

1-1 By: Guillen, Bonnen of Brazoria H.B. No. 51
 1-2 (Senate Sponsor - Hinojosa)
 1-3 (In the Senate - Received from the House May 1, 2017;
 1-4 May 3, 2017, read first time and referred to Committee on
 1-5 Agriculture, Water & Rural Affairs; May 16, 2017, reported
 1-6 favorably by the following vote: Yeas 5, Nays 2; May 16, 2017, sent
 1-7 to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12		X		
1-13		X		
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to regulation of the commercial oyster industry in this
 1-20 state; increasing criminal penalties; authorizing a fee.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subchapter A, Chapter 76, Parks and Wildlife
 1-23 Code, is amended by adding Section 76.0205 to read as follows:

1-24 Sec. 76.0205. SUSTAINABILITY OF OYSTER INDUSTRY. (a) In
 1-25 order to enhance the viability of commercial oyster fishing and
 1-26 ensure the sustainability of the oyster industry to accommodate the
 1-27 highest number of commercial oyster fishing boats, a person who
 1-28 purchases oysters under Section 47.0091 and holds a shellfish
 1-29 certificate, as defined by Section 436.002, Health and Safety Code,
 1-30 must:

1-31 (1) distribute, in an area designated by the
 1-32 department, oyster shells or other cultch material approved by the
 1-33 department in an amount equal to not less than 30 percent of the
 1-34 total volume of oysters purchased by the person in the previous
 1-35 license year; or

1-36 (2) pay a fee to the department in an amount calculated
 1-37 under Subsection (c).

1-38 (b) The distribution of oyster shells or other cultch
 1-39 material must be directly supervised by an agent or employee of the
 1-40 department.

1-41 (c) The department shall calculate the current market cost
 1-42 of the acquisition and deposition of cultch material on a per cubic
 1-43 yard basis. The fee charged under Subsection (a)(2) is the market
 1-44 cost established under this subsection multiplied by 30 percent of
 1-45 the total volume of oysters purchased by the person in the previous
 1-46 license year. The fee charged under this section shall be deposited
 1-47 to the credit of the oyster shell recovery and replacement program
 1-48 account.

1-49 (d) A person who possesses oysters that do not meet the
 1-50 requirements of Section 76.112:

1-51 (1) shall replace the oysters in the beds from which
 1-52 they were taken as directed by an authorized employee of the
 1-53 department; and

1-54 (2) is subject to any penalty and must perform any
 1-55 remedy authorized by law.

1-56 SECTION 2. Sections 76.101(b) and (d), Parks and Wildlife
 1-57 Code, are amended to read as follows:

1-58 (b) No ~~Except as provided in Subsection (d) of this~~
 1-59 ~~section, no]~~ person may take or attempt to take oysters from the
 1-60 public water of this state, without the use of a boat, for pay or for
 1-61 the purpose of sale, barter, or exchange or any other commercial

2-1 purpose without first having acquired from the department a
2-2 commercial oyster fisherman's license.

2-3 (d) Each member of the [The captain and] crew of a licensed
2-4 commercial oyster boat is [are not] required to have a general
2-5 commercial [oyster] fisherman's license [licenses] to take oysters
2-6 while they are on a licensed boat that is being used to take
2-7 oysters.

2-8 SECTION 3. Section 76.118, Parks and Wildlife Code, is
2-9 amended by amending Subsection (a) and adding Subsections (e-2) and
2-10 (e-3) to read as follows:

2-11 (a) Except as provided in Subsections (b), ~~[and] (c), (e-2),~~
2-12 and (e-3) [of this section], a person who violates a provision of
2-13 this subchapter or a regulation of the commission issued under this
2-14 subchapter commits an offense that is a Class C Parks and Wildlife
2-15 Code misdemeanor.

2-16 (e-2) If it is shown at the trial of a defendant, including
2-17 the captain of a commercial oyster boat, a member of the crew of a
2-18 commercial oyster boat, or a person who purchases oysters from the
2-19 captain or a member of the crew of a commercial oyster boat, for a
2-20 violation of a statute or a regulation adopted relating to oyster
2-21 size that the defendant has been convicted once in the oyster season
2-22 in which the offense under trial was allegedly committed of a
2-23 violation of a statute or a regulation adopted relating to oyster
2-24 size, the defendant is guilty of a Class B Parks and Wildlife Code
2-25 misdemeanor.

2-26 (e-3) If it is shown at the trial of a defendant, including
2-27 the captain of a commercial oyster boat, a member of the crew of a
2-28 commercial oyster boat, or a person who purchases oysters from the
2-29 captain or a member of the crew of a commercial oyster boat, for a
2-30 violation of a statute or a regulation adopted relating to oyster
2-31 size that the defendant was in possession of a cargo of oysters in
2-32 which 30 percent or more of the oysters were less than three inches
2-33 in length along an imaginary straight line through the long axis of
2-34 the shell, the defendant is guilty of a Class B Parks and Wildlife
2-35 Code misdemeanor.

2-36 SECTION 4. Subchapter C, Chapter 76, Parks and Wildlife
2-37 Code, is amended by adding Section 76.1181 to read as follows:

2-38 Sec. 76.1181. SUSPENSION OF LICENSE. (a) For purposes of
2-39 this section, "final conviction" includes a plea of guilty or nolo
2-40 contendere to or the imposition of deferred adjudication for an
2-41 offense.

2-42 (b) On final conviction for an offense punishable under
2-43 Section 76.118(e-3), the commercial oyster boat license of the boat
2-44 used in the commission of the violation is suspended for 30 days.

2-45 (c) On final conviction for an offense punishable under
2-46 Section 76.118(e-3), the commercial oyster boat captain's license
2-47 of the captain of the boat used in the commission of the violation
2-48 is suspended for 30 days. During the period of suspension, the
2-49 holder of the suspended license may not purchase a general
2-50 commercial fisherman's license or a commercial oyster fisherman's
2-51 license.

2-52 (d) On final conviction for an offense punishable under
2-53 Section 76.118(e-3), the general commercial fisherman's license of
2-54 a member of the crew of a boat on which the violation was committed
2-55 is suspended for 30 days. During the suspension period, the holder
2-56 of the suspended license may not purchase a commercial oyster boat
2-57 captain's license or a commercial oyster fisherman's license.

2-58 (d-1) On final conviction for an offense punishable under
2-59 Section 76.118(e-3), the commercial oyster fisherman's license of
2-60 the person who takes or attempts to take oysters without the use of
2-61 a boat is suspended for 30 days.

2-62 (e) On final conviction for an offense punishable under
2-63 Section 76.118(e-3), any license issued by the department to a
2-64 person that purchases oysters is suspended for 30 days. During the
2-65 suspension period, the holder of the suspended license may not
2-66 purchase a license issued by the department allowing the taking or
2-67 purchase of oysters.

2-68 (f) A suspension period described by this section must be
2-69 served during the public oyster season in which the violation

3-1 occurred, unless less than 30 days remain in the public oyster
 3-2 season, in which case the suspension must be served at the beginning
 3-3 of the next public oyster season.

3-4 SECTION 5. Section 76.119, Parks and Wildlife Code, is
 3-5 amended by amending Subsection (a) and adding Subsections (c) and
 3-6 (d) to read as follows:

3-7 (a) If a vessel licensed as a commercial oyster boat is
 3-8 involved in a violation of this chapter, the captain of the vessel
 3-9 licensed as a commercial oyster boat is primarily responsible for
 3-10 the violation. A member of the crew of a vessel licensed as a
 3-11 commercial oyster boat is not guilty of a violation unless the
 3-12 member of the crew committed the violation against the captain's
 3-13 orders, except for a violation of Section 76.109, 76.112, or
 3-14 76.116, in which case each person on the vessel is responsible for
 3-15 the violation.

3-16 (c) The captain of a vessel licensed as a commercial oyster
 3-17 boat shall identify the name of the captain, the vessel, and each
 3-18 member of the crew to each purchaser of oysters.

3-19 (d) A person who purchases oysters under Section 47.0091,
 3-20 who holds a shellfish certificate as defined by Section 436.002,
 3-21 Health and Safety Code, and who purchases oysters from a captain of
 3-22 a vessel licensed as a commercial oyster boat, the holder of a
 3-23 commercial oyster boat license, or a member of the crew of a
 3-24 commercial oyster boat in violation of Section 76.109, 76.112, or
 3-25 76.116 or this section may not possess the oysters and is subject to
 3-26 any penalty prescribed by law.

3-27 SECTION 6. Section 76.301, Parks and Wildlife Code, is
 3-28 amended by amending Subsections (c) and (f) and adding Subsection
 3-29 (h) to read as follows:

3-30 (c) A proclamation issued under Subsection (a) of this
 3-31 section may limit the quantity and size of oysters that may be
 3-32 taken, possessed, sold, or purchased and may prescribe the times,
 3-33 places, conditions, and means and manner of taking oysters.
 3-34 [~~However, measures dealing with sale and purchase may only be~~
 3-35 ~~implemented at first sale or exchange transaction.]~~

3-36 (f) A person who violates a proclamation issued under
 3-37 [~~Subsection (a) of] this subchapter [section] commits an offense~~
 3-38 ~~that is a Parks and Wildlife Code Class C misdemeanor. [An offense~~
 3-39 ~~under this section is punishable by a fine of not less than \$25 nor~~
 3-40 ~~more than \$200.]~~

3-41 (h) A proclamation of the commission under this section
 3-42 applies to any person who:

3-43 (1) purchases oysters from the captain of a commercial
 3-44 oyster boat, the holder of a commercial oyster boat license, or a
 3-45 member of the crew of a commercial oyster boat;

3-46 (2) purchases oysters under Section 47.0091; and

3-47 (3) holds a shellfish certificate, as defined by
 3-48 Section 436.002, Health and Safety Code.

3-49 SECTION 7. Subchapter E, Chapter 76, Parks and Wildlife
 3-50 Code, is amended by adding Section 76.304 to read as follows:

3-51 Sec. 76.304. VESSEL MONITORING SYSTEM. (a) The commission
 3-52 by proclamation may establish a vessel monitoring system for
 3-53 commercial oyster boats.

3-54 (b) Before the commission issues a proclamation under
 3-55 Subsection (a), the department shall consult with commercial oyster
 3-56 boat license holders concerning establishment of a vessel
 3-57 monitoring system.

3-58 SECTION 8. Subchapter F, Chapter 76, Parks and Wildlife
 3-59 Code, is amended by adding Sections 76.405, 76.406, and 76.407 to
 3-60 read as follows:

3-61 Sec. 76.405. LICENSE BUYBACK PROGRAM. (a) The department
 3-62 shall implement a license buyback program for licenses issued under
 3-63 this subchapter as part of the oyster license moratorium program
 3-64 established by this subchapter.

3-65 (b) The commission by rule shall establish criteria, using
 3-66 reasonable classifications, for the department's use in selecting
 3-67 licenses to be purchased. The department or executive director
 3-68 shall consult with the oyster license moratorium review board
 3-69 concerning establishment of the criteria.

4-1 (c) The department shall retire each license purchased
4-2 under the license buyback program until the commission finds that
4-3 management of the oyster fishery allows reissue of those licenses
4-4 through auction or lottery.

4-5 (d) The department shall set aside an amount determined by
4-6 commission rule that is at least 20 percent of the fees from
4-7 licenses issued under this subchapter to be used only for the
4-8 purpose of buying back commercial oyster boat licenses from willing
4-9 license holders. That money shall be sent to the comptroller for
4-10 deposit to the credit of the game, fish, and water safety account.

4-11 (e) The department may solicit and accept grants and
4-12 donations of money or materials from private or public sources for
4-13 the purpose of buying back licenses issued under this subchapter
4-14 from willing license holders.

4-15 (f) Money to be used for the purpose of buying back licenses
4-16 issued under this subchapter is not subject to Section 403.095,
4-17 Government Code.

4-18 (g) The commission shall consider the social and economic
4-19 viability of the oyster industry and input from the oyster license
4-20 moratorium review board regarding the reissue of commercial oyster
4-21 boat licenses through auction or lottery.

4-22 Sec. 76.406. PREVAILING AUTHORITY. A proclamation of the
4-23 commission under this subchapter prevails over any conflicting
4-24 provision of this chapter to the extent of the conflict.

4-25 Sec. 76.407. REPORT TO LEGISLATURE. (a) Not later than
4-26 November 1, 2020, the department shall report to the governor and
4-27 each member of the legislature an overview of the administration
4-28 and status of the oyster license buyback program, including the
4-29 biological, sociological, and economic effects of the program.

4-30 (b) This section expires September 1, 2021.

4-31 SECTION 9. The Parks and Wildlife Commission shall adopt
4-32 any rules required to implement Sections 76.405, 76.406, and
4-33 76.407, Parks and Wildlife Code, as added by this Act, not later
4-34 than June 1, 2018.

4-35 SECTION 10. (a) Except as provided by Subsection (b) of
4-36 this section, this Act takes effect September 1, 2017.

4-37 (b) Sections 76.405, 76.406, and 76.407, Parks and Wildlife
4-38 Code, as added by this Act, take effect June 1, 2018.

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