

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1303
By: Brown
Natural Resources
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Committee Report (Substituted - REVISED)

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. C.S.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, C.S.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 Parks and Wildlife 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); and 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 Subchapter D, as follows:

SUBCHAPTER D. FINFISH LICENSE MANAGEMENT

Sec. 47.071. FINFISH LICENSE MANAGEMENT PROGRAM. Requires the Parks and Wildlife Department (TPWD) to implement a finfish license management program in accordance with proclamations adopted by the Texas Parks and Wildlife Commission (TPWC) 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 TPWC 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. Provides that no person may engage in commercial finfish fishing unless the person is aboard a boat operating under a license issued by TPWC 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. Requires a proclamation under this section to establish a commercial finfish fisherman’s license in accordance with the provisions of this subchapter.

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 TPWC, whichever amount is more. 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 TPWC.

Sec. 47.079. LICENSE TRANSFER. Authorizes TPWC, 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 TPWC 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 TPWC by proclamation to allow a license to be transferred beginning no later than September 1, 2002. 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). Defines "member of a license holder's immediate family."

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, 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, or the license holder is convicted of theft or fishing gear or product. 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 a suspension under this section may be for six months for certain flagrant offenses including if the license holder is convicted of theft of fishing gear or products associated with this subchapter.

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 TPWC, by rule, to establish criteria, using reasonable classifications, by which TPWD selects licenses to be purchased. Authorizes TPWC to delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but TPWC by order must finally adopt the rules establishing the criteria. Requires TPWC or the executive director to consult with the license management review board concerning establishment of the criteria. Requires TPWC to retire each license purchased under the license buyback program until TPWC 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 TPWC 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 TPWC 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 TPWC proclamation issued under this code.

Sec. 47.083. CRAB TRAPS. Requires TPWC, 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 TPWC 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 TPWC to adopt any rules necessary for the administration of the program established under this subchapter. Requires TPWC 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.

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 66.019(f), Parks and Wildlife Code, to set forth a cash sale ticket.

SECTION 10. Amends Section 66.206, Parks and Wildlife Code, effective September 1, 2000, by adding Subsection (e), to provide that this section does not apply to a person fishing trotlines under a commercial finfish fisherman's license.

SECTION 11. Requires TPWD, not later than September 1, 2000, to implement a finfish management program as provided by Section 47.071, Parks and Wildlife Code, as added by this Act. Repeals Section 47.003, Parks and Wildlife Code (Commercial Finfish Fisherman's License) on the effective date of a proclamation issued by the Parks and Wildlife Commission under Chapter 47D, Parks and Wildlife Code, as added by this Act.

SECTION 12. 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 13. Effective date: September 1, 1999.

SECTION 14. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 7.

Amends Section 47.071, Parks and Wildlife Code, to delete text requiring the TPWD to implement a program by a certain date.

Amends Section 47.074, Parks and Wildlife Code, to provide that no person may engage in commercial fishing unless the person is aboard a boat operating under a certain license. Requires the establishment of a commercial finfish fisherman's license in accordance with the provisions of this subchapter. Deletes text regarding a license adopted by TPWC under this subchapter.

Amends Section 47.075, Parks and Wildlife Code, to delete text regarding fees.

Amends Section 47.079, Parks and Wildlife Code, to require TPWC to allow a license to be transferred beginning not later than September 1, 2002. Defines "member of a license holder's immediate family." Deletes text requiring TPWC by vote to define "immediate family." Deletes text regarding license transfer.

Amends Section 47.080, Parks and Wildlife Code, to authorize the executive director to suspend a license if certain conditions exist. Provides that a suspension under this section may be for six months for certain flagrant offenses including if the license holder is convicted of theft of fishing gear or products associated with this subchapter. Deletes provisions regarding a flagrant offense being counted for more than one suspension under this section. Deletes text regarding any other operator.

Amends Section 47.081, Parks and Wildlife Code, to authorize TPWC or the executive director to consult with the finfish license management review board, rather than the finfish advisory committee.

Deletes proposed Subchapter E, regarding saltwater fisheries license management programs.

SECTION 9.

Amends Section 66.109(f), Parks and Wildlife Code, to set forth requirements for a cash sale ticket. Deletes proposed amendments to Section 66.206, Parks and Wildlife Code,

SECTION. 10.

Amends Section 66.206, Parks and Wildlife Code, Effective September 1, 2000, by adding subsection (e), to provided that this section does not apply to a person fishing trotlines under a commercial finfish fisherman's license. Deletes repealer.

SECTION 11.

Amends SECTION 11 to require the TPWD, not later than September 1, 2000, to implement a finfish management program as provided by Section 47.071, Parks and Wildlife Code, as added by this Act. Repeals Section 47.003, Parks and Wildlife Code (Commercial Finfish Fisherman's License).

SECTION 12.

Redesignated from SECTION 14.