**Chapter 246-282 WAC**

**SANITARY CONTROL OF SHELLFISH**

**Redline Draft Proposed Changes**

**WAC**

[246-282-001](#_WAC_246-282-001_) Scope and purpose.

[246-282-005](#_WAC_246-282-005_)  Minimum performance standards.

[246-282-006](#_WAC_246-282-006_)  Washington state Vibrio parahaemolyticus and Vibrio vulnificus control plan.

[246-282-010](#_WAC_246-282-010_) Definitions.

[246-282-012](#_WAC_246-282-012_) Certificates of approval—Operation licenses, harvest site certificates.

[246-282-014](#_WAC_246-282-014_)  Operating provisions.

[246-282-016](#_WAC_246-282-016_) Aquaculture.

[246-282-017](#_246-282-017_Mooring_areas) NEW SECTION Mooring Areas

[246-282-020](#_WAC_246-282-020_)  Harvest Sites.

[246-282-032](#_WAC_246-282-032_)  Relay permit.

[246-282-034](#_WAC_246-282-034_)  Wild seed permit.

[246-282-036](#_WAC_246-282-036_) Bait permit.

[246-282-042](#_WAC_246-282-042_Transplant)  Transplant and wet storage permit.

[246-282-050](#_WAC_246-282-050_) Packing, handling, and storing of shucked shellfish.

[246-282-060](#_WAC_246-282-060_) Personal health and cleanliness.

[246-282-070](#_WAC_246-282-070_) Construction and maintenance.

[246-282-080](#_WAC_246-282-080_) Identification and records.

[246-282-082](#_WAC_246-282-082_) Export certificate.

[246-282-092](#_WAC_246-282-092_) Inspection by department.

[246-282-100](#_WAC_246-282-100_) Notice of decision—Adjudicative proceeding.

[246-282-102](#_WAC_246-282-102_) Denial, revocation, suspension of license, certificate, or permit—Civil penalties.

[246-282-104](#_WAC_246-282-104_) Penalty assignment—Calculation of penalty and proportionate adjustment—Aggravating and mitigating factors.

[246-282-110](#_WAC_246-282-110_) Administrative provisions.

[246-282-120](#_WAC_246-282-120_) Penalty clause.

[246-282-130](#_WAC_246-282-130_) Separability clause.

~~246-282-990 Fees.~~

## **WAC 246-282-001 Scope and purpose.**

These requirements, as authorized under chapter 69.30 RCW, establish minimum performance standards for the growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption. These requirements do not apply to persons who conduct activities limited to:

(1) Retail food service, in compliance with the requirements of chapter 246-215 WAC, Food service;

(2) Personal use, in compliance with requirements of chapters 77.32 RCW, Licenses, and 77.15 RCW, Fish and wildlife enforcement code; and

(3) Transporting as a common carrier of freight.

## **WAC 246-282-005 Minimum performance standards.**

(1) A person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (2019) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of 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 environmental health and safety);

(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.

## **WAC 246-282-006 Washington state *Vibrio parahaemolyticus* and *Vibrio vulnificus* control plan.**

(1) This section establishes the Washington state *Vibrio parahaemolyticus (Vp)* and *Vibrio vulnificus (Vv)* 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) A harvester or shellfish dealer harvesting or delivering oysters to a certified shucker packer for shucking or postharvest processing (PHP) during the control months must 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 (23) of this section.

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

~~(a) "Single-source~~ *~~Vp or Vv~~* ~~case" or "case" means a laboratory-confirmed~~ *~~Vp or Vv~~* ~~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 when harvested.~~

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

(3) A harvester or shellfish dealer harvesting oysters during the control months shall report the volume of oysters harvested. This information must be reported by month, oyster species, size class, and growing area for all control months. This information must be compiled and reported by December 31st annually. A harvester or shellfish dealer that does not submit this information to the department may not harvest oysters during the control months during the next calendar year.

(4) A harvester or shellfish dealer harvesting oysters during the control months shall complete, submit to the department, and keep on file a current *Vp and Vv* harvest plan of operations (harvest plan). The harvest plan must be submitted 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 or shellfish dealer shall sign and date their harvest plan each year and make it available to the department upon request.

(5) The harvest plan must:

(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 (9) of this section.

(c) Identify if water temperature or internal oyster tissue temperature is used as the harvest temperature to meet the requirements in subsection (9) of this section and specifically how this measurement will be taken.

(6) The department shall review and either approve or deny the harvest plan within 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 or shellfish dealer may not harvest oysters during the control months unless the department has approved the plan.

(7) 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 cases that occurred during the previous consecutive five-year period that were within the control months and attributed to that growing area.

(8) The department shall complete risk categorization and publish a list of all growing areas by risk category 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.

(9) Time of harvest to cooling requirements and harvest controls are as follows:

(a) Category 1:

| **Requirements During Control Months:** | **Time of Harvest to Cooling:** |
| --- | --- |
| Except as noted below, the time of harvest to cooling requirement is: | 9 hours |
| When ambient air temperature at harvest is greater than 85°F, the time of harvest to cooling requirement is: | 7 hours |
| When harvest temperature is between 68°F and 70°F, the time of harvest to cooling requirement is: | 5 hours |
| **Harvest Control:** During control months, harvest is not allowed for 24 hours when harvest temperature is above 70°F. |

(b) Category 2:

| **Requirements During Control Months:** | **Time of Harvest to Cooling:** |
| --- | --- |
| Except as noted below, the time of harvest to cooling requirement is: | 7 hours |
| When ambient air temperature at harvest is greater than 80°F, the time of harvest to cooling requirement is: | 5 hours |
| When harvest temperature is between 66°F and 68°F, the time of harvest to cooling requirement is: | 3 hours |
| **Harvest Control:** During control months, harvest is not allowed for 24 hours when harvest temperature is above 68°F. |

(c) Category 3:

| **Requirements During Control Months:** | **Time of Harvest to Cooling:** |
| --- | --- |
| Except as noted below, time of harvest to cooling requirement is: | 5 hours |
| When ambient air temperature at harvest is greater than 75°F, the time of harvest to cooling requirement is: | 3 hours |
| When harvest temperature is between 64°F and 66°F, the time of harvest to cooling requirement is: | 1 hour |
| **Harvest Control:** During control months, harvest is not allowed for 24 hours when harvest temperature is above 66°F. |

(d) When a harvester or shellfish dealer places oysters in a container or conveyance, but does not remove them from the tide flat as part of their harvest, the following conditions must be met:

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

(ii) The oysters in the container or conveyance must be returned to 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 12 hours before harvest can be completed.

(10) 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 harvest temperature must take water temperature at the depth of oysters unless another method is documented in their harvest plan.

(11) A harvester or shellfish dealer must take the measurements required by subsection (10) of this section with either:

(a) A thermometer that is verified weekly using manufacturer specifications or with a method approved in the harvest plan; 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 weekly.

(12) A harvester or shellfish dealer using a thermometer according to subsection (11)(a) of this section shall document and maintain the thermometer verification with operational records.

(13) A harvester or shellfish dealer using a thermometer according to subsection (11)(b) of this section shall keep the manufacturer certificate with operational records.

(14) A harvester or shellfish dealer 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 and Vv* growth is minimized and maximum time of harvest to cooling hours specified in subsection (9) is not exceeded.

(15) If shellstock is beach wet stored 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.

(16) If the required time of harvest to cooling requirements are not met after removal from the tide flat, 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 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.

(17) If ownership of oysters is transferred before the oysters are cooled in accordance with the time of harvest to cooling requirements, the receiving dealer shall meet the time of harvest to cooling requirement based on the original harvest time. The harvester shall provide the following to the receiving shellfish dealer:

(a) Temperatures recorded under subsection (10) of this section;

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

(c) Growing area risk category for the harvested oysters; and

(d) The time of harvest to cooling that remains for the oysters based on the growing area risk category from where it was originally harvested or the more stringent risk category as outlined in subsection (15) of this section if the shellstock was wet stored in a different growing area from where it was harvested.

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

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

(b) A person responsible for the on-site management of harvest activities must be trained by either the department or a person who completed the department approved training within the last 5 years.

(c) A harvester or shellfish dealer shall maintain a record of all persons who completed training.

(19) 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.

(20) 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.

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

(22) 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.

(23) If a shellfish operation is found to be implicated in or have post-harvest abuse that may have caused or contributed to confirmed cases as defined in this section, they may not harvest oysters during the rest of the control months or for a time determined by the department.

(24) For the purposes of this section:

(a) "Single-source *Vp or Vv* case" or "case" means a laboratory-confirmed *Vp or Vv* 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 when harvested.

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

## **WAC 246-282-010 Definitions.**

The following definitions, 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. If a definition of the NSSP Model Ordinance or chapter 69.30 RCW is inconsistent with a provision otherwise established under this chapter, then the more stringent definition, as determined by the department, will apply.

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

(2) "Approved" means acceptable 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 harvesting or storing of shellstock from one growing area that is placed in another growing area for less than 14 days**.**

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

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

(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 department approved vehicles 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 ten (10) boats. This only includes boats that can accommodate 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 ten (10) boats. This only includes boats that can accommodate 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.

(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.

(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.

(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.

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

(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.

(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.

(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 oysters;

(e) Thirty-eight millimeters (1 and ½ 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.

(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.

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

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

(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.

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

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

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

(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).

(34) “Transplant” means the harvest and transfer of shellstock greater than maximum seed size from one harvest site and placement on another for 14 days or more.

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

(36) "Wet storage" or “Wet stored” means the temporary storage or storing of shellstock in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater for less than 14 days.

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

## **WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates.**

 (1) The department may issue the following certificates of approval to a person who conducts shellfish operations:

(a) A shellfish operation license; and

(b) A harvest site certificate.

(2) A person must have or act on behalf of a person who has a valid shellfish operation license when in possession of a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for bait.

(3) To get a shellfish operation license from the department, a person must:

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

(b) Submit a a written plan of operations that describes the shellfish operation to the satisfaction of the department;

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

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

(4) A person must have or act on behalf of a person who has a valid harvest site certificate when harvesting a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for bait.

(5) For a person to get a harvest site certificate from the department, the following requirements must be met.

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

(b) The person submits a complete application on a form developed by the department.

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

(d) The harvest site is not impacted by any actual or potential sources of pollution. If necessary to determine if the site is impacted by any actual or potential sources of pollution, the harvest site must pass a pollution assessment inspection conducted by the department.

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

(f) The person pays the applicable fee required by WAC 246-282-990.

(6) A shellfish operation license and harvest site certificate for a shellfish dealer expires on June 30th annually.

(7) A shellfish operation license and harvest site certificate for a harvester expires on March 31st annually.

## **WAC 246-282-014 Operating provisions.**

(1) A person must show a valid shellfish operation license when in possession of a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for bait, upon request, to an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The shellfish operation license can be in the form of 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) A person must show a valid harvest site certificate when harvesting a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for bait, upon request, to an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The harvest site certificate can be in the form of 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) A person must have a valid harvest site certificate when placing a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for bait, in containers at a harvest site.

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

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

(a) Ensure that at least one individual harvesting shellfish on behalf of the operation at each harvest site carry a copy of a valid operation license and a valid harvest site certificate;

(b) Ensure the individuals harvesting on behalf of the operation furnish shellfish tags that comply with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance;

(c) Ensure, by supervision at harvest sites or other adequate means, that 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 reason to believe that an individual is using the operation's tags, shellfish operation license, or harvest site certificate for a purpose other than a purpose approved by the department.

(6) The designated person in charge of a shellfish operation must have a functioning telephone with voicemail capabilities and an email address belonging to the owner(s) or person in charge. The person in charge must:

(a) Monitor the telephone, voicemail 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.

## **WAC 246-282-016 Aquaculture.**

(1) A person must have an aquaculture permit to conduct an aquaculture operation with a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for bait.

(2) For a person to get an aquaculture permit approved by the department, the person must comply with the NSSP Model Ordinance Chapter 6 – Shellfish Aquaculture.

(3) Aquaculture activities may be approved 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 180 days in Open status.

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

(4) If the person intends to harvest oyster seed, other than Kumamoto and Olympia, that have a seed size greater than one (1) inch and less than one and one half (1½) inches, the operation must:

(a) Stake or mark the grow-out site to be easily identified by the person until the minimum 180-day period has passed.

(b) Begin the lot minimum grow-out period the moment when the entire lot is added to the grow-out site.

(c) Keep records for each lot of shellfish that show a lot identification number; 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.

**NEW SECTION**

## **246-282-017 Mooring areas**

In a mooring area with a density of less than one acre per boat, the department shall conduct a pollution assessment to support the classification of that portion of the growing area in accordance with the NSSPModel 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/100ml at the sanitary line.

## **WAC 246-282-020 Harvest Sites.**

(1) A person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for 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 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. 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 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 in all unclassified areas except for bait harvest according to WAC 246-282-036 and aquaculture according to WAC 246-282-016.

## **WAC 246-282-032 Relay permit.**

(1) The department may issue a relay permit 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.

(2) For a person to get a relay permit from the department, the following requirements must be met.

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

(b) The person has 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 complete application on a form developed by the department.

(e) The person submits a written plan of operations that describes the procedures and conditions of the relay operation to the satisfaction of the department.

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

(i) May 1 through October 31; and

(ii) November 1 through April 30.

(g) The person pays the applicable fee required by WAC 246-282-990.

(3) 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 period consistently purge themselves of bacteria to approved levels. The validation study must:

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

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

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

(4) The plan of operations required in subsection (2)(e) must describe the following activities:

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

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

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

(d) Keeping records for each relayed lot that shows 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.

(5) For a shellfish lot relayed to a site for a grow-out period of less than 14 days, a person must:

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

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

(6) A person is exempt from 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 24 months.

(7) The relay permit issued under this section expires on the same date as the shellfish operation license.

(8) A person is exempt from the provisions of subsection (2) (f) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of 60 days. Only microbiological contaminates need to be reduced.

(9) A person must have a valid shellfish operation license to act as an agent for another person with a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the relay permit, if the agent conducting the harvest is:

(a) Documented in the permit;

(b) In possession of a copy of the permit when harvesting; and

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

## **WAC 246-282-034 Wild seed permit.**

(1) The department may issue a wild seed permit to move shellfish from a harvest site in a growing area classified by the department as Conditionally Approved in closed status, Restricted, or Prohibited.

(2) For a person to get a wild seed permit from the department, the following requirements must be met.

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

(b) The person has a harvest site certificate listing both the initial harvest site for the seed and the grow-out site.

(c) The original harvest site has acceptable levels of poisonous chemicals, is not in an area known to be a hazardous chemical disposal site, and is not in a closure zone of a wastewater treatment plant or marina.

(d) The grow-out site is in a natural body of water classified by the department as Approved or Conditionally Approved.

(e) The person submits a complete application on a form developed by the department.

(f) The person submits a written plan of operations that describes the procedures of the wild seed operation, including the size distribution of the seed, to the satisfaction of the department.

(g) The person pays the applicable fee required by WAC 246-282-990.

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

(a) Follow all procedures in the plan of operations approved by the department;

(b) Harvest seed from an area classified as Prohibited only during daylight hours;

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

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

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

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

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

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

(4) The wild seed permit issued under this section expires on the same date as the shellfish operation license.

(5) 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 (2)(a) through (d) of this section;

(b) Leaves the seed in the grow-out site for a minimum of six months before final harvest; and

(c) Submits a written plan of operations that describes the seed harvest and grow-out activities for the person's shellfish operation license to the satisfaction of the department.

(6) 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.

## **WAC 246-282-036 Bait permit.**

(1) The department may issue a bait permit to harvest shellfish from a harvest site in a growing area classified by the department as Prohibited, Restricted, or Conditionally Approved in closed status or from an unclassified area.

(2) For a person to get a bait permit from the department, the following requirements must be met.

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

(b) The person has a valid harvest site certificate for the site.

(c) The harvest site is not impacted by biotoxin levels that would cause the department to close it for harvest for human consumption.

(d) The person submits a complete application on a form developed by the department.

(e) The person submits a written plan of operations that describes the procedures of the bait operation to the satisfaction of the department.

(f) The person pays the applicable fee required by WAC 246-282-990.

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

(a) Follow all procedures in the plan of operations approved by the department;

(b) Harvest bait from an area classified as Prohibited 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" 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.

(4) The bait permit issued under this section expires on the same date as the shellfish operation license.

(5) A person possessing a commercial quantity of bait shellfish is exempt from the requirement to obtain a bait permit if that 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."

## **WAC 246-282-042 Transplant and wet storage permit.**

(1) The department may issue a wet storage permit for recirculating, flow-through, or beach wet storage.

(2) For a person to get a wet storage permit from the department, the following requirements must be met.

(a) Has a valid shellfish operation license;

(b) Submits a complete written application on a form developed by the department;

(c) Submits a written plan of operations that describes the procedures of the wet storage operation to the satisfaction of the department;

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

(e) Passes an inspection by the department; and

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

(3) 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.

(4) If shellstock are wet stored in a natural body of water for less than 14 days, the following requirements must be met.

(a) The person has a valid harvest site certificate for the original harvest site and for where wet storage occurs. Both the original harvest site and the wet storage site must be classified as Approved or Conditionally Approved in open status.

(b) The person has a valid wet storage permit for the beach where the shellstock are stored.

(c) Shellstock must be identified with a tag as specified in WAC 246-282-080 when moving shellstock for wet storage from one harvest site to another.

(d) Wet stored shellstock must:

(i) Be stored in a single layer at the approved harvest site;

(ii) Contain tags as specified in WAC 246-282-080;

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

(iv) Be held in containers that ensure the free flow of water to all shellstock;

(v) Be protected from physical, chemical, or thermal conditions which may compromise shellstock survival, quality, or activity during wet storage; and

(vi) Be harvested, handled, identified, processed, and shipped according to the requirements of this chapter.

(e) Shellstock must stay on the final harvest site for less than 14 days. The shellstock will keep the characteristics of the original harvest site and must be tagged according to requirements listed in WAC 246-282-080 once harvested.

(5) If a person is harvesting shellstock for transplant to another harvest site, the following requirements must be met.

(a) The person has a valid harvest site certificate for the original harvest site. The original harvest site must be classified as Approved or Conditionally Approved in the open status.

(b) The person has a harvest site certificate showing grow out site(s) as approved transplant site(s).

(c) Shellstock harvested for transplant to another harvest site must be identified by tagging or other department approved means, until placed on the transplant site.

(d) Accurate and detailed records of the original harvest site, transplant method and destination of transplanted shellstock must be kept for 1 year.

(e) Shellstock must stay on the final harvest site for 14 days or more. After 14 days the following apply:

(i) The shellstock takes the characteristics and properties of that harvest site; and

(ii) Harvest of the shellstock must be considered a new harvest.

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

(7) A person operating under a wet storage permit must 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.

## **WAC 246-282-050 Packing, handling, and storing of shucked shellfish.**

(1) A person who packs, handles, or stores shucked shellfish or operates a shucked shellfish repacking plant must meet all the requirements specified in this chapter and the NSSP Model Ordinance for packing plants.

(2) Shucked oyster containers must have a label stating the following: “Not intended to be consumed raw. Cook thoroughly to an internal temperature of 145°F for 15 seconds.

## **WAC 246-282-060 Personal health and cleanliness.**

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

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

## **WAC 246-282-070 Construction and maintenance.**

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

(2) An owner of a shellfish operation must submit to the department for consultation properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities at least 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 must review properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities required by subsection (2) of this section within 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.

## **WAC 246-282-080 Identification and records.**

(1) A person possessing a commercial quantity of shellfish or any quantity of shellfish for sale, whether that sale is for human consumption or for bait, must have a written record documenting that the shellfish came from one or more of the following sources:

(a) A harvest site or sites for which the person 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 complies with the requirements of the NSSP Model Ordinance and is eligible for inclusion on the current Interstate Certified Shellfish Shippers List, published by the U.S. Food and Drug Administration.

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

(3) If the person possessing shellstock in subsection (2) of this section is the harvester, the tag must include 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) If the person possessing shellstock in subsection (2) of this section is a dealer who purchased from a harvester that is retagging with a dealer tag, the tag must include the department harvest site application number, harvest ID, parcel number, or other approved harvest site identifier.

(5) A person packing a commercial quantity of shucked shellfish or any quantity of shucked shellfish for sale, whether that sale is for human consumption or for bait, must 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.

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

(7) The harvester-shipper shall record the following:

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

(b) Name and quantity of shellfish;

(c) Date of harvest; and

(d) Date shipped.

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

## **WAC 246-282-082 Export certificate.**

(1) The department may issue an export certificate to a shellfish dealer for a specific lot of shellfish.

(2) To get an export certificate from the department, a shellfish dealer must:

(a) Export the lot to a country that requires a production certificate from a governmental health authority;

(b) Have a valid shellfish operation license issued by the department;

(3) Comply with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance;

(c) Submit a complete application on a form developed by the department;

(d) Document use of each export certificate as specified by the department; and

(e) Pay the applicable fees required by WAC 246-282-990.

## **WAC 246-282-092 Inspection by department.**

(1) The department shall 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 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 license;

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

(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 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, the department may apply to a court of competent jurisdiction for an administrative warrant in accordance with RCW 69.30.120.

(5) During inspections, the department has free and unimpeded access to any of the following to determine whether the operation 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.

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

(1) A notice of a denial, suspension, modification, or revocation of a license 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) A notice of imposition of a civil penalty from the department must comply with RCW 43.70.095. A person 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 who receives a civil penalty from the department, may contest a department decision, within 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 include the following in or with the application:

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

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

(c) A copy of the contested department decision.

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

## **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, this chapter, and the NSSP Model Ordinance;

(b) Refuses an inspection by the department;

(c) Harvests shellfish from any harvest site for which the 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 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, 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, this chapter, or the NSSP Model Ordinance committed by a person in charge, employee, or agent of a person issued a shellfish operation license as a violation committed by the licensee.

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

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

(a) The extent to which the violation is part of a pattern of the same or substantially similar conduct;

(b) The extent to which previous education, technical assistance, or notice of correction has been provided for the same or substantially similar conduct; and

(c) The extent to which the violation caused serious and actual injury or death to a person or persons.

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

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

(a) Voluntary disclosure of the violation;

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

(c) Voluntarily taking 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, 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 $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 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.

## **WAC 246-282-110 Administrative provisions.**

(1) If the department finds during an inspection that 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, the department may issue a written statement of deficiencies or notice of correction.

(a) The statement of deficiencies or notice of correction must specify where the operation fails to comply with chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance. The statement of deficiencies or notice of correction must also specify a reasonable period for the owner or person in charge to correct the violation(s).

(b) 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) 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 correction, 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, a person who:

(a) Fails to 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 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, 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, 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 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 one or more of the following measures be taken by a person 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 to assure natural purification of the shellfish.

(5) The 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 department may require any or all 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 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 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 department may require the owner or 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) A person may not remove or alter a notice or tag constituting a hold order or abatement order placed on shellfish by the department.

(7) 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, the department may revoke the license of the shellfish operation or initiate other legal enforcement proceedings authorized by law.

## **WAC 246-282-120 Penalty clause.**

A person found violating any of the provisions of 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.

## **WAC 246-282-130 Separability clause.**

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