

23: 2 B - 14

LEGISLATIVE HISTORY CHECKLIST

NJSA: 23:2B-14; 50:4-3 (Clams and oysters -- unlawful taking - increase penalties)

LAWS OF: 1983

CHAPTER: 219

Bill No: S1170

Sponsor(s): Russo

Date Introduced: March 8, 1982

Committee: Assembly: Agriculture & Environment

Senate: Natural Resources & Environment

Amended during passage: Yes // Senate Committee Substitute
(OCR) enacted

according to Governor's recommendations:

Date of Passage: Assembly: Jan. 27, 1983 Re-enacted 6-20-83

Senate: May 17, 1982 Re-enacted 5-23-83

Date of Approval: June 27, 1983

Following statements are attached if available:

Sponsor statement: Yes //

Committee statement: Assembly Yes //

Senate Yes //

Fiscal Note: /// No

Veto Message: Yes //

Message on Signing: /// No

Following were printed:

Reports: /// No

Hearings: /// No

6-27-83

[OFFICIAL COPY REPRINT]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1170

STATE OF NEW JERSEY

ADOPTED MARCH 15, 1982

AN ACT concerning the taking of clams and oysters from State
 lease lands and amending P. L. 1979, c. 199 and R. S. 50:4-3.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

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

3 73. For purposes of this section, the "act" means and includes
 4 all the new sections and amended sections contained herein, all the
 5 remaining sections of Title 50 of the Revised Statutes, sections
 6 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9,
 7 23:5-16, 23:5-35, 23:9-114, 23:9-115 and 23:9-120 of Title 23 of
 8 the Revised Statutes, sections 1, 2, 3 and 7 of P. L. 1938, c. 318
 9 (C. 23:5-5.1 through 23:5-5.3 and 23:5-5.7), P. L. 1952, c. 216 (C.
 10 23:5-5.1a); and sections 1, 2, and 3 of P. L. 1941, c. 211 (C. 23:5-24.1
 11 to 23:5-24.3).

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

14 a. (1) Any person who violates the provisions of this act or of
 15 any rule, regulation, license or permit promulgated or issued pur-
 16 suant to this act shall be liable to a penalty of not less than \$100.00
 17 or more than \$3,000.00 for the first offense and not less than \$200.00
 18 or more than \$5,000.00 for any subsequent offense, unless the com-
 19 missioner has established an alternate penalty for a specific offense
 20 pursuant to subsection a. (2) of this section.

21 (2) The Commissioner of Environmental Protection, with the
 22 approval of the Marine Fisheries Council, may, by regulation,
 23 establish a penalty schedule for any specific violation of this act
 24 or of any rule or regulation promulgated pursuant to this act. No
 25 such penalty may be less than \$10.00 nor more than \$100.00 on the

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate amendments adopted in accordance with Governor's recommenda-
 tions April 25, 1983.**

26 first offense or less than \$20.00 nor more than \$200.00 on any sub-
27 sequent offense. Any penalty provided for by this act or by the fee
28 schedule promulgated by the commissioner shall be collected in a
29 civil action by a summary proceeding under the penalty enforce-
30 ment law (N. J. S. 2A:58-1 et seq.). The Superior Court or any
31 County Court, county district court or municipal court shall have
32 jurisdiction to enforce said penalty enforcement law. If the viola-
33 tion is of a continuing nature, each day during which it continues
34 shall constitute an additional separate and distinct offense.

35 b. Any person who violates the provisions of this act or any rule
36 or regulation or any license or permit promulgated or issued pur-
37 suant to this act shall be liable to the revocation of any license
38 which he holds pursuant to this act for such period of time as the
39 court may choose.

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

46 The department is hereby authorized and empowered to com-
47 promise and settle any claim for a penalty under this section in
48 such amount in the discretion of the department as may appear
49 appropriate and equitable under all of the circumstances.

50 *d. In addition to the penalties prescribed by this section, a person*
51 *violating the provisions of R. S. 50:4-3 shall be subject to the for-*
52 *feiture of any vessel or equipment used in the commission of the*
53 *violation. A designated enforcement officer of the Department of*
54 *Environmental Protection, the marine police, or any other law en-*
55 *forcement officer may seize and secure any vessel or equipment*
56 *used in the commission of such a violation *and institute a civil*
57 *action in a court of competent jurisdiction to determine if for-*
58 *feiture is warranted. The court]* *Upon the seizure of the vessel*
59 *or equipment, the enforcement officer, member of the marine police,*
60 *or other law enforcement officer shall immediately thereafter insti-*
61 *tute a civil action to determine if the forfeiture is warranted in the*
62 *court in which the penalty action was filed pursuant to this section,*
63 *which court shall have jurisdiction to adjudicate the forfeiture*
64 *action. The owner or any person having a security interest in the*
65 *vessel or equipment may secure a release of the same by depositing*
66 *with the clerk of the court in which the action is pending a bond*
67 *with good and sufficient sureties in an amount to be fixed by the*
68 *court, conditioned upon the return of the vessel or equipment to*

69 *the Department of Environmental Protection upon demand after*
70 *completion of the court proceeding. The court may proceed in a*
71 *summary manner and* may direct the confiscation of the vessel*
72 *or equipment by the department for its use or for disposal by sale*
73 *or public auction. Moneys collected by the department through the*
74 *sale or public auction of the vessel or equipment shall be used by*
75 *the Division of Fish, Game and Wildlife for the enforcement of the*
76 *provisions of this act.*

1 2. R. S. 50:4-3 is amended to read as follows:

2 50:4-3. No person shall [go upon, take or remove oysters, clams
3 or other material,] dredge upon, throw, cast or drag an oyster
4 dredge, use oyster tongs, rakes, forks or other instruments or
5 appliances used for catching oysters or clams, or tread for clams,
6 upon any of the leased lands of this State lying under the tidal
7 waters of the Atlantic seaboard or tributaries thereof, above Cape
8 May Point, other than land or ground for which such person or his
9 employer then holds a lease from the council.

1 3. This act shall take effect immediately.

STATEMENT

This bill would subject any unauthorized person who removes oysters or clams from State lease lands to forfeiture of any vessel or equipment used to do so.

Currently, the penalty for violation of this section is so low that it does not act as a sufficient deterrent. If violators are subject to forfeiture of expensive vessels and equipment, it is believed that there will be far fewer violations.

The bill further directs that any moneys received through the sale or public auction of a vessel will be used exclusively for enforcement.

51170(1982)

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO
SENATE. No. 1170

STATE OF NEW JERSEY

DATED: JUNE 21, 1982

This bill would subject any unauthorized person who removes oysters or clams from State lease lands to forfeiture of any vessel or equipment used to do so.

Currently, the penalty for violation of this section of law (R. S. 50:4-3) is so low that it does not act as a sufficient deterrent. If violators are subject to forfeiture of expensive vessels and equipment, it is believed that there will be far fewer violations.

The bill further directs that any moneys received through the sale or public auction of a vessel will be used exclusively to enforce this provision of law.

The bill limits the scope of R. S. 50:4-3 to the use of instruments or appliances utilized to take clams or oysters, thereby precluding the possibility that mere physical presence or the manual taking of a clam or oyster would be a violation of this section, and, hence, grounds for the forfeiture of a vessel.

SENATE NATURAL RESOURCES AND AGRICULTURE
COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1170

STATE OF NEW JERSEY

DATED: MARCH 15, 1982

This bill would subject any unauthorized person who removes oysters or clams from State lease lands to forfeiture of any vessel or equipment used to do so.

Currently, the penalty for violation of this section of law (R. S. 50:4-3) is so low that it does not act as a sufficient deterrent. If violators are subject to forfeiture of expensive vessels and equipment, it is believed that there will be far fewer violations.

The bill further directs that any moneys received through the sale or public auction of a vessel will be used exclusively to enforce this provision of law.

The Senate Committee Substitute limits the scope of R. S. 50:4-3 to the use of instruments or appliances utilized to take clams or oysters, thereby precluding the possibility that mere physical presence or the manual taking of a clam or oyster would be a violation of this section, and, hence, grounds for the forfeiture of a vessel.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

March 30, 1983

SENATE BILL NO. 1170

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1170 with my recommendations for reconsideration.

The bill would subject an unauthorized person who removes oysters or clams from State leased lands to forfeiture of any vessel or equipment used in the commission of the violation. The bill provides that a designated enforcement officer of the Department of Environmental Protection, the marine police, or any other law enforcement officer may seize such a vessel or any other equipment used in the commission of such a violation and institute a civil action in a court of competent jurisdiction to determine if the forfeiture is warranted.

The bill does not provide sufficient safeguards to ensure that this court proceeding will occur in a timely manner, and that the property rights of the individual accused of such a violation are adequately protected.

Accordingly, I herewith return Senate Bill No. S-1170 with my recommendations for amendment.

Page 2, Section 1, Line 56: After "violation" DELETE "and institute a civil" and INSERT ".Upon the seizure of any such vessel or equipment, the enforcement officer, member of the marine police, or other law enforcement officer shall immediately thereafter institute a civil action to determine if the forfeiture is warranted in the court in which the penalty action was filed pursuant to this section, which court shall have jurisdiction to adjudicate the forfeiture action."

Page 2, Section 1, Line 57: DELETE entirely

Page 2, Section 1, Line 58: DELETE "feiture is warranted. The court" and INSERT "The owner or any person having a security interest in any such vessel or equipment may secure a release of the same by depositing with the clerk of the court in which such action is pending a bond with good and sufficient sureties in an amount to be fixed by the court, conditioned upon the return of said vessel or equipment to the Department of Environmental Protection upon

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

demand after completion of the court proceeding. The court may proceed in a summary manner and".

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel