

## **BILL ANALYSIS**

Senate Research Center

H.B. 51  
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Agriculture, Water & Rural Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties note that oyster fisheries are an important part of Texas commercial fishing but they are concerned about overfishing of these fisheries. H.B. 51 addresses this issue by providing for a license buyback program.

H.B. 51 amends current law relating to regulation of the commercial oyster industry in this state, increases criminal penalties, and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 8 (Section 76.405, Parks and Wildlife Code) and SECTION 9 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 76, Parks and Wildlife Code, by adding Section 76.0205, as follows:

Sec. 76.0205. SUSTAINABILITY OF OYSTER INDUSTRY. (a) Requires a person who purchases oysters under Section 47.0091 (Purchase of Aquatic Products by Wholesale Fish Dealers) and holds a shellfish certificate, as defined by Section 436.002 (Definitions), Health and Safety Code, to complete certain tasks in order to enhance the viability of commercial oyster fishing and ensure the sustainability of the oyster industry to accommodate the highest number of commercial oyster fishing boats.

(b) Requires that the distribution of oyster shells or other cultch material be directly supervised by an agent or employee of the Texas Parks and Wildlife Department (TPWD).

(c) Requires TPWD to calculate the current market cost of the acquisition and deposition of cultch material on a per cubic yard basis. Provides that the fee charged under Subsection (a)(2) (requiring certain persons to pay a fee to TPWD in a certain amount) is the market cost established under this subsection multiplied by 30 percent of the total volume of oysters purchased by the person in the previous license year. Requires that the charged fee be deposited to the credit of the oyster shell recovery and replacement program account.

(d) Requires a person who possesses oysters that do not meet the requirements of Section 76.112 (Oyster Size Limits) to replace the oysters in the beds from which they were taken as directed by an authorized employee of TPWD. Provides that a person who possesses oysters that do not meet the requirements of Section 76.112 is subject to any penalty and requires the person to perform any remedy authorized by law.

SECTION 2. Amends Sections 76.101(b) and (d), Parks and Wildlife Code, as follows:

(b) Provides that no person may take or attempt to take oysters from the public water of this state, without the use of a boat, for pay or for certain other purposes without first

having acquired from TPWD a commercial oyster fisherman's license (COFL). Deletes existing text providing that no person, except as provided in Subsection (d), may take or attempt to take oysters from the public water of this state for pay or for certain other purposes without first having acquired from TPWD a COFL.

(d) Provides that each member of the crew of a licensed oyster boat is required to have a general commercial fisherman's license (GCFL) to take oysters while they are on a certain boat, rather than provides that the captain and crew of a licensed commercial oyster boat are not required to have COFLs to take oysters while they are on a certain boat.

SECTION 3. Amends Section 76.118, Parks and Wildlife Code, by amending Subsection (a) and adding Subsections (e-2) and (e-3), as follows:

(a) Provides that, except as provided in Subsections (b), (c), (e-2), and (e-3), rather than except as provided in Subsections (b) and (c) of this section, a person who violates a certain provision or regulation commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(e-2) Provides that a defendant, including certain persons, is guilty of a Class B Parks and Wildlife Code misdemeanor if it is shown at the trial of the defendant for a violation of a statute or a regulation adopted relating to oyster size that the defendant has been convicted once in the oyster season in which the offense under trial was allegedly committed of a violation of a statute or a regulation adopted relating to oyster size.

(e-3) Provides that a defendant, including certain persons, is guilty of a Class B Parks and Wildlife Code misdemeanor if it is shown at the trial of the defendant for a violation of a statute or a regulation adopted relating to oyster size that the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters were less than three inches in length along an imaginary straight line through the long axis of the shell.

SECTION 4. Amends Subchapter C, Chapter 76, Parks and Wildlife Code, by adding Section 76.1181, as follows:

Sec. 76.1181. SUSPENSION OF LICENSE. (a) Provides that, for the purposes of this section, "final conviction" includes a plea of guilty or nolo contendere to or the imposition of deferred adjudication for an offense.

(b) Provides that, on final conviction for an offense punishable under Section 76.118(e-3), the commercial oyster boat license (COBL) of the boat used in TPWC of the violation is suspended for 30 days.

(c) Provides that, on final conviction for an offense punishable under Section 76.118(e-3), the commercial oyster boat captain's license (COBCL) of the captain of the boat used in TPWC of the violation is suspended for 30 days. Prohibits the holder of the suspended COBCL, during the period of suspension, from purchasing a GCFL or COFL.

(d) Provides that, on final conviction for an offense punishable under Section 76.118(e-3), the GCFL of a member of the crew of a boat on which the violation was committed is suspended for 30 days. Prohibits the holder of the suspended license, during the suspension period, from purchasing a COBCL or COFL.

(d-1) Provides that, on final conviction for an offense punishable under Section 76.118(e-3), the COFL of the person who takes or attempts to take oysters without the use of a boat is suspended for 30 days.

(e) Provides that, on final conviction for an offense punishable under Section 76.118(e-3), any license issued by TPWD to a person that purchases oysters is suspended for 30 days. Prohibits the holder of the suspended license, during the

suspension period, from purchasing a license issued by TPWD allowing the taking or purchase of oysters.

(f) Requires that a suspension period be served during the public oyster season in which the violation occurred, unless less than 30 days remain in the public oyster season, in which case the suspension is required to be served at the beginning of the next public oyster season.

SECTION 5. Amends Section 76.119, Parks and Wildlife Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Provides that a member of the crew of a vessel licensed as a commercial oyster boat is not guilty of a violation unless the member of the crew committed the violation against the captain's orders, except for a violation of certain sections of this code, including Section 76.112, in which case each person on the vessel is responsible for the violation.

(c) Requires the captain of a vessel licensed as a commercial oyster boat to identify the name of the captain, the vessel, and each member of the crew to each purchaser of oysters.

(d) Prohibits a person who purchases oysters under Section 47.0091 (Purchase of Aquatic Products by Wholesale Fish Dealers), who holds a shellfish certificate as defined by Section 436.002 (Definitions), Health and Safety Code, and who purchases oysters from a certain person from possessing the oysters and provides that the person is subject to any penalty described by law.

SECTION 6. Amends Section 76.301, Parks and Wildlife Code, by amending Subsections (c) and (f) and adding Subsection (h), as follows:

(c) Deletes existing text authorizing measures dealing with the sale and purchase of oysters to only be implemented at first sale or exchange transaction.

(f) Provides that a person who violates a proclamation issued under this subchapter (Oyster Regulations) commits an offense that is a Parks and Wildlife Code Class C misdemeanor, rather than provides that a person who violates a proclamation issued under Subsection (a) (relating to authorizing the Texas Parks and Wildlife Commission (TPWC) to regulate the taking, possession, purchase, and sale of oysters and requiring that a proclamation contain certain findings) of this section commits an offense. Deletes existing text providing that an offense is punishable by a fine of not less than \$25 nor more than \$200.

(h) Provides that a proclamation of TPWC under this section (Regulation of Taking, Possession, Purchase, and Sale of Oysters) applies to certain persons.

SECTION 7. Amends Subchapter E, Chapter 76, Parks and Wildlife Code, by adding Section 76.304, as follows:

Sec. 76.304. VESSEL MONITORING SYSTEM. (a) Authorizes TPWC by proclamation to establish a vessel monitoring system for commercial oyster boats.

(b) Requires TPWD, before TPWC issues a proclamation under Subsection (a), to consult with COBL holders concerning establishment of a vessel monitoring system.

SECTION 8. Amends Subchapter F, Chapter 76, Parks and Wildlife Code, by adding Sections 76.405, 76.406, and 76.407, as follows:

Sec. 76.405. LICENSE BUYBACK PROGRAM. (a) Requires TPWD to implement a license buyback program (program) for licenses issued under this subchapter (Oyster

License Moratorium) as part of the oyster license moratorium program established by this subchapter.

(b) Requires TPWC, by rule, to establish criteria, using reasonable classifications, for TPWD's use in selecting licenses to be purchased. Requires TPWD or the executive director of TPWD to consult with the oyster license moratorium review board (review board) concerning establishment of the criteria.

(c) Requires TPWD to retire each license purchased under the program until TPWC finds that management of the oyster fishery allows reissue of those licenses through auction or lottery.

(d) Requires TPWD to set aside a certain amount to be used only for the purpose of buying back COBLs from willing COBL holders and requires that the money be sent to the Texas comptroller of public accounts for deposit to the credit of the game, fish, and water safety account.

(e) 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 from willing license holders.

(f) Provides that money to be used for the purpose of buying back licenses is not subject to Section 403.095 (Use of Dedicated Revenue), Government Code.

(g) Requires TPWC to consider the social and economic viability of the oyster industry and input from the review board regarding the reissue of COBLs through auction or lottery.

Sec. 76.406. PREVAILING AUTHORITY. Provides that a proclamation of TPWC under this subchapter prevails over any conflicting provision of this chapter (Oysters) to the extent of the conflict.

Sec. 76.407. REPORT TO LEGISLATURE. (a) Requires TPWD, not later than November 1, 2020, to report to the governor and each member of the legislature an overview of the administration and status of the program, including certain effects of the program.

(b) Provides that this section expires September 1, 2021.

SECTION 9. Requires TPWC to adopt any rules required to implement Sections 76.405, 76.406, and 76.407, Parks and Wildlife Code, as added by this Act, not later than June 1, 2018.

SECTION 10. (a) Effective date, except as provided by Subsection (b): September 1, 2017.

(b) Effective date, Sections 76.405, 76.406, and 76.407, Parks and Wildlife Code, as added by this Act: June 1, 2018.