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"Tougher fines in store for illegal clammers," 1-30-2003 AsburyPark Press, p.A3

"Warning issued on consuming 13 fish species," 1-30-2003 Home News, p.A3

P.L. 2003, CHAPTER 8, *approved January 27, 2003*
Assembly, No. 1882 (*Second Reprint*)

1 AN ACT concerning penalties for violations of certain laws pertaining
2 to ¹[the harvest of]¹ shellfish and marine fisheries¹, amending
3 P.L.1979, c.199, and amending and supplementing P.L.1979, c.321
4 (C.58:24-1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. Section 73 of P.L.1979, c.199 (C.23:2B-14) is amended to read
10 as follows:

11 73. For purposes of this section, the "act" means and includes all
12 the new sections and amended sections contained herein, all the
13 remaining sections of Title 50 of the Revised Statutes, sections
14 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9,
15 23:5-16, **[23:5-35,]** 23:9-114, 23:9-115 and 23:9-120 of Title 23 of
16 the Revised Statutes, **[sections 1, 2, 3 and 7 of P.L.1938, c.318**
17 **(C.23:5-5.1 through 23:5-5.3 and 23:5-5.7), P.L.1952, c.216**
18 **(C.23:5-5.1a),]** and sections 1, 2, and 3 of P.L.1941, c.211
19 (C.23:5-24.1 to 23:5-24.3).

20 The commissioner may utilize any or all of the following remedies
21 for any violation of this act:

22 a. (1) **[Any]** A person who violates the provisions of this act or
23 of any rule, regulation, license or permit **[promulgated]** adopted or
24 issued pursuant to this act shall be liable to a penalty of not less than
25 **[\$100.00]** \$300 or more than **[\$3,000.00]** \$3,000 for the first offense
26 and not less than **[\$200.00]** \$500 or more than **[\$5,000.00]** \$5,000
27 for any subsequent offense, unless the commissioner has established an
28 alternate penalty for a specific offense pursuant to **[subsection a. (2)**
29 **of this section]** paragraph (2) of this subsection.

30 (2) The Commissioner of Environmental Protection, with the
31 approval of the Marine Fisheries Council, may, by regulation, establish
32 a penalty schedule for any specific violation of this act or of any rule
33 or regulation **[promulgated]** adopted pursuant to this act. No such
34 penalty may be less than **[\$10.00]** \$30 or more than **[\$100.00 on]**
35 \$100 for the first offense or less than **[\$20.00]** \$50 or more than
36 **[\$200.00 on]** \$200 for any subsequent offense. Any penalty provided
37 for by this act or by the fee schedule **[promulgated]** adopted by the
38 commissioner shall be collected in a civil action by a summary

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAN committee amendments adopted February 28, 2002.

² Assembly floor amendments adopted March 14, 2002.

1 proceeding [under "the penalty enforcement law" (N.J.S.2A:58-1 et
2 seq.)] pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
3 c.274 (C.2A:58-10 et seq.). The Superior Court or any municipal
4 court shall have jurisdiction to enforce [said penalty enforcement
5 law.] the "Penalty Enforcement Law of 1999." If the violation is of
6 a continuing nature, each day during which it continues shall constitute
7 an additional, separate and distinct offense.

8 b. [Any] ²⁽¹⁾ A person who violates the provisions of this act or
9 any rule or regulation or any license or permit [promulgated] adopted
10 or issued pursuant to this act shall be liable to the revocation or
11 suspension of any license [which he holds] or permit held by the
12 violator pursuant to this act for such period of time as the court may
13 choose, except when the rule or regulation violated includes a
14 mandatory revocation or suspension schedule in which case that
15 schedule shall determine the period of time of the revocation or
16 suspension.

17 ²⁽²⁾ In the case of a person who ¹[violates the provisions of
18 R.S.50:2-11 or in the case of a person who] ¹ knowingly violates the
19 provisions of ¹R.S.50:2-11, ¹ R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3,
20 or any rule or regulation or any license or permit adopted or issued
21 pursuant ²[to this act] thereto ², the violator shall be subject to a
22 mandatory revocation or suspension of the license or permit or
23 privilege for the taking of oysters, clams or other shellfish held by the
24 violator, or in the case of a violator without the necessary license or
25 permit the loss of the privilege to take oysters, clams or other shellfish,
26 for a period of three years for a first offense, five years for a second
27 offense, and 10 years for the third and any subsequent offense. For
28 purposes of this ¹[section] ²[subsection¹] paragraph², a knowing
29 violator shall include, but need not be limited to: ^{2(a)} a person who
30 is the holder of a commercial shellfish license or permit; ^{2(b)} a person
31 who is the holder of a recreational shellfish license or permit who is in
32 possession of more than the daily recreational shellfish limit; (c) a
33 person without any shellfish license or permit who is in possession of
34 more than the daily recreational shellfish limit; (d)² a person who is the
35 holder of a recreational shellfish license or permit who is engaging in
36 shellfish activities with the holder of a commercial shellfish license or
37 permit; or ^{2(e)} a person without the necessary shellfish license or
38 permit who is engaging in shellfish activities with the holder of a
39 commercial shellfish license or permit.

40 c. If [any] a person violates any of the provisions of this act, or
41 any rule or regulation or any license or permit [promulgated] adopted
42 or issued pursuant to [the provisions of] this act, the department may
43 institute a civil action in a court of competent jurisdiction for
44 injunctive relief to prohibit and prevent [such] the violation or
45 violations and the [said] court may proceed in the action in a summary

1 manner.

2 The department is hereby authorized and empowered to
3 compromise and settle any claim for a penalty under this section in
4 such amount in the discretion of the department as may appear
5 appropriate and equitable under all of the circumstances.

6 d. In addition to the penalties prescribed by this section, a person
7 ~~[violating]~~ who violates the provisions of R.S.50:2-11, R.S.50:3-13,
8 R.S.50:4-2 or R.S.50:4-3 , or any rule or regulation or any license or
9 permit adopted or issued pursuant thereto, shall be subject to the
10 forfeiture of any vessel, vehicle, or equipment used in the commission
11 of the violation. A designated ~~[enforcement]~~ conservation officer of
12 the Department of Environmental Protection, ~~[the marine police]~~ a
13 member of the State Police, or any other law enforcement officer may
14 seize and secure any vessel, vehicle, or equipment used in the
15 commission of such a violation. Upon the seizure of the vessel,
16 vehicle, or equipment, the ~~[enforcement]~~ conservation officer,
17 member of the ~~[marine police]~~ State Police , or other law enforcement
18 officer shall immediately thereafter institute a civil action to determine
19 if the forfeiture is warranted in the court in which the penalty action
20 was filed pursuant to this section, which court shall have jurisdiction
21 to adjudicate the forfeiture action. The owner or any person having
22 a security interest in the vessel, vehicle, or equipment may secure ~~[a]~~
23 its release ~~[of the same]~~ by depositing with the clerk of the court in
24 which the action is pending a bond with good and sufficient sureties
25 in an amount to be fixed by the court, conditioned upon the return of
26 the vessel, vehicle, or equipment to the Department of Environmental
27 Protection upon demand after completion of the court proceeding.
28 The court may proceed in a summary manner and may direct the
29 confiscation of the vessel, vehicle, or equipment by the department for
30 its use or for disposal by sale or public auction. Moneys collected by
31 the department through the sale or public auction of the vessel,
32 vehicle, or equipment shall be used by the Division of Fish ~~[, Game]~~
33 and Wildlife for the enforcement of the provisions of this act.

34 (cf: P.L.1991, c.91, s.279)

35

36 2. Section 4 of P.L.1979, c.321 (C.58:24-4) is amended to read as
37 follows:

38 4. For the purposes of ~~[sections 1 through 10 of this act]~~
39 P.L.1979, c.321 (C.58:24-1 et seq.) , the distribution, sale, offering for
40 sale, or having in possession with intent to distribute or sell, any
41 oysters, clams or other shellfish shall be prima facie evidence that such
42 shellfish were intended for use as food.

43 (cf: P.L.1979, c.321, s.4)

44

45 3. Section 6 of P.L.1979, c.321 (C.58:24-6) is amended to read as

1 follows:

2 6. The department may make such specific orders regarding the
3 growing and handling of oysters, clams or other shellfish and the
4 disposal of polluting matter which may affect the purity of oysters,
5 clams or other shellfish, as it may deem necessary to enforce the
6 provisions of [this act] P.L.1979, c.321 (C.58:24-1 et seq.).
7 (cf: P.L.1979, c.321, s.6)

8

9 4. Section 9 of P.L.1979, c.321 (C.58:24-9) is amended to read as
10 follows:

11 9. [Any] A person who violates any of the provisions of [sections
12 1 through 8 of this act] P.L.1979, c.321 (C.58:24-1 et seq.) or any
13 rule, regulation, order or permit [promulgated] adopted or issued
14 pursuant [to this act] thereto is guilty of a petty disorderly persons
15 offense and [any such] a person convicted of a subsequent offense is
16 guilty of a disorderly persons offense.
17 (cf: P.L.1979, c.321, s.9)

18

19 5. Section 10 of P.L.1979, c.321 (C.58:24-10) is amended to read
20 as follows:

21 10. Any vessel, vehicle or equipment used in violation of
22 [sections 1 through 8 of this act] P.L.1979, c.321 (C.58:24-1 et seq.)
23 or any rule, regulation, order or permit issued or [promulgated]
24 adopted pursuant [to said sections] thereto may be confiscated and
25 forfeited. The department may seize and secure any [such] vessel,
26 vehicle or equipment and shall immediately thereafter give notice
27 thereof to a court located in the county where the seizure is made
28 which shall, at an appointed time and place, summarily hear and
29 determine whether [such] the vessel, vehicle or equipment was
30 unlawfully used and if it does so determine, it may direct the
31 confiscation and forfeiture of [such] the vessel, vehicle or equipment
32 to the use of the department. The Commissioner of Environmental
33 Protection may dispose of any [such] confiscated and forfeited vessel,
34 vehicle or equipment at [his] the commissioner's discretion. Nothing
35 contained in [sections 1 through 8 of this act] P.L.1979, c.321
36 (C.58:24-1 et seq.) shall be construed to limit the powers and
37 responsibilities of the Department of Health and Senior Services
38 pursuant to any provisions of Title 24 of the Revised Statutes.
39 (cf: P.L.1979, c.321, s.10)

40

41 6. (New section) a. In addition to the penalties prescribed in
42 sections 9 and 10 of P.L.1979, c.321 (C.58:24-9 and 58:24-10), a
43 person who knowingly violates any of the provisions of P.L.1979,
44 c.321 (C.58:24-1 et seq.), or any rule, regulation, order or permit
45 adopted or issued pursuant thereto, shall be subject to the mandatory

1 revocation or suspension of any license or permit or privilege required
2 by the Department of Environmental Protection for the taking of
3 oysters, clams or other shellfish, or in the case of a violator without
4 the necessary license or permit the loss of the privilege to take oysters,
5 clams or other shellfish, for a period of three years for a first offense,
6 five years for a second offense, and 10 years for the third offense and
7 any subsequent offense.

8 b. For purposes of this section, a knowing violator shall include,
9 but need not be limited to (1) a person who is the holder of a
10 commercial shellfish license or permit, (2) ²a person who is the holder
11 of a recreational shellfish license or permit who is in possession of
12 more than the daily recreational shellfish limit, (3) a person without
13 any shellfish license or permit who is in possession of more than the
14 daily recreational shellfish limit, (4)² a person who is the holder of a
15 recreational shellfish license or permit who is engaging in shellfish
16 activities with the holder of a commercial shellfish license or permit,
17 or ²~~[(3)]~~ ²(5) a person without the necessary shellfish license or
18 permit who is engaging in shellfish activities with the holder of a
19 commercial shellfish license or permit.

20

21 7. This act shall take effect on the first day of the third month
22 following enactment.

23

24

25

26

27 _____
28 Increases penalties for violations of certain shellfish harvest and marine
fisheries laws.

ASSEMBLY, No. 1882

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman DOUGLAS H. FISHER

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Increases penalties for violations of certain shellfish harvest laws.

CURRENT VERSION OF TEXT

As introduced.



A1882 VAN DREW, FISHER

2

1 AN ACT concerning penalties for violations of certain laws pertaining
2 to the harvest of shellfish, amending P.L.1979, c.199, and amending
3 and supplementing P.L.1979, c.321 (C.58:24-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 73 of P.L.1979, c.199 (C.23:2B-14) is amended to read
9 as follows:

10 73. For purposes of this section, the "act" means and includes all
11 the new sections and amended sections contained herein, all the
12 remaining sections of Title 50 of the Revised Statutes, sections
13 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9,
14 23:5-16, **[23:5-35,]** 23:9-114, 23:9-115 and 23:9-120 of Title 23 of
15 the Revised Statutes, **[sections 1, 2, 3 and 7 of P.L.1938, c.318**
16 **(C.23:5-5.1 through 23:5-5.3 and 23:5-5.7), P.L.1952, c.216**
17 **(C.23:5-5.1a),]** and sections 1, 2, and 3 of P.L.1941, c.211
18 (C.23:5-24.1 to 23:5-24.3).

19 The commissioner may utilize any or all of the following remedies
20 for any violation of this act:

21 a. (1) **[Any]** A person who violates the provisions of this act or
22 of any rule, regulation, license or permit **[promulgated]** adopted or
23 issued pursuant to this act shall be liable to a penalty of not less than
24 **[\$100.00]** \$300 or more than **[\$3,000.00]** \$3,000 for the first offense
25 and not less than **[\$200.00]** \$500 or more than **[\$5,000.00]** \$5,000
26 for any subsequent offense, unless the commissioner has established an
27 alternate penalty for a specific offense pursuant to **[subsection a. (2)**
28 **of this section]** paragraph (2) of this subsection.

29 (2) The Commissioner of Environmental Protection, with the
30 approval of the Marine Fisheries Council, may, by regulation, establish
31 a penalty schedule for any specific violation of this act or of any rule
32 or regulation **[promulgated]** adopted pursuant to this act. No such
33 penalty may be less than **[\$10.00]** \$30 or more than **[\$100.00 on]**
34 \$100 for the first offense or less than **[\$20.00]** \$50 or more than
35 **[\$200.00 on]** \$200 for any subsequent offense. Any penalty provided
36 for by this act or by the fee schedule **[promulgated]** adopted by the
37 commissioner shall be collected in a civil action by a summary
38 proceeding **[under "the penalty enforcement law" (N.J.S.2A:58-1 et**
39 **seq.)]** pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
40 c.274 (C.2A:58-10 et seq.). The Superior Court or any municipal
41 court shall have jurisdiction to enforce **[said penalty enforcement**
42 **law.]** the "Penalty Enforcement Law of 1999." If the violation is of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 a continuing nature, each day during which it continues shall constitute
2 an additional, separate and distinct offense.

3 b. ~~[Any]~~ A person who violates the provisions of this act or any
4 rule or regulation or any license or permit ~~[promulgated]~~ adopted or
5 issued pursuant to this act shall be liable to the revocation or
6 suspension of any license ~~[which he holds]~~ or permit held by the
7 violator pursuant to this act for such period of time as the court may
8 choose , except when the rule or regulation violated includes a
9 mandatory revocation or suspension schedule in which case that
10 schedule shall determine the period of time of the revocation or
11 suspension .

12 In the case of a person who violates the provisions of R.S.50:2-11
13 or in the case of a person who knowingly violates the provisions of
14 R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3, or any rule or regulation or
15 any license or permit adopted or issued pursuant to this act, the
16 violator shall be subject to a mandatory revocation or suspension of
17 the license or permit or privilege for the taking of oysters, clams or
18 other shellfish held by the violator, or in the case of a violator without
19 the necessary license or permit the loss of the privilege to take oysters,
20 clams or other shellfish, for a period of three years for a first offense,
21 five years for a second offense, and 10 years for the third and any
22 subsequent offense. For purposes of this section, a knowing violator
23 shall include, but need not be limited to: a person who is the holder
24 of a commercial shellfish license or permit; a person who is the holder
25 of a recreational shellfish license or permit who is engaging in shellfish
26 activities with the holder of a commercial shellfish license or permit;
27 or a person without the necessary shellfish license or permit who is
28 engaging in shellfish activities with the holder of a commercial shellfish
29 license or permit.

30 c. If ~~[any]~~ a person violates any of the provisions of this act, or
31 any rule or regulation or any license or permit ~~[promulgated]~~ adopted
32 or issued pursuant to ~~[the provisions of]~~ this act, the department may
33 institute a civil action in a court of competent jurisdiction for
34 injunctive relief to prohibit and prevent ~~[such]~~ the violation or
35 violations and the ~~[said]~~ court may proceed in the action in a summary
36 manner.

37 The department is hereby authorized and empowered to
38 compromise and settle any claim for a penalty under this section in
39 such amount in the discretion of the department as may appear
40 appropriate and equitable under all of the circumstances.

41 d. In addition to the penalties prescribed by this section, a person
42 ~~[violating]~~ who violates the provisions of R.S.50:2-11, R.S.50:3-13,
43 R.S.50:4-2 or R.S.50:4-3 , or any rule or regulation or any license or
44 permit adopted or issued pursuant thereto, shall be subject to the
45 forfeiture of any vessel, vehicle, or equipment used in the commission

1 of the violation. A designated [enforcement] conservation officer of
2 the Department of Environmental Protection, [the marine police] a
3 member of the State Police, or any other law enforcement officer may
4 seize and secure any vessel, vehicle, or equipment used in the
5 commission of such a violation. Upon the seizure of the vessel,
6 vehicle, or equipment, the [enforcement] conservation officer,
7 member of the [marine police] State Police, or other law enforcement
8 officer shall immediately thereafter institute a civil action to determine
9 if the forfeiture is warranted in the court in which the penalty action
10 was filed pursuant to this section, which court shall have jurisdiction
11 to adjudicate the forfeiture action. The owner or any person having
12 a security interest in the vessel, vehicle, or equipment may secure [a]
13 its release [of the same] by depositing with the clerk of the court in
14 which the action is pending a bond with good and sufficient sureties
15 in an amount to be fixed by the court, conditioned upon the return of
16 the vessel, vehicle, or equipment to the Department of Environmental
17 Protection upon demand after completion of the court proceeding.
18 The court may proceed in a summary manner and may direct the
19 confiscation of the vessel, vehicle, or equipment by the department for
20 its use or for disposal by sale or public auction. Moneys collected by
21 the department through the sale or public auction of the vessel,
22 vehicle, or equipment shall be used by the Division of Fish [, Game]
23 and Wildlife for the enforcement of the provisions of this act.
24 (cf: P.L.1991, c.91, s.279)

25
26 2. Section 4 of P.L.1979, c.321 (C.58:24-4) is amended to read as
27 follows:

28 4. For the purposes of [sections 1 through 10 of this act]
29 P.L.1979, c.321 (C.58:24-1 et seq.), the distribution, sale, offering for
30 sale, or having in possession with intent to distribute or sell, any
31 oysters, clams or other shellfish shall be prima facie evidence that such
32 shellfish were intended for use as food.
33 (cf: P.L.1979, c.321, s.4)

34
35 3. Section 6 of P.L.1979, c.321 (C.58:24-6) is amended to read as
36 follows:

37 6. The department may make such specific orders regarding the
38 growing and handling of oysters, clams or other shellfish and the
39 disposal of polluting matter which may affect the purity of oysters,
40 clams or other shellfish, as it may deem necessary to enforce the
41 provisions of [this act] P.L.1979, c.321 (C.58:24-1 et seq.).
42 (cf: P.L.1979, c.321, s.6)

43
44 4. Section 9 of P.L.1979, c.321 (C.58:24-9) is amended to read as
45 follows:

1 9. [Any] A person who violates any of the provisions of [sections
2 1 through 8 of this act] P.L.1979, c.321 (C.58:24-1 et seq.) or any
3 rule, regulation, order or permit [promulgated] adopted or issued
4 pursuant [to this act] thereto is guilty of a petty disorderly persons
5 offense and [any such] a person convicted of a subsequent offense is
6 guilty of a disorderly persons offense.
7 (cf: P.L.1979, c.321, s.9)

8
9 5. Section 10 of P.L.1979, c.321 (C.58:24-10) is amended to read
10 as follows:

11 10. Any vessel, vehicle , or equipment used in violation of
12 [sections 1 through 8 of this act] P.L.1979, c.321 (C.58:24-1 et seq.)
13 or any rule, regulation, order or permit issued or [promulgated]
14 adopted pursuant [to said sections] thereto may be confiscated and
15 forfeited. The department may seize and secure any [such] vessel,
16 vehicle , or equipment and shall immediately thereafter give notice
17 thereof to a court located in the county where the seizure is made
18 which shall, at an appointed time and place, summarily hear and
19 determine whether [such] the vessel, vehicle , or equipment was
20 unlawfully used and if it does so determine, it may direct the
21 confiscation and forfeiture of [such] the vessel, vehicle , or equipment
22 to the use of the department. The Commissioner of Environmental
23 Protection may dispose of any [such] confiscated and forfeited vessel,
24 vehicle , or equipment at [his] the commissioner's discretion. Nothing
25 contained in [sections 1 through 8 of this act] P.L.1979, c.321
26 (C.58:24-1 et seq.) shall be construed to limit the powers and
27 responsibilities of the Department of Health and Senior Services
28 pursuant to any provisions of Title 24 of the Revised Statutes.
29 (cf: P.L.1979, c.321, s.10)

30
31 6. (New section) a. In addition to the penalties prescribed in
32 sections 9 and 10 of P.L.1979, c.321 (C.58:24-9 and 58:24-10), a
33 person who knowingly violates any of the provisions of P.L.1979,
34 c.321 (C.58:24-1 et seq.), or any rule, regulation, order or permit
35 adopted or issued pursuant thereto, shall be subject to the mandatory
36 revocation or suspension of any license or permit or privilege required
37 by the Department of Environmental Protection for the taking of
38 oysters, clams or other shellfish, or in the case of a violator without
39 the necessary license or permit the loss of the privilege to take oysters,
40 clams or other shellfish, for a period of three years for a first offense,
41 five years for a second offense, and 10 years for the third offense and
42 any subsequent offense.

43 b. For purposes of this section, a knowing violator shall include,
44 but need not be limited to (1) a person who is the holder of a
45 commercial shellfish license or permit, (2) a person who is the holder

1 of a recreational shellfish license or permit who is engaging in shellfish
2 activities with the holder of a commercial shellfish license or permit,
3 or (3) a person without the necessary shellfish license or permit who
4 is engaging in shellfish activities with the holder of a commercial
5 shellfish license or permit.

6

7 7. This act shall take effect on the first day of the third month
8 following enactment.

9

10

11

STATEMENT

12

13 This bill amends current law to increase penalties associated with
14 certain illegal shellfish harvest activities, including but not limited to,
15 clamming at night, clamming in condemned water, and invasion of
16 leased shellfish grounds.

17 The bill increases the minimum monetary penalty assessed for
18 certain violations from not less than \$100 for the first offense and not
19 less than \$200 for any subsequent offense to not less than \$300 for the
20 first offense and not less than \$500 for any subsequent offense. The
21 bill also increases the minimum monetary penalty assessed for certain
22 violations pursuant to a penalty schedule established by the
23 Commissioner of Environmental Protection, with the approval of the
24 Marine Fisheries Council, from not less than \$10 for the first offense
25 and not less than \$20 for any subsequent offense to not less than \$30
26 for the first offense and not less than \$50 for any subsequent offense.

27 In the case of knowing violators, the bill provides for license
28 revocation or suspension, or the loss of the privilege to take oysters,
29 clams or other shellfish in the case of a violator without a license, for
30 three years for a first offense, five years for a second offense, and 10
31 years for a third and any subsequent offense. In addition, the bill
32 provides for the confiscation of vessels, vehicles, and equipment when
33 certain shellfish harvest violations occur. The bill also contains
34 technical amendments, including amendments to delete references to
35 repealed statutes and to reflect the recent name change of the Division
36 of Fish and Wildlife.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1882

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2002

The Assembly Agriculture and Natural Resources Committee reports favorably and with committee amendments Assembly Bill No. 1882.

This bill amends current law to increase penalties associated with certain illegal shellfish harvest activities and marine fisheries violations, including but not limited to, clamming at night, clamming in condemned water, and invasion of leased shellfish grounds.

The bill increases the minimum monetary penalty assessed for certain violations from not less than \$100 for the first offense and not less than \$200 for any subsequent offense to not less than \$300 for the first offense and not less than \$500 for any subsequent offense. The bill also increases the minimum monetary penalty assessed for certain violations pursuant to a penalty schedule established by the Commissioner of Environmental Protection, with the approval of the Marine Fisheries Council, from not less than \$10 for the first offense and not less than \$20 for any subsequent offense to not less than \$30 for the first offense and not less than \$50 for any subsequent offense.

In the case of knowing violators, the bill provides for license revocation or suspension, or the loss of the privilege to take oysters, clams or other shellfish in the case of a violator without a license, for three years for a first offense, five years for a second offense, and 10 years for a third and any subsequent offense. In addition, the bill provides for the confiscation of vessels, vehicles, and equipment when certain shellfish harvest violations occur. The bill also contains technical amendments, including amendments to delete references to repealed statutes and to reflect the recent name change of the Division of Fish and Wildlife.

The committee amended the bill to (1) change the title to reflect the fact that the bill also raises the minimum fines for marine fisheries violations, (2) provide that, for violations of R.S.50:2-11 (time of day and Sunday restrictions on the taking of shellfish), mandatory license revocation or suspension would apply to a "knowing violator" rather than to any violator, and (3) make a technical amendment.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 1882

STATE OF NEW JERSEY

DATED: NOVEMBER 18, 2002

The Senate Environment Committee reports favorably Assembly Bill No. 1882 (2R).

Assembly Bill No. 1882 (2R) amends current law to increase penalties associated with certain illegal shellfish harvest activities and marine fisheries violations, including but not limited to, clamming at night, clamming in condemned water, and invasion of leased shellfish grounds.

The bill increases the minimum monetary penalty assessed for certain violations from not less than \$100 for the first offense and not less than \$200 for any subsequent offense to not less than \$300 for the first offense and not less than \$500 for any subsequent offense. The bill also increases the minimum monetary penalty assessed for certain violations pursuant to a penalty schedule established by the Commissioner of Environmental Protection, with the approval of the Marine Fisheries Council, from not less than \$10 for the first offense and not less than \$20 for any subsequent offense to not less than \$30 for the first offense and not less than \$50 for any subsequent offense.

In the case of so-called "knowing violators" of certain shellfish harvest laws, the bill provides for mandatory revocation or suspension of shellfish licenses, permits, and privileges for three years for a first offense, five years for a second offense, and 10 years for a third and any subsequent offense. In addition, the bill provides for the confiscation of vessels, vehicles, and equipment when certain shellfish harvest violations occur. The bill also contains technical amendments, including amendments to delete references to repealed statutes and to reflect the recent name change of the Division of Fish and Wildlife.

Assembly Bill No. 1882 (2R) is identical to Senate Bill No. 1361.

SENATE, No. 1361

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MARCH 21, 2002

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Increases penalties for violations of certain shellfish harvest and marine fisheries laws.

CURRENT VERSION OF TEXT

As introduced.



S1361 CAFIERO

2

1 AN ACT concerning penalties for violations of certain laws pertaining
2 to shellfish and marine fisheries, amending P.L.1979, c.199, and
3 amending and supplementing P.L.1979, c.321 (C.58:24-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 73 of P.L.1979, c.199 (C.23:2B-14) is amended to read
9 as follows:

10 73. For purposes of this section, the "act" means and includes all
11 the new sections and amended sections contained herein, all the
12 remaining sections of Title 50 of the Revised Statutes, sections
13 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9,
14 23:5-16, **[23:5-35,]** 23:9-114, 23:9-115 and 23:9-120 of Title 23 of
15 the Revised Statutes, **[sections 1, 2, 3 and 7 of P.L.1938, c.318**
16 **(C.23:5-5.1 through 23:5-5.3 and 23:5-5.7), P.L.1952, c.216**
17 **(C.23:5-5.1a),]** and sections 1, 2, and 3 of P.L.1941, c.211
18 (C.23:5-24.1 to 23:5-24.3).

19 The commissioner may utilize any or all of the following remedies
20 for any violation of this act:

21 a. (1) **[Any]** A person who violates the provisions of this act or
22 of any rule, regulation, license or permit **[promulgated]** adopted or
23 issued pursuant to this act shall be liable to a penalty of not less than
24 **[\$100.00]** \$300 or more than **[\$3,000.00]** \$3,000 for the first offense
25 and not less than **[\$200.00]** \$500 or more than **[\$5,000.00]** \$5,000
26 for any subsequent offense, unless the commissioner has established an
27 alternate penalty for a specific offense pursuant to **[subsection a. (2)**
28 **of this section]** paragraph (2) of this subsection.

29 (2) The Commissioner of Environmental Protection, with the
30 approval of the Marine Fisheries Council, may, by regulation, establish
31 a penalty schedule for any specific violation of this act or of any rule
32 or regulation **[promulgated]** adopted pursuant to this act. No such
33 penalty may be less than **[\$10.00]** \$30 or more than **[\$100.00 on]**
34 \$100 for the first offense or less than **[\$20.00]** \$50 or more than
35 **[\$200.00 on]** \$200 for any subsequent offense. Any penalty provided
36 for by this act or by the fee schedule **[promulgated]** adopted by the
37 commissioner shall be collected in a civil action by a summary
38 proceeding **[under "the penalty enforcement law" (N.J.S.2A:58-1 et**
39 **seq.)]** pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
40 c.274 (C.2A:58-10 et seq.). The Superior Court or any municipal
41 court shall have jurisdiction to enforce **[said penalty enforcement**
42 **law.]** the "Penalty Enforcement Law of 1999." If the violation is of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S1361 CAFIERO

1 a continuing nature, each day during which it continues shall constitute
2 an additional, separate and distinct offense.

3 b. [Any] (1) A person who violates the provisions of this act or
4 any rule or regulation or any license or permit [promulgated] adopted
5 or issued pursuant to this act shall be liable to the revocation or
6 suspension of any license [which he holds] or permit held by the
7 violator pursuant to this act for such period of time as the court may
8 choose , except when the rule or regulation violated includes a
9 mandatory revocation or suspension schedule in which case that
10 schedule shall determine the period of time of the revocation or
11 suspension .

12 (2) In the case of a person who knowingly violates the provisions
13 of R.S.50:2-11, R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3, or any rule or
14 regulation or any license or permit adopted or issued pursuant thereto,
15 the violator shall be subject to a mandatory revocation or suspension
16 of the license or permit or privilege for the taking of oysters, clams or
17 other shellfish held by the violator, or in the case of a violator without
18 the necessary license or permit the loss of the privilege to take oysters,
19 clams or other shellfish, for a period of three years for a first offense,
20 five years for a second offense, and 10 years for the third and any
21 subsequent offense. For purposes of this paragraph, a knowing
22 violator shall include, but need not be limited to: (a) a person who is
23 the holder of a commercial shellfish license or permit; (b) a person
24 who is the holder of a recreational shellfish license or permit who is in
25 possession of more than the daily recreational shellfish limit; (c) a
26 person without any shellfish license or permit who is in possession of
27 more than the daily recreational shellfish limit; (d) a person who is the
28 holder of a recreational shellfish license or permit who is engaging in
29 shellfish activities with the holder of a commercial shellfish license or
30 permit; or (e) a person without the necessary shellfish license or permit
31 who is engaging in shellfish activities with the holder of a commercial
32 shellfish license or permit.

33 c. If [any] a person violates any of the provisions of this act, or
34 any rule or regulation or any license or permit [promulgated] adopted
35 or issued pursuant to [the provisions of] this act, the department may
36 institute a civil action in a court of competent jurisdiction for
37 injunctive relief to prohibit and prevent [such] the violation or
38 violations and the [said] court may proceed in the action in a summary
39 manner.

40 The department is hereby authorized and empowered to
41 compromise and settle any claim for a penalty under this section in
42 such amount in the discretion of the department as may appear
43 appropriate and equitable under all of the circumstances.

44 d. In addition to the penalties prescribed by this section, a person
45 [violating] who violates the provisions of R.S.50:2-11, R.S.50:3-13,

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1 R.S.50:4-2 or R.S.50:4-3 , or any rule or regulation or any license or
2 permit adopted or issued pursuant thereto, shall be subject to the
3 forfeiture of any vessel, vehicle, or equipment used in the commission
4 of the violation. A designated [~~enforcement~~] conservation officer of
5 the Department of Environmental Protection, [~~the marine police~~] a
6 member of the State Police, or any other law enforcement officer may
7 seize and secure any vessel, vehicle, or equipment used in the
8 commission of such a violation. Upon the seizure of the vessel,
9 vehicle, or equipment, the [~~enforcement~~] conservation officer,
10 member of the [~~marine police~~] State Police , or other law enforcement
11 officer shall immediately thereafter institute a civil action to determine
12 if the forfeiture is warranted in the court in which the penalty action
13 was filed pursuant to this section, which court shall have jurisdiction
14 to adjudicate the forfeiture action. The owner or any person having
15 a security interest in the vessel, vehicle, or equipment may secure [~~a~~]
16 its release [~~of the same~~] by depositing with the clerk of the court in
17 which the action is pending a bond with good and sufficient sureties
18 in an amount to be fixed by the court, conditioned upon the return of
19 the vessel, vehicle, or equipment to the Department of Environmental
20 Protection upon demand after completion of the court proceeding.
21 The court may proceed in a summary manner and may direct the
22 confiscation of the vessel, vehicle, or equipment by the department for
23 its use or for disposal by sale or public auction. Moneys collected by
24 the department through the sale or public auction of the vessel,
25 vehicle, or equipment shall be used by the Division of Fish [~~, Game~~]
26 and Wildlife for the enforcement of the provisions of this act.
27 (cf: P.L.1991, c.91, s.279)

28
29 2. Section 4 of P.L.1979, c.321 (C.58:24-4) is amended to read as
30 follows:

31 4. For the purposes of [~~sections 1 through 10 of this act~~]
32 P.L.1979, c.321 (C.58:24-1 et seq.) , the distribution, sale, offering for
33 sale, or having in possession with intent to distribute or sell, any
34 oysters, clams or other shellfish shall be prima facie evidence that such
35 shellfish were intended for use as food.
36 (cf: P.L.1979, c.321, s.4)

37
38 3. Section 6 of P.L.1979, c.321 (C.58:24-6) is amended to read as
39 follows:

40 6. The department may make such specific orders regarding the
41 growing and handling of oysters, clams or other shellfish and the
42 disposal of polluting matter which may affect the purity of oysters,
43 clams or other shellfish, as it may deem necessary to enforce the
44 provisions of [~~this act~~] P.L.1979, c.321 (C.58:24-1 et seq.).
45 (cf: P.L.1979, c.321, s.6)

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1 4. Section 9 of P.L.1979, c.321 (C.58:24-9) is amended to read as
2 follows:

3 9. ~~Any~~ A person who violates any of the provisions of ~~sections~~
4 ~~1 through 8 of this act~~ P.L.1979, c.321 (C.58:24-1 et seq.) or any
5 rule, regulation, order or permit ~~promulgated~~ adopted or issued
6 pursuant ~~to this act~~ thereto is guilty of a petty disorderly persons
7 offense and ~~any such~~ a person convicted of a subsequent offense is
8 guilty of a disorderly persons offense.

9 (cf: P.L.1979, c.321, s.9)

10

11 5. Section 10 of P.L.1979, c.321 (C.58:24-10) is amended to read
12 as follows:

13 10. Any vessel, vehicle or equipment used in violation of
14 ~~sections 1 through 8 of this act~~ P.L.1979, c.321 (C.58:24-1 et seq.)
15 or any rule, regulation, order or permit issued or ~~promulgated~~
16 adopted pursuant ~~to said sections~~ thereto may be confiscated and
17 forfeited. The department may seize and secure any ~~such~~ such vessel,
18 vehicle or equipment and shall immediately thereafter give notice
19 thereof to a court located in the county where the seizure is made
20 which shall, at an appointed time and place, summarily hear and
21 determine whether ~~such~~ the vessel, vehicle or equipment was
22 unlawfully used and if it does so determine, it may direct the
23 confiscation and forfeiture of ~~such~~ the vessel, vehicle or equipment
24 to the use of the department. The Commissioner of Environmental
25 Protection may dispose of any ~~such~~ such confiscated and forfeited vessel,
26 vehicle or equipment at ~~his~~ the commissioner's discretion. Nothing
27 contained in ~~sections 1 through 8 of this act~~ P.L.1979, c.321
28 (C.58:24-1 et seq.) shall be construed to limit the powers and
29 responsibilities of the Department of Health and Senior Services
30 pursuant to any provisions of Title 24 of the Revised Statutes.

31 (cf: P.L.1979, c.321, s.10)

32

33 6. (New section) a. In addition to the penalties prescribed in
34 sections 9 and 10 of P.L.1979, c.321 (C.58:24-9 and 58:24-10), a
35 person who knowingly violates any of the provisions of P.L.1979,
36 c.321 (C.58:24-1 et seq.), or any rule, regulation, order or permit
37 adopted or issued pursuant thereto, shall be subject to the mandatory
38 revocation or suspension of any license or permit or privilege required
39 by the Department of Environmental Protection for the taking of
40 oysters, clams or other shellfish, or in the case of a violator without
41 the necessary license or permit the loss of the privilege to take oysters,
42 clams or other shellfish, for a period of three years for a first offense,
43 five years for a second offense, and 10 years for the third offense and
44 any subsequent offense.

45 b. For purposes of this section, a knowing violator shall include,

1 but need not be limited to (1) a person who is the holder of a
2 commercial shellfish license or permit, (2) a person who is the holder
3 of a recreational shellfish license or permit who is in possession of
4 more than the daily recreational shellfish limit, (3) a person without
5 any shellfish license or permit who is in possession of more than the
6 daily recreational shellfish limit, (4) a person who is the holder of a
7 recreational shellfish license or permit who is engaging in shellfish
8 activities with the holder of a commercial shellfish license or permit,
9 or (5) a person without the necessary shellfish license or permit who
10 is engaging in shellfish activities with the holder of a commercial
11 shellfish license or permit.

12

13 7. This act shall take effect on the first day of the third month
14 following enactment.

15

16

17

STATEMENT

18

19 This bill amends current law to increase penalties associated with
20 certain illegal shellfish harvest activities and marine fisheries
21 violations, including but not limited to, clamming at night, clamming
22 in condemned water, and invasion of leased shellfish grounds.

23 The bill increases the minimum monetary penalty assessed for
24 certain violations from not less than \$100 for the first offense and not
25 less than \$200 for any subsequent offense to not less than \$300 for the
26 first offense and not less than \$500 for any subsequent offense. The
27 bill also increases the minimum monetary penalty assessed for certain
28 violations pursuant to a penalty schedule established by the
29 Commissioner of Environmental Protection, with the approval of the
30 Marine Fisheries Council, from not less than \$10 for the first offense
31 and not less than \$20 for any subsequent offense to not less than \$30
32 for the first offense and not less than \$50 for any subsequent offense.

33 In the case of "knowing violators" of certain shellfish harvest laws,
34 the bill provides for mandatory revocation or suspension of shellfish
35 licenses, permits, and privileges for three years for a first offense, five
36 years for a second offense, and 10 years for a third and any subsequent
37 offense. In addition, the bill provides for the confiscation of vessels,
38 vehicles, and equipment when certain shellfish harvest violations
39 occur. The bill also contains technical amendments, including
40 amendments to delete references to repealed statutes and to reflect the
41 recent name change of the Division of Fish and Wildlife.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1361

STATE OF NEW JERSEY

DATED: NOVEMBER 18, 2002

The Senate Environment Committee reports favorably Senate Bill No. 1361.

Senate Bill No. 1361 amends current law to increase penalties associated with certain illegal shellfish harvest activities and marine fisheries violations, including but not limited to, clamming at night, clamming in condemned water, and invasion of leased shellfish grounds.

The bill increases the minimum monetary penalty assessed for certain violations from not less than \$100 for the first offense and not less than \$200 for any subsequent offense to not less than \$300 for the first offense and not less than \$500 for any subsequent offense. The bill also increases the minimum monetary penalty assessed for certain violations pursuant to a penalty schedule established by the Commissioner of Environmental Protection, with the approval of the Marine Fisheries Council, from not less than \$10 for the first offense and not less than \$20 for any subsequent offense to not less than \$30 for the first offense and not less than \$50 for any subsequent offense.

In the case of so-called "knowing violators" of certain shellfish harvest laws, the bill provides for mandatory revocation or suspension of shellfish licenses, permits, and privileges for three years for a first offense, five years for a second offense, and 10 years for a third and any subsequent offense. In addition, the bill provides for the confiscation of vessels, vehicles, and equipment when certain shellfish harvest violations occur. The bill also contains technical amendments, including amendments to delete references to repealed statutes and to reflect the recent name change of the Division of Fish and Wildlife.

Senate Bill No. 1361 is identical to Assembly Bill No. 1882 (2R).