

Chapter 90.72 RCW
SHELLFISH PROTECTION DISTRICTS

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RCW 90.72.020 Shellfish tidelands. For purposes of this chapter, "shellfish tidelands" means all saltwater tidelands on which shellfish are grown or harvested for human consumption. [1985 c 417 s 2.]

RCW 90.72.030 Shellfish protection districts—Establishment—Governing body—Programs. The legislative authority of each county having shellfish tidelands within its boundaries is authorized to establish a shellfish protection district to include areas in which nonpoint pollution threatens the water quality upon which the continuation or restoration of shellfish farming or harvesting is dependent. The legislative authority shall constitute the governing body of the district and shall adopt a shellfish protection program with elements and activities to be effective within the district. The legislative authority may appoint a local advisory council to advise the legislative authority in preparation and implementation of shellfish protection programs. This program shall include any elements deemed appropriate to deal with the nonpoint pollution threatening water quality over shellfish tidelands, including, but not limited to, requiring the elimination or decrease of contaminants in stormwater runoff, establishing monitoring, inspection, and repair elements to ensure that on-site sewage systems are adequately maintained and working properly, assuring that animal grazing and manure management practices are consistent with best management practices, and establishing educational and public involvement programs to inform citizens on the causes of the threatening nonpoint pollution and what they can do to decrease the amount of such pollution. The county legislative authority shall consult with the department of health, the

department of ecology, the department of agriculture, or the conservation commission as appropriate as to the elements of the program. An element may be omitted where another program is effectively addressing those sources of nonpoint water pollution. Within the limits of RCW 90.72.040 and 90.72.070, the county legislative authority shall have full jurisdiction and authority to manage, regulate, and control its programs and to fix, alter, regulate, and control the fees for services provided and charges or rates as provided under those programs. Programs established under this chapter, may, but are not required to, be part of a system of sewerage as defined in RCW 36.94.010. [2008 c 250 s 1; 2007 c 150 s 1; 1992 c 100 s 2; 1985 c 417 s 3.]

Findings—1992 c 100: "The legislature finds that shellfish harvesting is important to our economy and way of life. Washington state is an international leader in the cultivation and production of shellfish. However, large portions of the state's productive recreational and commercial shellfish beds are closed to harvesting, and more are threatened, because of water pollution. The legislature finds that the problem of shellfish bed closures demands a public policy solution and that the state, local governments, and individuals must each take strong and swift action or this precious resource will be lost.

It is the goal of the legislature to prevent further closures of recreational and commercial shellfish beds, to restore water quality in saltwater tidelands to allow the reopening of at least one restricted or closed shellfish bed each year, and to ensure Washington state's commanding international position in shellfish production.

The legislature finds that failing on-site sewage systems and animal waste are the two most significant causes of shellfish bed closures over the past decade. Remedial actions at the local level are required to effectively address these problems.

The legislature finds that existing entities, including conservation districts and local health departments, should be used by counties to address the water quality problems affecting the recreational and commercial shellfish harvest.

The legislature finds that local action in each watershed where shellfish are harvested is required to protect this vital resource. The legislature hereby encourages all counties having saltwater tidelands within their boundaries to establish shellfish protection districts and programs designed to prevent any further degradation and contamination and to allow for restoration and reopening of closed shellfish growing areas." [1992 c 100 s 1.]

RCW 90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted. (1) The county legislative authority may create a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the legislative authority. The legislative authority may create more than one district. A district may include any area or areas within the county, whether incorporated or unincorporated. Counties shall coordinate and cooperate with cities, towns, and water-related special

districts within their boundaries in establishing shellfish protection districts and carrying out shellfish protection programs. Where a portion of the proposed district lies within an incorporated area, the county shall develop procedures for the participation of the city or town in the determination of the boundaries of the district and the administration of the district, including funding of the district's programs. The legislative authority of more than one county may by agreement provide for the creation of a district including areas within each of those counties. County legislative authorities are encouraged to coordinate their plans and programs to protect shellfish growing areas, especially where shellfish growing areas are located within the boundaries of more than one county. The legislative authority or authorities creating a district may abolish a shellfish protection district on its or their own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting.

(2) If the county legislative authority creates a shellfish protection district by its own motion, any registered voter residing within the boundaries of the shellfish protection district may file a referendum petition to repeal the ordinance that created the district. Any referendum petition to repeal the ordinance creating the shellfish protection district shall be filed with the county auditor within seven days of passage of the ordinance. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in creation of the shellfish protection district and a negative answer to the question and a negative vote on the measure results in the shellfish protection district not being created. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the shellfish protection district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title and full text of the measure to be referred. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the shellfish protection district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor.

(3) The county legislative authority shall not impose fees, rates, or charges for shellfish protection district programs upon properties on which fees, rates, or charges are imposed under chapter 36.89 or 36.94 RCW for substantially the same programs and services. [2011 c 10 s 84; 1997 c 447 s 20; 1992 c 100 s 3; 1985 c 417 s 4.]

Notice to registered poll voters—Elections by mail—2011 c 10:
See note following RCW 29A.04.008.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Findings—1992 c 100: See note following RCW 90.72.030.

RCW 90.72.045 Shellfish protection districts—Programs required after closure or downgrading of growing area classification—Annual report. The county legislative authority shall create a shellfish protection district and establish a shellfish protection program developed under RCW 90.72.030 or an equivalent program to address the causes or suspected causes of pollution within one hundred eighty days after the department of health, because of water quality degradation due to ongoing nonpoint sources of pollution has closed or downgraded the classification of a recreational or commercial shellfish growing area within the boundaries of the county. The county legislative authority shall initiate implementation of the shellfish protection program within sixty days after it is established.

A copy of the program must be provided to the departments of health, ecology, and agriculture. An agency that has regulatory authority for any of the sources of nonpoint pollution covered by the program shall cooperate with the county in its implementation. The county legislative authority shall submit a written report to the department of health annually that describes the status and progress of the program. If rates or fees are collected under RCW 90.72.070 for implementation of the shellfish protection district program, the annual report shall provide sufficient detail of the expenditure of the revenue collected to ensure compliance with RCW 90.72.070. [2008 c 250 s 2; 2007 c 150 s 2; 1992 c 100 s 4.]

Findings—1992 c 100: See note following RCW 90.72.030.

RCW 90.72.060 Decisions addressing conflicting uses—Integration of the state environmental policy act and county ordinances and resolutions with programs. Whenever a governmental entity makes a decision which addresses a matter in which there is a conflict between (1) on the one hand, a proposed development, proposed change in land use controls, or proposed change in the provision of utility services; and (2) on the other hand, the long-term use of an area for the growing or harvesting of shellfish, which area is within the boundaries of a shellfish protection district, then the governmental entity making the decision must observe the requirements of chapter 43.21C RCW and county ordinances or resolutions integrating the state environmental policy act of 1971 into the various programs under county jurisdiction. [1985 c 417 s 6.]

RCW 90.72.065 Plans to control pollution effects of animal waste—Contracts with conservation districts. Within available funding and as specified in the shellfish protection program, counties creating shellfish protection districts shall contract with conservation districts to draft plans with landowners to control pollution effects of animal waste. [1992 c 100 s 5.]

Findings—1992 c 100: See note following RCW 90.72.030.

RCW 90.72.070 Program financing—Activities not subject to fees, rates, or charges—Collection of charges or rates. The county legislative authority establishing a shellfish protection district may finance the protection program through (1) county tax revenues, (2) reasonable inspection fees and similar fees for services provided, (3) reasonable charges or rates specified in its protection program, or (4) federal, state, or private grants. A dairy animal feeding operation with a certified dairy nutrient management plan as required in chapter 90.64 RCW and any other commercial agricultural operation on agricultural lands as defined in RCW 36.70A.030 shall be subject to fees, rates, or charges by a shellfish protection district of no more than five hundred dollars in a calendar year. Facilities permitted and assessed fees for wastewater discharge under the national pollutant discharge elimination system shall not be subject to fees, rates, or charges for wastewater discharge by a shellfish protection district. Lands classified as forestland under chapter 84.33 RCW and timberland under chapter 84.34 RCW shall not be subject to fees, rates, or charges by a shellfish protection district. Counties may collect charges or rates in the manner determined by the county legislative authority. [2008 c 250 s 3; 1992 c 100 s 6; 1985 c 417 s 7.]

Findings—1992 c 100: See note following RCW 90.72.030.

RCW 90.72.080 State water quality financial assistance—Priority to counties with shellfish protection districts. Counties that have formed shellfish protection districts shall receive high priority for state water quality financial assistance to implement shellfish protection programs, including grants and loans provided under *RCW 43.83.350, chapters **70.146 and 90.50A RCW. [2015 1st sp.s. c 4 s 57; 1992 c 100 s 7.]

Reviser's note: *(1) RCW 43.83.350 was repealed by 2024 c 168 s 2.

** (2) Chapter 70.146 RCW was recodified as chapter 70A.135 RCW pursuant to 2020 c 20 s 2046.

Findings—1992 c 100: See note following RCW 90.72.030.

RCW 90.72.900 Certain authority of counties not affected by chapter. This chapter shall not be considered as diminishing or affecting the authority of a county to adopt and enforce programs or controls, within all or a portion of the county, to deal with nonpoint pollution. [1985 c 417 s 8.]