

BILL ANALYSIS

Senate Research Center
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S.B. 761
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 51 of the 85th Legislature aimed to address problems with the harvest of undersize (sub-legal) oysters by establishing enhanced penalties for such violations.

However, since H.B. 51 was enacted violations associated with harvesting from an area closed by the Texas Parks and Wildlife Department (TPWD) have increased substantially. According to TPWD, these violations increased almost 700 percent from FY2017 to FY2018 while violations for harvesting from Restricted Areas dropped by 57 percent (Table 1). The current penalty for harvesting from an area closed by TPWD is a Class C Parks and Wildlife Code misdemeanor (fine of not less than \$25 nor more than \$500). Since violations related to harvesting oysters from a management closure area do not carry enhanced penalties, oyster captains have realized they can harvest oysters from these areas and pay any fines incurred for little more than the “cost of doing business.”

TPWD has recommended this discrepancy to be remedied so that violations associated with harvesting from an area closed by TPWD would mirror those in H.B. 51 for undersize oysters. S.B. 761 amends the Parks and Wildlife Code by creating a Class A, Class B, and making punishable as a Class C certain Class A misdemeanor offenses related to illegal harvesting of oysters from public lands during the night that are closed to oystering by the Parks and Wildlife Commission or restricted from oystering by the Department of State Health Services (DSHS).

Under current law, a Parks and Wildlife Code felony is punishable by confinement in prison for a term of 2 to 10 years and an optional fine of \$2,000 to \$10,000. A Class A Parks and Wildlife Code misdemeanor is punishable by confinement in county jail for a term not to exceed one year and an optional fine of \$500 to \$4,000. A Class B Parks and Wildlife Code misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days and an optional fine of \$200 to \$2,000. A Class C Parks and Wildlife Code misdemeanor is punishable by a fine of \$25 to \$500.

Table 1. Number of citations issued for harvesting oysters from a department closed area and a DSHS Restricted Area for fiscal years FY 2013 through FY 2018. Data for FY 2019 is preliminary.

Violations	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Oyster in Closed Area/Season	2	2	8	7	26	207
Oyster in Restricted Waters	16	16	59	29	14	3

As proposed, S.B. 761 amends current law relating to the regulation of oyster harvesting and increases a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 76.118(c), (e-2), (e-3), (e-4), and (g), Parks and Wildlife Code, as follows:

(c) Provides that a person who violates Sections 76.109 (Night Dredging Prohibited), and either Section 76.115 (Closing Areas) or 76.116 (Oysters From Restricted Areas) in the same criminal episode commits an offense that is a Class A Parks and Wildlife Code misdemeanor, rather than provides that a person who violates Section 76.116, or at the same time violates sections 76.109 and 76.116, commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

(e-2) Provides that an offense related to oyster size or the harvest of oysters from a closed area is a Class B Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted at least twice for a violation of a provision or regulation relating to oyster size or the harvest of oysters from a closed area, rather than providing that the punishment for an offense otherwise punishable under Subsection (a) is a Class B Parks and Wildlife misdemeanor if certain information is shown on the trial of the offense. Deletes existing Subdivisions (1)–(2) and creates this subsection from existing Subdivision (3).

(e-3) Provides that an offense during the commission of which the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell or an offense related to the harvest of oysters from a closed area is a Class B Parks and Wildlife Code misdemeanor, if it is shown on the trial of the offense that the defendant has previously been convicted one time for a violation of a provision or regulation relating to oyster size and the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell or relating to the harvest of oysters from a closed area. Deletes existing text relating to a punishment of a Class C misdemeanor and attendant license suspension under Section 76.1181 (Suspension of License) under certain conditions. Makes nonsubstantive changes.

(e-4) Provides that the punishment for an offense otherwise punishable under Subsection (a) is a Class A, rather than B, Parks and Wildlife Code misdemeanor, with an attendant license suspension under Section 76.1181 if it is shown on the trial of the offense that:

(1) makes no changes to this subdivision;

(2) the provision or regulation violated relates to:

(A) creates this paragraph from existing text and makes a nonsubstantive change; or

(B) the harvest of oysters from a closed area; and

(3) the defendant has previously been convicted at least two times for a violation of a provision or regulation relating to:

(A) creates this paragraph from existing text and makes a nonsubstantive change; or

(B) the harvest of oysters from a closed area.

(g) Provides that if it is shown on the trial of a defendant for a violation of Section 76.109 and either Section 76.115 or 76.116 occurring in the same criminal episode that the defendant has been convicted once before within five years before the trial date of a violation of Section 76.109 and either Section 76.115 or 76.116 occurring in the same criminal episode, rather than shown at the trial of a defendant for a violation at the same

time of Section 76.109 and either Section 76.116 or Section 76.205 of this code that the defendant has been convicted once before within five years before the trial date of a violation at the same time of Section 76.109 and either Section 76.115 or Section 76.205 of this code, the defendant is guilty of a Parks and Wildlife Code felony.

SECTION 2. Makes application of this Act prospective. Provides that for purposes of this section an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. Effective date: September 1, 2019.