## STAFF REPORT

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| **Agenda Item:** | 4 | **Name:** | Jenny Ngo |
| **Proposed No**.: | 2018-0191 | **Date:** | November 28, 2018 |

**SUBJECT**

Proposed Ordinance 2018-0191 would create the Poverty Bay Shellfish Protection District and shellfish protection program.

**SUMMARY**

In Fall 2016, the Washington State Department of Health ("Department of Health") downgraded a 124 acre portion of shellfish beds in Poverty Bay in the City of Federal Way and adjacent to the City of Des Moines. Monitoring data showed that water quality in Poverty Bay did not meet water quality standards for fecal coliform. Under state law,[[1]](#footnote-1) King County, acting as the county legislative authority, is required to create a shellfish protection district and establish a shellfish protection program to address causes or suspected causes of pollution within 180 days after closure or downgraded status.

Proposed Ordinance 2018-0191, creates a shellfish protection district and establishes a Closure Response Plan as the shellfish protection program. Proposed Ordinance 2018-0191 appears to meet the requirements of Chapter 90.72 RCW.

**BACKGROUND**

**Commercial Shellfish Harvesting**

Commercial shellfish operators harvest shellfish (clams, oysters, mussels, geoducks, and scallops) in Puget Sound under licenses issued by the Washington State Department of Health (Department of Health). The Department of Health manages the approval of harvest areas, inspections of companies, monitors pathogens in commercial shellfish, and closes harvest areas that do not meet water quality standards.

Shellfish are susceptible to pollution and runoff resulting from urbanized areas. The Department of Health monitors both recreational and commercial shellfish growing areas and identifies four classifications for all shellfish harvesting areas: Approved, Conditionally Approved, Restricted, and Prohibited. An Approved classification authorizes commercial shellfish harvest for direct marketing. Conditionally Approved indicates that the growing area meets the approved status during certain periods during a given year, but are closed to shellfish harvesting during predictable periods.[[2]](#footnote-2) Restricted shellfish harvesting areas does not meet the approved criteria, but shellfish from these areas may be transplanted to an approved growing area and later harvested. A Prohibited classification indicates that there may be a health risk to consumers and commercial harvests are not permitted.

**Poverty Bay**

Poverty Bay, located adjacent to the Cities of Des Moines and Federal Way, has nearly 1,000 acres of shellfish beds. The primary shellfish that is commercially harvested is geoduck, with approximately half harvested by the Puyallup Tribe and half auctioned by the Washington State Department of Natural Resources. The land surrounding Poverty Bay is mostly developed with single-family residences, parks, commercial development, and several major arterials. Nearly 2,300 parcels are served by on-site septic systems.

In fall 2016, approximately 225 acres of Poverty Bay were downgraded to Conditionally Approved after failing water quality tests conducted by the Department of Health. Shellfish harvesting is prohibited during the predictable period for Poverty Bay, which is June 1 through November 30 of each year. The County is required to create a shellfish protection district and establish a shellfish protection plan once a downgrade occurs:[[3]](#footnote-3)

*“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.”*

**ANALYSIS**

Shellfish protection district are established when nonpoint source pollution threatens water quality in areas where shellfish harvesting occurs. Shellfish protection districts can be created at the discretion of a county legislative body or may be mandated under state law when a downgrade of a shellfish harvesting area occurs, as in the case with Poverty Bay. Proposed Ordinance 2018-0191 would create the shellfish protection district and the required shellfish protection program.

Where the district's boundaries are within an incorporated area, the County is required to establish procedures for participation for affected jurisdictions. For the proposed Poverty Bay shellfish protection district, the Department of Natural Resources and Parks convened a technical committee comprised of representatives from King County, the cities of Des Moines, Federal Way, Kent, and SeaTac, the Department of Health, Department of Ecology, Department of Natural Resources (DNR), Washington State Parks and Recreation Commission, Washington State Department of Transportation, Lakehaven and Midway Sewer Districts, the University of Washington, and the Puyallup Tribe. The technical committee developed the parameters of the shellfish protection district, including the boundaries of the district, objectives specific to the district, and proposed actions, which has been transmitted through Proposed Ordinance 2018-0191.

State law permits the collection of charges or rates to implement a shellfish protection district and its activities; however, no rate or charge are proposed as part of this ordinance. Executive staff have indicated that the program can be implemented within existing resources and grant opportunities. A future ordinance adopted by Council would be necessary to enact charges or rates for the district.

Pursuant to RCW 90.72.030, shellfish protection districts must address topics deemed appropriate to manage nonpoint source pollution threatening water quality. This is carried out through an accompanying shellfish protection program, which is entitled the Closure Response Plan in Attachment B of the proposed ordinance. RCW 90.72.030 requires the minimum elements be included in the Closure Response Plan:

* 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 Closure Response Plan appears to meet the minimum elements listed in RCW 90.72.030. Additional testing, monitoring, and analyses is underway by WLRD to identify sources of pollution as well as necessary actions to address the pollution. The Closure Response Plan addresses suspected non-point sources, including on-site septic systems and stormwater discharge; however, actions may change as necessary to target specific sources once these sources are confirmed.

**AMENDMENTS**

Amendment 1 adds language to clarify the classification of the affected shellfish harvesting beds, adds language to reflect the requirements of Chapter 90.72 RCW, clarifies the requirements within the new chapter including stating that the council is the governing body, the adoption of the shellfish protection program, outside agencies for coordination, requirements for annual report transmittal to the state, and provisions to dissolve the district by ordinance. The two attachments within the proposed ordinance are also modified to include additional language related to stormwater, clarification on boundary features, and clarifications to maps. Title Amendment 1 updates the title to reflect changes in Amendment 1.

**ATTACHMENTS**

1. Proposed Ordinance 2018-0191 (and its attachments)
2. Amendment 1
3. Title Amendment 1
4. Transmittal Letter
5. Fiscal Note

**INVITED**

1. Christie True, Director, DNRP
2. Josh Baldi, Division Director, WLRD
1. RCW 90.72.045 [↑](#footnote-ref-1)
2. The length of closure is pre-determined for a conditionally approved area and is based on the amount of time water quality in the harvesting area can recover. Two examples of closures are during summer boating season or after heavy rainfall events. [↑](#footnote-ref-2)
3. RCW 90.72.045 [↑](#footnote-ref-3)