

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1303  
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Natural Resources  
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### **DIGEST**

Currently, Texas law does not allow a license management program for commercial finfish fishery. A person can obtain a license to commercially harvest and sell finfish in Texas. However, this open access system has led to overcapitalization of finfish fishery resulting in excess taking of finfish stocks and a decline in economic stability in the industry. The Parks and Wildlife Commission has placed restrictions on areas for fishing, times for fishing, size limits, bag and possession limits, and quantity and type of gear under the authority of Chapters 47 and 66, Parks and Wildlife Code. Additionally, current law does not allow for the creation of new licenses, which does not allow a mechanism to create new opportunities for fishery harvest. S.B. 1303 would authorize the Parks and Wildlife Commission to create a license management program for the commercial finfish fishery, and would establish fees and licenses for commercial finfish fishing.

### **PURPOSE**

As proposed, S.B. 1303 sets forth authority and rules for finfish fishery.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Finfish License Management Review Board executive director in SECTION 7 (Sections 47.073(d), 47.080(a), 47.103(d), and 47.110, Parks and Wildlife Code); Texas Natural Resource Conservation Commission in SECTION 7 (Sections 47.074(a) and (e), 47.075, 47.079(a), 47.081(b) and (c), 47.082(a), 47.083(a), 47.084(b), 47.104(a) and (c), 47.105, 47.107(a), 47.109(a), 47.111(b), and 47.112(b), Parks and Wildlife Code); in SECTION 9 (Section 66.206(e), Parks and Wildlife Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 47.001(1) and (2), Parks and Wildlife Code, to redefine “commercial fisherman” and “commercial finfish fisherman.”

SECTION 2. Amends Section 47.002, Parks and Wildlife Code, by adding Subsection (i), to provide that a person who engages in commercial finfish fishing under Subchapter D and who holds a commercial finfish fisherman’s license issued under Subchapter D and possesses that license on board is not required to obtain or possess a general commercial fisherman’s license.

SECTION 3. Amends Section 47.007, Parks and Wildlife Code, by adding Subsection (f), to provide that a person who engages in commercial finfish fishing under Subchapter D and who holds a commercial finfish fisherman’s license issued under Subchapter D and possesses that license on board is not required to obtain or possess a commercial fishing boat license.

SECTION 4. Amends Section 47.0091, Parks and Wildlife Code, to provide that no wholesale fish dealer may purchase for resale or receive for sale, barter, exchange, or any other commercial purpose any aquatic product from any person or entity in this state unless the dealer purchases the product from the holder of a commercial crab fisherman’s license, or a commercial finfish fisherman’s license.

SECTION 5. Amends Section 47.0111, Parks and Wildlife Code, to make conforming and nonsubstantive changes.

SECTION 6. Amends Section 47.012, Parks and Wildlife Code, to make conforming changes.

SECTION 7. Amends Chapter 47, Parks and Wildlife Code, by adding Subchapters D and E, as follows:

SUBCHAPTER D. FINFISH LICENSE MANAGEMENT

Sec. 47.071. FINFISH LICENSE MANAGEMENT PROGRAM. Requires the Parks and Wildlife Department (TPWD) to implement, no later than September 1, 2000, a finfish license management program in accordance with proclamations adopted by the Texas Natural Resource Conservation Commission (TNRCC) under Chapter 61 and this subchapter, to promote efficiency and economic stability in the commercial finfish industry and to conserve economically important finfish resources.

Sec. 47.072. DEFINITION. Defines "license."

Sec. 47.073. FINFISH LICENSE MANAGEMENT REVIEW BOARD. Requires the license holders under this subchapter to elect a finfish license management review board (board) of nine members. Prohibits a majority of the members of the review board from being residents of the same county. Requires the review board to advise TNRCC and TPWD and make recommendations concerning the administrative aspects of the finfish licensing program. Requires the executive director to adopt procedures for the operation of the review board and the election and terms of board members. Requires the executive director to solicit and consider recommendations regarding these procedures from persons who purchased commercial finfish fisherman's licenses after September 1, 1997 and through December 17, 1998. Requires a member of the review board to qualify to obtain a commercial finfish fisherman's license under this subchapter, or be a person who has knowledge of the commercial finfish industry, subject to Chapter 2110, Government Code. Provides that a member of the review board serves without compensation or a per diem allowance.

Sec. 47.074. LICENSING. Provides that no person may engage in business as a commercial finfish fisherman unless the person has obtained a commercial finfish fisherman's license or a license adopted by TNRCC under this subchapter. Provides that no person may engage in commercial finfish fishing aboard a boat operating under a license issued by TNRCC unless certain conditions exist. Authorizes TPWD to issue a commercial finfish fisherman's license only to a person who documents in a manner acceptable to TPWD that the person held a commercial finfish fisherman's license during the period after September 1, 1997, through December 17, 1998, beginning September 1, 2000. Sets forth requirements of a proclamation issued under this section. Requires a proclamation under this section to require a license other than the commercial fisherman's license to contain findings by TNRCC that support the need for the proclamation. Requires TNRCC to adopt a finfish fishery management plan, before implementing new license requirements. Sets forth requirements for TNRCC to consider regarding license requirements. Requires the presiding officer of TNRCC to appoint a finfish advisory committee (committee) to advise TNRCC on the preparation and implementation of a finfish fishery management plan, if one is developed. Requires the committee to consist of persons from the finfish industry and individuals and groups interested in the coastal finfish resources of the state.

Sec. 47.075. LICENSE FEE. Provides that the fee for a commercial finfish fisherman's license issued under this subchapter is \$300 or an amount set by TNRCC, whichever amount is more. Provides that the fee for any other license issued by TNRCC under this subchapter is an amount set by TNRCC for the license. Provides that all fees generated by the issuance of a license under this subchapter are to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account subject to Section 47.081(d).

Sec. 47.076. LICENSE RENEWAL. Requires a person seeking to renew a license established by this subchapter to have held the license during the preceding license year.

Sec. 47.077. LIMIT ON NUMBER OF LICENSES HELD. Prohibits a person from holding or directly or indirectly controlling more than one license issued under this subchapter. Requires a license issued to a person other than an individual to designate an individual in whose name the license is issued.

Sec. 47.078. EXPIRATION OF LICENSE. Provides that a license required by this subchapter is valid only during the period for which it is issued without regard to the date on which the license

is acquired. Provides that each period is one year beginning on September 1 or another date set by TNRCC.

Sec. 47.079. LICENSE TRANSFER. Authorizes TNRCC, by rule, to set a fee for the transfer of a license. Prohibits the amount of the transfer fee from exceeding the amount of the license fee. Requires TNRCC to send all license transfer fees to the comptroller for deposit to the credit of the game, fish, and water safety account subject to Section 47.081(d). Requires TNRCC by proclamation to allow a license to be transferred beginning no later than September 1, 2004. Requires TNRCC to annually review the decision regarding license transfer. Authorizes a license to be transferred at any time to an heir or devisee of a deceased license holder, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property, notwithstanding Subsection (c). Authorizes a license to be transferred at any time to a member of a license holder's immediate family, notwithstanding Subsection (c). Requires TNRCC by vote to define "immediate family" for purposes of this subsection.

Sec. 47.080. LICENSE SUSPENSION AND REVOCATION. Requires the executive director, after notice to a license holder and the opportunity for a hearing, to suspend a commercial finfish fisherman's license or a license adopted by TNRCC under this subchapter, if the license holder or any other operator of the licensed vessel is convicted of one or more flagrant offenses totaling three flagrant offenses for the licensed vessel. Sets forth suspension conditions. Authorizes the executive director to permanently revoke a license issued under this subchapter, if certain conditions exist, after notice and the opportunity for a hearing. Provides that the same flagrant offense may not be counted for more than one suspension under this section. Sets forth flagrant offenses for purposes of this section.

Sec. 47.081. LICENSE BUYBACK. Authorizes TPWD to implement a license buyback program for licenses issued under this subchapter as part of the finfish license management program established by this subchapter. Authorizes TNRCC, by rule, to establish criteria, using reasonable classifications, by which TPWD selects licenses to be purchased. Authorizes TNRCC to delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but TNRCC by order must finally adopt the rules establishing the criteria. Requires TNRCC or the executive director to consult with the committee concerning establishment of the criteria. Requires TNRCC to retire each license purchased under the license buyback program until TNRCC finds that management of the finfish fishery allows reissue of those licenses through auction or lottery. Requires TPWD to set aside at least 20 percent of the fees from licenses issued or license transfers approved under this subchapter to be used only for the purpose of buying back those licenses from a willing license holder. Requires the money to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account. Authorizes TPWD to solicit and accept grants and donations or money or materials from private or public sources for the purpose of buying back licenses issued under this subchapter from a willing license holder. Provides that money to be used for the purpose of buying back licenses issued under this subchapter is not subject to Section 403.095, Government Code.

Sec. 47.082. LINE LIMITS. Requires TNRCC by proclamation issued under this code to authorize the holder of a commercial finfish fisherman's license to use up to 20 trotlines no more than 600 feet long, or another number and length of line authorized by TNRCC proclamation, to take or attempt to take finfish, no later than September 1, 2000. Provides that no holder of commercial finfish fisherman's license may possess on board more than the number of lines prescribed by this code or by TNRCC proclamation issued under this code.

Sec. 47.083. CRAB TRAPS. Requires TNRCC, by proclamation issued under this code, to authorize the holder of a commercial finfish fisherman's license to use up to 20 crab traps, or a number of traps authorized by TNRCC proclamation, for use in commercial fishing for bait purposes only, no later than September 1, 2000. Provides that this section does not authorize the taking of any product for pay or for the purpose of sale, barter, or exchange.

Sec. 47.084. PROGRAM ADMINISTRATION; RULES. Requires the executive director to establish administrative procedures to carry out the requirements of this subchapter. Requires TNRCC to adopt any rules necessary for the administration of the program established under this subchapter. Requires TNRCC to prescribe all gear marking requirements for trotlines and crab traps under this subchapter in accordance with Chapter 66.

Sec. 47.085. DISPOSITION OF FUNDS. Requires money received for a license issued under this subchapter and fines for violations of this subchapter to be remitted to TPWD by the 10th day of the month following the date of collection.

Sec. 47.086. PROCLAMATION; PROCEDURES. Provides that Chapter 61D, and Sections 61.054 and 61.055 apply to the adoption of proclamations under this subchapter.

#### SUBCHAPTER E. SALTWATER FISHERIES LICENSE MANAGEMENT PROGRAMS

Sec. 47.101. SALTWATER FISHERIES LICENSE MANAGEMENT PROGRAMS. Authorizes TPWD to implement license management programs for individual saltwater fisheries in accordance with proclamations adopted by TNRCC under Chapter 61 and this subchapter, to promote efficiency and economic stability in the saltwater commercial fisheries industries and to conserve economically important saltwater fisheries. Provides that this subsection does not apply to a saltwater fishery governed by Chapter 77D or F, or Chapter 78B.

Sec. 47.102. DEFINITIONS. Defines “license” and “saltwater fishery.”

Sec. 47.103. SALTWATER FISHERIES LICENSE MANAGEMENT REVIEW BOARD. Requires the license holders under this subchapter to elect a saltwater fisheries license management review board (review board) with an odd number of members greater than four and fewer than 12. Prohibits a majority of the members of the review board from being residents of the same county. Requires the review board to advise TNRCC and TPWD and to make recommendations concerning the administrative aspects of the saltwater fisheries licensing program. Requires the executive director to adopt procedures for determining the size and operations of the review board and the election and terms of board members. Provides that the review board is not subject to Chapter 2110, Government Code. Provides that a member of the review board serves without compensation or a per diem allowance.

Sec. 47.104. LICENSING. Provides that no person may engage in business as a commercial fisherman for a particular species for which a license is required unless the person has obtained the license for that species, if TNRCC adopts one or more licenses to be issued under this subchapter. Sets forth requirements for proclamation under this section. Requires a proclamation under this section requiring a license to contain findings by TNRCC that support the need for the proclamation. Requires TNRCC to adopt a fishery management plan for the species affected, before implementing new license requirements. Sets forth considerations for TNRCC, in determining the need for a license requirement. Requires the presiding officer of TNRCC to appoint a committee to advise TNRCC on the preparation and implementation of the fishery management plan for each plan that is developed. Requires the committee to consist of persons from the affected industry and individuals and groups interested in the saltwater fisheries of the state.

Sec. 47.105. LICENSE FEE. Provides that the fee for a license issued under this subchapter is \$300 or an amount set by TNRCC, whichever amount is more. Requires all fees generated by the issuance of a license under this subchapter to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account subject to Section 47.111(d).

Sec. 47.106. LICENSE RENEWAL. Requires a person seeking to renew a license issued under this subchapter to have held the license during the preceding license year.

Sec. 47.107. LIMIT ON NUMBER OF LICENSES HELD. Provides that no person may hold or directly or indirectly control more licenses issued under this subchapter than the maximum number determined by TNRCC. Requires a license issued to a person other than an individual to designate an individual in whose name the license is issued.

Sec. 47.108. EXPIRATION OF LICENSE. Provides that a license required by this subchapter is valid only during the period for which it is issued without regard to the date on which the license is acquired. Provides that each period is one year beginning on September 1 or another date set by TNRCC.

Sec. 47.109. LICENSE TRANSFER. Authorizes TNRCC, by rule, to set a fee for the transfer of

a license. Prohibits the amount of the transfer from exceeding the amount of the license fee. Requires TNRCC to send all license transfer fees to the comptroller for deposit to the credit of the game, fish, and water safety account subject to Section 47.111(d). Requires TNRCC by proclamation to allow a license to be transferred beginning no later than four years after the license requirement is adopted. Requires TNRCC to annually review the decision regarding license transfer. Authorizes a license to be transferred at any time to an heir or devisee of a deceased license holder, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property, notwithstanding Subsection (c).

Sec. 47.110. LICENSE REVOCATION. Requires the executive director to revoke a license issued under this subchapter if the holder within a two-year period violated more than once any law or TNRCC rule providing for the conservation and protection of aquatic products and is finally convicted of the violations, after notice to a license holder and the opportunity for a hearing.

Sec. 47.111. LICENSE BUYBACK. Authorizes TPWD to implement a license buyback program as part of any license management program established by this subchapter. Authorizes TNRCC, by rule, to establish criteria, using reasonable classifications, by which TPWD selects licenses to be purchased. Authorizes TNRCC to delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but TNRCC by order must finally adopt the rules establishing the criteria. Requires TNRCC or the executive director to consult with the appropriate committee concerning establishment of the criteria. Requires TNRCC to retire each license purchased under the license buyback program until TNRCC finds that management of the affected fishery allows reissue of those licenses through auction or lottery. Requires TPWD to set aside at least 20 percent of the fees from licenses issued and license transfers approved under this subchapter to be used only for the purpose of buying back those licenses from a willing license holder. Requires money to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account. Authorizes TPWD to solicit and accept grants and donations of money or materials from private or public sources for the purpose of buying back licenses issued under this subchapter from a willing license holder. Provides that money to be used for the purpose of buying licenses under this subchapter is not subject to Section 403.095, Government Code.

Sec. 47.112. PROGRAM ADMINISTRATION; RULES. Requires the executive director to establish administrative procedures to carry out the requirements of this subchapter. Requires TNRCC to adopt any rules necessary for the administration of a program established under this subchapter.

Sec. 47.113. DISPOSITION OF FUNDS. Requires money received for a license issued under this subchapter or fines for violations of this subchapter to be remitted to TPWD by the 10th day of the month following the date of collection.

Sec. 47.114. PROCLAMATION; PROCEDURES. Provides that Chapter 61D, and Sections 61.054 and 61.055 apply to the adoption of a proclamation under this subchapter.

Sec. 47.115. PREVAILING AUTHORITY. Provides that a proclamation of TNRCC under this subchapter does not prevail over a conflicting provision of Subchapter D or of Chapter 77 or 78.

SECTION 8. Amends Section 66.016, Parks and Wildlife Code, to prohibit a person on board a boat licensed or required to be licensed for a commercial fishing activity under Chapter 78, from catching and retaining any fish species whose sale is prohibited when taken from Texas waters. Makes a conforming change.

SECTION 9. Amends Section 66.206, Parks and Wildlife Code, by adding Subsection (e), to provide that this section does not apply to a person fishing trotlines under a commercial finfish fisherman's license unless TNRCC, by rule, so requires, effective September 1, 2000.

SECTION 10. Repealer: Chapter 47, Parks and Wildlife Code (Commercial Finfish Fisherman's License).

SECTION 11. Requires TPWD to issue a written report to the governor and the legislature no later than the beginning of the second regular legislative session to convene following the implementation of a finfish license management program under Chapter 47D, Parks and Wildlife Code, as added by this Act, or the

adoption by the Parks and Wildlife Commission of a fishery management plan under Chapter 47E, Parks and Wildlife Code, as added by this Act. Requires the report to include an overview of the administration and status of the affected license management program.

SECTION 12. Effective date: September 1, 1999.

SECTION 13. Emergency clause.