

and tongs with wooden shafts, to be used entirely by hand, and without any ropes or hoisting gear whatever. Any person or persons violating any one of the provisions of this section shall be liable to the penalties prescribed in section 5 for taking oysters with rakes and tongs without license; nothing in this section affect offenses committed in whole or in part before March 20, 1910, nor pending prosecution for past offenses.

### Culling.

An. Code, sec. 8. 1904, sec. 7. 1894, ch. 380, sec. 7. 1906, ch. 439.

8. All oysters taken from any of the waters of this State, either with scoops, dredges or any similar instruments, or tongs or rakes, shall be culled upon their natural bed or bar whence taken, and all shells shall be returned to the bed or bar from which they were taken, and all oysters whose shells measure less than two and one-half inches in length, measuring from hinge to mouth, shall be included in said culling and replaced upon said bed or bar as 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 hole 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. 81—see notes to the latter. *Footte v. Stanley*, 117 Md. 346 and 58 L. Ed. (U. S. Sup. Ct.) 698.  
See sec. 19.

An. Code, sec. 9. 1904, sec. 8. 1894, ch. 380, sec. 8. 1900, ch. 380.

9. Any person who shall have oysters in his possession which contain more than five per cent. of shells, and oysters less than two and one-half inches from hinge to mouth, 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.

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.

*Cf.* art. 39, sec. 96, and art. 99, sec. 27, and notes.