

CHAPTER 8

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

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

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

C.23:2B-14 "Act" defined, penalties; enforcement.

73. For purposes of this section, the "act" means and includes all the new sections and amended sections contained herein, all the remaining sections of Title 50 of the Revised Statutes, sections 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9, 23:5-16, 23:9-114, 23:9-115 and 23:9-120 of Title 23 of the Revised Statutes, and sections 1, 2, and 3 of P.L.1941, c.211 (C.23:5-24.1 to 23:5-24.3).

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

a. (1) A person who violates the provisions of this act or of any rule, regulation, license or permit adopted or issued pursuant to this act shall be liable to a penalty of not less than \$300 or more than \$3,000 for the first offense and not less than \$500 or more than \$5,000 for any subsequent offense, unless the commissioner has established an alternate penalty for a specific offense pursuant to paragraph (2) of this subsection.

(2) The Commissioner of Environmental Protection, with the approval of the Marine Fisheries Council, may, by regulation, establish a penalty schedule for any specific violation of this act or of any rule or regulation adopted pursuant to this act. No such penalty may be less than \$30 or more than \$100 for the first offense or less than \$50 or more than \$200 for any subsequent offense. Any penalty provided for by this act or by the fee schedule adopted by the commissioner shall be collected in a civil action by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court or any municipal court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999." If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

b. (1) A person who violates the provisions of this act or any rule or regulation or any license or permit adopted or issued pursuant to this act shall be liable to the revocation or suspension of any license or permit held by the violator pursuant to this act for such period of time as the court may choose, except when the rule or regulation violated includes a mandatory revocation or suspension schedule in which case that schedule shall determine the period of time of the revocation or suspension.

(2) In the case of a person who knowingly violates the provisions 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 regulation or any license or permit adopted or issued pursuant thereto, the violator shall be subject to a mandatory revocation or suspension of the license or permit or privilege for the taking of oysters, clams or other shellfish held by the violator, or in the case of a violator without the necessary license or permit the loss of the privilege to take oysters, clams or other shellfish, for a period of three years for a first offense, five years for a second offense, and 10 years for the third and any subsequent offense. For purposes of this paragraph, a knowing violator shall include, but need not be limited to: (a) a person who is the holder of a commercial shellfish license or permit; (b) a person who is the holder of a recreational shellfish license or permit who is in possession of more than the daily recreational shellfish limit; (c) a person without any shellfish license or permit who is in possession of more than the daily recreational shellfish limit; (d) a person who is the holder of a recreational shellfish license or permit who is engaging in shellfish activities with the holder of a commercial shellfish license or permit; or (e) a person without the necessary shellfish license or permit who is engaging in shellfish activities with the holder of a commercial shellfish license or permit.

c. If a person violates any of the provisions of this act, or any rule or regulation or any license or permit adopted or issued pursuant to this act, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation or violations and the court may proceed in the action in a summary manner.

The department is hereby authorized and empowered to compromise and settle any claim for

a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.

d. In addition to the penalties prescribed by this section, a person who violates the provisions 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 regulation or any license or permit adopted or issued pursuant thereto, shall be subject to the forfeiture of any vessel, vehicle, or equipment used in the commission of the violation. A designated conservation officer of the Department of Environmental Protection, a member of the State Police, or any other law enforcement officer may seize and secure any vessel, vehicle, or equipment used in the commission of such a violation. Upon the seizure of the vessel, vehicle, or equipment, the conservation officer, member of the State 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. The owner or any person having a security interest in the vessel, vehicle, or equipment may secure its release by depositing with the clerk of the court in which the action is pending a bond with good and sufficient sureties in an amount to be fixed by the court, conditioned upon the return of the vessel, vehicle, or equipment to the Department of Environmental Protection upon demand after completion of the court proceeding. The court may proceed in a summary manner and may direct the confiscation of the vessel, vehicle, or equipment by the department for its use or for disposal by sale or public auction. Moneys collected by the department through the sale or public auction of the vessel, vehicle, or equipment shall be used by the Division of Fish and Wildlife for the enforcement of the provisions of this act.

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

C.58:24-4 Distribution, sale or possession of shellfish; prima facie evidence of intent for use as food.

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

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

C.58:24-6 Order on growing, handling of shellfish, disposal of polluting matter.

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

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

C.58:24-9 Violations; penalties.

9. A person who violates any of the provisions of P.L.1979, c.321 (C.58:24-1 et seq.) or any rule, regulation, order or permit adopted or issued pursuant thereto is guilty of a petty disorderly persons offense and a person convicted of a subsequent offense is guilty of a disorderly persons offense.

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

C.58:24-10 Vessel, vehicle or equipment used in violations; confiscation and forfeiture; disposal.

10. Any vessel, vehicle, or equipment used in violation of P.L.1979, c.321 (C.58:24-1 et seq.) or any rule, regulation, order or permit issued or adopted pursuant thereto may be confiscated and forfeited. The department may seize and secure any vessel, vehicle, or equipment and shall immediately thereafter give notice thereof to a court located in the county

where the seizure is made which shall, at an appointed time and place, summarily hear and determine whether the vessel, vehicle, or equipment was unlawfully used and if it does so determine, it may direct the confiscation and forfeiture of the vessel, vehicle, or equipment to the use of the department. The Commissioner of Environmental Protection may dispose of any confiscated and forfeited vessel, vehicle, or equipment at the commissioner's discretion. Nothing contained in P.L.1979, c.321 (C.58:24-1 et seq.) shall be construed to limit the powers and responsibilities of the Department of Health and Senior Services pursuant to any provisions of Title 24 of the Revised Statutes.

C.58:24-10.1 Additional penalties.

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

b. For purposes of this section, a knowing violator shall include, but need not be limited to (1) a person who is the holder of a commercial shellfish license or permit, (2) a person who is the holder of a recreational shellfish license or permit who is in possession of more than the daily recreational shellfish limit, (3) a person without any shellfish license or permit who is in possession of more than the daily recreational shellfish limit, (4) a person who is the holder of a recreational shellfish license or permit who is engaging in shellfish activities with the holder of a commercial shellfish license or permit, or (5) person without the necessary shellfish license or permit who is engaging in shellfish activities with the holder of a commercial shellfish license or permit.

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

Approved January 27, 2003.