibition on the disposition of the shellfish for human consumption pending relay to an approved growing area for a sufficient period of time to assure natural purification of the shellfish.

(5) The secretary may issue an abatement order to the owner or person in charge of a shellfish operation whenever the department, after conducting an appropriate investigation, determines that a shellfish operation, or person working on behalf of a shellfish operation, presents a potential risk for transmitting an infectious disease to consumers of shellfish.

(a) The secretary may require any or all of the following measures be taken by the owner or person in charge of a shellfish operation who is issued the abatement order:

(i) Immediate closure of the shellfish operation until, in the opinion of the secretary, no further danger of a disease outbreak exists;

(ii) Immediate exclusion of any person suspected to be infected with a disease agent transmissible through food from all activities with the shellfish operation; and

(iii) Restriction of the activities of any person who is suspected to be infected with a disease agent transmissible through food to some area of the shellfish operation where there would be no danger of the person transmitting disease agents to shellfish consumers.

(b) As an alternative to the abatement order described in this section, the secretary may require the owner, or any person working on behalf of the shellfish operation to submit to adequate medical and laboratory examinations, including examination of their bodily discharges as needed to determine if the person is infected with a microbial agent transmissible through food.

(6) No person may remove or alter a notice or tag constituting a hold order or abatement order placed on shellfish by the department.

(7) No person may relabel, repack, reprocess, alter, dispose of, destroy, or release shellfish or containers of shellfish for which the department has issued a hold order or abatement order without:

(a) Permission of the department; or

(b) An order by a court of competent jurisdiction.

(8) If the owner or person in charge of a shellfish operation fails to comply with a hold order or an abatement order issued according to this section, then the department may revoke the license of the shellfish operation or initiate other legal enforcement proceedings authorized by law.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-110, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-110, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030 and 43.20.050. WSR 85-21-048 (Order 296), § 248-58-090, filed 10/14/85. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-090, filed 7/24/78; Regulation 58.090, effective 3/11/60.]

WAC 246-282-120 Penalty clause. Any person found violating any of the provisions of these regulations or chapter 69.30 RCW is guilty of a gross misdemeanor, and upon conviction will be subject to:

(1) A fine; or

(2) Imprisonment in the county jail of the county in which the offense was committed; or

(3) Both fine and imprisonment.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-120, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-120, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030 and 43.20.050. WSR 85-21-048 (Order 296), § 248-58-500, filed 10/14/85. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-500, filed 7/24/78.]

WAC 246-282-130 Separability clause. Should any section, paragraph, clause or phrase of these rules and regulations be declared unconstitutional or invalid for any reason, the remainder of these rules and regulations are not affected.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-130, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-282-130, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 69.30.030. WSR 78-08-059 (Order 163), § 248-58-900, filed 7/24/78.]

WAC 246-282-990 Fees. (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(3) The fee for each export certificate is \$20.00.

(4) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category	Type of Operation	Number of Harvest Sites	Fee
Harvester		≤ 2	\$173
		3 or more	\$259
Shellstock Shipper	0 - 49 acres	≤ 2	\$195
		3 or more	\$292
Shellstock Shipper		N/A	\$468

(6/3/14)

Fee Category

Type of Operation	Number of Harvest Sites	Fee
50 or greater acres		
Shucker-Packer (plants < 2000 ft ²)	≤ 2	\$354
Shucker-Packer (plants < 2000 ft ²)	3 or more	\$533
Shucker-Packer (plants 2000 - 5000 ft ²)	≤ 2	\$429
Shucker-Packer (plants 2000 - 5000 ft ²)	3 or more	\$644
Shucker-Packer (plants > 5000 ft ²)	N/A	\$1,189

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	\$9,140
Discovery Bay Shellfish	\$2,226
Jamestown S'Klallam Tribe	\$2,226
Lower Elwha Klallam Tribe	\$3,515
Lummi Nation	\$703
Nisqually Tribe	\$2,461
Port Gamble S'Klallam Tribe	\$3,749
Puyallup Tribe of Indians	\$9,257
Squaxin Island Tribe	\$2,109
Suquamish Tribe	\$14,178
Swinomish Tribe	\$820
Taylor Shellfish	\$234
Tulalip Tribe	\$7,382

(6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(7) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

[Statutory Authority: RCW 43.70.250. WSR 14-12-082, § 246-282-990, filed 6/3/14, effective 7/4/14; WSR 13-11-038, § 246-282-990, filed 5/10/13, effective 6/10/13; WSR 12-14-073, § 246-282-990, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 11-19-

011, § 246-282-990, filed 9/7/11, effective 10/8/11. Statutory Authority: RCW 43.70.250. WSR 10-19-034, § 246-282-990, filed 9/9/10, effective 10/10/10; WSR 09-19-067, § 246-282-990, filed 9/14/09, effective 10/15/09; WSR 08-13-067, § 246-282-990, filed 6/13/08, effective 7/14/08; WSR 07-17-159, § 246-282-990, filed 8/21/07, effective 9/21/07; WSR 06-15-131, § 246-282-990, filed 7/19/06, effective 8/19/06; WSR 05-17-120, § 246-282-990, filed 8/17/05, effective 9/17/05; WSR 04-15-154, § 246-282-990, filed 7/21/04, effective 8/21/04; WSR 03-18-093, § 246-282-990, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 43.70.250 and 34.70.250 [43.70.250]. WSR 03-14-037, § 246-282-990, filed 6/23/03, effective 7/24/03. Statutory Authority: RCW 43.70.250 and the 2002 supplemental operating budget. WSR 02-15-094, § 246-282-990, filed 7/16/02, effective 8/16/02. Statutory Authority: RCW 43.70.250, 70.90.150, and 43.20B.250. WSR 01-14-047, § 246-282-990, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-990, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.70.250. WSR 00-02-016, § 246-282-990, filed 12/27/99, effective 1/27/00; WSR 99-12-022, § 246-282-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 98-12-068, § 246-282-990, filed 6/1/98, effective 7/2/98. Statutory Authority: RCW 43.203.020 [43.20B.-020]. WSR 97-12-031, § 246-282-990, filed 5/30/97, effective 6/30/97. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 96-16-073, § 246-282-990, filed 8/6/96, effective 10/1/96. Statutory Authority: RCW 43.70.040. WSR 93-17-096 (Order 389), § 246-282-990, filed 8/17/93, effective 9/17/93; WSR 91-02-049 (Order 121), recodified as § 246-282-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20A.-055. WSR 85-12-029 (Order 2236), § 440-44-065, filed 5/31/85; WSR 84-13-006 (Order 2109), § 440-44-065, filed 6/7/84; WSR 83-15-021 (Order 1991), § 440-44-065, filed 7/14/83. Statutory Authority: 1982 c 201. WSR 82-13-011 (Order 1825), § 440-44-065, filed 6/4/82.]