

WSR 26-01-084

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed December 15, 2025, 8:13 a.m., effective January 15, 2026]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 246-282 WAC, Sanitary control of shellfish. The state board of health (board) has adopted amendments to chapter 246-282 WAC, with the exception of WAC 246-282-990, and created two new sections, WAC 246-282-017 and 246-282-044, to modify harvest control requirements by setting more proactive measures to prevent illnesses and protect public health. The adopted rule also updates definitions, makes changes to seed size and various tagging requirements, and makes technical and editorial changes as needed.

The majority of chapter 246-282 WAC has not been updated since 2002 and 2015 and many of the changes adopted in this rule making are editorial or technical, to enhance readability and conform with the style guide used by the office of the code reviser. In addition to these changes, the adopted rule amends controls found in the Washington state vibrio parahaemolyticus control plan, WAC 246-282-006, to address rising early season temperatures that can result in increased illnesses. The department of health, using delegated rule-making authority from the board, has filed two emergency rules, once in 2023 and again in June 2025, to address this issue. The board also adopted additional changes in chapter 246-282 WAC to address various gaps in the regulation of commercial shellfish and to align with federal regulations.

Citation of Rules Affected by this Order: New WAC 246-282-017 and 246-282-044; and amending WAC 246-282-001, 246-282-005, 246-282-006, 246-282-010, 246-282-012, 246-282-014, 246-282-016, 246-282-020, 246-282-032, 246-282-034, 246-282-036, 246-282-042, 246-282-050, 246-282-060, 246-282-070, 246-282-080, 246-282-082, 246-282-092, 246-282-100, 246-282-102, 246-282-104, 246-282-110, 246-282-120, and 246-282-130.

Statutory Authority for Adoption: RCW 69.30.030 and 43.20.050.

Adopted under notice filed as WSR 25-18-076 on August 29, 2025.

Changes Other than Editing from Proposed to Adopted Version: Several nonsignificant corrections were made based on comments received during the formal comment period. They include grammar and citation edits, as well as clarifications that do not change the effect of the rule.

- Removed a redundant sentence in WAC 246-282-010.
- Removed an unnecessary clause in WAC 246-282-012, 246-282-014, 246-282-020, and 246-282-080.
- Made edits in WAC 246-282-016, 246-282-044, and 246-282-082 to provide clarity to the rule and to correct a citation.
- Corrected a citation related to adjudicative proceedings in WAC 24-282-100.
- Made grammatical edits in WAC 246-282-102 and 246-282-110.

A final cost-benefit analysis is available by contacting Shay Bauman, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4110, TTY 711, email shay.bauman@sboh.wa.gov, website <https://sboh.wa.gov/>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 24, Repealed 0.

Date Adopted: November 19, 2025.

Michelle A. Davis, MPA
Executive Director

RDS-6417.3

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

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 or bait. 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.

AMENDATORY SECTION (Amending WSR 25-06-081, filed 3/4/25, effective 4/4/25)

WAC 246-282-005 Minimum performance standards. (1) ((Any)) A person engaged in a shellfish operation ((~~or~~)) possessing a commercial quantity of shellfish, or possessing any quantity of shellfish for sale for human consumption or bait, 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 (2023) (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~~)) environmental health and safety);

(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~~) environmental health and safety; (~~and~~)

(c) Chapter 69.30 RCW; and

(d) 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.

AMENDATORY SECTION (Amending WSR 15-08-083, filed 3/31/15, effective 5/1/15)

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) This section establishes the (~~Washington state~~) *Vibrio parahaemolyticus* (Vp) control plan (control plan) for the months of May 1st through September 30th (control months). The requirements of this section are an extension of the NSSP Model Ordinance.

(2) (~~All~~) A harvester(~~s and~~) or shellfish dealer(~~s~~) harvesting or delivering oysters to a certified shucker packer for shucking or postharvest processing (PHP) during the control months (~~must~~) shall label the oysters with a harvest tag stating "For shucking by a certified dealer" or "For PHP by a certified dealer." Oysters harvested and tagged in compliance with this subsection are exempt from subsections (3) through (~~20~~) (23) of this section.

(3) (~~The following definitions apply throughout this section:~~

(a) ~~"Single source *Vibrio parahaemolyticus* case" or "case" means a laboratory confirmed *Vibrio parahaemolyticus* associated illness or illnesses with a common exposure that are reported to the department. The case must:~~

(i) ~~Be associated with commercially harvested shellstock;~~

(ii) ~~Not involve documented postharvest abuse; and~~

(iii) ~~Be traced back to a single growing area.~~

(b) ~~"Control months" means May 1st through September 30th.~~

(c) ~~"Cool" or "cooling" means to:~~

(i) ~~Adequately ice or place in a controlled environment with a temperature of 45°F (7.2°C) or less; and~~

(ii) ~~Reach and maintain an internal oyster tissue temperature of 50°F (10°C) or less.~~

(d) ~~"Harvest temperature" means the water temperature or internal oyster tissue temperature at the time of harvest. The harvester or shellfish dealer shall state whether they use water temperature or internal oyster tissue temperature for harvest temperature in their harvest plan.~~

(4) ~~All~~) A harvester(~~s and~~) or shellfish dealer(~~s~~) harvesting or processing oysters during the control months shall report the volume of oysters harvested or processed. This information must be reported by month, oyster species, size class, utilization type (raw, shucked, postharvest processed), and growing area for all control months. This information must be compiled and reported to the department by December 31st (~~each year~~) annually. A harvester(~~s and~~) or shellfish dealer(~~s~~) that (~~do~~) does not submit this information to the department may not harvest oysters during the control months during the next calendar year.

(~~5~~) (4) A harvester(~~s and~~) or shellfish dealer(~~s~~) harvesting oysters during the control months shall complete, submit to

the department, and keep on file a current (~~(*Vibrio parahaemolyticus*)~~) Vp harvest plan of operations (harvest plan). (~~(In order for the department to review the harvest plan prior to May 1st,)~~) The harvest plan must be submitted (by March 1st each year) to the department for review at least 14 calendar days before the first planned harvest within the control months unless no changes have been made to the existing harvest plan. Each harvester(s) or shellfish dealer(s) shall sign and date their harvest plan each year and make it available to the department upon request.

~~((6))~~ (5) The harvest plan must include, at a minimum:

(a) ~~((Describe))~~ The harvest, temperature collection, cooling, and conveyance methods(-);

(b) ~~((Include))~~ An example of the harvest temperature record designed to meet the requirements in subsection ~~((11))~~ (10) of this section(-); and

(c) ~~((Identify))~~ If water temperature or internal oyster tissue temperature (~~(is)~~) will be used as the harvest temperature to meet the requirements in subsection ~~((11))~~ (10) of this section and specifically how this measurement will be taken.

~~((7))~~ (6) The department shall review and either approve or deny the harvest plan within ~~((thirty))~~ 14 calendar days of receipt. If the department denies approval of the harvest plan, the department shall notify the applicant of the decision in writing stating the reasons for the denial and providing the opportunity to correct the deficiencies. A harvester(s) or shellfish dealer(s) may not harvest oysters during the control months unless the department has approved the plan.

(7) A harvester or shellfish dealer shall follow their approved harvest plan. Failure to follow the approved harvest plan subjects the shellfish operation to actions in WAC 246-282-110.

(8) Time of harvest to cooling requirements and harvest controls are based on a risk categorization of each growing area. The department shall assign each growing area a category of 1, 2, or 3, ~~((+))~~ where 1 corresponds to the least stringent and 3 the most stringent harvest controls(+). These categories are based on the number of single source cases that occurred during the previous consecutive five-year period that were within the control months and ~~((were))~~ attributed to that growing area.

~~((9))~~ (The department shall categorize coastal growing areas in Willapa Bay and Grays Harbor as Category 1 for the first year of implementation attributing no illnesses to these areas for the years 2010 to 2014. For subsequent years, the department shall categorize coastal growing areas based on the criteria in subsection (8) of this section.

~~((10))~~ The department shall complete risk categorization and publish a list of all growing areas by risk category ~~((no later than))~~ by February 1st annually. The department shall use a rolling five-year average number of cases to calculate risk categories as follows:

(a) Category 1: An average of 0.2 or fewer cases attributed to the growing area over a five-year period.

(b) Category 2: An average of more than 0.2, but less than 1.0 cases attributed to the growing area over a five-year period.

(c) Category 3: An average of 1.0 or more cases attributed to the growing area over a five-year period.

~~((11))~~ Time of harvest begins after the first oysters to be harvested are exposed to the air.) (10) Time of harvest to cooling requirements ~~((and harvest controls are as follows:))~~ during control

months are listed in the tables in (a), (b), and (c) of this subsection. If multiple conditions apply at the time of harvest, then the most stringent time of harvest to cooling must be used.

(a) Category 1:

<u>((Requirements)) Condition at Harvest:</u>	<u>Time of Harvest to Cooling:</u>
Except as noted below, the time of harvest to cooling requirement ((from June 1st through September 30th)) is:	9 hours
When ambient air temperature ((at harvest is greater than 90°F, the time of harvest to cooling requirement)) is 90.0°F or above:	7 hours
When harvest temperature is ((between 68°F and 70°F from July 1st through August 31st, the time of harvest to cooling requirement is)) 68.0°F to 70.0°F:	5 hours
((Harvest Control: From July 1st through August 31st, harvest is not allowed for twenty-four hours)) When harvest temperature is above 70.0°F(=):	<u>Harvest is not allowed for 24 hours</u>

(b) Category 2:

<u>((Requirements)) Condition at Harvest:</u>	<u>Time of Harvest to Cooling:</u>
Except as noted below, the time of harvest to cooling requirement ((from May 1st through September 30th)) is:	7 hours
When ambient air temperature ((at harvest is greater than 85°F, the time of harvest to cooling requirement)) is 85.0°F or above:	5 hours
When harvest temperature is ((between 66°F and 68°F from July 1st through August 31st, the time of harvest to cooling requirement is)) 66.0°F to 68.0°F:	3 hours
((Harvest Control: From July 1st through August 31st, harvest is not allowed for twenty-four hours)) When harvest temperature is above 68.0°F(=):	<u>Harvest is not allowed for 24 hours</u>

(c) Category 3:

<u>((Requirements)) Condition at Harvest:</u>	<u>Time of Harvest to Cooling:</u>
Except as noted below, the time of harvest to cooling requirement ((from May 1st through September 30th)) is:	5 hours
When ambient air temperature ((at harvest is greater than 80°F, the time of harvest to cooling requirement)) is 80.0°F or above:	3 hours

((Requirements)) <u>Condition at Harvest:</u>	<u>Time of Harvest to Cooling:</u>
When <u>harvest temperature is</u> ((between 64°F and 66°F from July 1st through August 31st, the time of harvest to cooling requirement is)) <u>64.0°F to 66.0°F:</u>	1 hour
((Harvest Control: From July 1st through August 31st, harvest is not allowed for twenty-four hours)) <u>When harvest temperature is above 66.0°F(=):</u>	<u>Harvest is not allowed for 24 hours</u>

(d) When a harvester or shellfish dealer places oysters in a container or conveyance, but does not remove them from the ~~((tide flat))~~ harvest site as part of their harvest ~~((and the harvest exceeds the time to cooling requirements in subsection (11) of this section, then)),~~ the following conditions must be met:

(i) The harvester or shellfish dealer shall hold a valid site certification for that site;

(ii) The oysters in the container or conveyance must be returned to approximately the same tidal level or lower than where they were collected; and

(iii) The oysters must be covered by the tide for a minimum of four hours before harvest can be completed.

~~((12) Harvesters and shellfish dealers shall take the following measurements at the times specified below and record this information in a harvest temperature record for each harvest site for all harvests occurring within the control months.))~~ (11) A harvester or shellfish dealer shall record and maintain a harvest temperature record for each harvest site for all harvests during the control months. The harvest temperature record must be maintained for three years and made available to the department upon request. The following measurements must be taken at the date, time, and location of harvest and recorded in the harvest temperature record:

(a) Air temperature; and

(b) Harvest temperature. A harvester or shellfish dealer using water temperature for the harvest temperature must take the water temperature at the depth of oysters unless another method is documented in their harvest plan.

(12) A harvester ~~((s and))~~ or shellfish dealer ~~((s))~~ shall take ~~((these))~~ the measurements required by subsection (11) of this section with ~~((a))~~ either:

(a) A thin-tip digital thermometer that is verified ~~((weekly))~~ monthly using manufacturer specifications or with a method approved in a harvest plan ~~((. Thermometer verification must be documented and maintained))~~; or

(b) A thermometer certified by the National Institute of Standards and Technology (NIST) with a manufacturer certificate that does not need to be verified monthly.

(13) A harvester or shellfish dealer using a thermometer according to subsection (12) (a) of this section shall document and maintain the thermometer verification with operational records. ~~((Harvesters and shellfish dealers shall record the following measurements and the date and time they were taken in the record, maintain the record for three years, and make the record available to the department upon request:))~~

~~((a) Air temperature at time and location of harvest; and~~

~~(b) Harvest temperature at time and location of harvest. Harvesters and shellfish dealers using water temperature for harvest temperature shall take water temperature at depth of oysters unless another method is documented in their harvest plan.~~

~~(13))~~ (14) A harvester or shellfish dealer using a thermometer according to subsection (12)(b) of this section shall keep the manufacturer certificate with operational records.

(15) A harvester((s-and)) or shellfish dealer((s)) shall initiate cooling as soon as practical from the time of harvest and within the time of harvest to cooling requirements for the growing area where the oysters were harvested to ensure that the Vp growth is minimized and maximum ((number of)) time of harvest to cooling hours specified in subsection (10) of this section is not exceeded.

~~((14))~~ (16) If shellstock is beach wet stored or stored in a flow-through wet storage system in a growing area with a different risk category than where it was harvested, the more stringent time of harvest to cooling requirement must be used.

(17) If the required time of harvest to cooling requirements are not met after removal from the ((tide flat)) harvest site, the harvester or shellfish dealer shall dispose of the oysters using one of the methods below and record the disposition on the harvest record:

(a) Destroy the oysters;

(b) Place the oysters within the original growing area or another approved growing area and allow a minimum of ((fourteen)) 14 days before reharvesting; or

(c) Deliver the oysters to a certified shucker packer for shucking or PHP and attach a harvest tag meeting the requirements in subsection (2) of this section.

~~((15))~~ (18) If ownership of oysters is transferred ((prior to)) before the oysters ((being)) are cooled ((in accordance with the time of harvest to cooling requirements)) to an internal temperature of 50.0°F or less, the receiving dealer shall meet the time of cooling requirement outlined in subsection (10) of this section. The harvester shall ((include in the harvest record required under WAC 246-282-080 the)) provide the following information to the receiving dealer:

(a) Temperatures recorded under subsection ((12)) (11) of this section;

(b) Date, time, and name of the person or entity ((to whom the oysters were transferred)) who received the oysters; ((and))

(c) Growing area risk category for the harvested ((product.

~~(d) The receiving shellfish dealer shall meet the time of harvest to cooling requirements for the original harvest time.~~

~~(16) *Vibrio parahaemolyticus* training requirements are as follows:~~

~~(a)) oysters; and~~

(d) The total time of harvest to cooling for the oysters based on the growing area risk category. If shellstock is wet stored after purchase, the purchasing dealer shall comply with subsection (16) of this section.

(19) A harvester((s-and)) or shellfish dealer((s)) shall complete an initial department-approved training specific to the requirements of this section ((prior to)) before harvesting or shipping oysters during the control months.

~~((b))~~ (a) A harvester((s-and)) or shellfish dealer((s)) shall complete department-approved refresher training within one year following any revision of this ((rule)) section considered significant under RCW 34.05.328 or at least every five years.

~~((e) Those))~~ (b) A person responsible for the on-site management of harvest activities must be trained by either

~~(i) Harvesters and shellfish dealers at their operation who completed the department approved training; or~~

~~(ii) The department)~~ the department or a person who completed the department approved training within the last five years.

~~((d))~~ (c) A harvester((s and)) or shellfish dealer((s)) shall maintain a record ((those trained in their operational records)) of all persons who completed training.

~~((17))~~ (20) A harvester or shellfish dealer may request a waiver from specific requirements of this section from the department. The request must:

(a) Be in writing;

(b) Identify the requirement requested to be waived;

(c) State the reason for the waiver; and

(d) Provide supporting information.

~~((18))~~ (21) The department may grant a waiver request if it:

(a) Is consistent with the applicable standards and the intent of this section; and

(b) Provides a comparable level of public health protection to the requirement being waived.

~~((19))~~ (22) If the department approves a waiver request, the department shall notify the requestor of the decision in writing.

~~((20))~~ (23) If the department denies a waiver request, the department shall notify the requestor of the decision in writing stating the reasons for the denial. The requestor shall comply with the provision that was the subject of the waiver request.

~~((21) The department shall review this section to evaluate the effectiveness of the rules and determine areas where revisions may be necessary by November 2017.)~~ (24) For the purposes of this section:

(a) "Control months" means May 1st through September 30th.

(b) "Cool" or "cooling" means to:

(i) Adequately ice or place in a controlled environment with a temperature of 45.0°F (7.2°C) or less; and

(ii) Reach and maintain an internal oyster tissue temperature of 50.0°F (10.0°C) or less.

(c) "Harvest temperature" means the water temperature or internal oyster tissue temperature when harvested.

(d) "Single source Vp case" or "case" means a laboratory-confirmed Vp associated illness or illnesses with a common exposure that are reported to the department. The case must:

(i) Be associated with commercially harvested shellstock;

(ii) Not involve documented postharvest abuse; and

(iii) Be traced back to a single growing area.

(e) "Time of harvest" begins when the first oyster to be harvested in a lot is removed from the water or is no longer submerged by the tide.

AMENDATORY SECTION (Amending WSR 14-09-003, filed 4/3/14, effective 5/4/14)

WAC 246-282-010 Definitions. The ~~((following))~~ definitions in this section, as well as those in chapter 69.30 RCW and the NSSP Model Ordinance, apply ~~((in the interpretation and the implementation of~~

~~these rules and regulations))~~ throughout chapter 246-282 WAC unless the context clearly requires otherwise.

(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))~~ department.

(2) "Approved" means acceptable to ~~((the secretary based on the department's determination as to))~~ the department based on 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) "Beach wet storage" or "beach wet stored" means when shellstock greater than maximum seed size is harvested from one harvest site and placed in another harvest site for less than 14 days.

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

~~((5))~~ (6) "Civil penalty" means a monetary penalty administratively issued by the ~~((secretary))~~ department. 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 using proper transportation conveyances 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) "Marina" means any water area with a structure including, but not limited to, docks, basins, floating docks, or mooring buoys used for docking and constructed to provide temporary or permanent

docking or buoy moorage space for more than 10 boats. This only includes boats with a marine sanitation device.

(16) "Mooring area" means any portion of a growing area that is used to provide temporary or permanent anchorage or attachment to a mooring buoy for more than 10 boats. This only includes boats with a marine sanitation device.

(17) "Mooring buoy" means a floating marker permanently secured to a waterway bed with an anchoring line that can be used by boats instead of a dock.

(18) "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))~~ (19) "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))~~ (20) "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))~~ (21) "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))~~ (22) "Person in charge" means an individual responsible for the supervision of employees and the management of any shellfish operation.

~~((21))~~ (23) "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))~~ (24) "Sale" means to sell; offer for sale; barter; trade; deliver; consign; hold for sale, consignment, barter, trade, or delivery; donate; 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))~~ (25) "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 ~~((Kumomoto)) Kumamoto~~ oysters;

(e) ~~((Fifty-one)) Thirty-eight~~ millimeters ~~((2)) 1~~ and 1/2 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))~~ (26) "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))~~ (27) "Shellfish dealer" means a person with a shellstock shipper or shucker-packer license.

~~((27))~~ (28) "Shellfish growing area" means the classified lands and waters in and upon which shellfish ~~((are))~~ may be grown for harvesting in commercial quantities or for sale for human consumption.

~~((28))~~ (29) "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))~~ (30) "Shellfish operation license" means a type of certificate of approval applying to the overall activities of a shellfish operation.

~~((30))~~ (31) "Shellstock shipper" means a shellfish operation that does not shuck shellfish or repack shucked shellfish.

~~((31))~~ (32) "Shucker-packer" means a shellfish operation that may shuck and pack shellfish.

~~((32))~~ (33) "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))~~ (34) "Transplant" means when shellstock greater than maximum seed size is moved from one harvest site and placed in another harvest site for 14 days or more.

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

~~((34))~~ (36) "Wet storage" or "wet stored" means the ~~((temporary storage))~~ placement of harvested shellstock in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater. Types of wet storage include beach wet storage, flow-through wet storage, and recirculating wet storage.

~~((35))~~ (37) "Wild seed" means naturally set seed shellfish.

AMENDATORY SECTION (Amending WSR 11-19-011, filed 9/7/11, effective 10/8/11)

WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates. (1) The department shall issue ~~((s two types of))~~ the following certificates of approval to a person ~~((s))~~ who conducts shellfish operations ~~((. They are))~~ and meets the requirements in this chapter and chapter 69.30 RCW:

(a) A shellfish operation license ~~((s))~~; and

(b) A harvest site certificate ~~((s))~~.

(2) ~~((Any))~~ A 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,))~~ engaged in the actions listed in WAC 246-282-005(1) must have a valid shellfish operation license.

~~((To obtain))~~ (3) An applicant for a shellfish operation li-
cense ~~((, a person must))~~ shall:

~~(a) Submit to the department a ((completed))~~ complete application
on a form ~~((developed))~~ provided by the department ~~((~~

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

~~((e))~~ (b) Pass a preoperational inspection demonstrating com-
pliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordina-
nance; and

~~((d))~~ (c) Pay the ((department any shellfish operation li-
icense)) applicable fee required by ((this chapter)) WAC 246-282-990.

~~((3) Any person who harvests))~~ (4) A person harvesting a commer-
cial quantity of shellfish or any quantity of shellfish for sale for
human consumption ((must possess, or act on behalf of a person who
possesses,)) or bait shall have a valid harvest site certificate. ((In
order for a person to obtain a harvest site certificate, all of the
following requirements must be met.))

(5) To qualify for a harvest site certificate, an applicant
shall:

~~((The person possesses))~~ Have a valid shellfish operation li-
cense ~~((~~);

~~((The person))~~ Submit ~~((s))~~ to the department a completed ap-
plication ~~((that describes))~~ on a form provided by the department. The
form must require, at a minimum, the following characteristics ((of))
describing 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, depart-
ment of fish and wildlife catch area number, or tribal identification
number; and

(iv) Documentation of legal ownership or lease for shellfish har-
vesting ~~((~~

~~(c) The harvest site is in a growing area that meets the require-~~
~~ments 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 man-~~
~~agement plan, if applicable.~~

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

(c) Pay the applicable fee required by WAC 246-282-990.

~~((4) All))~~ (6) The department shall issue a harvest site certif-
icate if all of the requirements in subsection (5) of this section are
met and:

(a) The harvest site is in a growing area that meets the require-
ments of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance
for a shellfish growing area;

(b) The harvest site is not impacted by any actual or potential
sources of pollution. If necessary to determine whether the site is
impacted by any actual or potential sources of pollution, the harvest
site must pass a pollution assessment inspection conducted by the de-
partment; and

(c) The applicant signs the current conditionally approved area management plan, if applicable.

(7) A shellfish operation license((s)) and harvest site certificate((s)) for a shellfish dealer((s)) expires on ((the thirtieth day of June each year)) June 30th annually. ((All))

(8) A shellfish operation license((s)) and harvest site certificate((s)) for a harvester((s)) expires on ((the thirty-first day of March each year)) March 31st annually.

AMENDATORY SECTION (Amending WSR 01-04-054, 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))~~ A person engaged in the actions listed in WAC 246-282-005(1) shall show a valid shellfish operation license, upon request, to ~~((any))~~ an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The shellfish operation license can be an electronic copy, photocopy, or the original issued by the department. 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 person harvesting a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption ((must display a photocopy or original of)) or bait shall show a valid harvest site certificate, upon request, to ~~((any))~~ an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The harvest site certificate can be an electronic copy, photocopy, or the original issued by the department. 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 person placing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption or bait in containers at a harvest site ((must do so only at a site for which the person possesses)) shall have a valid harvest site certificate.

(4) The owner(s) of a shellfish operation ~~((must))~~ shall 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))~~ shall:

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

(b) Ensure the individuals harvesting on behalf of the operation furnish shellfish tags ((meeting)) that comply with the requirements of chapter 69.30 RCW, ~~((these rules))~~ this chapter, 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~~) the 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~~) they have reason to believe that (~~any~~) an individual is using the operation's tags, shellfish operation license, or harvest site certificate for (~~any~~) a purpose other than (~~one~~) a purpose approved by the department.

(6) The designated person in charge of a shellfish operation (~~must~~) shall have a functioning telephone (~~message device or service issued by a telephone service provider~~) with voice mail capabilities and an email address belonging to the owner(s) or person in charge. The person in charge (must) shall:

(a) Monitor the (~~device or service~~) telephone, voice mail inbox, and email 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 or email used for this purpose changes; or

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

AMENDATORY SECTION (Amending WSR 19-14-094, filed 7/1/19, effective 8/1/19)

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.)~~) (1) A person who engages in aquaculture activities must have an aquaculture permit. To qualify for an aquaculture permit approved by the department, the person shall comply with the NSSP Model Ordinance Chapter 6 - Shellfish Aquaculture.

(2) The department shall approve an operation for aquaculture activities in prohibited and unclassified areas if the following requirements are met:

(a) The person has a valid shellfish operation license;

(b) The operation has an aquaculture plan of operations and aquaculture permit approved by the department;

(c) Shellfish must not exceed the defined maximum seed size. The person shall limit the production of seed larger than maximum seed size commingled with the smaller seed to less than five percent of the total number of seed in the lot. Depletion of the shellstock above maximum seed size is required if more than five percent of the seed lot is above maximum seed size;

(d) The beginning of the minimum grow-out period for a lot is the moment when the entire lot is added to the grow-out site;

(e) Shellfish are moved to approved or conditionally approved areas for a minimum of 120 days in open status; and

(f) The initial and grow-out sites are listed on the shellfish dealer's harvest site certificate.

(3) If the person intends to harvest oyster seed, other than Kukumamoto and Olympia, that have a seed size greater than one inch and less than one and one-half inches, from a prohibited or unclassified area, the operation must:

(a) Begin the lot minimum grow-out period the moment when the entire lot is added to the grow-out site; and

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

(4) The department may grant a waiver for a shellfish operation to use a measurement other than length when determining seed size if:

(a) It is consistent with the applicable standards and the intent of this section, as related to market size and 120-day grow-out time;

(b) Studies are completed that determine shellfish growth in the defined time period; and

(c) It provides a comparable level of public health protection to the requirement being waived.

(5) If the department approves a waiver request, the department shall notify the requestor of the decision in writing.

(6) Waiver approval will only be granted for the growing areas evaluated in subsection (4) of this section.

(7) If the department denies a waiver request, the department shall notify the requestor of the decision in writing stating the reasons for the denial.

NEW SECTION

WAC 246-282-017 Mooring areas. In a mooring area with a density of greater than one boat per acre, the department shall conduct a pollution assessment to support the classification of that portion of the growing area in accordance with the NSSP Model Ordinance. The department may amend the density requirement in this section if the mean water depth in an enclosed bay is less than 12 feet or under certain hydrographic conditions where dilution calculations show the area cannot meet 14 fecal coliform/100 ml at the sanitary line.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

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

(a) The department has classified the shellfish 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))~~ when harvested;~~

(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.))~~ A restricted classification will be considered when the department receives a complete application for a permit for relay or wild seed harvest for the site and there is no impact from a wastewater treatment plant or wastewater collection system, marina, combined sewage overflow, or other pathogens of human origin.~~

(3) While a harvest site is in closed status, ~~(())~~ a person may not 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))~~ in all ~~((growing areas))~~ unclassified ~~((by the department))~~ areas except for bait harvest according to WAC 246-282-036 and aquaculture according to WAC 246-282-016.

AMENDATORY SECTION (Amending WSR 11-17-104, filed 8/22/11, effective 9/22/11)

WAC 246-282-032 Relay permit. (1) The department ~~((will))~~ shall issue a relay permit ~~((to a person))~~ to move shellfish from a harvest site in a shellfish growing area classified as ~~(())~~ restricted ~~(())~~ or ~~(())~~ conditionally approved ~~(())~~ in closed status meeting the criteria for ~~(())~~ restricted ~~(())~~ classification ~~((, if all of the following conditions))~~ if the requirements in this section and chapter 69.30 RCW are met.

(2) An applicant for a relay permit shall:

(a) ~~((The person possesses))~~ Have a valid shellfish operation license ~~((-))~~;

(b) ~~((The person possesses))~~ Have 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))~~ Submit a complete application on a form provided by the department and a written plan of operations ((approved by the department)) that completely ((describing)) describes the procedures and conditions of the relay operation ((-));

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

- (i) May 1st through October 31st; and
- (ii) November 1st through April 30~~((-))~~th; and

~~((f) The person pays the department a relay permit application fee or renewal))~~ (e) Pay the applicable fee as required by ~~((this chapter))~~ WAC 246-282-990.

~~((2) Each))~~ (3) The department shall issue a relay permit if all of the requirements in subsection (2) of this section are met and the initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.

(4) A 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))~~ The 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 1,300, with no sample having more than 2,300 ~~((-))~~ ;

(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))~~ Repeat a minimum of once every ~~((twelve))~~ 12 years for a continuing operation and whenever relay conditions change ~~((-))~~ ; and

(d) Document that all samples ~~((must be))~~ are analyzed by an approved laboratory.

~~((3) A person operating under a relay permit must follow all procedures in))~~ (5) The plan of operations ~~((approved by the department, including))~~ required in subsection (2)(c) of this section must describe the following activities:

(a) How staking ~~((or))~~ , marking, or documenting will be done to easily identify the grow-out site ~~((to be easily identified by the person))~~ until the minimum relay period ~~((of time))~~ is passed; and

(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))~~ How the person will relay the 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))~~ (6) The beginning of the minimum relay period for a shellfish lot is the moment when the last part of the lot is added to the grow-out site.

(7) The operation shall keep documentation for each relayed lot, that shows:

(a) A lot identification number;

(b) The species, location, date, and quantity moved from the initial harvest site;

(c) The grow-out location; and

(d) The date of first harvest of any of those shellfish from the grow-out site.

(8) For ~~(each lot of)~~ shellfish relayed to a site for a grow-out period of less than ~~(fourteen)~~ 14 days, a person ~~(must)~~ shall:

(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 2,300 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))~~ (3)(b) of this section, before releasing control of the ~~(shellfish)~~ lot.

~~((5))~~ (9) A person is exempt from ~~(any)~~ fees required by WAC 246-282-990 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))~~ 24 months.

~~((6))~~ (10) A ~~(person's)~~ relay permit issued under this section expires on the same date as the ~~(person's)~~ shellfish operation license.

~~((7))~~ (11) A person is exempt from the provisions of subsection ~~((1)(e))~~ (2)(d) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of ~~((six months))~~ 60 days. Only microbiological contaminants need to be reduced.

~~((8))~~ (12) A person ~~(possessing)~~ must have a valid shellfish operation license ~~(may)~~ to act as an agent for another person ~~(possessing)~~ with a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the relay permit, ~~((provided that))~~ if 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)~~ when harvesting; and

(c) Conducting activities described in the written plan of operations approved by the department for the agent's shellfish operation.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-034 Wild seed permit. (1) The department ~~((will))~~ shall 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 "pro-~~

hibited," if all of the following conditions are met)) prohibited if the requirements in this section and chapter 69.30 RCW are met.

(2) To qualify for a wild seed permit:

(a) The ~~((person possesses))~~ applicant shall:

(i) Have a valid shellfish operation license((-)); and

~~((b) The person possesses))~~ (ii) Have a harvest site certificate listing both the initial harvest site for the seed and the grow-out site((-));

~~((e))~~ (b) The original harvest site ((has)) must have 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))~~ (c) The grow-out site ((is)) must be in a natural body of water classified by the department as ((=)) approved((=)) or ((=)) conditionally approved.((=))

~~((e) The person submits a completed written))~~ (3) To apply for a wild seed permit the applicant shall:

(a) Submit to the department a complete application on a form provided by the department and a written plan of operations ((approved by the department)) that completely ((describing)) describes the procedures of the wild seed operation, including the size distribution of the seed((-)); and

~~((f) The person pays the department a wild seed permit application fee or renewal))~~ (b) Pay the applicable fee as required by ((this chapter)) WAC 246-282-990.

~~((2))~~ (4) A person operating under a wild seed permit ((must)) shall:

(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))~~ 120 days 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))~~ 120 days after initial harvest; and

(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))~~ (5) A wild seed permit issued under this section expires on the same date as the ((person's)) shellfish operation license.

~~((4))~~ (6) 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))~~ (2)(a) through ~~((d))~~ (c) of this section;
- (b) Leaves the seed in the grow-out site for a minimum of ~~((six months))~~ 120 days before final harvest; and
- (c) ~~((Fully describes the seed harvest and grow-out activities in))~~ Submits a written plan of operations ~~((approved by))~~ to the department that completely describes the seed harvest and grow-out activities for the person's shellfish operation license.
- (7) Wild seed harvested from a conditionally approved area in closed status or a restricted area must follow the relay standards listed in WAC 246-282-032.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

- WAC 246-282-036 Bait permit.** (1) The department ~~((will approve and))~~ shall 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.))~~ or from an unclassified area if the requirements in this section and chapter 69.30 RCW are met.
- (2) To qualify for a bait permit:
- (a) The ~~((person possesses))~~ applicant shall:
- (i) Have a valid shellfish operation license((-)); and
~~((b) The person possesses))~~ (ii) Have a valid harvest site certificate for the site((-));
- ~~((e))~~ (b) The harvest site ((is not)) must not be impacted by biotoxin levels that would cause the department to close it for harvest for human consumption((-));
- ~~((d) The person submits a completed written))~~ (3) To apply for a bait permit the applicant shall:
- (a) Submit a complete application to the department on a form provided by the department and written plan of operations ((approved by the department)) that completely ((describing)) describes the procedures of the bait operation((-)); and
- ~~((e) The person pays the department a bait permit application fee or renewal))~~ (b) Pay the applicable fee as required by ((this chapter)) WAC 246-282-990.
- ~~((2))~~ (4) A person operating under a bait permit ((must)) shall:
- (a) Follow all procedures in the plan of operations approved by the department;
- (b) Harvest bait from an area classified as ~~(("prohibited(" or unclassified~~ only during daylight hours;
- (c) Harvest bait from an area classified as ~~(("prohibited(" or unclassified~~ 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))~~ before 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))~~ (5) A bait permit issued under this section expires on the same date as the ((person's)) shellfish operation license.

~~((4) Any))~~ (6) A person possessing a commercial quantity of bait shellfish is exempt from the requirement to obtain a bait permit ((provided)) if 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."

AMENDATORY SECTION (Amending WSR 01-04-054, 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.~~

~~(7) A person's wet storage permit expires on the same date as the person's shellfish operation license.))~~ (1) The department shall issue a wet storage permit for recirculating, flow-through, or beach wet storage if the requirements in this section and chapter 69.30 RCW are met.

(2) To qualify for a wet storage permit the applicant shall:

- (a) Have a valid shellfish operation license;

(b) Have a valid harvest site certificate for the applicable site(s);

(c) Submit to the department a complete application on a form provided by the department and a written plan of operations that completely describes the procedures of the wet storage operation;

(d) Document that the water used for the operation meets the requirements of the NSSP Model Ordinance;

(e) Pass an inspection by the department; and

(f) Pay the applicable fee required by WAC 246-282-990.

(3) If shellstock are beach or flow-through wet stored, the following requirements must be met:

(a) The person shall have a valid wet storage permit for where the shellstock are stored;

(b) Both the original harvest site and the wet storage site must be classified as approved or conditionally approved in open status;

(c) The shellstock must:

(i) Contain a tag as specified in WAC 246-282-080 when moved from one harvest site to another;

(ii) Be identified by lot, with each lot containing shellstock of the same harvest site and date. Shellstock must not be commingled with other lots;

(iii) Be held in containers and stored in a manner that ensures the free flow of water to all shellstock; and

(iv) Be tagged according to requirements listed in WAC 246-282-080 once harvested.

(4) If shellstock are wet stored in a recirculating system, the following requirements must be met:

(a) The person shall have a valid wet storage permit for where the shellstock are stored;

(b) The operation shall undergo and pass a validation study as described in the NSSP Model Ordinance;

(c) The operation shall maintain water testing requirements as described in the NSSP Model Ordinance;

(d) The shellstock must:

(i) Contain a tag as specified in WAC 246-282-080;

(ii) Be identified by lot, with each lot containing shellstock of the same harvest site and date. The shellstock must not be commingled with other lots; and

(iii) Be held in containers and stored in a manner that ensures the free flow of water to all shellstock; and

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

(5) If shellstock is wet stored for less than 14 days, the shellstock will keep the characteristics and properties of the original harvest site.

(6) If shellstock is wet stored, excluding a recirculating wet storage system, on a site for 14 days or more, the shellstock will take on the characteristics and properties of that harvest site and be considered transplanted. These shellstock must meet the requirements under WAC 246-282-044.

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

(8) A wet storage permit issued under this section expires on the same date as the shellfish operation license.

NEW SECTION

WAC 246-282-044 Transplant. (1) To transplant shellstock, the following requirements must be met:

- (a) The person shall have a valid shellfish operation license;
 - (b) The person shall have a valid harvest site certificate for the original harvest site(s) and the original harvest site(s) are classified as approved or conditionally approved in the open status.
 - (c) The person shall have a valid harvest site certificate for the grow-out site(s);
 - (d) During transit, the shellstock must be identified by tagging or other methods approved by the department. The identification must include:
 - (i) The date the shellstock was removed from the original harvest site(s);
 - (ii) The quantity of shellstock;
 - (iii) The species of shellstock; and
 - (iv) The original harvest site(s) and grow-out site(s); and
 - (e) The operation shall keep and maintain accurate and detailed records of the original harvest site, transplant method, and destination of transplanted shellstock for one year.
- (2) After 14 days, the shellstock will take on the characteristics and properties of the transplant site.
- (3) While in transit, shellstock under this section are exempt from the requirements in WAC 246-282-006.

AMENDATORY SECTION (Amending WSR 01-04-054, 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))~~ A person who packs, handles, or stores shucked shellfish or operates a shucked shellfish repacking plant ((must)) shall meet all the requirements specified in this chapter and the NSSP Model Ordinance for packing plants.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-060 Personal health and cleanliness. (1) ~~((Any))~~ A person may not work in any growing area, shucking, packing, or repacking plant in any capacity when 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))~~ A person who is an owner, a person in charge, or an employee of a shellfish operation must practice good personal cleanli-

ness while handling shellfish. ~~((These))~~ The person ~~((s-must))~~ shall wash their hands thoroughly with soap and water before ~~((starting to handle))~~ handling 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 food-borne illness transmitted through shellfish, ~~((then the secretary))~~ it may require medical examination of that person and laboratory examination of clinical specimens from that person to determine presence of infection. ~~((Any))~~ A person failing to ~~((obtain))~~ get an examination required by the ~~((secretary))~~ department 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.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-070 Construction and maintenance. (1) ~~((All owners and persons))~~ An owner or person in charge of shellfish operations ~~((must))~~ shall 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))~~ An owner of a shellfish operation ~~((must))~~ shall submit to the department for consultation properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities at least ~~((thirty))~~ 30 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))~~ shall review properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities required by subsection (2) of this section within ~~((thirty))~~ 30 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.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-080 Identification and records. (1) ~~((Any))~~ A person ~~((who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess))~~ engaged in the actions listed in WAC 246-282-005(1) shall have a written record documenting that the shellfish came from one or more of the following sources:

- (a) A harvest ~~((site(s)))~~ site or sites for which the person ~~((possesses))~~ has 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))~~ complies with the requirements of the NSSP Model Ordinance.

nance 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 person possessing a commercial quantity of shellstock or any quantity of shellstock for sale for human consumption ((must)) or bait shall 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))~~ If the person possessing shellstock in subsection (2) of this section is the harvester, the tag must include the growing area name and either the department harvest site application number (ex: 2012-23), harvest ID, parcel number, or other approved harvest site identifier. This information must be listed on the harvester tag, harvest record, and harvest site certificate.

(4) When retagging shellstock, the dealer tag must have the exact harvest site information as provided on the original harvest tag.

(5) A person ~~((who packs))~~ packing a commercial quantity of shucked shellfish or any quantity of shucked shellfish for sale for human consumption ~~((must do so))~~ or bait, shall pack the shellfish 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))~~ (6) The owner or person in charge of a shellfish operation ~~((must))~~ shall 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)~~ (7) The harvester-shipper shall ~~((include))~~ record the following:

(a) Location of harvesting area(s) by name or code ~~((r))~~;

(b) Name and quantity of shellfish ~~((r))~~;

(c) Date of harvest ~~((r))~~; and

(d) Date shipped.

~~((6))~~ (8) All tags for shellstock and labels for containers of shucked shellfish required by this section ~~((must be used))~~ are only for use with the original lot of shellfish for which they were intended and must not be reused.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-082 Export certificate. (1) The department ~~((will))~~ shall issue an export certificate to a shellfish dealer for a specific lot of shellfish if ~~((the dealer:~~

~~(1) Is exporting))~~ all requirements are met.

(2) To qualify for an export certificate from the department, a shellfish dealer shall:

(a) Be exporting the lot to ~~((an Asian))~~ a country that requires a production certificate from a governmental health authority;

~~((2) Possesses a))~~ (b) Have a valid shellfish operation license issued by the ~~((secretary))~~ department;

~~((3) Is in compliance))~~ (c) Comply with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance;

~~((4) Completes an application specified))~~ (d) Submit to the department a complete application on a form provided by the department;
~~((5))~~ (e) Document~~((s))~~ use of each export certificate as specified by the department; and
~~((6) Pays the department any fee for each export certificate))~~
(f) Pay the applicable fee required by ~~((this chapter))~~ WAC 246-282-990.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-092 Inspection by department. (1) The department ~~((enters and inspects any))~~ may enter or inspect a harvest site, physical facility, records, 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 shall inspect~~((s))~~ each shellfish operation:
 (a) A minimum of once per year;
 (b) Before issuing a new shellfish operation license to a person;
 (c) Within 30 days after issuing a new shellfish operation li-
cence;

(d) Before a shellfish operation uses any physical facility for the first time; and

~~((d))~~ (e) Before the shellfish operation uses any extensively remodeled physical facility.

(3) If the department determines by inspection or investigation that an owner, person in charge, or ~~((any))~~ a 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))~~ shall have free and unimpeded access to any of the following ~~((in order))~~ to determine whether the operation ~~((is in compliance))~~ complies 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.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-100 Notice of decision—Adjudicative proceeding.

(1) (~~The department's~~) A notice of a denial, suspension, modification, or revocation of a license (~~is consistent~~) from the department must comply 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~~) A notice of imposition of a civil penalty (~~is consistent~~) from the department must comply with RCW 43.70.095. A person (~~upon whom the department imposes~~) who receives a civil fine from the department 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~~) who receives a notice as described in subsection (1) or (2) of this section from the department, may contest a department decision, within (~~twenty-eight~~) 28 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~~) shall 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~~) 246-10 WAC. If a provision in this chapter conflicts with chapter (~~246-08~~) 246-10 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

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~~) this chapter, or the NSSP Model Ordinance;
- (b) Refuses an inspection by the department;

(c) Harvests shellfish from any harvest site for which the ~~((secretary))~~ department 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))~~ this chapter;

(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 inspection or investigation;

(h) Aids another person in violating any requirement of chapter 69.30 RCW, ~~((these rules))~~ this chapter, 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) The department may treat violations of chapter 69.30 RCW, ~~((these rules))~~ this chapter, 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.

AMENDATORY SECTION (Amending WSR 01-04-054, 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 either a proportionate adjustment is warranted ~~((and/))~~ or there are aggravating or mitigating factors present or both.

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(~~τ~~) 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(~~τ~~) including, but not limited to, revocation of the license.

(8) The department will consider circumstances that decrease the seriousness of a violation(~~τ~~) 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))~~ Voluntarily 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))~~ \$500 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 the purpose~~((s))~~ 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.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

- WAC 246-282-110 Administrative provisions.** (1) If the department finds during an inspection that ~~((any))~~ an 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))~~ must specify how the operation fails to comply with chapter 69.30 RCW ~~((and these rules. It specifies))~~, this chapter, or the NSSP Model Ordinance. The statement of deficiencies or notice of correction must also specify a reasonable period ~~((of time))~~ for the owner or person in charge to correct the violation(s).
- (b) ~~((In the event))~~ If the owner or person in charge fails to correct the violation(s) specified in the statement of deficiencies or notice of correction, 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))~~ An authorized representative of the department, fish and wildlife patrol officer or ex officio patrol officer may, without previously providing a statement of deficiencies or notice of correc-

tion, 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))~~ a person who:

(a) Fails to ~~((display))~~ show an original, electronic copy, or photocopy of a valid shellfish operation license;

(b) Is reasonably expected to have harvested the shellfish and fails to ~~((display))~~ show an original, electronic copy, 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))~~ this chapter, 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))~~ 10 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))~~ possessing 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, witnessed 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))~~ department 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))~~ department 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))~~ department, 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))~~ a 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))~~ department may require the owner, or ~~((any))~~ a 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))~~ A person ~~((may))~~ shall not remove or alter a notice or tag constituting a hold order or abatement order placed on shellfish by the department.

(7) ~~((No))~~ A person may not 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.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-120 Penalty clause. ~~((Any))~~ A person found violating any of the provisions of ~~((these regulations))~~ this chapter 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.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-130 ((Separability)) Severability clause. Should any section, paragraph, clause or phrase of these rules and regula-

tions be declared unconstitutional or invalid for any reason, the remainder of these rules and regulations are not affected.