

whose shells measure less than three inches in length, measuring from hinge to mouth, whether attached to a marketable oyster or not, shall be included in said culling and replaced upon said bed or bar as taken; 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 the culling of oysters taken as aforesaid required by this section shall be actually made and completed before such oysters are thrown or deposited in the hold or bottom of any such canoe or boat or vessel aforesaid.

This section (as it stood prior to act of 1906, ch. 439), applied to oysters taken from private beds, as well as from natural beds. *Windsor v. State*, 103 Md. 615.

This section referred to as indicating that sec. 9 applies only to oysters taken from the waters of this state. *Tyler v. State*, 93 Md. 310.

This section and secs. 9-17, referred to in construing sec. 75—see notes to the latter. *Foot v. Stanley*, 117 Md. 346 and 58 L. Ed. (U. S. Sup. Ct.) 698.

See sec. 19.

An. Code, 1924, sec. 9. 1912, sec. 9. 1904, sec. 8. 1894, ch. 380, sec. 8. 1900, ch. 380. 1927, ch. 125, sec. 9.

9. Any person who shall have oysters in his possession which contain more than five per cent. of shells, and oysters less than three inches from hinge to mouth, (whether adhering to marketable oysters or not), which for the purpose of this Article are declared to be unmerchantable oysters, shall be guilty of a misdemeanor, and in ascertaining such percentage the officers of the oyster police force and the measurers and inspectors are hereby authorized and directed to select such amount of oysters from any pile, hold, bin, house or other place as he may think proper and to require the same to be culled and disposed of, as provided in Section 11 of this Article; and any person violating any of the provisions of this Section shall be subject to the penalties and fines as provided in Section 11 of this Article, in precisely the same manner as if he were a captain of a boat.¹

This section applies only to oysters taken from waters of this state and not to oysters taken in another state and brought here. The object and intent of act of 1900, ch. 380. *Tyler v. State*, 93 Md. 310; *Windsor v. State*, 103 Md. 614. And see *State v. Insley*, 64 Md. 29.

This section applies to oysters taken from private beds as well as from natural beds. This section is constitutional. *Windsor v. State*, 103 Md. 616.

It is not necessary for officer to cull an entire cargo of oysters; he may select and cull any number of bushels he sees fit, amount of fine being determined by court from evidence and admissions. *Dean v. State*, 98 Md. 82.

See sec. 19 and notes to sec. 8.

[9. Any person who shall have oysters in his possession which contain more than eight per cent. of shells, and oysters less than three inches from hinge to mouth (whether adhering to marketable oysters or not), which for the purpose of this Article are declared to be unmerchantable oysters, shall be guilty of a misdemeanor, and in ascertaining such percentage any county inspector and deputy inspector is hereby authorized and directed to select such amount of oysters from any pile, hold, bin, house or other place as he may think proper, and to require the same to be culled and disposed of, as provided in Section 11 of this Article and any person violating any of the provisions of this Section shall be subject to the penal-

¹ Sec. 2 of ch. 125 of acts of 1927 repealed all laws inconsistent therewith to extent of such inconsistency.