

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 275  
SENATE BILL 402

AN ACT TO ESTABLISH SEVERE PENALTIES FOR DELIBERATELY  
HARVESTING POLLUTED SHELLFISH AND TO INCREASE FINES FOR  
VIOLATIONS OF MARINE FISHERIES STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 113 of the General Statutes is amended by adding a new section to read:

**"§ 113-209. Taking polluted shellfish at night or with prior conviction forbidden; penalty.**

(a) It is unlawful for any person between sunset and sunrise to willfully take or attempt to take shellfish from areas closed to harvest by statute, rule, or proclamation because of suspected pollution.

(b) It is unlawful for any person to willfully possess, sell or offer for sale shellfish taken between sunset and sunrise from areas closed to harvest by statute, rule, or proclamation because of suspected pollution.

(c) It is unlawful for any person who has been convicted of an offense under this Chapter within the preceding two years involving shellfish taken from areas closed because of suspected pollution to willfully take, attempt to take, possess, sell or offer for sale shellfish from areas closed to harvest by statute, rule, or proclamation because of suspected pollution.

(d) Any person violating any provisions of this section shall be guilty of a Class I felony and upon conviction shall, at a minimum, be fined no less than two thousand five hundred dollars (\$2,500) or be imprisoned for no less than one year. A second or subsequent conviction under this section within two years of a preceding conviction shall be punished by imprisonment for no less than three years. Upon conviction of any person for a violation of this section, the court shall order the confiscation of all weapons, equipment, vessels, vehicles, conveyances, fish, and other evidence, fruit, and instrumentalities of the offense. The confiscated property shall be disposed of in accordance with G.S. 113-137."

Sec. 2. G.S. 113-187 reads as rewritten:

**"§ 113-187. Penalties for violations of Article Subchapter and rules.**

(a) ~~It is unlawful for any~~ Any person to who participate ~~participates~~ in a any commercial fishing operation conducted in violation of any provision of this ~~Article~~ Subchapter and its implementing rules or in ~~any an~~ operation in connection with which any vessel is used in violation of any provision of this ~~Article~~ Subchapter and its

~~implementing rules.~~ rules is guilty of a misdemeanor punishable in the discretion of the court.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this ~~Article~~ Subchapter and its implementing rules is guilty of a misdemeanor punishable in the discretion of the court.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this ~~Article~~ Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this ~~Article~~ Subchapter and its implementing rules is guilty of a misdemeanor punishable in the discretion of the court.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules ~~and regulations [and rules]~~ of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following ~~rules and regulations [and rules]~~, rules, shall be guilty of a misdemeanor punishable by a fine of not less than ~~fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00)~~ for the first offense and not less than ~~one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00)~~ for any offense thereafter, or imprisonment for not more than ~~30 days, six months,~~ six months, or both. The violations of the statute or the rules ~~and regulations [and rules]~~ for which ~~this the~~ the penalty is mandatory are:

- (1) Taking or attempting to take, possess, sell, or offer for sale any ~~oysters~~ oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl ~~net between January 1 and the date upon which the shrimping season shall be opened by the Secretary.~~ net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or rule ~~for the protection of the shrimp population or juveniles of any other species of major economic importance.~~ to trawl nets.
- (4) Violating the provisions of a special permit or gear license issued by the Department.
- (5) Using or attempting to use any trawl ~~net-net,~~ long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Sec. 3. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1989.