

less than the prohibited size, and all shells shall be considered as not having been culled according to the provisions of this Section for the purpose of this Section shall be declared to be unmerchantable oysters; and when oysters measuring less than three inches are adhering so closely to the shell of a marketable oyster as to render removal impossible without destroying the small oysters, then such oysters, including the marketable oyster or oysters, shall be returned to the bed or bar from which they were taken. And it shall be unlawful for any person to take, buy or sell the small oysters and shells from the natural rocks, beds and shoals as aforesaid, or to take, buy or sell or have in possession oysters less than three inches in length from hinge to mouth. Whenever any inspector or other officer shall have reason to believe that this Section has been violated with the reference to the culling of oysters, such inspector or other officer is hereby authorized to examine the cargo of any boat or vessel, and if upon examination of said cargo the said inspector or other officer shall find that five per centum or more of said cargo shall consist of shells and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, the captain of the boat or other person in charge of said boat shall be deemed to have violated this Section, and upon conviction, if of a dredge boat or vendor of oysters, shall be fined not less than one hundred dollars, or confined in jail not less than thirty days nor more than six months, either or both, and in addition to such fine or imprisonment said cargo shall be confiscated and returned to the natural beds under the supervision of the oyster inspector or other officer making the arrest, and at the expense of the violator, which expense shall be in addition to the fine imposed and collectable in the same manner, and the boat or vessel on which said oysters are found shall be held as security for the payment of said fine; if the boat in which only oyster tongs are used, the said captain or other person in charge shall be fined not less than fifty dollars or confined in jail not less than fifteen days nor more than three months, either or both, and said cargo confiscated and returned to the natural beds under the supervision of the oyster inspector or other officer making the arrest. And the boat or vessel on which said oysters are found shall be held as security for the payment of said fine, provided, however, that when any person shall be found with oysters in violation of this Section, he shall be presumed to be a dredger or vendor of oysters, and if he claims to be a tonger, the burden shall be upon said person to show that he is a tonger only. In case there is an appeal or waiver of trial before Justice of the Peace, in order to provide for the disposition of any oysters that have been declared unmerchantable, the cargo of oysters shall remain in the possession or custody of the Deputy Commander, Inspector or other officer making the arrest until the captain of the boat or vessel or the packer shall have reculled the oysters in question; and the officer under whose supervision the re-culling is done, after ascertaining the quantity of unmerchantable oysters and shells so culled out, shall give the captain or other person in charge of said vessel or packing house, a certificate showing the number of bushels of such unmerchantable oysters and the said captain or other person shall return said unmerchantable oysters so culled out to the natural beds or bars under the supervision of the