



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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FILED

**DATE: August 29, 2025**

**TIME: 9:20 AM**

**WSR 25-18-076**

**Agency:** State Board of Health

☒ **Original Notice**

☐ **Supplemental Notice to WSR**

☐ **Continuance of WSR**

☒ **Preproposal Statement of Inquiry was filed as WSR 22-06-034 ; or**

☐ **Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** Chapter 246-282 WAC, Sanitary Control of Shellfish. The State Board of Health (board) is proposing to amend chapter 246-282 WAC, with the exception of WAC 246-282-990, and to create two new sections, WAC 246-282-017 and 246-282-044, to modify harvest control requirements by setting more proactive measures to prevent illnesses and protect public health. The rule proposal also updates definitions, makes changes to seed size and various tagging requirements, and makes technical and editorial changes as needed.

**Hearing location(s):**

<b>Date:</b>	<b>Time:</b>	<b>Location: (be specific)</b>	<b>Comment:</b>
11/19/2025	1:30 pm	Washington State Department of Health 111 Israel Road S.E. Tumwater, WA 98501 Building: Town Center Two (TC2, Rooms 166 & 167)	The rules hearing will be hybrid. Individuals may attend either virtually or in-person.  Register to participate via Zoom here: <a href="https://us02web.zoom.us/webinar/register/WN_DII0Jo2yQUe1KBgX_flccw">https://us02web.zoom.us/webinar/register/WN_DII0Jo2yQUe1KBgX_flccw</a>

**Date of intended adoption:** 11/19/2025 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name Shay Bauman  
Address PO Box 47990, Olympia, WA 98504-7990  
Email shellfish@sboh.wa.gov  
Fax None  
Other <https://fortress.wa.gov/doh/policyreview/>  
Beginning (date and time) Date and time of filing  
By (date and time) 10/27/2025 at 11:59 pm

**Assistance for persons with disabilities:**

Contact Shay Bauman  
Phone 360-236-4110  
Fax None  
TTY 711  
Email shay.bauman@sboh.wa.gov  
Other wsboh@sboh.wa.gov  
By (date) 11/05/2025

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The majority of chapter 246-282 WAC has not been updated since 2002 and 2015 and many of the changes proposed in this rulemaking are editorial or technical, to enhance readability and conform with the style guide used by the Office of the Code Reviser. In addition to these changes, the rule proposal amends controls found in the Washington State Vibrio parahaemolyticus (Vp) Control Plan, WAC 246-282-006, to address rising early season temperatures that can result in increased illnesses. The Department of Health (department), using delegated rulemaking authority from the board, has filed two emergency rules, once in 2023 and again in June 2025, to address this issue. The board is also proposing to make additional changes in chapter 246-282 WAC to address various gaps in the regulation of commercial shellfish and to align with federal regulations.

**Reasons supporting proposal:**

Vp is a naturally occurring bacteria found in marine waters. Molluscan bivalve shellfish acquire Vp through filter feeding. Humans who consume raw or undercooked shellfish containing Vp can develop an intestinal disease called vibriosis. The current Vp Control Plan, last updated in 2015, establishes a control season between May 1 and September 30. However, the

strictest time-to-cooling requirements for oysters currently begin July 1. In 2021, there were a high number of vibriosis cases involving Washington shellfish largely due to very high temperatures during the summer months. Early season high temperatures and midday low tides also occurred in May 2023 and June 2025 and as a result, the department filed emergency rules to address the need for more stringent time to cooling controls. The department expects this trend to continue. A review of rule requirements revealed gaps in the current controls and opportunities to more adequately protect consumers. The board is proposing more proactive measures to prevent illness and protect public health.

**Statutory authority for adoption:** RCW 69.30.030 and 43.20.050

**Statute being implemented:** RCW 69.30.030

**Is rule necessary because of a:**

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** State Board of Health

**Type of proponent:** ☐ Private. ☐ Public. ☒ Governmental.

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting Shay Bauman	111 Israel Road SE Tumwater WA 98501	360-236-4110
Implementation Dani Toepelt	111 Israel Road SE, Tumwater, WA 98501	360-890-6054
Enforcement Dani Toepelt	111 Israel Road SE, Tumwater, WA 98501	360-890-6054

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**

☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name

Address

Phone

Fax

TTY

Email

Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

☒ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name Shay Bauman

Address PO Box 47990, Olympia, WA 98504-7990

Phone 360-236-4110

Fax None

TTY 711

Email shay.bauman@sboh.wa.gov

Other N/A

☐ No: Please explain:

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

☒ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

☒ [RCW 34.05.310](#) (4)(b)

(Internal government operations)

☒ [RCW 34.05.310](#) (4)(c)

(Incorporation by reference)

☒ [RCW 34.05.310](#) (4)(d)

(Correct or clarify language)

☐ [RCW 34.05.310](#) (4)(e)

(Dictated by statute)

☐ [RCW 34.05.310](#) (4)(f)

(Set or adjust fees)

☒ [RCW 34.05.310](#) (4)(g)

((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4). (Does not affect small businesses).

☐ This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule: WAC 246-282-001, 246-282-014, 246-282-020, 246-282-060, 246-282-070, 246-282-104, 246-282-120, and 246-282-130 are exempt under RCW 34.05.310(4)(d), as the proposed changes clarify the language in the rule without changing its effect. WAC 246-282-010 is also exempt under RCW 34.05.310(4)(d), as terms defined in this section are intended to clarify the meaning of the terms used throughout the chapter and are not intended to set standards. WAC 246-282-012, 246-282-036, and 246-282-042 are exempt under RCW 34.05.310(4)(d) and (4)(g)(ii), as the proposed changes are editorial, related to a process requirement for making an application to the agency for a license or permit, and are intended to provide clarification without changing the effects of the rule. WAC 246-282-092, 246-282-100, and 246-282-102 are exempt under RCW 34.05.310(4)(b) and (d), as the proposed changes are editorial and are intended to provide clarification without changing the effects of the rule. The proposed changes also relate only to internal governmental operations that are not subject to violation by a nongovernment party. WAC 246-282-005 and 246-282-110 are exempt under RCW 34.05.310(4)(c) and (d), as the proposed changes are editorial, incorporate federal model ordinance by reference without material change, and are intended to provide clarification without changing the effects of the rule. Finally, new WAC 246-282-017 is exempt under RCW 34.05.310(4)(b), as the proposed new section relates only to internal governmental operations that are not subject to violation by a nongovernment party.

**(2) Scope of exemptions:** *Check one.*

☐ The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

☒ The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

☐ The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.

☒ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

**The following is a brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

The Washington Department of Health (department) regulates the commercial shellfish industry in order to prevent illness or death from consumption of contaminated molluscan shellfish. Chapter 246-282 WAC, Sanitary Control of Shellfish, establishes standards for the growing, harvesting, processing, and marketing of molluscan shellfish for human consumption. The State Board of Health (board) serves as the rulemaking body, while the department serves as the regulatory agency. The department also serves as the state shellfish authority administering the Model Ordinance of the National Shellfish Sanitation Program (NSSP). The Model Ordinance, a consensus code, contains requirements for both the

shellfish industry and state shellfish control agencies (e.g., the department) that must be followed in order for shellfish to be shipped interstate and abroad.

Chapter 246-282 WAC is the primary mechanism used by the department for ensuring that the industry meets the requirements of NSSP and for fulfilling its statutory direction to regulate the commercial shellfish industry for the protection of public health.

Consuming raw or undercooked oysters can lead to a gastrointestinal illness called Vibriosis caused by the pathogenic form of *Vibrio parahaemolyticus* (Vp) bacteria found in oysters. Vp is a naturally occurring bacteria found in marine waters. Molluscan bivalve shellfish acquire Vp through filter feeding. Vp bacterium is active in warmer temperatures and dormant in cooler temperatures and has one of the fastest reproductive rates among human pathogens. As a result, vibriosis occurs primarily during the summer months with an increased incidence of illness during warmer years compared to cooler years.

In 2021, there were 87 confirmed Vp cases<sup>1</sup> involving Washington shellfish largely due to exceedingly high temperatures during the summer months. The department expects this trend to continue. Together, the board and department determined rule revisions were necessary to ensure current controls are adequate to protect consumers. They also want to consider more proactive measures to prevent illness and protect public health.

Additionally, the board is proposing to modify the definition of “seed” to reduce the maximum shell length for other oyster species from 2 inches to 1 and 1/2 inches. The reduction is based on the evaluation of available data to determine shellfish growth rates. “Seed” refers to shellfish that are less than market size for human consumption. The Model Ordinance requires each shellfish authority to set the maximum seed size (based on current market size and a minimum of 120 days of growing outside the initial waters) for shellfish moved from Unclassified or Prohibited waters to waters in other classifications. While shell length in chapter 246-282 WAC has, until now, remained unchanged, the market for Pacific and other oyster species has become smaller in recent years, with Pacific oysters now reaching the market in sizes around 2 inches. The proposed change is necessary to meet the requirements of the Model Ordinance, ensure safe shellfish, and protect the health of shellfish consumers.

To address concerns regarding the use of shell length for measurement (as opposed to width or weight), the board is proposing rule language that will allow this requirement to be waived provided a substitute measurement accurately protects public health and meets the requirements of the NSSP. To be granted a waiver, the shellfish operation would have to complete a study that determines shellfish growth in the defined time period.

Finally, the proposed rule revision includes updating definitions, tagging requirements, and other technical and editorial changes.

The board does not anticipate that compliance with the proposed rules will require small businesses to hire or engage with any professional services.

**SBEIS Table 1 identifies and summarizes which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).**

**SBEIS Table 1. Summary of Businesses Required to comply to the Proposed Rule**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of businesses in Washington State	Minor Cost Threshold
114112	Shellfish Fishing*	64***	\$1,175.62
112512	Shellfish Farming**	34***	\$3,098.51

\* The Shellfish Fishing category includes establishments primarily engaged in the commercial catching or taking of shellfish from their natural habitat.

\*\* The Shellfish Farming category includes establishments primarily engaged in farm raising shellfish.

\*\*\* The Washington Department of Revenue reported 98 businesses categorized under either “Shellfish Fishing” or “Shellfish Farming” as of 2021. Separately, the Department of Health Shellfish Licensing and Certification Program reports the number

<sup>1</sup> This number includes multisource, single source, and recreational illnesses.

of license holders for harvesters as 78, shellstock shippers as 209, and shucker packers as 22. NAICS codes and Department of Health number of licenses by activity type are not intended to be comparable and each have their unique parameters for inclusion.

**The board conducted an analysis of probable costs of businesses in the industry to comply with the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.**

To gather information on the costs and benefits of the proposed rule changes, the board and the department collaborated to create a cost survey that was distributed to shellfish operations and Tribal partners. This survey was distributed via email which included a SurveyMonkey link. The survey was open from June 5th through June 19th.

The cost survey was intended to serve as a snapshot of potential costs and benefits associated with complying with the proposed rule. The cost survey was not designed or analyzed with the purpose of producing cost estimates that are representative of all shellfish operations in Washington state, nor was it intended to provide inference about the costs of any Shellfish operations that did not respond to the cost survey. Throughout section 3, the cost survey presents the board and department with informed insight about the types and ranges of costs that shellfish operations could experience to comply with the proposed rule.

25 respondents started the survey, however 10 of these respondents did not answer any of the survey questions. Of the 15 respondents that provided answers, 12 identified as small businesses, meaning that they have 50 or fewer employees<sup>2</sup>. One respondent said that they were not sure how many employees their operations has.

Throughout each of the WAC sections in this analysis, the board has provided the number of respondents that answered each question.

For the purposes of the analysis, increased cost was defined as the costs to adhere to the proposed rule that are in addition to what a shellfish operation already incurs, both up front and ongoing costs. Cost savings is defined as funds saved due to adherence to the proposed rule. One-time costs are defined as costs that occur only once, whereas recurring costs are costs that occur one time per year.

Portions of the proposed rule are exempt from the requirements of the Regulatory Fairness Act as identified above. The board has considered the costs for the remaining portions of the proposed rules, which are described below.

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

##### **WAC 246-282-006(4):**

**Description:** The current rule requires a harvester or shellfish dealer to submit new harvest plans, or changes to their current harvest plan, to the department by March 1<sup>st</sup> each year. The proposed rule requires submission of the harvest plan at least 14 calendar days before the first planned harvest.

14 shellfish operations provided an answer to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that the one-time costs could range from neutral or insignificant to \$5,000, while the annual recurrent costs could range from neutral or insignificant to \$2,000.

One respondent (1/14) estimated a one-time cost of \$5,000 and a recurrent cost of \$2,000 but did not provide an explanation for their estimate. Five respondents (5/14) indicated that this question did not apply to their operation. One of these respondents (1/5) provided the following explanation:

- “We are a shellfish shipper always handling shellfish under temperature control during shipment and holding. We do not harvest.”

Most survey respondents (8/14) indicated that the impact would be cost neutral or insignificant. These operations made the following statements:

- “As I understand it – this doesn’t add to our expense. But I might not understand it.”
- “14 days makes more sense.”

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<sup>2</sup> [RCW 19.85.020: Definitions](#). “Small business” means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

- “The current rule aligns with my annual license renewal, which is convenient. Our active harvest season goes through the new year, so any interruption to harvest in January, waiting on approval of harvest plans, would affect my and employee earnings.”
- “Nothing has changed on our farm so my plan doesn’t change. If the plan requirements or format change, I will have additional costs.”
- “This is helpful. Thanks!”

**WAC 246-282-006(10):**

**Description:** The current rule specifies time of harvest to cooling requirements based on certain dates (i.e. from June 1st through September 30th or from July 1st through August 31st.) The proposed rule removes these dates and specifies that the conditions listed in the table apply during all control months, which are from May 1st through September 30th.

12 shellfish operations provided an answer to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that both the one-time and annual recurrent costs could range from neutral or insignificant to \$25,000.

One respondent (1/12) estimated a one-time cost of \$1,000 and a recurrent cost of \$2,000. This respondent did not provide an explanation for their estimate.

An additional respondent (1/12) estimated a one-time cost ranging from \$18,750 to \$25,000 and a recurrent cost of \$25,000. This respondent explained that the provided values are “based on estimated opportunity cost of removing 3 potential harvest month[s] during the year. We cannot predict the future but harvest value will increase with inflation, so [the] estimate will increase annually above \$25K eventually.”

Another respondent (1/12) estimated a recurrent cost of \$200, saying that “this was estimated as the hours needed for recording during May.”

Two respondents (2/12) indicated that this question did not apply to their operation. These operations made the following statements:

- “[We] do not transport shellfish after harvest, so this rule change does not apply. However, if transportation of shellfish to a facility was part of the business operation, then this can cause an increase[d] cost due to changes in temperature, which can change due to need to purchase ice to cool oysters, or the cancellation of orders or delayed orders, therefore the increase cost varies and depends on order size.”
- “We purchase from SP. Perhaps there are higher costs associated with more temperature control/ice costs that might impact costs. It is hard to say impact. Yet cooling is key control to health during vibrio season.”

Most survey respondents (7/12) indicated that the impact would be cost neutral or insignificant. These operations made the following statements:

- “We already follow strict temperature controls from moment of harvest to cooler with ice and document the temperature every hour. This is not only during the control period of May 1 to Sept 30, but all year long.”
- “The dates in Washington already are May 1 to September 30.”
- “This makes sense from a health perspective, although, we do not currently produce oysters in the May-Sept vibrio season.”
- “[We] operate as if the VP rule covers all control months in all growing areas already. This brings the rule up to the standard we have set internally.”

**WAC 246-282-006(10)(d):**

**Description:** The current rule specifies that 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, the oysters must be covered by the tide for a minimum of four hours before the harvest can be completed. The proposed rule keeps the four-hour resubmergence requirement but also requires the oysters to be returned to approximately the same tidal level or lower than where they were collected.

13 shellfish operations provided an answer to this survey question.



**Cost(s):** Based on responses from the survey it is estimated that the one-time costs could range from neutral to insignificant to \$1,600, while the annual recurrent costs could range from neutral to insignificant to \$15,000.

Three respondents (3/13) indicated that the proposed change would result in both one-time and recurrent increased costs for their operations. The respondents estimated one-time costs of \$250, \$500, and \$1,600 and recurrent costs of \$2,500, \$10,000, and \$500, respectively. These operations provided the following statements regarding costs:

- “Additional gear and labor is needed.”
- “Tides are changing every day and harvest times are always changing. Sometimes it’s best [to] place the harvest where it will be best for the next harvest.”
- “This seems a little ridiculous. If the 4 hours is important, just require that they are submerged for minimum 4 hours. Growers do not have access to all tidal elevations all the time, but they can figure out where to locate product to meet the requirement of 4 hours without returning to a specified elevation. Also, growers harvest from multiple elevations at the same time - so which elevation would be relevant with the new rule?”

One survey respondent (1/13) estimated a recurrent cost of \$15,000. This respondent provided the following comment:

- “On our Oakland Bay farm, when water temperatures are not at risk of approaching the limit (May, June, September) we will put sacks of oysters on the ramp and harvest them on the falling tide before they are uncovered. This process would no longer be permitted, so our boat will have to pick the sacks at high tide and make a special delivery to the processing plant for all control months, despite water temperature.”

Five respondents (5/13) indicated that this question did not apply to their operation. One of these respondents (1/5) said that “when oysters are harvested and bagged, they are left at the tidal level where they are harvested.” Another respondent (1/5) said that “as a dealer, this is not going to change our operation.”

Three respondents (3/13) indicated that the impact would be cost neutral or insignificant and one respondent (1/13) said that they are “unable to determine cost. It depends on the level of the tide any given day.”

**WAC 246-282-006(12):**

**Description:** The current rule specifies that harvesters and shellfish dealers shall take measurements with a thermometer that is verified weekly using manufacturer specifications or with a method approved in a harvest plan. The proposed rule requires measurements to be taken either with a thin-tip digital thermometer that is verified monthly using manufacturer specifications or with a method approved in a harvest plan, or with an NIST certified thermometer that has a manufacturer certificate that does not need to be verified monthly.

12 shellfish operations provided an answer to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that both the one-time and annual recurrent costs could range from neutral or insignificant to \$500.

Two respondents (2/12) indicated that the proposed change would result in only a one-time increased cost for their operation. These respondents estimated one-time costs of \$55 and \$100 and said the following regarding their estimates:

- “I must purchase a new, instant read, thin tipped digital thermometer that can be verified monthly.”
- “Bought a new thermometer which can be calibrated as per our HACCP plan. Our current thermometers are tested every week during Vibrio season but can’t be calibrated. I understand the need for accurate temps so I bought a third one that can be calibrated.”

One respondent (1/12) indicated that the proposed change would result in only a recurrent increased cost of \$300 for their operation, stating that “although our digital thermometers have always matched the inspector’s temp, we need to buy new ones because we don’t have NIST certified.”

Three respondents (3/12) indicated that the proposed change would result in both a one-time and recurrent increased cost for their operation. The respondents estimated one-time costs of \$400, \$500, and \$500, and recurrent costs of \$100, \$500, and \$50, respectively. Two of these respondents (2/3) said the following about costs:

- “New digital thermometers cost. Ongoing annual replacement costs.”

- “New rule sounds fine. We would just need to source new thermometers.”

One respondent (1/12) indicated that this question did not apply to their operation.

Three respondents (3/12) indicated that the impact would be cost neutral or insignificant, with one of these respondents explaining that “we already do this.”

The cost survey revealed potential misunderstandings regarding the proposed rule change. Operations must use a thin-tip digital thermometer (as low as \$10 on Amazon<sup>3</sup>) or a NIST certified thermometer (as low as \$34<sup>4</sup>). Either will suffice. The department does not anticipate a reoccurring cost unless the thermometers must be replaced. However, depending on the size of the operation and how many growing areas the operation is harvesting from, multiple thermometers may need to be purchased.

#### **WAC 246-282-006(18)**

**Description:** The current rule outlines record-keeping requirements when ownership of oysters is transferred prior to the oysters being cooled in accordance with the time of harvest to cooling requirements. It also requires the receiving dealer to meet the time of harvest to cooling requirements for the original harvest time. The proposed rule adds a new requirement for the harvester to provide the receiving dealer with the total time of harvest to cooling for the oysters, based on the growing area risk category.

12 shellfish operations provided an answer to this survey question.

**Cost(s):** Based on the responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$250, while the annual recurrent costs could range from cost neutral to insignificant to \$50.

Two respondents (2/12) indicated that the proposed change would result in an increased cost for the operation. One of these respondents (1/2) estimated a one-time cost of \$200 and a recurrent cost of \$50. This respondent said the following about costs:

- “Increased training of supervisors and employees; increased documentation and guide and map of growing areas, classes, and time to temperature requirements.”

The other respondent (1/2) estimated a one-time cost of \$250, stating that the “new rule requires an update to farm documentation.”

Six respondents (6/12) indicated that the question did not apply to their operation. The following are some of the reasons that were provided by these respondents:

- “Our operations do not involve transporting shellfish from [the] area after harvest; therefore, [this] change will not apply to [our] operation.”
- “In our case, ownership is never transferred prior to the oysters being cooled in accordance with the time of harvest to cooling requirements.”
- “I do not sell to a dealer or wholesale. I am strictly retail.”
- “Dealer does not have changed actions in this.”

Finally, four respondents (4/12) indicated that the impact would be cost neutral or insignificant, with three of these respondents (3/4) stating that they already do this practice.

In addition to the proposed changes described above, the board made the following changes in this section, which are exempt from analysis:

**WAC 246-282-006:** The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and make several editorial changes to existing language. The proposed changes are editorial only and are intended to

<sup>3</sup> [Amazon.com: Professional Meat Thermometer Digital, ±0.5°F NIST Certified Accuracy, Instant Read Food Thermometer for Cooking Grill, 100% Waterproof, Auto-Rotate Backlit Display, Motion-Sensing On/Off, Red : Industrial & Scientific](https://www.amazon.com/Professional-Meat-Thermometer-Digital-0.5F-NIST-Certified-Accuracy-Instant-Read-Food-Thermometer-for-Cooking-Grill-100-Waterproof-Auto-Rotate-Backlit-Display-Motion-Sensing-On-Off-Red-Industrial-Scientific/dp/B07K9K9K9K)

<sup>4</sup> [McMaster-Carr](https://www.mcmaster.com/carr/)



provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-006(3):** The proposed changes clarify the type of information that harvesters or shellfish dealers shall report to the department. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-006(6):** The proposed changes reduce the time for the department to review and either approve or deny the harvest plan from 30 days to 14 calendar days of receipt. The proposed changes relate only to internal governmental operations that are not subject to violation by a nongovernment party. The proposed changes are considered exempt under RCW 34.05.310(4)(c).

**WAC 246-282-006(8):** The proposed changes clarify that growing area risk categories are based on the number of single source cases that occurred during the previous consecutive five-year period that were within the control months and attributed to that growing area. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-006(11):** The proposed changes clarify the requirements for recording and maintaining a harvest temperature record. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-006(14):** The proposed changes reduce the department's review time for harvest plans from 30 days to 14 days. The proposed changes relate only to internal governmental operations that are not subject to violation by a nongovernment party. The proposed changes are considered exempt under RCW 34.05.310(4)(c).

**WAC 246-282-006(16):** The proposed changes clarify the requirements for the more stringent time of harvest to cooling to be used if shellstock is beach wet stored in a growing area with a different risk category than where it was harvested. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-006(19):** The proposed changes clarify that a person who trains another must have completed the department-approved training within the last 5 years. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-006(24):** The proposed changes add a new definition for 'time of harvest' and amended 'harvest temperature' and 'single source case.' Terms defined in this section are intended to provide clarification on the meaning of the term used throughout the section without changing the effects of the rule. The proposed changes are considered exempt RCW 34.05.310(4)(d).

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

##### **WAC 246-282-016:**

**Description:** The current rule sets a maximum shell length of fifty-one millimeters or 2 inches for other oyster species. This definition currently impacts only permits issued for wild seed. The proposed rule reduces the maximum shell length to thirty-eight millimeters or 1 and 1/2 inches for other oyster species. This will impact the permits issued for wild seed, as well as those for aquaculture activities.

12 shellfish operations provided an answer to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$20,000, while the annual recurrent costs could range from neutral or insignificant to \$1,800.

Three respondents (3/12) indicated that the proposed rule would result in both one-time and recurrent costs for their operations. One of these respondents (1/3) estimated a one-time cost of \$1,800 and a recurrent cost of \$1,800. This operation provided the following explanation:

- "Increased training of supervisors and employees, increased labor to measure, increased labor to cull commercial oysters from seed and/or cultch, mortality of seed from additional required handling."

Another respondent (1/3) estimated a one-time cost of \$20,000 but did not provide an explanation for their estimate.

Finally, the third respondent (1/3) estimated a one-time cost of \$3,000,000 and a recurrent cost of \$250,000, which relate to the establishment of nurseries in Approved areas to enable the operation to grow bigger seed. Since this is not a requirement of the proposed rule, these estimates have been excluded from the summary of costs. This operation provided the following explanation and information regarding this proposed change:

- “The sections of WAC 262-282-010 and WAC 246-282-016 regarding seed size have the potential to have financial implications on the shellfish industry. [We] appreciate[s] the Department’s option for a waiver and how this may allow for seed greater than 1.5” in length. Record keeping to confirm grow out in approved waters for 120 days, regardless of seed size is a solution [we] support[s]. [We] [are] investing more than \$3,000,000 to develop infrastructure, with an annual operating cost of more than \$250,000, to grow seed larger in approved waters before planting onto the beach. Seed cost is a significant portion of a shellfish farm’s expenses and the larger the seed when out planted, the higher the survival. Our experience shows that 1.5” – 2” oysters survive 50% better than 0.5” – 0.75” oysters planted onto the farm. With threats from invasive species, such as European Green Crab, and other unknown future predators / diseases, [we] [are] concerned that the importance of planting larger oyster seed will only continue to grow. While [we] [have] the resources and scale to invest in secondary nurseries in approved waters, permitting and environmental monitoring costs, which were greater than \$500,000 for this project, are cost prohibitive for most of the industry. In the fast-growing summer months, seed that is 0.75” will pass the 1.5” size maximum in 3 weeks. In 2 weeks or less, you may find more than 5% of the fastest growing animals in that bin has passed the 1.5” mark. [We] [urge] the Department to consider increasing this allowance to 10%. These oysters are comingled with smaller oysters and will be treated as a single lot, so risk to human health is insignificant compared to the cost of depletion. The cost of depletion on oysters within a single nursery bin in our flupsy is more than \$8,000. [We] [urge] the Department to consider increasing the seed size exceedance allowance to 10% and consider how waivers could be utilized to grant shellfish farms the flexibility to grow seed to the size that best fits their farm’s needs while ensuring 120 days of grow out in approved waters.

The majority of respondents (8/12) indicated that the question did not apply to their operation. The following are the explanations provided by these operations:

- “We don’t buy large seed.”
- “Small business operations do not involve seed purchase or planting.”
- “This rule is based on no science and should not be adopted. As a dealer, it does not change anything for me.”

Finally, one respondent (1/12) indicated that the impact would be cost neutral or insignificant, with this respondent stating that this was “not applicable to my operation.”

#### **WAC 246-282-016(3)(a):**

**Description:** The proposed rule adds new language to clarify the requirements for aquaculture operations harvesting oyster seed, other than Kumamoto and Olympia, that have a seed size greater than one (1) inch and less than one and one half (1½) inches. One of these requirements is starting the minimum grow-out period the moment when the entire lot is added to the grow-out site.

11 shellfish operations provided an answer to this survey question.

**Cost(s):** The majority of respondents (9/11) indicated that this question did not apply to their operation.

One respondent (1/11) indicated that the impact would be cost neutral or insignificant. Another respondent (1/11) indicated that the impact would be cost neutral or insignificant and also stated that this was “not applicable to my operation.”

#### **WAC 246-282-016(3)(b):**

**Description:** The proposed rule adds new language to clarify the requirements for aquaculture operations harvesting oyster seed, other than Kumamoto and Olympia, that have a seed size greater than one (1) inch and less than one and one half (1½) inches. One of these requirements is to keep records for each lot of shellfish that show the species, location, date, and quantity moved from the initial site, the grow-out location, and the date of first harvest of any of those shellfish from the grow-out site.

12 shellfish operations provided an answer to this survey question.

**Cost(s):** One respondent (1/12) indicated that the proposed rule would result in a recurrent cost of \$15,000 for their operation, but did not provide an explanation.

The majority of respondents (10/12) indicated that this question did not apply to their operation.

One respondent (1/12) indicated that the impact would be cost neutral or insignificant, stating that “[we] already collect this information.”

**WAC 246-282-016(4):**

**Description:** The proposed rule provides shellfish operations with the ability to apply for a seed size waiver if it is consistent with the applicable standards and intent of the definition, as related to market size and the 120-day grow-out time. As part of this process, the shellfish operation will have to complete a study that determines shellfish growth in the defined time period.

Survey Respondents: 12 shellfish operations provided an answer to this survey question.

**Cost(s):** When asked whether they plan to apply for a seed size waiver, half of the respondents who answered this question (6/12) said that they do not plan to apply for a waiver, and half (6/12) said that they do not know at this time.

Shellfish operations who answered either “no” or “I don’t know at this time” to the question of whether they plan to apply for a waiver, were subsequently asked why they responded that way. The following were some of their responses:

- “Unsure of grow out calculation, seed size per species, seed size availability, ability to source cultch, etc.”
- “I buy seed oysters from Taylor Shellfish to grow out to a size I can sell retail. That usually takes 360 days or more.”
- “I don’t anticipate being in this situation.”
- “I don’t capture natural set seed. I don’t sell seed.”
- “We don’t want to waste time and money completing a study.”
- “Because I don’t understand.”
- “I’m a dealer in this case.”
- “[We] have invested in nursery infrastructure in approved waters.”
- “This is not applicable to my operation.”
- “[My] business operations do not involve seed purchase or planting.”

The board acknowledges that there will be a cost for those shellfish operations that decide to apply for a seed size waiver and have to complete the associated study. If the proposed rules are adopted, the department will work with shellfish operations on a guidance document establishing the parameters of the study. Since these parameters have not yet been established, the cost for this portion of the proposed rule language is indeterminate at this time.

In addition to the proposed changes described above, the board made the following changes in this section, which are exempt from analysis:

**WAC 246-282-016(1):** The proposed changes amend language to conform with the 2025 bill drafting guide. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-016(2):** The proposed changes add new language to clarify a complete application for getting an aquaculture permit from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(g)(ii).

**WAC 246-282-016(2):** The proposed changes add new language to outline and clarify aquaculture activities that may be approved in Prohibited and unclassified areas. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

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

**WAC 246-282-032(8):**

**Description:** The current rule exempts growers from the validation study requirement if relaying shellfish to an approved grow-out site for a minimum of six months (180 days). The proposed rule reduces the grow-out period from six months (180 days) to greater than 60 days, to align with the NSSP Model Ordinance.

12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

**Cost(s):** Three respondents (3/12) indicated no cost savings resulting from this proposed change and eight respondents (8/12) selected the neutral (\$0) option. One of the respondents (1/3) who indicated that there would be no cost savings provided the following explanation:

- “When a validation study is done, we are doing so to get quick turnaround on market ready products. While we appreciate the move towards alignment with the NSSP, the difference will not change the instances a validation study is required.”

Shellfish operations who indicated a neutral (\$0) impact chose this option because they are dealers, they do not relay, or their business operations do not involve growing of shellfish.

In addition to the proposed change described above, the board made the following changes in this section, which are exempt from analysis:

**WAC 246-282-032:** The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and make several editorial changes to existing language. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-032(2):** The proposed changes clarify application requirements for getting a relay permit from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(g)(ii).

**WAC 246-282-032(8):** The proposed changes clarify that only microbiological contaminants need to be reduced, to ensure consistency with the NSSP Model Ordinance. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

#### **WAC 246-282-034, Wild Seed Permit.**

##### **WAC 246-282-034:**

**Description:** The current rule sets a maximum shell length of fifty-one millimeters or 2 inches for other oyster species. This definition currently impacts only permits issued for wild seed. The proposed rule reduces the maximum shell length to thirty-eight millimeters or 1 and 1/2 inches for other oyster species. This will impact the permits issued for wild seed, as well as those for aquaculture activities.

The costs of this proposed rule change are captured under the Aquaculture section, WAC 246-282-016.

##### **WAC 246-282-034(3)(g):**

**Description:** The current rule requires a person operating under a wild seed permit to stake or mark the grow-out site. The proposed rule removes the requirement for staking or marking, but a person operating a wild seed permit must still keep records that identify the grow-out site.

12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

**Cost(s):** Three respondents (3/12) indicated no cost savings resulting from this proposed change and nine respondents (9/12) selected the neutral (\$0) option. One of the respondents (1/3) who indicated that there would be no cost savings stated that “we don’t use wild seed.”

Similarly to the responses provided in the relay permit section, shellfish operations who indicated a neutral (\$0) impact chose this option because they do not anticipate needing this, they are dealers, or because their business operations do not involve purchasing, planting, or processing seed. Additionally, one operation stated that “this is appreciated, but not necessarily cost saving.”

##### **WAC 246-282-034(3)(h):**

**Description:** The current rule requires a person operating under a wild seed permit to keep records for each lot of seed harvested that show a lot identification number. The proposed rule removes the requirement for a lot identification number as part of recordkeeping.

12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

**Cost(s):** Five respondents (5/12) indicated no cost savings resulting from this proposed change and six respondents (6/12) selected the neutral (\$0) option. One of the respondents (1/5) who indicated that there would be no cost savings stated that “we don’t use wild seed.”

The explanations given by the shellfish operations who indicated a neutral (\$0) impact were nearly identical to those described for WAC 246-282-034(3)(g) above. These operations stated that they are dealers, that their business operations do not involve seed purchase, planting, or processing, or that this was simply not applicable to them. Again, one operation stated that “this is appreciated, but not necessarily cost saving.”

**WAC 246-282-034(3) and (5):**

**Description:** The current rule requires seed to be left in a grow-out site for a minimum of six months before final harvest. The proposed rule reduces the grow out period from six months (180 days) to 120 days, to align with the NSSP Model Ordinance.

12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

**Cost(s):** Six respondents (6/12) indicated no cost savings resulting from this proposed change and five respondents (5/12) selected the neutral (\$0) option. One of the respondents (1/6) who indicated that there would be no cost savings stated that “we don’t use wild seed.”

The three explanations given by the shellfish operations who indicated a neutral (\$0) impact were identical to those described for WAC 246-282-034(3)(h) above. In addition, one operation stated that “wild seed normally requires more time than this to mature anyway.”

**WAC 246-282-034(6):**

**Description:** The current rule allows the harvesting of wild seed from a Conditionally Approved area in closed status or from a Restricted area, as long as live shellfish larger than seed size is limited to less than 5% and the shellfish are moved to a grow out site for a minimum of six months. The proposed rule allows the harvesting of wild seed from these areas as long as the relay standards in WAC 246-282-032 are followed. Shellfish can be moved to a grow out site for seven to greater than 60 days.

12 shellfish operations responded to this survey question.

**Cost(s):** The majority of respondents (11/12) indicated that this question did not apply to their operation because they don’t plan to harvest wild seed and one respondent (1/12) indicated that the impact was cost neutral or insignificant.

In addition to the proposed change described above, the board made the following changes in this section, which are exempt from analysis:

**WAC 246-282-034:** The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and made several editorial changes to existing language. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-034(2):** The proposed changes clarify application requirements for getting a wild seed permit from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(g)(ii).

**NEW WAC 246-282-044, Transplant.**

**WAC 246-282-044(1)(d):**

**Description:** The proposed rule adds new requirements for transplanting shellstock to another harvest site. One of these new requirements is to identify the shellstock during transit, by tagging or other methods approved by the department. This identification must include the date the shellstock was removed from the original harvest site(s), the quantity and species of shellstock, and the original harvest site(s) and grow out site(s).

12 shellfish operations responded to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that the one-time costs could range from neutral or insignificant to \$4,500, while the annual recurrent costs could range from neutral or insignificant to \$5,000.

Three respondents (3/12) indicated that the proposed change would result in increased costs for their operation. One respondent (1/3) estimated a one-time cost of \$500 and a recurrent cost of \$250. This operation indicated that the proposed change “would require an update to harvest bag tags for the purpose of transferring seed.” Another respondent (1/3) estimated a one-time cost of \$4,500 and a recurrent cost of \$5,000. This respondent explained that “with this requirement each time product is moved for any reason (husbandry, farming, thinning, finishing, etc) from harvest site to harvest site, tagging, records, labor to fill out forms, etc. is necessary.” Finally, one respondent (1/3) estimated a \$4,000 recurrent cost, which encompasses the “cost of tags and time to fill out tags.”

The majority of respondents (8/12) indicated that this question did not apply to their operation. The following are some of the reasons provided by this category of respondents:

- “We don’t transplant.”
- “Dealer.”
- “We are given transfer paperwork from Taylor Shellfish, which delineates how many baby oysters we are transporting to our site, which has a San Juan County parcel number on this paperwork.”
- “Shellfish are not moved or transplanted, they remain at [the] harvest site.”

One respondent (1/12) indicated that the impact was cost neutral or insignificant.

**WAC 246-282-044(1)(e):**

**Description:** The proposed rule adds new requirements for transplanting shellstock to another harvest site. One of these new requirements is to keep and maintain accurate and detailed records of the original harvest site, transplant method, and destination of transplanted shellstock for one year.

12 shellfish operations responded to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that the one-time costs could range from neutral or insignificant to \$12,000, while the annual recurrent costs could range from neutral or insignificant to \$25,000.

Two respondents (2/12) indicated that the proposed change would result in increased costs for their operation. One respondent (1/2) estimated a one-time cost of \$1,000 and a recurrent cost of \$600. Another respondent (1/2) estimated a one-time cost of \$12,000 and a recurrent cost of \$25,000. This respondent explained that “one-time costs include adjusting current inventory tracking software to track transplant method, which in our opinion is unnecessary information to track. Ongoing costs is the additional time managers will spend inputting data entries for every lot of transplant instead of monthly entries as is our current practice.”

Half of the respondents (6/12) indicated that this question did not apply to their operation, with similar reasons provided as in the previous question.

Four respondents (4/12) indicated that the impact was cost neutral or insignificant. The following were some of the reasons provided by this category of respondents:

- “We already do this so there is no extra cost.”
- “Cannot determine the cost at this time. Likely minimal.”
- “We do this already.”

In addition to the proposed new rules described above, the board is proposing the following rule in this section, which is exempt from analysis:

**WAC 246-282-044(2):** The proposed rule clarifies that after 14 days, the shellstock will take on the characteristics and properties of the transplant site. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).



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

**WAC 246-282-080(3) and (4):**

**Description:** The proposed rule adds a new requirement for harvester tags to have the department harvest site application number, harvest ID, parcel number, or other approved harvest site identifier. This information must be listed on the harvester tag, harvest record, and harvest site certificate. The proposed rule also requires the dealer tag to have the exact harvest site information as provided on the original harvest tag, when shellstock is retagged.

12 shellfish operations responded to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$40,000, while the annual recurrent costs could range from cost neutral or insignificant to \$2,000.

The majority of shellfish operations that responded to this question (7/12) indicated that the proposed change would result in increased costs for their operation. One-time costs estimated by the respondents were as follows: \$40 - \$1,000; \$250; \$500; \$500; \$2,000, \$6,000, and \$40,000. Only four of those respondents (4/7) indicated that the proposed change would result in recurrent costs. The estimated recurrent costs were \$100, \$100, \$1,000, and \$2,000.

Respondents provided the following information regarding costs:

- “Adding harvest identifier or parcel number would take additional employee time and would vary depending on the quantity of orders at value of \$800-\$9,000 per order. The number of orders determines the amount of tags and time to add department harvest site number (or parcel number).”
- “Tag editing, printing and labor to make changes.”
- “This would require an upgrade to harvest bag tags.”
- “I will have to replace all of the tags I just purchased and reprogram the app we use to include the new requirements.”
- “We will have to figure out how we will do this. Some farms have the same code for different beaches.”
- “Initial costs include updating tag formatting, developing a database that connects internal tracking codes to a parcel ID/HSC and the labor it will take to do the data entry to develop the records in accordance with the new rule. Ongoing costs include maintaining this database as it needs updating.”

One respondent (1/12) indicated that this question did not apply to their operation, explaining that “we already include our harvest site ID on the tag.”

Four respondents (4/12) indicated that the impact was cost neutral or insignificant. The following were some of the reasons provided by this category of respondents:

- “We seldom retag our shellfish and keep the original information as required from the SP we purchase from. If we retag we would provide this harvest site information.”
- “Any extra information I may need on the ticket I will write on it until I run out of stock. I already have most of the info on my tags.”
- “Just starting to get my first tags printed so this shouldn’t increase costs.”

The cost survey revealed potential misunderstandings regarding the proposed rule change. The proposed rule allows for flexibility with what is on the tag itself. It does not have to be the parcel number, but some other approved identifier that can be linked to a harvest site. The department anticipates that the majority of shellfish operations are already doing this or a portion of this, and that complex changes such as those to databases will not be required. Furthermore, shellfish operations will not be required to immediately replace all of their tags or purchase new tags once the rule goes into effect. They will be able to use up existing inventory first.

In addition to the proposed change described above, the board made the following change in this section, which is exempt from analysis:

**WAC 246-282-080:** The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and made several editorial changes to existing language. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

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

**WAC 246-282-082(2)(a):**

**Description:** The current rule specifies that the department will issue an export certificate to a shellfish dealer for a specific lot if the dealer is “exporting the lot to an Asian country that requires a production certificate from a governmental health authority.” The proposed rule removes the language “an Asian country” to expand export certificates to be approved to any country that requires a production certificate from a governmental health authority.

12 shellfish operations responded to this survey question.

**Cost(s):** None of the respondents (0/12) estimated increased costs as a result of this proposed change.

The majority of respondents (8/12) indicated that this question did not apply to their operation. The following were some of the reasons provided by this category of respondents:

- “This does not apply to business operations so cost will not be impacted.”
- “Our market is local, Lopez Island. We are too small to export anything.”

Four respondents (4/12) indicated that the impact was cost neutral or insignificant. One of these respondents (1/4) explained that “we are already paying for our exports”, while another (1/4) said that “we use this service weekly for our exports to Asia so this change won’t impact this program. However, perhaps countries outside of Asia will accept them as Health Certs instead of NOAA.”

In addition to the proposed change described above, the board made the following changes in this section, which are exempt from analysis:

**WAC 246-282-082:** The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(d).

**WAC 246-282-082(2):** The proposed changes clarify application requirements for getting an export certificate from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.310(4)(g)(ii).

#### **All WAC Sections: Operation documentation.**

**Description:** Operation documentation is required to align with the most current WAC language. This rulemaking amends nearly every WAC section within the chapter and will most likely require shellfish operations to update plans of operations, harvest and sales logs, etc.

14 shellfish operations responded to this survey question.

**Cost(s):** Based on responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$10,000, while the annual recurrent costs could range from cost neutral or insignificant to \$2,500.

The majority of respondents (9/14) estimated increased costs associated with updating their documentation. Five of these respondents (5/9) indicated that updating their documentation would result in only one-time costs for their operation. The one-time costs estimated by these operations were \$30, \$250, \$500, \$500, and \$5,000. The following were some of the explanations provided by these operations:

- “Employee time paid to make updates.”
- “Estimated administrative time.”
- “My harvest area is not yet fully approved so we are somewhat inactive and we are updating documents in an ongoing basis.”
- “Updating all required documents will take a significant number of hours to complete. The plan of operations and all harvest and sales documents will need to be updated. Hopefully that will be a one time requirement.”

One respondent (1/9) indicated that updating their documentation would result in only recurrent costs for their operation. This respondent estimated recurrent costs of \$2,235 but did not provide an explanation.

Three respondents (3/9) indicated that updating their documentation would result in both one-time and recurrent costs. These respondents estimated one-time costs of \$415, \$1,500, and \$10,000, as well as recurrent costs of \$515-750, \$250, and \$2,500 respectively. These operations provided the following explanations regarding their estimates:

- “Form editing & modification; printing expenses; management; supervisory and employee (harvester) training time; follow-up check of employee understanding; repeat of training for new hires.”
- “This question is so general that answering correctly is nearly impossible. Also, what cost, direct costs, new system costs, new data management costs?”
- “Administrative time is the primary cost driver. Also, I may need to re-print an inventory of harvest tags.”

One shellfish operation (1/14) stated that they are “unable to estimate additional cost until an inspector visits to tell me I need to adjust the record keeping.”

Two shellfish operations (2/14) indicated that this question did not apply to their operation.

Finally, two shellfish operations (2/14) indicated that the impact was cost neutral or insignificant, with one of these operations (1/2) stating that “[they] don’t see it increasing any time or cost for [their] small farm.”

**SBEIS Table 2. Summary of Section 3 probable cost(s)**

<b>WAC Citation and Description</b>	<b>Probable Cost(s)</b>
WAC 246-282-006(4): Harvest plans.	Cost neutral or insignificant up to \$5,000 in one-time costs and \$2,000 in recurrent costs.
WAC 246-282-006(10): Harvest to cooling requirements.	Cost neutral or insignificant up to \$25,000 in one-time costs and \$25,000 in recurrent costs.
WAC 246-282-006(10)(d): Returning oysters to the same tidal level or lower.	Cost neutral or insignificant up to \$1,600 in one-time costs and \$15,000 in recurrent costs.
WAC 246-282-006(12): Thermometers.	Cost neutral or insignificant up to \$500 in one-time costs and \$500 in recurrent costs.
WAC 246-282-006(18): Transfer of ownership documentation.	Cost neutral or insignificant up to \$250 in one-time costs and \$50 in recurrent costs.
WAC 246-282-016: Reducing the maximum shell length for seed.	Cost neutral or insignificant up to \$20,000 in one-time costs and \$1,800 in recurrent costs.
WAC 246-282-016(3)(a): Minimum grow-out period start time.	Cost neutral or insignificant.
WAC 246-282-016(3)(b): Record keeping for aquaculture operations harvest oyster seed with a seed size greater than 1 inch and less than 1 1/2 inches.	Cost neutral or insignificant up to \$15,000 in recurrent costs.
WAC 246-282-016(4): Seed size waiver and study.	Indeterminate at this time.
WAC 246-282-032(8): Reducing the grow-out period from 180 days to greater than 60 days.	Cost neutral (\$0).
WAC 246-282-034(3)(g): Removing the requirement for staking or marking the grow-out site.	Cost neutral (\$0).
WAC 246-282-034(3)(h): Removing the lot identification number as part of record keeping.	Cost neutral (\$0).
WAC 246-282-034(3) and (5): Reducing the grow-out period from 180 days to 120 days.	Cost neutral (\$0).
WAC 246-282-034(6): Harvest of wild seed and relay standards.	Cost neutral or insignificant.
WAC 246-282-044(1)(d): Identifying shellstock during transit.	Cost neutral or insignificant up to \$4,500 in one-time costs and \$5,000 in recurrent costs.
WAC 246-282-044(1)(e): Record keeping requirements for transplant.	Cost neutral or insignificant up to \$12,000 in one-time costs and \$25,000 in recurrent costs.

WAC 246-282-080(3) and (4): Requirements for harvester and dealer tags.	Cost neutral or insignificant up to \$40,000 in one-time costs and \$2,000 in recurrent costs.
WAC 246-282-082(2)(a): Expanding export certificates.	Cost neutral or insignificant.
All sections: Operation documentation.	Cost neutral or insignificant up to \$10,000 in one-time costs and \$2,500 in recurrent costs.

The board anticipates that compliance with one of the proposed rules may cause businesses in the industry to lose sales or revenue. This pertains to the expansion of the most strict time-to-cooling months in WAC 246-282-006. This change may result in growers not being able to harvest during warmer conditions, compared to the current rule. While this may cause growers to lose sales, it is most protective of public health. Additionally, the majority of survey respondents indicated that this change would result in a cost neutral or insignificant impact, with some of the respondents already operating under the most strict controls.

**The following is an analysis on if the proposed rule may impose more than minor costs for businesses in the industry. It includes a summary of how the costs were calculated.**

Yes, the costs of the proposed rule are greater than the minor cost threshold.

#### **Summary of how the costs were calculated.**

The minor cost threshold for Shellfish Fishing as of 2021 is \$1,175.62, based on 0.3% of Average Annual Gross Business Income as calculated by data collected by the Washington Department of Revenue (SBEIS Table 1).

Of the 19 portions of rule analyzed in Section 3 (SBEIS Table 2), 9 portions have probable costs that exceed the minor cost threshold of \$1,175.62. Additionally, while the costs for the seed size waiver and study are indeterminate at this time, it is very likely that they will exceed the minor cost threshold.

#### **Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

The board estimates that the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

#### **Explanation of the determination**

Of the 15 respondents that provided answers to the survey questions, 12 identified as small businesses, meaning that they have 50 or fewer employees. One respondent said that they were not sure how many employees their operations has. Based on what the department knows about this shellfish operation, they were categorized as a small business for the purpose of this analysis. Two survey respondents categorized themselves as large businesses, meaning that they have 51 or more employees. This breakdown is representative of the shellfish industry in the state of Washington.

Of the two large businesses that participated in the survey, only one completed the survey in its entirety, with the other large business providing a response to only the first question in the survey.

The summary of costs from the cost survey by business size is presented below in SBEIS Table 3.

**SBEIS Table 3. Summary of probable cost(s) for small businesses and large businesses\***

<b>WAC Citation and Description</b>	<b>Probable Cost(s), Small Businesses</b>	<b>Probable Cost(s), Large Businesses</b>
WAC 246-282-006(4): Harvest plans.	Cost neutral or insignificant up to \$5,000 in one-time costs and \$2,000 in recurrent costs.	Cost neutral or insignificant.
WAC 246-282-006(10): Harvest to cooling requirements.	Cost neutral or insignificant up to \$25,000 in one-time costs and \$25,000 in recurrent costs.	Cost neutral or insignificant.
WAC 246-282-006(10)(d): Returning oysters to the same tidal level or lower.	Cost neutral or insignificant up to \$1,600 in one-time costs and \$10,000 in recurrent costs.	\$15,000 in recurrent costs.

WAC 246-282-006(12): Thermometers.	Cost neutral or insignificant up to \$500 in one-time costs and \$500 in recurrent costs.	No costs indicated.
WAC 246-282-006(18): Transfer of ownership documentation.	Cost neutral or insignificant up to \$250 in one-time costs and \$50 in recurrent costs.	Not applicable.
WAC 246-282-016: Reducing the maximum shell length for seed.	Cost neutral or insignificant up to \$20,000 in one-time costs and \$1,800 in recurrent costs.	Cost estimate outside of scope.**
WAC 246-282-016(3)(a): Minimum grow-out period start time.	Cost neutral or insignificant.	Cost neutral or insignificant.
WAC 246-282-016(3)(b): Record keeping for aquaculture operations harvest oyster seed with a seed size greater than 1 inch and less than 1 1/2 inches.	Cost neutral or insignificant up to \$15,000 in recurrent costs.	Cost neutral or insignificant.
WAC 246-282-016(4): Seed size waiver and study.	Indeterminate at this time.	Indeterminate at this time.
WAC 246-282-032(8): Reducing the grow-out period from 180 days to greater than 60 days.	Cost neutral (\$0).	No cost savings indicated.
WAC 246-282-034(3)(g): Removing the requirement for staking or marking the grow-out site.	Cost neutral (\$0).	Cost neutral (\$0).
WAC 246-282-034(3)(h): Removing the lot identification number as part of record keeping.	Cost neutral (\$0).	No cost savings indicated.
WAC 246-282-034(3) and (5): Reducing the grow-out period from 180 days to 120 days.	Cost neutral (\$0).	No cost savings indicated.
WAC 246-282-034(6): Harvest of wild seed and relay standards.	Cost neutral or insignificant.	Not applicable.
WAC 246-282-044(1)(d): Identifying shellstock during transit.	Cost neutral or insignificant up to \$4,500 in one-time costs and \$5,000 in recurrent costs.	\$4,000 in recurrent costs.
WAC 246-282-044(1)(e): Record keeping requirements for transplant.	Cost neutral or insignificant up to \$1,000 in one-time costs and \$600 in recurrent costs.	\$12,000 in one-time costs and \$25,000 in recurrent costs.
WAC 246-282-080(3) and (4): Requirements for harvester and dealer tags.	Cost neutral or insignificant up to \$6,000 in one-time costs and \$1,000 in recurrent costs.	\$40,000 in one-time costs and \$1,000 in recurrent costs.
WAC 246-282-082(2)(a): Expanding export certificates.	Cost neutral or insignificant.	Cost neutral or insignificant.
All sections: Operation documentation.	Cost neutral or insignificant up to \$10,000 in one-time costs and \$2,500 in recurrent costs.	\$2,235 in recurrent costs.

\* For some of the survey questions, shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following response options: "Yes", "No" and "Neutral (\$0)." If the respondent selected "no", this was reported as "no cost savings indicated" in Table 3. For other survey questions, shellfish operations were able to enter both one-time and annual recurrent costs, as well as select whether the impact of the proposed rule is cost neutral (\$0) or insignificant, or the question did not apply to their operation. If the respondent did not enter any costs nor select the cost neutral option, this was reported as "no costs indicated" in Table 3. If the respondent indicated that the question did not apply to their operation, this was reported as "not applicable" in Table 3.

\*\* One large shellfish operation provided a one-time cost of \$3,000,000 and an annual recurrent cost of \$250,000, which relate to the establishment of nurseries in Approved areas to enable the operation to grow bigger seed. Since this is not a requirement of the proposed rule, these estimates have been excluded from the summary of costs.

The following steps have been identified and taken to reduce the costs of the rule on small businesses.

1. Reducing, modifying, or eliminating substantive regulatory requirements.

The proposed rule reduces how often thermometers need to be verified.

2. Simplifying, reducing, or eliminating recordkeeping and reporting requirements.

The proposed rule eliminates the requirement for lot identification numbers.

3. Delaying compliance timetables.

The department will allow shellfish operations to utilize their inventory of existing tags before ordering new ones.

4. Any other mitigation techniques including those suggested by small businesses or small business advocates.

The proposed rules add the ability for shellfish operations to apply for a waiver to the seed size to allow the operations another way to measure their seed.

While the steps identified above are applicable to all shellfish operations, they will ease the burden on small businesses, which are the majority of operations in the state of Washington.

Description of how small businesses were involved in the development of the proposed rule.


Small businesses comprised the majority of the shellfish operations participating in the Rules Advisory Committee (RAC) meetings that the board and department have been holding as part of this rulemaking project. An additional strategy that was utilized to provide space for small growers/operations to voice their unique concerns or suggestions was the separation of those RAC meetings held in winter 2024 into small and large operations.

The estimated number of jobs that will be created or lost as a result of the compliance with the proposed rule.

The board does not anticipate that there will be any jobs created or lost as a result of compliance with the proposed rule.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name Shay Bauman  
Address PO Box 47990, Olympia, WA 98504-7990  
Phone 360-236-4110  
Fax None  
TTY 711  
Email shay.bauman@sboh.wa.gov  
Other N/A

<b>Date:</b> 8/29/2025 <b>Name:</b> Michelle Davis, MPA <b>Title:</b> Executive Director, Washington State Board of Health	<b>Signature:</b> 
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AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

**WAC 246-282-001 Scope and purpose.** These requirements, as authorized under chapter 69.30 RCW, establish minimum performance standards for the growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption or bait. These requirements do not apply to persons who conduct activities limited to:

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

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

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

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (2023) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of ~~((shellfish and water protection))~~ environmental health and safety);

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

(c) Chapter 69.30 RCW; and

(d) All other provisions of this chapter.

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

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

**WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan.** (1) This section establishes the ~~((Washington state))~~ *Vibrio parahaemolyticus* (Vp) control plan (control plan) for the months of

May 1st through September 30th (control months). The requirements of this section are an extension of the NSSP Model Ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

~~((+5))~~ (4) A harvester~~((s and))~~ or shellfish dealer~~((s))~~ harvesting oysters during the control months shall complete, submit to the department, and keep on file a current ~~((*Vibrio parahaemolyticus*))~~ Vp harvest plan of operations (harvest plan). ~~((In order for the department to review the harvest plan prior to May 1st,))~~ The harvest plan must be submitted ((by March 1st each year)) to the department for review at least 14 calendar days before the first planned harvest within the control months unless no changes have been made to the existing harvest plan. Each harvester((s and)) or shellfish dealer((s)) shall sign and date their harvest plan each year and make it available to the department upon request.

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

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

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

~~((Identify))~~ If water temperature or internal oyster tissue temperature ((is)) will be used as the harvest temperature to meet the

requirements in subsection ~~((11))~~ (10) of this section and specifically how this measurement will be taken.

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

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

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

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

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

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

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

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

~~((11) Time of harvest begins after the first oysters to be harvested are exposed to the air.))~~ (10) Time of harvest to cooling requirements ((and harvest controls are as follows:)) during control months are listed in the tables in (a), (b), and (c) of this subsection. If multiple conditions apply at the time of harvest, then the most stringent time of harvest to cooling must be used.

(a) Category 1:

<del>((Requirements))</del> <u>Condition at Harvest:</u>	<u>Time of Harvest to Cooling:</u>
Except as noted below, the time of harvest to cooling requirement <del>((from June 1st through September 30th))</del> is:	9 hours
When <b>ambient air temperature</b> <del>((at harvest is greater than 90°F, the time of harvest to cooling requirement))</del> is <u>90.0°F or above:</u>	7 hours

<b><u>((Requirements)) Condition at Harvest:</u></b>	<b><u>Time of Harvest to Cooling:</u></b>
When <b>harvest temperature</b> is ((between 68°F and 70°F from July 1st through August 31st, the time of harvest to cooling requirement is)) 68.0°F to 70.0°F:	5 hours
<del>((Harvest Control: From July 1st through August 31st, harvest is not allowed for twenty-four hours))</del> When <b>harvest temperature</b> is above 70.0°F((-):	<u>Harvest is not allowed for 24 hours</u>

(b) Category 2:

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

(c) Category 3:

<b><u>((Requirements)) Condition at Harvest:</u></b>	<b><u>Time of Harvest to Cooling:</u></b>
Except as noted below, <u>the</u> time of harvest to cooling requirement ((from May 1st through September 30th)) is:	5 hours
When <b>ambient air temperature</b> ((at harvest is greater than 80°F, the time of harvest to cooling requirement)) is 80.0°F or above:	3 hours
When <b>harvest temperature</b> is ((between 64°F and 66°F from July 1st through August 31st, the time of harvest to cooling requirement is)) 64.0°F to 66.0°F:	1 hour
<del>((Harvest Control: From July 1st through August 31st, harvest is not allowed for twenty-four hours))</del> When <b>harvest temperature</b> is above 66.0°F((-):	<u>Harvest is not allowed for 24 hours</u>

(d) When a harvester or shellfish dealer places oysters in a container or conveyance, but does not remove them from the ((~~tide flat~~)) harvest site as part of their harvest ((~~and the harvest exceeds the~~))

~~time to cooling requirements in subsection (11) of this section, then)), the following conditions must be met:~~

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

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

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

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

(a) Air temperature; and

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

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

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

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

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

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

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

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

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

~~((14))~~ (16) If shellstock is beach wet stored or stored in a flow-through wet storage system in a growing area with a different

risk category than where it was harvested, the more stringent time of harvest to cooling requirement must be used.

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

(a) Destroy the oysters;

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

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

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

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

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

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

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

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

~~((a))~~ oysters; and

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

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

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

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

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

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

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

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

(a) Be in writing;

(b) Identify the requirement requested to be waived;

(c) State the reason for the waiver; and



(d) Provide supporting information.

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

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

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

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

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

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

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

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

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

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

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

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

(i) Be associated with commercially harvested shellstock;

(ii) Not involve documented postharvest abuse; and

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

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

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

**WAC 246-282-010 Definitions.** The ~~((following))~~ definitions in this section, as well as those in chapter 69.30 RCW and the NSSP Model Ordinance, apply ~~((in the interpretation and the implementation of these rules and regulations))~~ throughout chapter 246-282 WAC unless the context clearly requires otherwise. 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 ~~((secretary))~~ department.

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

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

(4) "Beach wet storage" or "beach wet stored" means when shellstock greater than maximum seed size is harvested from one harvest site and placed in another harvest site for less than 14 days.

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

~~((5))~~ (6) "Civil penalty" means a monetary penalty administratively issued by the ~~((secretary))~~ department. It does not include any criminal penalty; damage assessment; wages, premiums, or taxes owed; or interest or late fees on any existing obligation.

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

~~(a) Forty pounds of mussels;~~

~~(b) One hundred oysters;~~

~~(c) Fourteen horse clams;~~

~~(d) Six geoducks; or~~

~~(e) Fifty pounds of other hard or soft shell clams; or~~

~~(f) Fifty pounds of scallops.))~~

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

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

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

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

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

(12) "Harvest site" means an area of intertidal or subtidal property within a commercial shellfish growing area, that is described by a unique county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, tribal identification number, or other government identification.

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

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

(15) "Marina" means any water area with a structure including, but not limited to, docks, basins, floating docks, or mooring buoys used for docking and constructed to provide temporary or permanent docking or buoy moorage space for more than 10 boats. This only includes boats with a marine sanitation device.

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

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

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

~~((16))~~ (19) "NSSP Model Ordinance" means the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish, as adopted in WAC 246-282-005.

~~((17))~~ (20) "Nursery" means an operation where shellfish are grown from an early sessile stage of life up to a maximum size meeting the definition of shellfish seed.

~~((18))~~ (21) "Number of previous violations" means the number of prior violations of the same or a similar nature for which the department has taken a license action or assessed a civil penalty.

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

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

~~((21))~~ (23) "Public health threat" is either:

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

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

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

~~((22))~~ (24) "Sale" means to sell; offer for sale; barter; trade; deliver; consign; hold for sale, consignment, barter, trade, or delivery; donate; and/or possess with intent to sell or dispose of in a commercial manner.

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

~~((24))~~ (25) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:

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

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

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

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

(e) ~~((Fifty-one))~~ Thirty-eight millimeters ~~((2))~~ 1 and 1/2 inches) for other oyster species;

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

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

~~((25))~~ (26) "Shellfish" means all varieties of fresh or fresh-frozen oysters, clams, scallops or mussels, either shucked or in the shell, and all fresh or fresh-frozen edible products thereof.

~~((26))~~ (27) "Shellfish dealer" means a person with a shellstock shipper or shucker-packer license.

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

~~((28))~~ (29) "Shellfish operation" means growing, placing in a container, harvesting, transporting, processing, culling, shucking,

packing, and repacking, storing, shipping, or reshipping of shellfish in commercial quantities or for sale for human consumption.

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

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

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

~~((+32+))~~ (33) "Technical assistance" means information provided by the department to a person regarding chapter 69.30 RCW; this chapter; technologies or other methods to achieve compliance with these rules; assistance in applying for a departmental license or permit required by these rules; or the goals and objectives of these rules. This is not intended to modify the definition of "technical assistance" as provided in RCW 43.05.010(3).

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

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

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

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

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

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

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

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

(2) ~~((Any))~~ A person ~~((who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses,))~~ engaged in the actions listed in WAC 246-282-005(1), or a person acting on behalf of them, must have a valid shellfish operation license.

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

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

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

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

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

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

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

(a) ((The person possesses)) Have a valid shellfish operation li-  
cence((-)).;

(b) ((The person)) Submit((s)) to the department a completed ap-  
plication ((that describes)) on a form provided by the department. The  
form must require, at a minimum, the following characteristics ((of))  
describing the site:

(i) Geographic location;

(ii) Map showing legal boundaries;

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

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

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

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

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

~~(f) The person signs the current conditionally approved area man-~~  
~~agement plan, if applicable.~~

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

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

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

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

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

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

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

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

**WAC 246-282-014 Operating provisions.** (1) ~~((Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid shellfish operation license))~~ A person engaged in the actions listed in WAC 246-282-005(1), or a person acting on behalf of them, shall show a valid shellfish operation license, upon request, to ~~((any))~~ an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The shellfish operation license can be an electronic copy, photocopy, or the original issued by the department. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(2) ~~((Any person who harvests))~~ A person harvesting a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption ~~((must display a photocopy or original of))~~ or bait, or a person acting on behalf of them, shall show a valid harvest site certificate, upon request, to ~~((any))~~ an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The harvest site certificate can be an electronic copy, photocopy, or the original issued by the department. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(3) ~~((Any person who places))~~ A person placing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption or bait in containers at a harvest site ~~((must do so only at a site for which the person possesses)), or a person acting on behalf of them, shall have a valid harvest site certificate.~~

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

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

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

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

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

(d) Notify the department if ~~((an owner or person in charge has))~~ they have reason to believe that ~~((any))~~ an individual is using the operation's tags, shellfish operation license, or harvest site certifi-



icate for ~~((any))~~ a purpose other than ~~((one))~~ a purpose approved by the department.

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

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

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

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

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

**WAC 246-282-016 Aquaculture.** ~~((Any person who conducts an aquaculture operation and is in possession of a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must meet all requirements of this chapter.))~~ (1) A person who engages in aquaculture activities must have an aquaculture permit. To qualify for an aquaculture permit approved by the department, the person shall comply with the NSSP Model Ordinance Chapter 6 - Shellfish Aquaculture.

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

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

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

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

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

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

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

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

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

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

location; and the date of first harvest of any of those shellfish from the grow-out site.

(4) The department may grant a waiver to seed size as defined in WAC 246-282-010(25) if:

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

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

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

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

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

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

#### NEW SECTION

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

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

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

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

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

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

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

(2) The department classifies a shellfish growing area as ~~((("))restricted(((")) or ((("))prohibited((("))~~ according to provisions of the NSSP Model Ordinance. ~~((However, the department considers classifying a harvest site as "restricted" only when the department has received a valid application for a permit for relay or wild seed harvest from the site.))~~ A restricted classification will be considered when the department receives a complete application for a permit for relay or wild seed harvest for the site and there is no impact from a wastewater treatment plant or wastewater collection system, marina, combined sewage overflow, or other pathogens of human origin.

(3) While a harvest site is in closed status, ~~((no))~~ a person may not move shellfish ~~((from it))~~ to a location outside of the harvest site or above the mean low tide line of the harvest site, unless the department has approved:

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

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

(4) Harvesting is prohibited ~~((from))~~ in all ~~((growing areas))~~ unclassified ~~((by the department))~~ areas except for bait harvest according to WAC 246-282-036 and aquaculture according to WAC 246-282-016.

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

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

(2) An applicant for a relay permit shall:

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

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

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

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

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

(i) May 1st through October 31st; and

(ii) November 1st through April 30~~(((-)))~~th; and

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

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

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

(a) ((It must)) Document that the geometric mean fecal coliform bacteria level in a minimum of five 100-gram tissue samples, representative of shellfish of the same species in the entire initial harvest site, is equal to or less than 1,300, with no sample having more than 2,300((-)):

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

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

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

(c) ((It must be repeated)) Repeat a minimum of once every ((twelve)) 12 years for a continuing operation and whenever relay conditions change((-)); and

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

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

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

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

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

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

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

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

(a) A lot identification number;

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

(c) The grow-out location; and

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

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

(a) Collect at least one sample from the ~~((shellfish))~~ lot at the initial harvest site and have it analyzed by an approved laboratory to demonstrate that the lot contains no more than 2,300 fecal coliform bacteria per 100 grams of shellfish tissue; and

(b) Collect at least one sample from the ~~((shellfish))~~ lot at the grow-out site at the end of the relay period and have it analyzed by an approved laboratory to demonstrate that the lot contains fecal coliform bacteria within the maximum limits determined by a validation study, as described in subsection ~~((+2))~~ (3)(b) of this section, before releasing control of the ~~((shellfish))~~ lot.

~~((+5))~~ (9) A person is exempt from ~~((any))~~ fees required by WAC 246-282-990 for an initial application and a validation study conducted by the department for a relay permit for the purpose of relaying shellfish from a growing area that the department downgraded from a classification of ~~(("))~~ approved~~(("))~~ or ~~(("))~~ conditionally approved~~(("))~~ to ~~(("))~~ restricted~~(("))~~ within the previous ~~((twenty-four))~~ 24 months.

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

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

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

(a) Documented in the permit;

(b) In possession of a copy of the permit ~~((at the time of harvest))~~ when harvesting; and

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

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

**WAC 246-282-034 Wild seed permit.** (1) The department ~~((will))~~ shall issue a wild seed permit ~~((to a person))~~ to move shellfish from a harvest site in a growing area classified by the department as ~~(( "conditionally approved" in closed status, "restricted," or "prohibited," if all of the following conditions are met))~~ prohibited if the requirements in this section and chapter 69.30 RCW are met.

(2) To qualify for a wild seed permit:

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

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

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

~~((e))~~ (b) The original harvest site ~~((has))~~ must have acceptable levels of poisonous chemicals, is not in an area known to be a hazardous chemical disposal site, and is not in a closure zone of a wastewater treatment plant or marina~~((-))~~;

~~((d))~~ (c) The grow-out site ~~((is))~~ must be in a natural body of water classified by the department as ~~(( ))~~ approved~~(( ))~~ or ~~(( ))~~ conditionally approved~~(( ))~~;

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

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

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

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

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

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

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

(d) Leave seed in a grow-out site for a minimum of ~~((six months))~~ 120 days before final harvest;

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

(f) Place any live shellfish larger than seed size attached to, or commingled with, the seed in the grow-out site for a minimum of ~~((six months))~~ 120 days after initial harvest; and

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

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

~~((3) A person's))~~ (5) A wild seed permit issued under this section expires on the same date as the ~~((person's))~~ shellfish operation license.

~~((4))~~ (6) A person is exempt from the requirements of this section for the activity of harvesting seed attached to containerized empty shellfish shells or other cultch material, provided that the person:

(a) Meets the conditions of subsection ~~((1))~~ (2)(a) through ~~((d))~~ (c) of this section;

(b) Leaves the seed in the grow-out site for a minimum of ~~((six months))~~ 120 days before final harvest; and

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

(7) Wild seed harvested from a conditionally approved area in closed status or a restricted area must follow the relay standards listed in WAC 246-282-032.

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

**WAC 246-282-036 Bait permit.** (1) The department ~~((will approve and))~~ shall issue a bait permit ~~((to a person))~~ to harvest shellfish from a harvest site in a growing area classified by the department as ~~((("))prohibited, (((")) restricted, (((")) or (((")) conditionally approved(((")) in closed status ((if all of the following conditions are met.))~~ or from an unclassified area if the requirements in this section and chapter 69.30 RCW are met.

(2) To qualify for a bait permit:

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

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

~~((b) The person possesses))~~ (ii) Have a valid harvest site certificate for the site((-));

~~((e))~~ (b) The harvest site ((is not)) must not be impacted by biotoxin levels that would cause the department to close it for harvest for human consumption((-));

~~((d) The person submits a completed written))~~ (3) To apply for a bait permit the applicant shall:

(a) Submit a complete application to the department on a form provided by the department and written plan of operations ((approved by the department)) that completely ((describing)) describes the procedures of the bait operation((-)); and

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

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

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

(b) Harvest bait from an area classified as ~~((("))prohibited(((")) or unclassified~~ only during daylight hours;

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

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

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

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

(g) Keep records for each lot of shellfish harvested for use as bait showing a lot identification number, the species, the harvest

site, the harvest date, the quantity harvested, the names of all buyers, and the quantity sold to each buyer.

~~((3) A person's))~~ (5) A bait permit issued under this section expires on the same date as the ((person's)) shellfish operation license.

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

- (a) Obtains the shellfish from a person with a valid bait permit;
- (b) Possesses a sales invoice for the shellfish from a person with a valid bait permit; and
- (c) Maintains each container of shellfish prominently labeled "NOT FOR HUMAN CONSUMPTION - BAIT USE ONLY."

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

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

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

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

- ~~(a) Possesses a valid shellfish operation license;~~
- ~~(b) Submits a completed written application and plan of operations to the department completely describing the procedures of the wet storage operation;~~
- ~~(c) Documents that the water used for the operation meets the requirements of the NSSP Model Ordinance;~~
- ~~(d) Passes an inspection by the department; and~~
- ~~(e) Pays the department a wet storage application fee or renewal fee as required by this chapter.~~

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

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

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

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

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

- (a) Have a valid shellfish operation license;
- (b) Have a valid harvest site certificate for the applicable site(s);



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

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

(e) Pass an inspection by the department; and

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

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

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

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

(c) The shellstock must:

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

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

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

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

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

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

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

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

(d) The shellstock must:

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

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

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

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

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

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

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

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

## NEW SECTION

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

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

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

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

~~(2) Any))~~ A person who packs, handles, or stores shucked shellfish or operates a shucked shellfish repacking plant ((must)) shall meet all the requirements specified in this chapter and the NSSP Model Ordinance for packing plants.

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

**WAC 246-282-060 Personal health and cleanliness.** (1) ~~((Any))~~ A person may not work in any growing area, shucking, packing, or repacking plant in any capacity when ill with or the carrier of a communicable disease which is transmissible through food and is in the infectious stage ((may not work in any growing area, shucking, packing or repacking plant in any capacity)) where that person might contaminate the shellfish or food contact surfaces with pathogenic organisms. The

owner, the person in charge, and the employee are all responsible for compliance with the requirements of this section.

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

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

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

**WAC 246-282-070 Construction and maintenance.** (1) ~~((All owners and persons))~~ An owner or person in charge of shellfish operations ~~((must))~~ shall arrange their physical facilities to aid in the flow of shellfish products through all handling, processing, and storage areas in a manner that will minimize contamination of the shellfish.

(2) ~~((Any))~~ An owner of a shellfish operation ~~((must))~~ shall submit to the department for consultation properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities at least ~~((thirty))~~ 30 days before the facilities are:

(a) Originally constructed;

(b) Converted from another use; or

(c) Extensively remodeled to the extent that a plan for a building permit is required by the city or county where located.

(3) The department ~~((will))~~ shall review properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities required by subsection (2) of this section within ~~((thirty))~~ 30 days of receipt and provide technical assistance to the owner of the shellfish operation regarding whether the proposed physical facilities would meet the requirements of this chapter.

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

**WAC 246-282-080 Identification and records.** (1) ~~((Any))~~ A person ~~((who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess))~~ engaged in the actions listed in WAC 246-282-005(1), or a person acting on behalf

of them, shall have a written record documenting that the shellfish came from one or more of the following sources:

(a) A harvest ((site(s))) site or sites for which the person ~~((possesses))~~ has a valid harvest site certificate;

(b) Another shellfish operation licensed by the department; or

(c) A shellfish dealer located outside of the state who ~~((is in compliance))~~ complies with the requirements of the NSSP Model Ordinance and is eligible for inclusion on the current Interstate Certified Shellfish Shippers List, published by the U.S. Food and Drug Administration.

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

(3) ~~((Any))~~ If the person possessing shellstock in subsection (2) of this section is the harvester, the tag must include the growing area name and either the department harvest site application number (ex: 2012-23), harvest ID, parcel number, or other approved harvest site identifier. This information must be listed on the harvester tag, harvest record, and harvest site certificate.

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

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

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

(b) Wording equivalent to "keep frozen" on containers of frozen shellfish.

~~((4))~~ (6) The owner or person in charge of a shellfish operation ((must)) shall keep accurate records of all lots of shellfish harvested, received, wet stored, shucked, packed, shipped, or sold by the shellfish operation for a minimum of three years.

~~((5) Information recorded by))~~ (7) The harvester-shipper shall ((include)) record the following:

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

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

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

(d) Date shipped.

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

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

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

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

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

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

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

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

~~((4) Completes an application specified))~~ (d) Submit to the department a complete application on a form provided by the department;

~~((5))~~ (e) Document~~((s))~~ use of each export certificate as specified by the department; and

~~((6) Pays the department any fee for each export certificate))~~

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

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

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

(2) The department shall inspect~~((s))~~ each shellfish operation:

(a) A minimum of once per year;

(b) Before issuing a new shellfish operation license to a person;

(c) Within 30 days after issuing a new shellfish operation license;

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

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

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

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

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

(a) Buildings, yards, warehouses, storage facilities, transportation facilities, vehicles, vessels and other places reasonably considered to be or to have been used in connection with the shellfish operation;

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

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

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

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

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

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

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

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

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

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

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

(1) ~~((The department's))~~ A notice of a denial, suspension, modification, or revocation of a license ~~((is consistent))~~ from the department must comply with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

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

(3) A license applicant or holder or a person ~~((upon whom the department imposes a civil penalty))~~ who receives a notice as described in subsection (1) or (2) of this section from the department, may contest a department decision, within ~~((twenty-eight))~~ 28 days of receipt of the decision by filing a written application for an adjudicative proceeding by a method showing proof of receipt with the administrative hearings unit, department of health. The person ~~((must))~~ shall include the following in or with the application:

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

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

(c) A copy of the contested department decision.

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

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

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

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

(b) Refuses an inspection by the department;

(c) Harvests shellfish from any harvest site for which the ~~((see-retary))~~ department has not issued a harvest site certificate to the person;

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

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

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

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

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

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

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

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

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

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

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

(a) The level of threat to public health;

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

(c) The presence of aggravating or mitigating factors.

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

#### Penalty Schedule

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

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

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

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

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

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

(6) The department considers circumstances that increase the seriousness of a violation ~~((7))~~ including, but not limited to, the following aggravating factors:

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

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

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

(7) If the department determines that one or more aggravating factors are present, ~~((then))~~ the department may assess the aggravated penalty or may increase the penalty to a level greater than listed in



the penalty schedule(~~(7)~~) including, but not limited to, revocation of the license.

(8) The department will consider circumstances that decrease the seriousness of a violation(~~(7)~~) including, but not limited to, the following mitigating factors:

(a) Voluntary disclosure of the violation;

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

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

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

(10) The maximum civil penalty that may be imposed by the department is (~~(five hundred dollars)~~) \$500 per day for each violation.

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

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

(a) Declining to pursue an administrative penalty;

(b) Issuing a notice of correction instead of pursuing an administrative penalty; or

(c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.

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

**WAC 246-282-110 Administrative provisions.** (1) If the department finds during an inspection that (~~(any)~~) an owner or person working on behalf of a shellfish operation fails to comply with any requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance, (~~(then)~~) the department may issue a written statement of deficiencies or notice of correction (~~(to the owner, person in charge, or other employee of the operation who is present)~~).

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

(b) (~~(In the event)~~) If the owner or person in charge fails to correct the violation(s) specified in the statement of deficiencies or

notice of correction, the department may revoke the license and certificate of compliance for that shellfish operation or may initiate any other enforcement proceeding authorized by law.

(2) ~~((Any))~~ A 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))~~ a person who:

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

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

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

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

(a) The department must complete its further investigation within ~~((ten))~~ 10 days.

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

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

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

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

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

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

(b) Immediate destruction of the shellfish by measures such as denaturing and placing in a sanitary landfill, witnessed by an authorized representative of the department who provides a record of destruction to the person; or

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

(5) The ~~((secretary))~~ department may issue an abatement order to the owner or person in charge of a shellfish operation whenever the

department, after conducting an appropriate investigation, determines that a shellfish operation, or person working on behalf of a shellfish operation, presents a potential risk for transmitting an infectious disease to consumers of shellfish.

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

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

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

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

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

(6) ~~((No))~~ A person ~~((may))~~ shall not remove or alter a notice or tag constituting a hold order or abatement order placed on shellfish by the department.

(7) ~~((No))~~ A person may not relabel, repack, reprocess, alter, dispose of, destroy, or release shellfish or containers of shellfish for which the department has issued a hold order or abatement order without:

(a) Permission of the department; or

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

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

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

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

(1) A fine; or

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

(3) Both fine and imprisonment.

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

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