

Regular Session, 2011

SENATE BILL NO. 73

BY SENATOR MORRISH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FISH/FISHING. Provides relative to oyster harvesting in Calcasieu Lake. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 56:435.1.1, relative to oyster harvesting; to provide for oyster
3 harvesting in Calcasieu Lake; to provide for harvest limits; to provide for the
4 issuance of certain permits; to authorize rulemaking authority; to provide terms,
5 conditions, and penalties; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 56:435.1.1 is hereby amended and reenacted to read as follows:

8 §435.1.1. Oyster harvest in Calcasieu Lake

9 A.(1) Oyster harvesting in Calcasieu Lake **shall be prohibited except by**
10 **special permit issued by the Department of Wildlife and Fisheries. Oyster**
11 **harvesting shall be limited to** using tongs; a hand dredge; a single dredge with
12 mechanical assist that has a tooth bar no more than thirty-six inches long; or use of
13 a single scraper with mechanical assist and a flat bar length of no more than
14 thirty-six inches is allowed.

15 **(2) No person shall be issued a permit for the commercial taking of**
16 **oysters on Calcasieu Lake unless that person provides proof that he**
17 **commercially harvested oysters from Calcasieu Lake through trip ticket**

1 **landings in three of the following four years: 2007, 2008, 2009, and 2010.**

2 B. All vessels used for the commercial harvest of oysters on Calcasieu Lake
3 must be self-propelled. "Self-propelled" means, when used in this Section, that the
4 vessel shall travel under its own power to its harvest area and when loaded with
5 oysters, shall travel under its own power to the place where the oysters are unloaded.

6 ~~C. The commission shall fix the open season for oyster harvest in Calcasieu
7 Lake, which shall begin on any date between October fifteenth and November first
8 and, for calendar years 2007 through 2010, shall end on a date set after consideration
9 of recommendations by the Louisiana Oyster Task Force. After calendar year 2010,
10 the season shall end on April thirtieth. However, in consultation with the Oyster Task
11 Force, the commission may open or close the season as biological data indicate a
12 need and may manage East Cove and West Cove separately.~~

13 ~~D~~ **C.** Harvest limits shall be set **twenty-five sacks of oysters per permittee**
14 **per day, but the sack limit may be lowered** by the commission ~~not to exceed~~
15 ~~twenty-five sacks of oysters per day per licensed vessel~~ **based upon technical and**
16 **biological data and** after consideration of recommendations by the ~~Louisiana~~
17 **Calcasieu Lake** Oyster Task Force. In addition, recreational fishermen may harvest
18 oysters as provided in R.S. 56:424(C). **Harvest limits for recreational fishermen**
19 **shall be one sack per person per day.**

20 ~~E. Any violation of the provisions of this Section shall be considered a class
21 four violation subject to the penalties contained in R.S. 56:34. **D. (1) Violation of**
22 **any provision of this Section or of any Wildlife and Fisheries Commission**
23 **regulation pertaining to taking, possessing, recording or reporting of landings**
24 **or selling oysters from Calcasieu Lake shall constitute a Class 4 violation. The**
25 **offender shall also be penalized as follows:**~~

26 **(a) For a first offense, the offender shall forfeit any permit to fish for**
27 **oysters on Calcasieu Lake and shall be barred from obtaining such permit for**
28 **the remainder of the period for which it was issued plus one year, during which**
29 **time the offender shall be barred from participating in any oyster fishing**

1 activity on Calcasieu Lake.

2 **(b) For a second offense, the offender shall forfeit any Calcasieu Lake**
3 **oyster permit issued to him and shall be barred from obtaining a Calcasieu**
4 **Lake oyster permit for the remainder of the period for which it was issued plus**
5 **two years, during which time the offender shall be barred from participating**
6 **in any oyster fishing activity on Calcasieu Lake.**

7 **(c) For a third offense, the offender shall forfeit any Calcasieu Lake**
8 **oyster permit issued to him and shall be permanently barred from obtaining a**
9 **Calcasieu Lake oyster permit and from participating in any oyster fishing**
10 **activity on Calcasieu Lake.**

11 **(2) Any person who participates in the fishery while barred shall be**
12 **penalized under the provisions of a Class 7-B violation.**

13 **E. The special permit provided for in this Section shall not be**
14 **transferable from one person to another for a period of three years from August**
15 **15, 2011, or until a transfer system is developed by the commission. An**
16 **exception to the prohibition on transfer may be granted by the commission, in**
17 **its sole discretion, in the case of proven physical hardship of the permittee, and**
18 **only if the transfer is to the permittee's spouse, parent/legal guardian, or**
19 **child/legal dependent of the permittee.**

20 **F.(1) The commission shall adopt rules and regulations, in accordance**
21 **with the Administrative Procedure Act, for the season, take, harvest, possession,**
22 **reporting, sale, transfer of special permits, apprenticeship, appeals, individual**
23 **transfer quotas, and entry of commercial fishermen into the commercial oyster**
24 **fishery in Calcasieu Lake.**

25 **(2) The commission shall, within three years from August 15, 2011,**
26 **establish by rules adopted in accordance with the Administrative Procedure Act**
27 **a system for the transfer of special permits. Such rules shall provide that there**
28 **shall be no financial gain realized by the transferor of the permit for such**
29 **transfer.**

1 **(3) The provisions of Paragraph (A)(2) of this Section shall expire and**
 2 **be void after adoption by the commission of all of the rules and regulations**
 3 **required by this Subsection.**

4 Section 2. This Act shall become effective upon signature by the governor or, if not
 5 signed by the governor, upon expiration of the time for bills to become law without signature
 6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 8 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by J. W. Wiley.

DIGEST

Morrish (SB 73)

Present law allows oyster harvesting in Calcasieu Lake using tongs; a hand dredge; a single dredge with mechanical assist that has a tooth bar no more than 36 inches long; or use of a single scraper with mechanical assist and a flat bar length of no more than 36 inches.

Proposed law prohibits oyster harvesting in Calcasieu Lake except by special permit issued by the DW&F.

Proposed law provides that no person can be issued a permit for the commercial taking of oysters on Calcasieu Lake unless that person provides proof that he commercially harvested oysters from Calcasieu Lake through trip ticket landings in 3 of the following 4 years: 2007, 2008, 2009, and 2010.

Present law sets the season for oyster harvesting in Calcasieu Lake.

Proposed law repeals present law and allows the W&F Commission to set the season.

Present law allows the commission to set the harvest limit so long as the limit does not exceed 25 sacks of oysters per day per licensed vessel after consideration of recommendations by the Louisiana Oyster Task Force. Further allows recreational fishermen to harvest oysters.

Proposed law changes present law and sets the harvest limit at 25 sacks of oysters per permittee per day, but the limit may be lowered by the commission based upon technical and biological data and after consideration of recommendations by the Calcasieu Lake Oyster Task Force. Further sets the harvest limit for recreational fishermen to 1 sack per person per day.

Present law provides that any violation of the present law will be a class 4 violation subject to the penalties contained in R.S. 56:34.

Proposed law changes present law and provides that a violation of any provision of this present law or of any W&F Commission regulation pertaining to taking, possessing, recording or reporting of landings or selling oysters from Calcasieu Lake will constitute a Class 4 violation. In addition, the offender will also be penalized as follows:

- (1) 1st offense - the offender shall forfeit any permit to fish for oysters on Calcasieu Lake and be barred from obtaining such permit for the remainder of the period for which it was issued plus 1 year, during which time the offender will be barred from participating in any oyster fishing activity on Calcasieu Lake.
- (2) 2nd offense, the offender shall forfeit any Calcasieu Lake oyster permit issued to him and be barred from obtaining a Calcasieu Lake oyster permit for the remainder of the period for which it was issued plus 2 years, during which time the offender shall be barred from participating in any oyster fishing activity on Calcasieu Lake.
- (3) 3rd offense, the offender shall forfeit any Calcasieu Lake oyster permit issued to him and be permanently barred from obtaining a Calcasieu Lake oyster permit and from participating in any oyster fishing activity on Calcasieu Lake.

Proposed law provides that any person who participates in the fishery while barred will be penalized under the provisions of a Class 7-B violation.

Proposed law provides that the special permit provided for in present law will not be transferable from one person to another for a period of 3 years from August 15, 2011, or until a transfer system is developed by the commission. Further provides an exception to the prohibition on transfer may be granted by the commission, in its sole discretion, in the case of proven physical hardship of the permittee, and only if the transfer is to the permittee's spouse, parent/legal guardian, or child/legal dependent of the permittee.

Proposed law requires the commission to adopt rules and regulations, in accordance with the Administrative Procedure Act, for the season, take, harvest, possession, reporting, sale, transfer of special permits, apprenticeship, appeals, individual transfer quotas, and entry of commercial fishermen into the commercial oyster fishery in Calcasieu Lake.

Proposed law requires the commission, within 3 years from August 15, 2011, to establish, by rules adopted in accordance with the APA, a system for the transfer of special permits. Further requires that the rules will provide that there will be no financial gain realized by the transferor of the permit for such transfer.

Proposed law provides that certain provisions of proposed law will expire and be void after adoption by the commission of all of the required rules and regulations.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 56:435.1.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill.

1. Establishes a special permit for oyster harvesting in Calcasieu Lake and sets the criteria for obtaining such permit.
2. Allows the W&F Commission to adopt rules and regulations, in accordance with the APA, for the season, take, harvest, possession, reporting, sale, transfer of special permits, apprenticeship, appeals, individual transfer quotas, and entry of commercial fishermen into the commercial oyster fishery in Calcasieu Lake.
3. Changes the penalty provisions.