

STORAGE NAME: h3779.wrm
DATE: March 16, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3779
RELATING TO: Saltwater fisheries/Nets
SPONSOR(S): Representative Kelly
COMPANION BILL(S): SB 1506 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) WATER & RESOURCE MANAGEMENT
 - (2) CRIME & PUNISHMENT
 - (3) GOVERNMENTAL RULES & REGULATIONS
 - (4)
 - (5)
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I. SUMMARY:

HB 3779 is a response to the continuing problems faced by the Marine Fisheries Commission (MFC) and the Department of Environmental Protection (DEP) in trying to enforce state constitutional restrictions on using certain commercial fishing nets in Florida waters.

HB 3779 would give the MFC explicit authority to adopt rules:

- Specifying when and where the use of gill nets, entangling nets, and certain seines can be used.
- Prohibiting the simultaneous possession of gill or entangling nets and restricted species of fish, such as mullet, pompano and whiting, or possession of restricted species of fish that show signs of having been caught with a gill or entangling net. The state could enforce this prohibition on the water, with the nets and catch still on board a vessel, as well as on shore, at the dock or other facilities of a wholesale saltwater products dealer, where the nets may be on board the vessel of a suspected violator but the fish have been off-loaded.

Additionally, HB 3779 attempts to clarify the definition of "entangling net" and to forestall future legal challenges on what size mesh constitutes a legal seine.

HB 3779 would take effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The MFC, which is responsible for developing rules to govern the state's marine resources, is currently assigned to the Board of Trustees. The Trustees must approve all MFC rules, but these rules are subject to the administrative hearing process and court challenge. With the exception of endangered species and the regulation of fishing gear in residential, manmade saltwater canals, the MFC has exclusive rulemaking authority over marine resources.

Concerned about declining fish populations and destruction to inshore habitats, Florida voters in November 1994 passed by a 4-1 margin a constitutional amendment banning the use of gill and other entangling nets in all Florida waters, and restricting the use of other types of nets in nearshore waters. Specifically, s. 16, Art. X of the state Constitution, which took effect July 1, 1995:

- Prohibits the use of gill nets or other entangling nets in Florida waters, the boundaries of which extend three miles from shore into the Atlantic Ocean and nine miles from shore into the Gulf of Mexico. Gill or other entangling nets work by snaring fish by their gills when they learn that the mesh is too small for them to swim through and try to back out of the net.
- Prohibits the use of other types of nets that are more than 500 square feet in mesh area in nearshore or inshore Florida waters, and provides that no more than two such nets, which shall not be connected, shall be used from any vessel where legal in Florida waters. "Nearshore or inshore waters" generally is defined as one mile from the shore along Florida's Atlantic coast, and three miles from shore along Florida's Gulf of Mexico coast. Seines catch fish by using panels (sometimes called "wings") to herd them into the center part of the net which has smaller mesh. The fish are then trapped in the net as the panel close.
- Prohibits a person fishing from shore from using more than one such legal net.
- Attempted to define "gill net" and "mesh area" in order to clearly delineate what types of nets would be illegal under the implementation of the constitutional amendment.
- Specified that no implementing legislation was needed, but that the Legislature could adopt more restrictions on the use of nets to harvest marine life.

Hardest hit were the net fishermen who relied on mullet and baitfishing to make a living. The Legislature enacted Chapter 95-414, L.O.F., relating to net-ban compensation to help out the disenfranchised fishermen. The act created a net buy-back program, where the state would pay fishermen between \$500 and \$3,500 for their nets, and offered job-training programs in coastal communities.

Controversy continues over the types of nets can be legally fished. Shrimpers won a state Supreme Court case in 1996 over DEP and the MFC concerning how to measure trawls (Department of Environmental Protection v. Millender). The immediate, practical effect of the court ruling was that trawls may be larger than 500 square feet of mesh

area. A more significant result of the Supreme Court ruling is that the MFC, when developing its gear rules, must consider the impact they could have on the commercial viability of the particular segment of fishing industry which uses that gear.

In 1997, legal challenges on whether commercial fishermen could augment their nets with sheets of tarpaulin, tobacco shade cloth, or plastic were dropped, at least for the time being, when the Legislature passed laws creating a three-year pilot program for Northwest Florida fishermen to use "tarp nets" on an experimental basis.

The latest challenge was filed last year by several commercial fishermen against proposed MFC rules that limit the mesh size of seines to 2 inches in diameter. Commercial fishermen had argued before an Administrative Law Judge last November that the proposed requirement for a small mesh size violates the "commercial viability" test established by the state Supreme Court. Additionally, the commercial fishermen contended that the proposed rule would have the unintended consequence of targeting juvenile fish species -- primarily young mullet -- that haven't had the opportunity to reproduce -- thus further reducing populations. However, the Administrative Law Judge in February 1998 ruled in the MFC's favor, saying that the 2-inch mesh seine is commercially viable gear, just not as efficient or lucrative as larger-mesh seine. The judge also dismissed the fishermen's contention that mullet were being unfairly targeted and that fish populations would decline because of the use of smaller mesh seines. The plaintiffs may appeal the ruling.

Not all court cases involving net violations are rule challenges. The Florida Marine Patrol, a division of the Department of Environmental Protection with the job of enforcing MFC rules, continues to have difficulty making successful cases against fishermen cited for net violations. One of the more common scenarios encountered by the FMP is a 14-foot (or smaller) boat, near the shore, carrying several thousand pounds of pompano, whiting or mullet, as well as one or more gill nets or large seines. The fisherman typically claims he caught the fish in federal waters (or, at least, not in nearshore waters if he has a seine larger than 500 square feet) and is headed to a seafood house to sell them. The FMP officer who stops the fisherman may suspect that the fish actually were netted close to shore because the boat is too small to have safely traversed many miles off the coast, and because it is the season when pompano are running in nearshore waters. The FMP officer may ticket the fisherman, but because he did not actually see the fisherman pull his nets, filled with fish, from nearshore waters, his case is weak.

In each of the last three years, the Legislature has amended Chapter 370 to either give the MFC more specific authority to adopt rules implementing the prohibitions and restrictions of the constitutional amendment banning or limiting the use of certain commercial fishing nets, or to assist the FMP in its enforcement efforts. During the 1997 session, the Legislature even created a new section of law -- s. 370.093, F.S., -- related to regulating the illegal use of nets. The new section of law also attempted to define what type of materials are **not** used to make the constitutionally illegal entangling nets:

"(2)(b)The use of gill or entangling nets of any size is prohibited, as such nets are defined in s. 16, Art. X of the State Constitution. Any net constructed wholly or partially of monofilament or multifilament material, other than a hand thrown cast net, or a handheld landing or dip net, shall be considered to be an entangling net

within the prohibition of s. 16, Art. X of the State Constitution unless specifically authorized by rule of the commission. Multifilament material shall not be defined to include nets constructed of braided or twisted nylon, cotton, linen twine, or polypropylene twine.”

However, questions have been raised whether a net made by weaving several individual strands of nylon monofilament is different from the “multifilament material” described in the statutes.

B. EFFECT OF PROPOSED CHANGES:

HB 3779 would give the Florida Marine Fisheries Commission explicit authority to adopt rules specifying “geographic or temporal” prohibitions on the possession of gill or entangling nets, or seines larger than 500 square feet in mesh area. In common parlance, “geographic” prohibitions would mean locations where such nets or seines are illegal to be used; “temporal” prohibitions would mean those times of year or fishery seasons when, again, the use of such nets or nets would be banned. The rules would take into consideration the federal open seasons for certain fisheries which may be harvested with gill or entangling nets, or whether it is legal to harvest certain fish species in state waters using a seine.

In addition, HB 3779 also directs the MFC to adopt rules prohibiting a commercial fisherman from having a gill or entangling net, and a catch of designated fish species, in his possession at the same time. Also prohibited would be the possession of designated fish species that show signs of having been caught with a gill or entangling net. These prohibitions shall include possession both on the water, or on land, docked at the facilities of a wholesale saltwater products dealer. The MFC intends to designate specific fish species in rule.

The penalties for violators of either of the above rules would be considered major violations, punishable as follows:

- o For a first violation within a seven-year period, a civil penalty of \$2,500 and suspension of all saltwater products license privileges for 90 calendar days following final disposition of the case.
- o For a second major violation charged within seven years of a first disposition that is other than acquittal or dismissal, a civil penalty of \$5,000 and suspension of all saltwater products license privileges for 12 months shall be imposed.
- o For a third and subsequent major violation charged within a seven-year period, resulting in a third or subsequent judicial disposition other than acquittal or dismissal, a civil penalty of \$5,000, lifetime revocation of the saltwater products license, and forfeiture of all gear and equipment used in the violation shall be imposed.

The bill also specifies that unless otherwise adopted by the MFC as a rule after July 1, 1995, no seine or part of a seine shall have a mesh size larger than 2 inches stretched mesh.

Finally, HB 3779 replaces in s. 370.093(2)(b) the word "multifilament" with the phrase "multistrand monofilament." This attempts to differentiate between entangling nets made by weaving individual strands of nylon monofilament, and those made from a different type of nylon that is braided or twisted, or from cotton, linen or polypropylene twine.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. HB 3779 gives the MFC additional authority make explicit rules to implement and enforce the constitutional prohibitions on the use of certain commercial fishing nets.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 370.092 and 370.093, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 370.092, F.S., to give MFC authority to adopt rules specifying geographic and temporal prohibitions on the possession of gill or entangling nets, or of seines that are larger than 500 square feet in mesh area. Provides that such rules shall be based on the absence of legal federal waters fisheries during those times of the year when gill or entangling nets likely would not legitimately be used, or on the unavailability of fisheries in state waters using seines larger than 500 square feet in mesh area. Authorizes additional rulemaking to prohibit simultaneous possession of gill or entangling nets with certain designated fish species, or the possession of certain fish species that show signs of having been harvested with a gill or entangling net. Specifies that "possession" shall include on the water or at a wholesale saltwater products dealer, but shall not include any fish harvested in federal waters as part of a legitimate fishery. Provides penalties for violators of said rules.

Section 2: Amends s. 370.093, F.S., to clarify what constitutes an "entangling net" for the purposes of implementing the prohibitions against the use of certain commercial fishing nets specified in s. 16, Art. X of the Florida Constitution. Replaces "multifilament" with "multistrand monofilament." Specifies that no seine or any part of a seine shall have a mesh size larger than 2 inches of stretched mesh, unless so authorized by an MFC rule adopted after July 1, 1995.

Section 3: Provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. The MFC likely will incur costs associated with developing and adopting the rules specified in the bill. Additionally, the MFC, the Office of the Attorney General and the Department of Environmental Protection (DEP) may incur additional legal costs in defending or researching any challenges to those rules.

However, more specific rules may result in more successful prosecution of net-ban violators, eventually resulting in fewer enforcement cases that fail in court, and thus savings for DEP's Division of Law Enforcement.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. Individuals and organizations that challenge the proposed MFC rules, or file amicus briefs to such challenges, will incur legal expenses.

Violators of the rules would face stiff penalties -- civil penalties ranging from \$2,500 to \$5,000, plus suspension of commercial fishing license privileges. Multiple offenders would lose their boats, gear and all other fishing equipment used in the prohibited activity.

2. Direct Private Sector Benefits:

Indeterminate. The private sector, as a whole, will benefit from improved enforcement of the constitutional net ban, both in terms of efficient use of tax dollars and the recovery of depleted fish species.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

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D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to a research discussion of HB 3779 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 3779 does not reduce the revenue-raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 3779 does not reduce state tax revenues shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Legislative Research Director:

Joyce Pugh

Joyce Pugh