**WAC 246-282 Sanitary Control of Shellfish Proposed Changes**

Sections

[1…………... 246-282-005; Minimum performance standards](#Performancestandards)

[2…………... 246-282-006; Vp Control Plan](#Vpcontrolplan)

[3…………... 246-282-010; Definitions](#Definitions)

[4…………... 246-282-012; Certificates of Approval](#certificatesofapproval)

[5…………... 246-282-014; Operating Provisions](#operatingprovisions)

[6…………... 246-282-016; Aquaculture](#aquaculture)

[7…………... 246-282-017; Mooring areas (new)](#mooringareas)

[8…………... 246-282-020; Growing areas](#growingareas)

[9…………... 246-282-032; Relay Permit](#relaypermit)

[10…………. 246-282-034; Wild Seed Permit](#wildseed)

[11…………. 246-282-036; Bait Permit](#baitpermit)

[12…………. 246-282-042; Wet storage permit](#wetstoragepermit)

[13…………. 246-282-050; Packing, handling, and storing of shucked shellfish](#packinghandlingstoring)

[14…………. 246-282-060; Personal Health and Cleanliness](#personalhealth)

[15………….246-282-070 Construction and Maintenance](#construction)

[16…………. 246-282-080; Identification and records](#idofrecords)

[17…………. 246-282-082; Export certificate](#exportcert)

[18…………. 246-282-092; Inspection by department](#inspectionbydept)

[19………….246-282-100; Notice of Decision- Adjudicative Proceeding](#noticeofadjuicative)

[20…………. 246-282-102; Denial, revocation, suspension of license, certificate, or permit—Civil penalties](#denialrevocation)

[21…………. 246-282-104; Penalty Assignment- Calculation of Penalty and Proportionate Adjustment- Aggravating and Mitigating Factors](#penaltyassignment)

[22………….246-282-110; Administrative Provisions](#administrativeprovisions)

[23…………. 246-282-120; Penalty Clause](#penaltyclause)

**How to use this document:**

1. Click on the section heading that you would like to review. This will take you to that section and you can add comments and feedback next to that section.
2. The red text is the proposed changes to be implemented.
3. The bolded black heading that is titled “reasoning” at the end of each row, will discuss why these changes have been suggested as well as any supporting information or justification for the proposed changes.
4. If there are sections that you do not see in here, but would like to suggest additions, or any amendments to, please list those sections, as well as any feedback in the bottom comment section.
5. Any questions about the proposed changes, rulemaking schedule or additional rulemaking items can be sent to Beth Lorence or Dani Toepelt.

**Chapter 246-282 WAC, Sanitary Control of Shellfish**

| **Activity Action, Section, and Title** | **Current Rule Language** | **Description of Proposed Changes and**  **Reason for the Change** | **Feedback, Estimated Cost Impact (if applicable)** |
| --- | --- | --- | --- |
| **246-282-005; Minimum performance standards** | (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 shellfish and water protection); | **Washington state department of health, office of environmental health and safety**  **Reasoning:** Updating the office name. |  |
|  | (c) All other provisions of this chapter. | **(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**  **Reasoning:** including the RCW code and clarifying the NSSP requirements. |  |
| **246-282-006; Vp Control Plan** | Washington state Vibrio parahaemolyticus control plan.  (1) This section establishes the Washington state Vibrio parahaemolyticus 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. | **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   **Reasoning:** Updating the title of WAC 246-282-006 to include another strain of Vibrio in the control plan and adding abbreviations. This is a proactive approach in case we see Vv illnesses. |  |
|  | (2) All harvesters and shellfish dealers 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 (20) of this section. | (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.  **Reasoning:** Shortening language and updating to include numbersthat have been added. |  |
|  | (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 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. | **(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.  **Reasoning:** Definitions moved to the end of section and changing grammar to be more readable.Establishes production reporting requirements in a clearer way. |  |
|  | (5) Harvesters and shellfish dealers harvesting oysters during the control months shall complete, submit to the department, and keep on file a current Vibrio parahaemolyticus 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 unless no changes have been made to the existing harvest plan. Harvesters and shellfish dealers shall sign and date their harvest plan each year and make it available to the department upon request. | **(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.** 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.  **Reasoning:**  Allow a more flexible timeframe for harvesters to submit their harvest plan and changing numbering/formatting/abbreviations. |  |
|  | (6) 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 (11) of this section.  (c) Identify if water temperature or internal oyster tissue temperature is used to meet the requirements in subsection (11) of this section and specifically how this measurement will be taken. | **(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.  **Reasoning:** Adding clarification and changes in numbering. |  |
|  | (7) The department shall review and either approve or deny the harvest plan within thirty 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. Harvesters and shellfish dealers may not harvest oysters during the control months unless the department has approved the plan. | **(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.  **Reasoning:** Requires DOH to approve or deny the harvest plan within two weeks instead of 30 days. Provides more flexibility for growers. Updating language and numbering to match. |  |
|  | (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 controls) based on the number of cases that occurred during the previous consecutive five-year period within the control months and were attributed to that growing area. | **(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.  **Reasoning:** Adding in language to make clearer. Updating numbering. |  |
|  | (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. | **Remove** category requirements for coastal growing areas for the first year.  **Reasoning:** This is not applicable anymore. |  |
|  | (10) The department shall complete risk categorization and publish a list of all growing areas by risk category no later than February 1st annually. The department shall use a rolling five-year average number of cases to calculate risk categories as follows. | (8) The department shall complete risk categorization and publish a list of all growing areas by risk category **by** February 1st annually.  **Reasoning:** Updating language to be clearer, as well as numbering. |  |
|  | (11) Time of harvest begins after the first oysters to be harvested are exposed to the air. Time of harvest to cooling requirements and harvest controls Time of harvest to cooling requirements and harvest controls are as follows:  (a) Category 1:   |  |  | | --- | --- | | **Requirements:** | **Time to Cooling:** | | Except as noted below, the time of harvest to cooling requirement from June 1st through August 31st is: | 9 hours | | When ambient air temperature at harvest is greater than 90°F, the time of harvest to cooling requirement is: | 7 hours | | When harvest temperature is between 68°F and 70°F from July 1st through September 30th, the time of harvest to cooling requirement is: | 5 hours | | **Harvest Control:** From July 1st through August 31st, harvest is not allowed for twenty-four hours when harvest temperature is above 70°F. | |   (b) Category 2:   |  |  | | --- | --- | | **Requirements:** | **Time to Cooling:** | | 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: | 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: | 3 hours | | **Harvest Control:** From July 1st through August 31st, harvest is not allowed for twenty-four hours when harvest temperature is above 68°F. | |   (c) Category 3:   |  |  | | --- | --- | | **Requirements:** | **Time to Cooling:** | | Except as noted below, time of harvest to cooling requirement from May1st 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: | 3 hours | | When harvest temperature is between 64°F and 66°F from July 1st through August 31st, the time of harvest to cooling requirement is: | 1 hour | | **Harvest Control:** From July 1st through August 31st, harvest is not allowed for twenty-four 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 oysters in the container or conveyance must be covered by the tide for a minimum of four hours before harvest can be completed. | **(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 twenty-four hours when harvest temperature is above 70°F. | |   (b) Category 2:   |  |  | | --- | --- | | **Requirements:** | **Time of Harvest to Cooling:** | | Except as noted below, the time of harvest to cooling requirement from 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 twenty-four hours when harvest temperature is above 68°F. | |   (c) Category 3:   |  |  | | --- | --- | | **Requirements:** | **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 twenty-four hours when harvest temperature is above 66°F. | |   **Reasoning:** Aim to reduce the number of illnesses by having more strict time to temperature requirement. Changed June 1st to May 1st in risk category 1, and all dates from July 1st to August 31st to May 1st through September 30th. This accounts for warmer weather in May and September.  Time of harvest moved to definitions section, updated language, months, and reduced ambient air temperatures in the risk categories to avoid the necessity of the emergency Rule. Language in risk category requirement tables were shortened for clarity.  Miles, et al., 1997 notes that “optimum (temperature) occurring between 37–39°C.” for vibrio growth. Lowering the maximum temperatures will help avoid that range; Yoon et al., 2008 also notes that” The concentration of V. parahaemolyticus in oysters is directly related to water temperature, with a higher concentration being present in oysters in warm water. Therefore, the National Shellfish Sanitation Program (2003) suggested that the time for which contaminated oysters are exposed to elevated temperatures be limited to prevent the survival and growth of V. parahaemolyticus.” Additionally, Table 1 in Gooch et al, 2002, illustrates the increased densities of *Vp* bacteria in oysters collected as water temperatures increased, (10C-32.5C) with the highest *Vp* densities occurring at water temperatures of 32.5C (90.5F). |  |
|  | 11(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 and the harvest exceeds the time to cooling requirements in subsection (11) of this section, then the oysters in the container or conveyance must be covered by the tide for a minimum of four hours before harvest can be completed. | (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.  **Reasoning:** The additional requirements of returning containerized (bagged) shellstock lower on the beach so it is covered by the tide for a minimum of 12 hours, instead of 4 hours. Requires oysters to be submerged in deep water for a longer time, in aim to allow for purging of *Vibrio* before it is harvested the next day. Reduction in *Vibrio* will prevent illnesses. The re-immersion of oysters for 1 day resulted in significantly (P 0.05) lower levels of total and pathogenic *V. parahaemolyticus* and *V. vulnificus* Jones et al., 2016. |  |
|  | (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. Harvesters and shellfish dealers shall take these measurements with a thermometer that is verified weekly using manufacturer specifications or with a method approved in a harvest plan. Thermometer verification must be documented and maintained 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. | **(10) A harvester or shellfish dealer** **shall record and maintain a harvest temperature record 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 at the time and location of harvest; and**  (b) Harvest temperature. **A harvester or shellfish dealer** using water temperatures for harvest temperature, **must** take water temperature at the depth of oysters unless another method is documented in their harvest plan. |  |
|  | (12) Harvesters and shellfish dealers shall take these measurements with a thermometer that is verified weekly using manufacturer specifications or with a method approved in a harvest plan. Thermometer verification must be documented and maintained 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. | **(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.**  **Reasoning:** Formatting changes and allowing NIST certified thermometer. This change aligns with current practice. |  |
|  | (13) Harvesters and shellfish dealers 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 maximum number of hours is not exceeded. | **(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 Vv and Vp growth is minimized**, and maximum time of **harvest to cooling hours specified in subsection (9)** is not exceeded.  **Reasoning:** Adding formatting changes and clarification to initiate cooling to minimize Vibrio growth. |  |
|  | NA | **(15) If shellstock is beach wet stored in a growing area with a different risk category than where it was harvested, the most stringent time to cooling must be used.**  **Reasoning:** Add the section to clarifying time to cooling when beach wet storage is used. Requires the strictest time to cool oysters quickly and prevent illness. Aligns with current practice. |  |
|  | (15) If ownership of oysters is transferred prior to the oysters being cooled in accordance with the time of harvest to cooling requirements, the harvester shall include in the harvest record required under WAC 246-282-080 the:  (a) Temperatures recorded under subsection (12) of this section;  (b) Date, time, and person or entity to whom the oysters were transferred; and  (c) Growing area risk category for the harvested product.  (d) The receiving shellfish dealer shall meet the time of harvest to cooling | **(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 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.**  **Reasoning:** Add requirement for the harvester to supply the amount of time the buyer must cool (ex: 3 hours to cool, etc.).  Clarifies who is responsible for cooling oysters when purchased by a dealer. Ensures the buyer has all information needed to cool the oysters within the required time per the Vibrio rule. |  |
|  | (16)(c)(i) Vibrio parahaemolyticus training requirements are as follows:  (c) Those 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. | (**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.**  **Reasoning:** Formatting change to clarify the “people/employees” are training. Clarifies that anyone can provide Vp training if they have taken the DOH training. |  |
|  | (17) A harvester or shellfish dealer may request a waiver from specific requirements of his section. | **(19)** A harvester or shellfish dealer may request a waiver from specific requirements of this section **from the department.**  **Reasoning:** Adding clarifying language. |  |
|  | (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. | **Reasoning: Remove** not applicable language | **None** |
|  | NA | **(23) If a shellfish operation is found to 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.**  **Reasoning:** Give ability for the department to not allow harvest during Vibrio season if illnesses are common for an operation. |  |
|  | NA | **(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.**  **Reasoning:** Clarifying definitions within the appropriate subsection. |  |
| **246-282-010; Definitions** | The following definitions, as well as those in RCW 69.30 and the NSSP Model Ordinance, apply in the interpretation and the implementation of these rules and regulations.  (1) "Abatement" means an action or series of actions to eliminate a public health hazard or reduce it to a level acceptable to the secretary.  (2) "Approved" means acceptable to the secretary based on the department's determination as to conformance with appropriate standards and good public health practice.  (3) "Approved laboratory" means a laboratory that is in conformance with requirements of the NSSP Model Ordinance. | 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.  **Reasoning:** Adding references to the RCW and formatting changes. |  |
|  | NA | **(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.**  **Reasoning:** Adds definition of Beach Wet Storage, which has been in guidance documents. Adds specific time requirements for shellstock that has been transferred to other beaches to allow for quicker traceback in event of an illness. This aligns with current practice. |  |
|  | (5) Civil penalty means a monetary penalty administratively issued by the secretary. | **(6)** Civil penalty means a monetary penalty administratively issued by **the department**.  **Reasoning:** Changing to department to be more specific. |  |
|  | (11) "Harvester" means a shellfish operation with activities limited to growing shellstock, placing shellstock in a container, harvesting shellstock, transporting shellstock within Washington state, and delivering shellstock to a shellfish dealer licensed by the department within four hours of landing it. A harvester does not process shellfish, ship shellfish outside of Washington state, sell shellfish outside of Washington state, sell shellfish to retail outlets, shuck shellfish, repack shellfish, or store shellfish in any location outside of the approved growing area from where the shellfish is harvested. | (**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.  **Reasoning:** Add the clarification that vehicles being used to transport shellstock must be approved by the department. This is to ensure shellstock is transported in a clean environment. |  |
|  | NA | **(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.**  **Reasoning:** Amending the definitions of Marina and mooring areas from 20 boats (used in the Model Ordinance) to 10 boats (used in the Department’s SOP). |  |
|  | NA | **(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.**  **Reasoning:** Amending the definitions of Marina and mooring areas from 20 boats (used in the Model Ordinance) to 10 boats (used in the Department’s SOP). |  |
|  | NA | **(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.**  **Reasoning:** Clarify what a mooring buoy is. |  |
|  | (19) “Person” means any individual, firm, corporation, partnership, company, association, or joint stock association, and the legal successor thereof. | **Reasoning: Remove** this definition is established in RCW 69.30.010 and is not needed here. |  |
|  | (23) “Secretary” means the secretary of the department of health or the secretary’s authorized representative. | **Reasoning: Remove** this definition is established in RCW 69.30.010 and is not needed here. |  |
|  | (22) "Sale" means to sell; offer for sale; barter; trade; deliver; consign; hold for sale, consignment, barter, trade, or delivery; and/or possess with intent to sell or dispose of in a commercial manner. | (**26**) "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.  **Reasoning:** Clarify that a donation is a sale. |  |
|  | (24) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:  (a) Thirteen millimeters (1/2 inch) for mussels;  (b) Twenty-five millimeters (1 inch) for scallops;  (c) Nineteen millimeters (3/4 inch) for Olympia oysters;  (d) Nineteen millimeters (3/4 inch) for Kumomoto oysters;  (e) Fifty-one millimeters (2 inches) for other oyster species;  (f) Thirty-eight millimeters (1 and 1/2 inch) for geoducks; and  (g) Thirteen millimeters (1/2 inch) for other clam species. | (**25**) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:  (e) **Thirty- eight millimeters (1 and ½ inches) for other oyster species;**  **Reasoning:** Decreases seed size for other oyster species from 2 inches to 1.5 inches.  An evaluation of current seed size, market size, and grow out time indicates that the definition prescribed to most shellfish species is adequate for public health protection. The seed length of one species, Pacific oyster, categorized within (24)(e) as 51 millimeter / 2-inch maximum shell length, is inadequate and must be reduced to allow an appropriate grow out time before meeting market size and ensure that market size shellfish are not available within aquaculture sites in Prohibited areas.  Current research and conditions indicate that market size for the Pacific oyster can be as small as 40 millimeters which is smaller than the maximum seed length in the WAC. The current discrepancy could allow market size oysters in aquaculture operations within Prohibited areas. In addition, grow out times are vital for public health protection to allow the shellfish to purge potential pathogens. The current seed size for the Pacific oyster does not remain under market size during any grow out periods defined in the table below. The proposed change to 38 millimeters remains just under market size. Additional record keeping requirement may be necessary when the species within (e) is near the upper limits of the proposed seed size. These additional requirements could be added to the Aquaculture portion of the WAC.  Using the identified growth rates and market size, the reduction of maximum shell length for “other oyster species” should be from 51 mm to 38 mm. This seed size would allow the Pacific oyster to remain below market size while in Prohibited areas. Record keeping requirements could help ensure a minimum of a 120 day grow out period in an Approved or Conditionally Approved area. **The process of determining the appropriate method and measurements to determine seed size is still in development.** |  |
|  | (27) "Shellfish growing area" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantities or for sale for human consumption. | **(28)** "Shellfish 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.  **Reasoning:** Added clarifying language. |  |
|  | NA | **(34) “Transplant” means the harvest and transfer of shellstock greater than maximum seed size in natural bodies of water for 14 days or more.**  **Reasoning:** Added definition of transplant to account for current practices. |  |
|  | (33) "Violation" means the commission of an act or acts prohibited by the provisions of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance. | **(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.  **Reasoning:** Added clarifying language and adjusted numbering. |  |
|  | (34) “Wet storage" means the temporary storage of shellstock in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater. | **(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.**  **Reasoning:** Added clarifying language and adjusted numbering. |  |
| **246-282-012; Certificates of Approval** | (1) The department issues two types of certificates of approval to persons who conduct shellfish operations. They are shellfish operation licenses and harvest site certificates. | (1) The department **may** issue **the following** certificates of approval to **a person** who conduct**s** shellfish operations:  **(a) A** shellfish operation license; and  **(b) A** harvest site certificate.  **Reasoning:** Formatting changes, clarification, and adjusted numbering. |  |
|  | (2) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid shellfish operation license. | 1. **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**.   **Reasoning:** Clarifies what constitutes commercial harvesting. |  |
|  | To obtain a shellfish operation license, a person must:  (a) Submit to the department a completed application on a form developed by the department;  (b) Submit to the department an acceptable written plan of operations that completely describes the shellfish operation;  (c) Pass a preoperational inspection demonstrating compliance with chapter [**69.30**](http://app.leg.wa.gov/RCW/default.aspx?cite=69.30) RCW, this chapter, and the NSSP Model Ordinance; and  (d) Pay the department any shellfish operation license fee required by this chapter. | **(3)** 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 written plan of operations that describes the shellfish **operation to the satisfaction of the department;**  **(d)** Pay **the applicable fee required by WAC 246-282-990.**  **Reasoning:** Formatting changes, clarification, and adjusted numbering. Added language on how to get a shellfish operational license. |  |
|  | (3) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid harvest site certificate. In order for a person to obtain a harvest site certificate, all of the following requirements must be met.  (a) The person possesses a valid shellfish operation license.  (b) The person submits to the department a completed application that describes the following characteristics of the site:  (i) Geographic location;  (ii) Map showing legal boundaries;  (iii) Unique government identification number, such as county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, or tribal identification number; and  (iv) Documentation of legal ownership or lease for shellfish harvesting.  (c) The harvest site is in a growing area that meets the requirements of chapter [69.30](http://app.leg.wa.gov/RCW/default.aspx?cite=69.30) RCW, this chapter, and the NSSP Model Ordinance for a commercial shellfish growing area.  (d) The harvest site is not impacted by any actual or potential sources of pollution.  (e) The harvest site passes a pollution assessment inspection conducted by the department if necessary to determine if the site is impacted by any actual or potential sources of pollution.  (f) The person signs the current conditionally approved area management plan, if applicable.  (g) The person pays the department any harvest site application fee required by this chapter. | 1. 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**. |  |
|  | (4) All shellfish operation licenses and harvest site certificates for shellfish dealers expire on the thirtieth day of June each year. All shellfish operation licenses and harvest site certificates for harvesters expire on the thirty-first day of March each year. | **(6)** A shellfish operation license and harvest site certificate for shellfish dealer expire on **June 30th annually**.  **(7)** A shellfish operation license and harvest site certificate for a harvester expires on **March 31st annually**. |  |
| **246-282-014; Operating Provisions** | (1) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid shellfish operation license, upon request, to any authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.  (2) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid harvest site certificate, upon request, to any authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.  (3) Any person who places a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption in containers at a harvest site must do so only at a site for which the person possesses a valid harvest site certificate. | (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** must display **an electronic,** photocopy, or original of a valid shellfish operation license, upon request, to any authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. **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** a**n 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.  **Reasoning:** Clarifying language and what constitutes commercial harvesting. Allows electronic photocopies of records to be displayed. |  |
|  | (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 both the operation license and the harvest site certificate designating that the site is approved by the department for harvesting by that operation.  (b) Furnish shellfish tags meeting the requirements of chapter [69.30](http://app.leg.wa.gov/RCW/default.aspx?cite=69.30) RCW, these rules, and the NSSP Model Ordinance to those individuals harvesting on behalf of the operation;  (c) Ensure, by supervision at harvest sites or other adequate means, that those individuals working on behalf of the operation harvest only from harvest sites approved by the department for the operation; and | (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 f**urnish 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.  **Reasoning:** Clarifying language. |  |
|  | (6) The designated person in charge of a shellfish operation must have a functioning telephone message device or service issued by a telephone service provider to the owner(s) or person in charge. The person in charge must:  (a) Monitor the device or service each day that the shellfish operation is active, regarding messages from the department about emergency closure of harvest areas or recall of shellfish products; and  (b) Notify the department whenever the telephone number used for this purpose changes; or | (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  **Reasoning:** Requires an email address. This allows for quicker notification in case of closures and illnesses. |  |
| **246-282-016; Aquaculture** | NA | **(1) Any 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.**   1. **If the person intends to harvest oyster seed other than Kumamoto and Olympia, that had a seed size greater than one (1) inch and less than one and one half (11/2) inches, the operation must:**   **(a) Stake or mark the grow-out site to be easily identified by the person until 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) Kepp 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.**  **Reasoning:** Adding additional record keeping and staking requirements for other oysters that are between 1 inch and 1.5 inches. **The process of determining the appropriate method and measurements to determine seed size is still in development.** |  |
| **246-282-017; Mooring areas (new)** | NA | **246-282-017 Mooring areas**  **When there are more than ten boats in an 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 National Shellfish Sanitation Program 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/100ml at the sanitary line.**  **Reasoning:** Adding additional record keeping and staking requirements for other oysters that are between 1 inch and 1.5 inches.  When boats in mooring areas exceed a threshold density of one boat per acre, dilution modeling shows plumes of significant fecal coliform counts (using MO default criteria) overlapping, creating a pollution condition comparable to those of marinas. Therefore, the more stringent threshold criteria (10 boats for marinas versus 20 boats for mooring areas in the MO) should apply.  The new Moorage Areas section of the MO (Chapter IV @.06) contains detailed criteria for an assessment of a mooring area, such as density of boats and potential for overnight occupancy, in addition to other criteria included in the Marina section. As Moorage Areas often have more potential than Marinas for illicit discharge (such as less accessibility to upland restrooms and pumpout facilities, in more remote locations, etc.) it seems counterintuitive that threshold triggers for regulation would be higher than for Marinas. A density trigger seems an appropriate way to identify Mooring Areas in need of more stringent regulation. |  |
| **246-282-020; Growing areas** | 246-282-020  Growing areas. | **246-282-020**  **Harvest Sites**  **Reasoning:** Change Title from Growing Areas to Harvest Sites; more reflective of the contents of the section |  |
|  | (1) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must do so only from a harvest site that meets one or more of the following conditions:  (a) The department has classified the growing area as "approved" or "conditionally approved," according to provisions of the NSSP Model Ordinance and the harvest site is in open status at the time of harvest; | (1) **A** **person harvesting** 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**;  **Reasoning:** Clarifies what constitutes commercial harvesting; adds “shellfish” for clarification |  |
|  | (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. | (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.**  **Reasoning:** Classifying a growing area appropriately is essential to protect public health. Adding the department’s consideration for potential contamination when looking to classify a growing area. Already being done, aligns with Model Ordinance. |  |
|  | (4) Harvesting is prohibited from all growing areas unclassified by the department. | (4) Harvesting is prohibited **in all unclassified areas except for bait harvest in according to WAC 246-282-036 and aquaculture according to WAC-282-16.**  **Reasoning:** Clarifies the exceptions to harvesting in unclassified growing areas. |  |
| **246-282-032; Relay Permit** | (1) The department will issue a relay permit to a person to move shellfish from a harvest site in a growing area classified as "restricted" or "conditionally approved" in closed status meeting the criteria for "restricted" classification, if all of the following conditions are met.  (a) The person possesses a valid shellfish operation license.  (b) The person possesses a valid harvest site certificate listing both the initial harvest site and the grow-out site.  (c) The initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.  (d) The harvest site is used for shellfish activities limited to the initial harvest of seed attached to containerized empty shellfish shells or other cultch material. | (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**.  **Reasoning:** Consolidated language for easier reading. Adding more specific language regarding submitting a plan of ops for relay |  |
|  | (2) Each validation study for a relay permit must demonstrate that shellfish harvested from a specified initial site do not contain excessive levels of fecal coliform bacteria and when relayed to a specified grow-out site for a specified time period consistently purge themselves of bacteria to approved levels. Each validation study must meet all of the following conditions.  (a) It must document that the geometric mean fecal coliform bacteria level in a minimum of five 100-gram tissue samples, representative of shellfish of the same species in the entire initial harvest site, is equal to or less than 1300, with no sample having more than 2300.  (b) It must document that specified relay procedures, times, and environmental conditions reduce fecal coliform bacteria in a minimum of five 100-gram tissue samples, representative of the entire lot of shellfish relayed, to levels that are equal to or less than:  (i) 330, with no more than two samples having greater than 230; or  (ii) Ten percent greater than the geometric mean of a minimum of five 100-gram tissue samples representative of the same shellfish species grown continuously for a minimum of six months at the grow-out site.  (c) It must be repeated a minimum of once every twelve years for acontinuing operation and whenever relay conditions change. | **(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.  **Reasoning:** Consolidated language for easier reading |  |
|  | (3) A person operating under a relay permit must follow all procedures in the plan of operations approved by the department, including:  (a) Staking or marking the grow-out site to be easily identified by the person until the minimum relay period of time is passed;  (b) Considering the beginning of the minimum relay time period for a lot to be the moment that the last part of the lot is added to the grow-out site;  (c) Relaying shellfish to a designated grow-out site for a minimum of seven days, or longer period of time as approved by the department; and  (d) Keeping records for each relayed lot of shellfish that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site. | **(4) 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 show**s** 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.  **Reasoning:** Consolidated language for easier reading. |  |
|  | (4) For each lot of shellfish relayed to a site for a grow-out period of less than fourteen days, a person must: | **(5)** For **a shellfish** lot relayed to a site for a grow-out period of less than **14** days, a person must:  **Reasoning:** Numbering change and clarifying language. |  |
|  | (5) A person is exempt from any fees for an initial application and a validation study conducted by the department for a relay permit for the purpose of relaying shellfish from a growing area that the department downgraded from a classification of "approved" or "conditionally approved" to "restricted" within the previous twenty-four months. | **(6)** A person 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 “**A**pproved" or "**C**onditionally **A**pproved~~"~~ to “**R**estricted" within the previous **24** months.  **Reasoning:** Numbering, formatting changes, and addition of the relevant WAC. |  |
|  | (6) A person's relay permit expires on the same date as the person's shellfish operation license.  (7) A person is exempt from the provisions of subsection (1) (e) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of six months. | **(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.**  **Reasoning:** Changes from 6 months to 60 days—this aligns with Model Ordinance requirements.  The Department reviewed historic relay validation studies to assist in revising the exemption from a validation study grow out length in WAC 246-282-032. This evaluation found that many historic validation studies failed both cold water and warm water requirements for a 14-day relay. In one case, a relay validation failed after a 77 day grow out time. Beyond this one case, the Department has not completed a relay validation study for a grow out time greater than 14 days. The current Model Ordinance allows validation study exemption for a minimum of 60 days grow out. The Department should add the minimum of 60 days grow out in WAC due to the uncertainty of bacteria and pathogen reduction in shellfish without a validation study for a grow out time period between 14 and 60 days or cold water and warm water validation studies should be completed. |  |
|  | (8) A person possessing a valid shellfish operation license may act as an agent for another person possessing a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the permit, provided that the agent conducting the harvest is:  (a) Documented in the permit;  (b) In possession of a copy of the permit at the time of harvest; and | **(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  **Reasoning:** Consolidated language for easier reading. |  |
| **246-282-034; Wild Seed Permit** | (1) The department will issue a wild seed permit to a person to move shellfish from a harvest site in a growing area classified by the department as "conditionally approved" in closed status, "restricted," or "prohibited," if all of the following conditions are met.  (a) The person possesses a valid shellfish operation license.  (b) The person possesses a harvest site certificate listing both the initial harvest site for the seed and the grow-out site.  (c) The original harvest site has acceptable levels of poisonous chemicals, is not in an area known to be a hazardous chemical disposal site, and is not in a closure zone of a wastewater treatment plant or marina.  (d) The grow-out site is in a natural body of water classified by the department as "approved" or "conditionally approved."  (e) The person submits a completed written application and plan of operations approved by the department completely describing the procedures of the wild seed operation, including the size distribution of the seed.  (f) The person pays the department a wild seed permit application fee or renewal fee as required by this chapter. | (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.  (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**.  **Reasoning:** Consolidated language for easier reading. Adds more information on how to obtain a wild seed permit. |  |
|  | (3) A person’s wild seed permit expires on the same date as the person’s shellfish operation license | **(4)** **The** wild seed permit **issued under this section** expires on the same date as the shellfish operation license |  |
|  | (4) A person is exempt from the requirements of this section for the activity of harvesting seed attached to containerized empty shellfish shells or other cultch material, provided that the person:  (b) Leaves the seed in the grow-out site for a minimum of six months final harvest; and  (c) Fully describes the seed harvest and grow-out activities in a written plan of operations approved by the department for the person's shellfish operation license | **(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.**  **Reasoning:** Numbering change and more consolidated language. |  |
|  | N/A | **(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.**  **Reasoning:** Adding a section to include requirements for harvesting wild seed from conditionally approved area. |  |
| **246-282-036; Bait Permit** | (1) The department will approve and issue a bait permit to a person to harvest shellfish from a harvest site in a growing area classified by the department as "prohibited," "restricted," or "conditionally approved" in closed status if all of the following conditions are met.  (2) A person operating under a bait permit must:  (a) Follow all procedures in the plan of operations approved by the department;  (b) Harvest bait from an area classified as "prohibited" only during daylight hours;  (c) Harvest bait from an area classified as "prohibited" only under direct monitoring by a person approved by the department; | (1) The department **may** approve and 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.  **(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**.  **Reasoning:** Allowing bait harvest from unclassified areas. Bait is not intended for direct human consumption. The changes to the WAC will allow bait harvest in unclassified areas provided the harvester meets the same requirements for a harvest in a “prohibited” area. |  |
|  | (2) A person operating under a bait permit must:  (a) Follow all procedures in the plan of operations approved by the department;  (b) Harvest bait from an area classified as "prohibited" only during daylight hours;  (c) Harvest bait from an area classified as "prohibited" only under direct monitoring by a person approved by the department;  (d) Completely immerse the shellfish in an approved dye that imparts an easily noticeable permanent color to the tissue immediately upon landing the shellfish;  (e) Label each container of shellfish "not for human consumption - bait use only" prior to removal from the harvest site;  (f) Store the shellfish physically separated from any shellfish intended for human consumption; and  (g) Keep records for each lot of shellfish harvested for use as bait showing a lot identification number, the species, the harvest site, the harvest date, the quantity harvested, the names of all buyers, and the quantity sold to each buyer. | **(3)** A person 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;  (e) Label each container of shellfish "not for human consumption - bait use only" **before** removal from the harvest site;  **Reasoning:** Allowing bait harvest from unclassified areas. Bait is not intended for direct human consumption. The changes to the WAC will allow bait harvest in unclassified areas provided the harvester meets the same requirements for a harvest in a “prohibited” area. |  |
|  | (3) A person's bait permit expires on the same date as the person's shellfish operation license.  (4) Any person possessing a commercial quantity of bait shellfish is exempt from the requirement to obtain a bait permit provided that the person:  (a) Obtains the shellfish from a person with a valid bait permit;  (b) Possesses a sales invoice for the shellfish from a person with a valid bait permit; and  (c) Maintains each container of shellfish prominently labeled "not for human consumption - bait use only." | **(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:  **Reasoning:** Adding an additional number for permit expiration, updating numbering and language. |  |
| **246-282-042; Wet storage permit** | Wet Storage Permit | **Transplant and Wet Storage** Permit  **Reasoning:** Add Transplant |  |
|  | (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.  (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. | 1. **The department may issue a wet storage permit for recirculating, flowthrough, or beach wet storage.** 2. **For a person to get a wet storage permit from the department, the following requirements must be met.** 3. **Has a valid shellfish operation license;** 4. **Submits a complete written application on a form developed by the department;** 5. **Submits a written plan of operations that describes the procedures of the wet storage operation to the satisfaction of the department;** 6. **Documents that the water used for the operation meets the requirements of the NSSP Model Ordinance;** 7. **Passes an inspection by the department; and** 8. **Pays the applicable fee required by WAC 246-282-990.**   **Reasoning:** Clarifies what constitutes commercial wet storage, and how to obtain a wet storage permit, re-wording for easier reading. |  |
|  | 1. 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. | **(4) If shellstock are wet stored in a natural body of water to beach wet store shellstock 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 site of wet storage must be classified as Approved or Conditionally Approved in open status.**  **(b) the person has a valid wet storage permit for the beach the shellstock are stored;**  **(c) Shellstock must be identified with a tag as specified in WA 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; and**  **(e) Shellstock must stay on the final harvest site for less than 14 days or more. After 14 days the following apply:**  **(i) The shellstock takes the characteristics of that new harvest site; and**  **(ii) Harvest of the shellstock must be considered a new harvest.**  **Reasoning:** Adds requirements and clarification when beach wet storing or transplanting. This change reflects current industry practice. It also allows for proper and prompt traceback in case of illness. Also tries to prevent illnesses by having bagged oysters not stacked high, where they are out of water for longer. |  |
|  | N/A | **(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~~ed~~ 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.**  **Reasoning:** Describes the requirements for “Transplant.” |  |
|  | (7) A person's wet storage permit expires on the same date as the person's shellfish operation license | **(8)** A wet storage permit **issued under this section** expires on the same date as the shellfish operation license.  **Reasoning:** Updated language for clarity |  |
| **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. | (1) Any person whopacks, 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.**  **Reasoning:** Remove repetitive information that matches Model Ordinance requirements. |  |
|  | (2) Any person who operates a shucked shellfish repacking plant must meet all the requirements specified in this chapter and the NSSP Model Ordinance for packing plants. | **(2)** **Shucked oyster containers must have a label stating the following: “Not intended to be consumed raw. Cook thoroughly to an internal temperature of 145F for 15 seconds.”**  **Reasoning:** Adds a requirement for all shucked meat containers to have a warning. This warning tries to avoid Vibrio and Norovirus illnesses and recommends cooking shucked meat oysters thoroughly. Oysters that could be contaminated with Vibrio are allowed to be shucked as a post-harvest fix. To ensure that bacteria and viruses are thoroughly cooked out, a warning label should be added. |  |
| **246-282-060; Personal Health and Cleanliness** | (1) A person ill with or the carrier of a communicable disease which is transmissible through food and is in the infectious stage may not work in any growing area, shucking, packing or repacking plant in any capacitywhere that person might contaminate the shellfish or food contact surfaces with pathogenic organisms. | (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.  **Reasoning:** Clarifying language and sentence structure. |  |
|  | (3) If the department determines by investigation that an owner or employee of a shellfish operation might be the source of a foodborne illness transmitted through shellfish, then the secretary may require medical examination of that person and laboratory examination of clinical specimens from that person to determine presence of infection. Any person failing to obtain an examination required by the secretary may not work for a shellfish operation, for a period of timethe department determines that person could be infectious, in any capacity that could result in contamination of shellfish with pathogenic organisms. | (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.  **Reasoning:** Updating language for clarity. |  |
| **246-282-070 Construction and Maintenance** | (1) All owner~~s~~ and person~~s~~ 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. | (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) Any owner of a shellfish operation must submit to the department for consultation properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities at least thirty days before the facilities are: | (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:  **Reasoning:** Updating language for clarity. |  |
|  | (3) The department will review properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities required by subsection (2) of this section within thirty days of receipt and provide technical assistance to the owner of the shellfish operation regarding whether the proposed physical facilities would meet the requirements of this chapter. | (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.  **Reasoning:** Updating language for clarity. |  |
| **246-282-080; Identification and records** | (1) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess a written record documenting that the shellfish came from one or more of the following sources:  (2) Any person who possesses a commercial quantity of shellstock or any quantity of shellstock for sale for human consumption must identify the shellstock by an approved tag with permanent marking, according to requirements of the NSSP Model Ordinance, upon removal from the harvest site. | (1) Any person who possesses a commercial quantity of shellfish, or any quantity of shellfish for sale **whether that sale is** for human consumption **or for bait** must possess a written record documenting that the shellfish came from one or more of the following sources:  (2) Any person who possesses 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.  **Reasoning:** Clarifies what constitutes commercial harvesting. |  |
|  | N/A | **(3) The tag must include the following:**  **(a) If they are the harvester: DOH harvest site application number (ex: 2012-23), harvest ID, parcel number, or other approved harvest site identifier, must be listed on the harvester tag, harvest record, and harvest site certificate.**  **(b) If a dealer purchased from a harvester and are retagging with a dealer tag: The harvester’s harvest site identifier (as stated in (a)) must be on the dealer tag.**  **Reasoning:** Adds a requirement to include most specific harvest information (such as parcel or harvest ID) to the tag.  Most specific harvest site information on a tag is essential in traceback. Without this information, it could take our staff up to a week to gather the appropriate information. The quicker we identify the source, the more illnesses we can prevent from happening. |  |
|  | N/A | 1. **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.**   **Reasoning:** Adds a requirement to include most specific harvest information (such as parcel or harvest ID) to the tag when retagging as well.  Most specific harvest site information on a tag is essential in traceback. Without this information, it could take our staff up to a week to gather the appropriate information. The quicker we identify the source, the more illnesses we can prevent from happening. |  |
|  | (3) Any person who packs a commercial quantity of shucked shellfish or any quantity of shucked shellfish for sale for human consumption must do so in approved containers that are legibly labeled by permanent marking, in accordance with the requirements of the NSSP Model Ordinance and with:  (a) Wording equivalent to "keep refrigerated" on containers of fresh shellfish; and  (b) Wording equivalent to "keep frozen" on containers of frozen shellfish. | 1. **Any person who 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.  **Reasoning:** Updating language for clarity. |  |
|  | (5) Information recorded by the harvester-shipper shall include: (a) Location of harvesting area(s) by name or code, (b) name and quantity of shellfish, (c) date of harvest, (d) date shipped.  (6) All tags for shellstock and labels for containers of shucked shellfish required by this section must be used only for the original lot of shellfish for which they were intended and must not be reused. | **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.  **Reasoning:** Updating language for clarity. |  |
| **246-282-082; Export certificate** | The department will issue an export certificate to a shellfish dealer for a specific lot of shellfish if the dealer:   1. Is exporting the lot to an Asian country that requires a production certificate from a governmental health authority;   (2) Possesses a shellfish operation license issued by the secretary;  (3) Is in compliance with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance;  (4) Completes an application specified by the department;  (5) Documents use of each export certificate as specified by the department; and  (6) Pays the department any fee for each export certificate required by this chapter. | **(1)** The department **may** issue an export certificate to a shellfish dealer for a specific lot of shellfish if the dealer:  **(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.**  **(c)**  **Submits** 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**  (3) **Comply** with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance.  **Reasoning:** Removes the requirement for only exporting to an Asian country. Matches practices that are already being done. Clarifying numbering and language. |  |
| **246-282-092; Inspection by department** | (1) The department enters and inspects any harvest site, physical facility, vehicle or vessel used by a shellfish operation as often as necessary to determine compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance. | (1) The department **shall enter or inspect** any 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.  **Reasoning:** Adds “records.” Already being done, aligns with the Model Ordinance requirements. |  |
|  | (2) The department inspects each shellfish operation:  (a) A minimum of once per year;  (b) Before issuing a new shellfish operation license to a person;  (c) Before a shellfish operation uses any physical facility for the first time; and  (d) Before the shellfish operation uses any extensively remodeled physical facility. | (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.  **Reasoning:** Adds an additional inspection requirement 30 days after being certified as a new operation-- already being done, aligns with the Model Ordinances requirements. |  |
|  | (3) If the department determines by inspection that an owner, person in charge, or any person working on behalf of the shellfish operation is in violation of any of the requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance, then the department may conduct a reinspection of the shellfish operation. If the same violation is identified by the department during the reinspection, then another reinspection may be conducted by the department within one month. The department may charge the owner of a shellfish operation a fee for a second or subsequent reinspection. | (3) If the department determines by inspection **or investigation** that an owner, person in charge, or 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 **reinspection.**  **Reasoning:** Changes when a reinspection fee can be charged—now after the 1st reinspection instead of after the 2nd. Reinspection is due within 2 weeks after the invoice is generated.  Charging after a reinspection not only pays for staff time, but also is another measure to ensure the operation acknowledges the impact of sanitary violations. They could make people sick, but also be charged monetary fees. |  |
|  | (5) During inspections, the department has free and unimpeded access to any of the following in order to determine whether the operation is in compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance: | (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:  **Reasoning:** Updating language for clarity. |  |
| **246-282-100; Notice of Decision- Adjudicative Proceeding** | (1) The department's notice of a denial, suspension, modification, or revocation of a license is consistent with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest the decision. | (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.  **Reasoning:** Updating language for clarity. |  |
|  | (2) The department's notice of imposition of a civil penalty is consistent with RCW 43.70.095. A person upon whom the department imposes a civil fine has the right to an adjudicative proceeding to contest the decision. | (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 **penalty** **from the department** has the right to an adjudicative proceeding to contest the decision.  **Reasoning:** Updating language for clarity. |  |
|  | (3) A license applicant or holder or a person upon whom the department imposes a civil penalty, may contest a department decision, within twenty-eight days of receipt of the decision by filing a written application for an adjudicative proceeding by a method showing proof of receipt with the administrative hearings unit, department of health. The person must include the following in or with the application: | 1. 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:   **Reasoning:** Updating language for clarity. |  |
| **246-282-102; Denial, revocation, suspension of license, certificate, or permit—Civil penalties** | (a) Fails to comply with any of the provisions of chapter 69.30 RCW, these rules, and 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;  (g) Fails to cooperate with the department or the department of fish and wildlife during an investigation;  (h) Aids another person in violating any requirement of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance; | 1. Fails to comply with any of the provisions of chapter 69.30 RCW, **this chapter**, and 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**;  (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;  **Reasoning:** Does not allow those who are not cooperating during an inspection to continue to operate. Those not cooperating may not be following the rules and may be a threat to public health. |  |
|  | (2) Violations of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance committed by a person in charge, employee, or agent of a person issued a shellfish operation license may be treated by the department as a violation committed by the licensee. | **(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.  **Reasoning:** Updating language for clarity. |  |
| **246-282-104; Penalty Assignment- Calculation of Penalty and Proportionate Adjustment- Aggravating and Mitigating Factors** | (2) The department determines administrative penalties from the range in the following penalty schedule. The standard penalty is assessed unless a proportionate adjustment is warranted and there are aggravating or mitigating factors present. | (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.**  **Reasoning:** Updating language for clarity. |  |
| **246-282-110; Administrative Provisions** | 1. The statement of deficiencies or notice of correction specifies the manner in which the operation fails to comply with chapter 69.30 RCW and these rules. It specifies a reasonable period of time for the owner or person in charge to correct the violation(s). 2. (b) In the event the owner or person in charge fails to correct the violation(s) specified in the statement of deficiencies, the department may revoke the license and certificate of compliance for that shellfish operation or may initiate any other enforcement proceeding authorized by law. | (a) The statement of deficiencies or notice of correction **must** **specify where** the operation fails to comply with chapter 69.30 RCW and, **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.  **Reasoning:** Updating language for clarity, addition that requires location of deficiencies and includes notice of correction. |  |
|  | 1. (2) Any authorized representative of the department, fish and wildlife patrol officer or ex officio patrol officer may, without previously providing a statement of deficiencies, immediately seize shellfish or issue written hold orders prohibiting the disposition or sale of shellfish whenever a commercial quantity of shellfish or any amount of shellfish for sale for human consumption is on the premises of, or in the possession of, any person who: 2. (a) Fails to display an original or photocopy of a valid shellfish operation license; 3. (b) Is reasonably expected to have harvested the shellfish and fails to display an original or photocopy of a valid shellfish operation license and a valid harvest site certificate; or 4. (c) Fails to maintain each container of shellfish properly tagged or labeled as required by chapter 69.30 RCW, these rules, and the NSSP Model Ordinance. | (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, any 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.  **Reasoning:** Updating language for clarity and inclusion of electronic records. |  |
|  | 1. (5) The secretary may issue an abatement order to the owner or person in charge of a shellfish operation whenever the department, after conducting an appropriate investigation, determines that a shellfish operation, or person working on behalf of a shellfish operation, presents a potential risk for transmitting an infectious disease to consumers of shellfish.   (a) The secretary may require any or all of the following measures be taken by the owner or person in charge of a shellfish operation who is issued the abatement order:  (i) Immediate closure of the shellfish operation until, in the opinion of the secretary, no further danger of a disease outbreak exists;  (b) As an alternative to the abatement order described in this section, the secretary may require the owner, or any person working on behalf of the shellfish operation to submit to adequate medical and laboratory examinations, including examination of their bodily discharges as needed to determine if the person is infected with a microbial agent transmissible through food. | (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 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 **department**, no further danger of a disease outbreak exists;  (b) As an alternative to the abatement order described in this section, the **department** may require the owner, or any person working on behalf of the shellfish operation to submit to adequate medical and laboratory examinations, including examination of their bodily discharges as needed to determine if the person is infected with a microbial agent transmissible through food.  **Reasoning:** Removes “secretary” and replaces with “department.” |  |
| **246-282-120; Penalty Clause** | Any person found violating any of the provisions of these regulations or chapter 69.30 RCW is guilty of a gross misdemeanor, and upon conviction will be subject to: | Any person found violating any of the provisions of these **this chapter** or chapter 69.30 RCW is guilty of a gross misdemeanor, and upon conviction will be subject to:  **Reasoning:** Updating language for clarity. |  |