

STORAGE NAME: h0693.wrm
DATE: March 9, 1997

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

BILL #: HB 693

RELATING TO: Marine fisheries

SPONSOR(S): Representative(s) Safley, Crow and Pruitt

STATUTE(S) AFFECTED: Amends sections 370.021, 370.025, 370.026, 370.027, 370.062, 370.081, 370.092, 370.14, 370.142, 370.15, and 370.25, Florida Statutes (F.S.) Repeals sections 370.08(7); 370.0821(3); 370.1125; 370.114; 370.13(2); 370.135(2),(3) and (4); 370.14(6); 370.15(2) and (3); 370.151(2); 370.153(4)(c),(d),(e) and (5)(b) and(d); 370.156; and 370.157, F.S.

COMPANION BILL(S): HB 903(s), CS/SB 412 (s), CS/SB 582

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

- (1) WATER & RESOURCE MANAGEMENT
- (2) CRIME & PUNISHMENT
- (3) FINANCE & TAXATION
- (4) GENERAL GOVERNMENT (FISCAL)

I. SUMMARY:

HB 693 consolidates the major violations for transgressing marine fisheries laws and rules, and substantially increases the penalties for several major violations. The bill clarifies the definition of "net" or "netting" and prohibits the use of nets not authorized by the Marine Fisheries Commission (MFC) or inconsistent with the constitutional restriction on the use of nets.

The bill also transfers the MFC from under the administrative purview of the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, to the Department of Environmental Protection (DEP), and authorizes the MFC to adopt its own rules. The effect of this transfer is that the Governor and Cabinet will no longer have final approval over MFC rules.

In addition, HB 693 includes provisions revising the inspection program for crawfish imported during the closed season and adds additional penalties for violations of the transferable crawfish trap tag program.

This bill also contains provisions permitting the sale of crawfish during the closed season, subject to reporting requirements; revises DEP's artificial reef construction program, providing penalties for its violation; and repeals a number of obsolete provisions.

The fiscal impact on government agencies is indeterminate, but likely minimal. Violators of marine fisheries laws and regulations, however, will face more expensive penalties.

HB 693 takes effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Net ban background

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, the amendment, 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 nautical miles from shore into the Atlantic Ocean and nine nautical miles from shore into the Gulf of Mexico.
- ▶ 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" is defined as one nautical mile from the shore along Florida's Atlantic coast, and three nautical miles from shore along Florida's Gulf of Mexico coast.
- ▶ 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. Among other things the act created a net buy-back program, where the state would pay fishermen between \$500 and \$3,500 for their nets.

Controversy continues over the types of nets can be legally fished. Shrimpers won a court case over DEP and the MFC concerning how to measure trawls. The practical effect of the court ruling is that trawls may be larger than 500 square feet of mesh area. The most recent legal challenges involve the use of nets augmented by sheets of tarpaulin, tobacco shade cloth, and plastic. DEP is appealing a Gulf County judge's August 1996 decision that fishing mesh attached to "shade tarp" (large plastic sheets with holes in them, commonly used to cover tobacco plants) and totaling more than 500 square feet in area is not a net, but a legal "harvesting device." The devices are being used to harvest bait fish. DEP and the MFC argue that the device is an illegal net, because the holes in the shade tarp act as open mesh. In any event, the judge's ruling does not extend beyond the boundaries of Gulf County.

Some fishermen in Florida's Panhandle are using a similar "harvesting device" where solid plastic tarp is stitched on each side of a 500-square-foot mesh net, like wings.

These devices can be as large as 880 square feet. The plastic wings corral fish, and as they are pulled together by rope, force the fish into the center mesh net. These devices also are mainly being used to catch bait fish. The MFC and the Florida Marine Patrol (FMP) have determined that these devices may not be illegal under the letter of the law, although they may violate the intent of the constitutional amendment.

Yet a third type of "harvesting device" that uses plastic tarp has been determined to be illegal by the MFC. This device includes two mesh nets connected by plastic sheeting in the middle. As stated earlier, the constitutional amendment clearly prohibits connecting two or more mesh nets. No fishermen has been caught actually using one of these devices.

On November 7, 1996, the Governor and Cabinet adopted an emergency rule proposed by the MFC which prohibits the harvest of mullet with nets larger than 500 square feet total, including plastic tarp or any other attachment. The greatest impact has been to the mullet fishery, which until the next in which cast nets are now the most efficient legal gear, but which are difficult to master and which reduce the size of the harvest. Recently, there have been attempts to evade the constitutional limitation on the size of nets used in inshore waters by attaching various types of unmeshed materials to legal nets to increase their size. There are no statutory definitions of the terms "net" and "netting."

Violations versus enforcement

In testimony earlier this year before the House Committee on Water and Resource Management, Florida Marine Patrol staff reported that more than 600 arrests had been made for violations of the constitutional and statutory limitations on the use of nets. Nearly 400 of these arrests occurred since July 1, 1996. Conservation groups and the Florida Marine Patrol, the enforcement arm of DEP, have expressed concerns that existing penalties may not be tough enough to deter unlawful behavior.

Currently in Chapter 370, F.S., a number of different levels of penalties are prescribed for violations of fisheries laws. For example, the penalties are identical for simultaneous possession of mullet in excess of the recreational daily bag limit and a gill net, and for the possession of trout, snook, or redfish in an amount of three fish over the daily recreational or commercial bag limit. The penalties are:

- For a first conviction, the penalty is imprisonment for not more than 60 days or a fine of not less than \$100 nor exceeding \$500, or both penalties.
- For a second or subsequent conviction within 12 months, the penalty is imprisonment for not more than 6 months or by a fine of not less than \$250 nor more than \$1,000, or both penalties.
- In addition, If the violation is for snook, an additional penalty of \$100 per fish is to be imposed.

Currently, s. 370.092(3)(a), F.S., imposes additional penalties for violation of the constitutional limitation on the use of nets and any MFC rules implementing it. These penalties are:

- o For a first major violation within a seven-year period, a civil penalty of \$2,500 and suspension of all saltwater products license privileges for 90 calendar days.
- o For a second major violation charged within seven years of a previous judicial disposition, which results in a second judicial disposition other than acquittal or dismissal, a civil penalty of \$5,000 and suspension of all saltwater products license privileges for 12 months.
- 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.

There is no requirement that the disposition of any case for violation of marine fisheries laws or rules be reported to the Florida Marine Patrol.

MFC authority issues

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. 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. Whenever a MFC rule and a provision of the Florida Statutes are in conflict, the conflicting statute is implicitly repealed. The Office of Statutory Revision, however, has not deleted the ineffective provisions and the Florida Statutes contain a number of obsolete provisions due to MFC rulemaking.

The MFC reports that there have been instances in which its rules have not been admitted as evidence by the courts because an affidavit as to their validity had not been presented to the court. The MFC also wishes to ensure that its rules may take into account the enforceability of the measures taken, in addition to traditional regulatory matters.

Crawfish issues

Existing law permits the importation of crawfish during the closed season, but requires that a Marine Patrol officer be present when a shipment is weighed. This requirement is a burden on the Marine Patrol's already-thin personnel resources. The marine patrol wishes to be authorized, but not required, to be present for weigh-ins.

The state's limited entry crawfish fishery requires trap tags and trap certificates, which are limited annually by the MFC. Section 370.142(2), F.S., currently provides for an additional civil penalty to be assessed for violations relating to traps. The DEP reports that at least one court has found this statute ambiguous. Currently, seafood dealers may not possess domestic crawfish during the closed season.

Artificial fishing reefs

Under s. 370.25, F.S., the DEP provides grants to local governments for constructing saltwater artificial reefs. The type of material used to create such reefs is critically important, as improper materials can create serious pollution. Although the department has established criteria for the program, the existing penalties for violating program requirements are considered insufficient. In addition, there are no provisions to guide

law enforcement officers making arrests regarding disposition of the vessel and its cargo.

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B. EFFECT OF PROPOSED CHANGES:

HB 693 clarifies and toughens penalties for marine fisheries violations, and prohibit courts from suspending, deferring, or withholding adjudication of guilt or sentencing from people convicted of major violations.

The bill also removes the MFC from oversight by the Board of Trustees, which currently has the authority to approve or reject all MFC rules. Under HB 693, the MFC rules must be signed by the DEP secretary and filed in a timely fashion, just as the Environmental Regulation Commission's rules are.

In an attempt to further clarify the constitutional net ban, HB 693 defines "net," "netting" and "miles." It requires that fishing gear used in violation of the net ban be seized and destroyed.

Finally, the bill:

- o Clarifies certain provisions concerning the harvesting and importation of Florida spiny lobster, and makes it discretionary for a Florida Marine Patrol officer to be at the scene of a weigh-in of spiny lobster.
- o Strengthens the enforcement provisions of DEP's artificial fishing reef program, and extends the reef grants program to non-profit organizations.
- o Repeals 13 statutory provisions that are obsolete due to adoption of MFC rules.

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?

Section 2 of HB 693 strengthens the MFC's authority to make rules, because the commission no longer would have to obtain approval of the Board of Trustees, which often had acted as court of appeal for fishermen and others dissatisfied with MFC rules. Affected parties still have the opportunity to challenge MFC rules administratively or in the courts.

Section 11 of the bill also makes it permissive for DEP to adopt rules related to its artificial fishing reef program. In effect, DEP would be allowed to

administer the program using guidelines adopted as an internal agency policy.

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

Section 11 of the bill envisions assistance from coastal local governments in enforcing the artificial fishing reef program, but does not require such participation.

- (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?

The Board of Trustees, under section 2 of the bill, would lose its authority to review and approve or reject the MFC's rules, as part of the commission's transfer to DEP for administrative oversight. However, the DEP secretary would not be able to halt MFC rules, but must file them in seven days with the Department of State -- in much the same way as the secretary handles rules adopted by the Environmental Regulation Commission.

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

Minimal.

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

Not applicable.

2. Lower Taxes:

Not applicable.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

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

Not applicable.

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

It is possible that the new definitions of "net" and "netting" in section 6 of the bill may limit the type of gear which some commercial fishermen are using but which is not patently illegal currently.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s.370.021, F.S., to incorporate into one section all the major violations of fisheries laws or rules. Leaves unchanged major violations and penalties relating to stone crabs, crawfish, and blue crabs are unchanged, as are the violation of simultaneous possession of commercial quantities of mullet and a gill net; the violation of possession of snook and redfish in excess of three fish over the daily commercial or recreational bag limit; and the existing additional penalties for violation of the constitutional net ban provisions and MFC rules relating to the net ban. Makes changes to the following violations:

- The possession of snook, redfish, bonefish and tarpon in quantities of more than three fish over the recreational or commercial daily bag limits is a major violation for which the additional penalties will apply.
- The major violation for possession of trout has been changed from in excess of three fish over the daily bag limit to in excess of ten fish over the daily bag limit, and the additional penalties will apply.
- The additional major penalties will also apply to a violation of the statutory provisions prohibiting simultaneous possession of commercial quantities of mullet and any gill net.
- The bill clarifies that the DEP will impose the additional civil penalties for the specified major violations.
- For a fourth or subsequent violation of the net ban or the special provisions relating to snook, redfish, trout, bonefish, and tarpon within a 7-year period, the penalty is a third degree felony.
- For purposes of punishing violations of the net ban, penalties will be imposed for any judicial outcome other than acquittal or dismissal.

- The prohibition on harvesting saltwater products during the period of license suspension or revocation is expanded to include the attempt to take such products. Also, penalties have been added for this offense: A first conviction is a first degree misdemeanor; thereafter, the penalty is a third degree felony.
- Upon the conviction for a major violation involving finfish, the licenseholder must show just cause why his or her saltwater products license should not be suspended or revoked. A major violation is as prescribed in s. 370.021(2)(c), F.S., for the taking and harvesting of illegal finfish, any single violation involving the possession of more than 100 pounds of illegal finfish, or any combination of violations in any 3-consecutive-year period wherein more than 200 pounds of illegal finfish in the aggregate are involved.

Repeals s. 370.021(2)(c)8.a., F.S., related to penalties for major violations. Repeals s. 370.021(2)(f), F.S., because the penalties for tarpon and bonefish are re-created elsewhere and federal law governs sailfish. Directs courts to notify the Florida Marine Patrol of the disposition of cases within 10 days. Defines "conviction" as any disposition other than acquittal or dismissal. Specifies that failure to pay civil penalties within 30 days can result in saltwater products or other saltwater fishing license suspension. Requires DEP and MFC rules to be judicially noticed under s. 90.202(9) and s. 90.203, F.S. The DEP's and MFC's emergency rules are to be judicially noticed under s. 90.202(5) and 90.203, F.S., when appropriately certified by affidavit. Replaces "civil" penalties with "administrative" penalties.

Section 2: Amends s. 370.025, F.S., is amended to delete the requirement that MFC rules be approved by the Governor and Cabinet. Provides that MFC rules take into account the enforceability of the measures being used, in order to achieve a high level of compliance with the measures and the expected benefits to the continuing health and abundance of the marine fisheries resources of this state.

Section 3: Amends s. 370.026, F.S., to place the MFC within DEP.

Section 4: Amends s. 370.027, F.S., to authorize the MFC to adopt its own rules, make research and funding recommendations to the DEP secretary, and clarify that the DEP's administrative and enforcement responsibilities regarding the MFC will continue. Prohibits the DEP secretary from changing MFC proposed rules or refusing to file proposed rules for adoption. Requires that MFC rules be filed by the secretary within 7 days of receipt from the MFC for permanent rules and within 24 hours of receipt for emergency rules. Deletes current prohibition against the MFC regulating fishing gear in residential, manmade saltwater canals.

Section 5: Amends s. 370.062, F.S., to conform provisions to 1996 legislation regarding tarpon tag program.

Section 6: Amends s. 370.0821, F.S., to delete provisions made ineffective by MFC rulemaking.

Section 7: Amends s. 370.092, F.S., to prohibit the use of any marine net that is not consistent with the constitutional net ban or that has not, other than a handheld cast or dip net, been expressly authorized by the MFC. Specifies that as used in s. 16, Art. X of the State Constitution and s.370.092(3), F.S., the term "net" or "netting" must be broadly

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construed to include all manner or combination of mesh or webbing or any other solid or semi-solid fabric or other material used to comprise a device that is used to take or harvest marine life. Clarifies that, as used in the constitutional net ban, the term "miles" is to be construed as international nautical miles. Requires the seizure of nets allegedly used in violation of the net ban and destruction of the nets upon a violator's conviction. Deletes provisions which have been moved by section 1 of this bill to s. 370.021, F.S.

Section 8: Amends s. 370.14, F.S., to delete a requirement that a Florida Marine Patrol officer be present when imported crawfish are weighed during the closed season. Specifies that, instead, such a cargo must be available for the Florida Marine Patrol's inspection; that the Florida Marine Patrol must be notified within 48 hours of a weigh-in and the weigh-in delayed up to four hours if requested, to allow an officer to be present. Specifies that within 48 hours after weigh-in completion, the Florida Marine Patrol must be notified of the weight and location of the crawfish, and the notice must include an affidavit that the crawfish were taken at least 50 miles from Florida.

Section 9: Amends s. 370.142, F.S., to provide new, additional penalties for certain violations of the transferable crawfish trap certificate program. For first violations for using untagged traps, illegal trap gear, or not possessing necessary trap certificates, the additional penalty is a fine of up to \$1000 and license suspension for the balance of the license year. A second such violation within 24 months earns a fine of up to \$2000 and license suspension for the balance of the license year. For a third or subsequent violation within 36 months, a fine of up to \$5000 may be imposed as well as suspension or revocation of one's trap number and saltwater products license.

Section 10: Amends s. 370.15(6) to delete provisions relating to the size of shrimp nets which have been made ineffective by MFC rulemaking.

Section 11: Amends s. 370.25, F.S., to revise enforcement provisions of the artificial reef program. Expands goals of the program to include responsibilities to enhance not only saltwater fishing but also provide for management of artificial reef-related marine resources for the public interest. Specifies that DEP is no longer required to adopt rules for grant applications and for allocating funds. Prohibit the transport of potential reef-construction materials across state waters without a DEP permit and require that either an inspection manifest or a certified inspector be aboard the vessel; the storage of uninspected and unapproved potential reef-construction materials aboard a vessel; and their placement in state waters. Specifies new penalties for violating this section.

Section 12: Repeals s. 370.08(7), F.S., relating to the use of gear and other equipment.

Section 13: Repeals s. 370.0821(3), F.S., relating to the use of nets in St. Johns County.

Section 14: Repeals s. 370.11(2) and (3), F.S., relating to the length of saltwater fish and the use of nets to harvest shad.

Section 15: Repeals s. 370.1125, F.S., relating to the harvest of a fish known as a "permit."

Section 16: Repeals s. 370.114, F.S., relating to the taking of corals and sea fans.

Section 17: Repeals s. 370.13(2), F.S. relating to a major violation involving stone crabs, which has been moved to s. 370.021, F.S.

Section 18: Repeals s. 370.135(2) and (3), F.S., relating to the harvest and sale of blue crabs and s. 370.135(4), F.S., which has been moved to s. 370.021, F.S.

Section 19: Repeals s. 370.14, F.S., relating to a major violation involving crawfish, which has been moved to s. 370.021, F.S.

Section 20: Repeals s. 370.15(2) and (3), F.S., relating to the harvest of shrimp.

Section 21: Repeals s. 370.151(2), F.S., relating to the Tortugas Shrimp Beds.

Section 22: Repeals s. 370.153(4)(c), (d), (e), and (5)(b), (d), F.S., relating to the harvest of shrimp in Clay, Duval, Nassau, Putnam, Flagler, and St. Johns Counties.

Section 23: Repeals s. 370.156, F.S., relating to the Florida East Coast Shrimp Bed.

Section 24: Section 370.157, F.S., relating to the harvest of shrimp in the Cedar Key closed area.

Section 25: 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:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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:

Violators of certain fisheries laws likely will pay higher fines or face stricter penalties with the passage of HB 693.

2. Direct Private Sector Benefits:

DEP and the MFC contend that better enforcement of the constitutional net ban, and of fisheries laws in general, results in a healthier marine resource for all Floridians to enjoy.

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

Minimal.

D. FISCAL COMMENTS:

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 693 because the bill does not require counties or municipalities to spend funds, or to take actions requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

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V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

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