

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill restricts individual freedom by attaching increased criminal penalties to certain violations of the marine net fishing limitations contained in s. 16, Art. X of the Florida Constitution, and the statutes or rules implementing that provision.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

In 1994, 71.7% of Florida voters amended the Florida Constitution by adopting the “Limiting Marine Net Fishing Initiative,” which provides, in part, that “marine resources...belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations.” The provision also provides that the limitations on marine net fishing are enacted to “protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing and waste.”

The provision is now found in s. 16, Art. X of the Florida Constitution (hereinafter referred to as the “Constitutional Amendment”), and may be summarized as follows:

- Prohibits the use of gill and other entangling nets in Florida waters;
- Prohibits the use of other nets larger than 500 square feet in mesh area within three miles seaward of the Gulf of Mexico coastline and within one mile seaward of the Atlantic coastline;
- Prohibits the use of more than two unconnected nets from a vessel;
- Allows a person who is not on a vessel to use only one net within three miles seaward of the Gulf of Mexico coastline and within one mile seaward of the Atlantic coastline;
- Defines “gill net” as one or more walls of netting which captures saltwater finfish by ensnaring or entangling them in the meshes of the net by the gills;
- Defines “entangling net” as a drift net, trammel net, stab net, or any other net which captures marine animals by causing all or part of the body to become entangled or ensnared in the meshes of the net;
- Excludes hand-thrown cast nets from the definitions of gill and entangling net;
- Provides specific criteria for measuring mesh area and defines “mesh area” as the total area of netting with the meshes open to comprise the maximum square footage; and
- Provides that the provision does not prohibit the establishment by law, or pursuant to law, of more restrictions on the use of nets.

Statutes and Rules Implementing the Constitutional Amendment

Section 370.093, F.S., prohibits attempts to take, and the taking of, marine life using any net and attachments not approved by the Florida Fish and Wildlife Conservation Commission (“FWC”) that, when combined, are larger than 500 square feet. This section also prohibits the use of certain nets constructed wholly or partially of monofilament or multistrand monofilament material. Upon the arrest of any person for violations of this section, the arresting officer must seize the illegally used nets and destroy the nets upon conviction of the offender. The FWC is specifically authorized to adopt rules implementing the provisions of this section and the

prohibitions and restrictions of the Constitutional Amendment. Violations of this provision are punishable as provided in s. 370.021(3), F.S.

Section 370.092, F.S. regulates the carriage of proscribed nets across Florida Waters. Except under specified circumstances, vessels are prohibited from transporting across Florida waters gill and entangling nets prohibited by the Constitutional Amendment. In addition, this provision prohibits possession of a gill or entangling net, or any seine net larger than 500 square feet in mesh area, on certain vessels. The FWC is also specifically authorized to adopt rules prohibiting possession and sale of mullet taken in illegal nets, and to adopt rules implementing the provisions of this section. Violations of this provision are punishable as provided in s. 370.021(3), F.S.

The FWC has adopted several rules implementing the Constitutional Amendment and related statutory provisions, including the following:

- Chapter 68B-4.0081, F.A.C.- Gear Specifications and Prohibited Gear (Provides general definitions related to nets, regulates carriage of nets across Florida waters, and prohibits the use of certain nets.)
- Chapter 68B-35, F.A.C. - Pompano, African Pompano, and Permit (Establishes specifications for gear, including nets.)
- Chapter 68B-39.0647 - Mullet (Establishes specifications for gear, including nets.)

Current Penalties for Violations of Net Provisions

Under current law, a person convicted of violating any provision of statute or FWC rule is subject to the following criminal penalties:

Violation	Current Criminal Penalties¹
1 st conviction	Imprisonment for not more than 60 days, a fine between \$100 and \$500, or both.
2 nd and subsequent convictions	Imprisonment for not more than 6 months, a fine between \$250 and \$1000, or both.

Any violation of the Constitutional Amendment or the FWC’s implementing rules is considered a “major violation” regardless of the severity of the offense. Any person who commits a major violation and receives a judicial disposition other than acquittal or dismissal is subject to the following mandatory civil penalties:

Violation	Current Civil Penalties²
1 st violation within 7 years (receiving disposition other than acquittal or dismissal)	\$2,500 fine and a 90 day suspension of license privileges
2 nd violation within 7 years (receiving disposition other than acquittal or dismissal)	\$5,000 fine and a 12 month suspension of license privileges
3 rd or more violation within 7 years (receiving disposition other than acquittal or dismissal)	\$5,000 fine, a lifetime revocation of license privileges, and forfeiture of gear used in violation

¹ s. 370.021(1), F.S.
² s. 370.021(3)(b), F.S.

EFFECT OF PROPOSED CHANGES

The bill defines a “flagrant violation” as “the illegal possession or use of a monofilament net or net with a mesh area larger than 2000 square feet,” and defines “violation” as “any judicial disposition other than acquittal or dismissal.” It should be noted that, in certain cases where there is a judicial disposition other than acquittal or dismissal, it is possible that an offender could be subject to both civil and criminal penalties, which is also the case under current law.

Proposed Civil Penalties for Flagrant Violations: This bill amends s. 370.021(3)(b), F.S., to provide that any person receiving a judicial disposition other than acquittal or dismissal for a flagrant violation of the Constitutional Amendment, implementing statutes, or rules “shall” be punishable as follows:

Violation	HB 1313 Civil Penalties
First flagrant violation	\$5,000 fine and 12 month suspension of license privileges
Second or subsequent flagrant violation	\$5,000 fine, lifetime suspension of license privileges, and forfeiture of all gear used in the violation

Proposed Criminal Penalties for Flagrant Violations: This bill amends s. 370.021(3)(b), F.S., to provide that a person convicted of any flagrant violation of the Constitutional Amendment, implementing statutes, or rules commits a third degree felony subject to a \$5,000 maximum fine and 5 year maximum imprisonment.

C. SECTION DIRECTORY:

- Section 1. Amends s. 370.021, F.S., revising penalties for violations of marine net limitation provisions.
- Section 2. Reenacts subsections (3) and (4) of s. 370.092, F.S., for purposes of incorporating the amendments to s. 370.021, F.S., by reference.
- Section 3. Reenacts s. 370.093, F.S., for purposes of incorporating the amendments to s. 370.021, F.S., by reference.
- Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues: According to the FWC, any additional revenues received are derived from civil penalty assessments, court ordered fines, and/or fees directed to the FWC. However, any such revenues will be irregular in amount and frequency of imposition.
- 2. Expenditures: According to the FWC, the bill is not expected to have an impact on state government because law enforcement and prosecution efforts to enforce marine net provisions are expected to remain constant. However, effectiveness of those efforts may be enhanced. The FWC asserts that there should be positive impact on the government sector if passage of this bill serves as a deterrent to continuing net violations resulting in fewer prosecutions and court dates.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues: None.
- 2. Expenditures: The bill does not appear to have a direct fiscal impact on state government. However, there may be an indeterminate negative fiscal impact on county governments if more violators are prosecuted as felony offenders and incarcerated in county jails as a result of the bill's passage.

DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: According to the FWC, there will be a fiscal impact on commercial fishers cited for net violations from court assessed fines/fees and commission assessed civil penalties, but it is undeterminable. In addition, the FWC asserts that, if the bill serves as a deterrent to illegal net fishing, then law-abiding commercial fishers may not be at an uncompetitive disadvantage with those who fish with illegal net gear.

C. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to affect the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Florida Fish and Wildlife Conservation Commission. The following comments regarding net fishing in general were included in a 2003 FWC publication entitled *Update on Enforcement of Laws Governing Marine Net Fishing*:

The Division has increased efforts to target such illegal net fishing. During the period of FY 01-02 and FY 02-03, the Division conducted an estimated 580 net enforcement details. These ranged from small details in localized lieutenant's areas to multi-day, multi-county details. Specialized equipment such as night vision goggles and cameras were utilized by officers on the ground and observers in the Division's aircraft from above. These details help the Division become proactive rather than reactive in reducing illegal net fishing.³

As to net enforcement, there are approximately 2500 commercial fishers who engage in net fishing. Over a three-year period (from 2000 through 2002), there were 408 citations issued for net-related violations. Five counties (Franklin, Wakulla, Gulf, Lee and Citrus) account for 58% of all violations. In the same period, there were 46 repeat violators, nearly all of whom are from the five mentioned counties.⁴

Data were analyzed for the period July 1, 2001 through June 30, 2002 involving 157 fishers cited for illegal use of nets. Of the 157, 68 violators were successfully prosecuted (adjudicated guilty, adjudication withheld or no contest plea). 18 violators were either not prosecuted, had their case dismissed or were found not guilty. 24 violators have cases pending. 47 violators have unknown dispositions (in these cases, FWC has not yet received disposition information from the court).⁵

³ FWC *Update on Enforcement of Laws Governing Marine Net Fishing*, Sept. 3-5, 2003 Commission Meeting, p.3.

⁴ FWC *Update on Enforcement of Laws Governing Marine Net Fishing*, Sept. 3-5, 2003 Commission Meeting, p.3.

⁵ FWC *Update on Enforcement of Laws Governing Marine Net Fishing*, Sept. 3-5, 2003 Commission Meeting, p.4.

Lack of dispositions are not necessarily a good indicator of the effectiveness of the current law. For example, there are many factors that weigh in affecting the outcome of these criminal cases. Some cases routinely take one to two years to make it through the criminal process. Reasons for these delays can be attributed to backlog in criminal court, continued appeals and filing of motions in the criminal cases, as well as the reluctance by the state or the court within the particular region, to proceed with the criminal case.⁶

* * *

FWC has commenced use of collection agencies, through the Office of the State's Chief Financial Officer, to collect unpaid civil penalties. FWC no longer rescinds required fines or penalties. FWC is effectively warning license holders that they will be subject to license suspension, civil fines and forfeiture of vessel and fishing gear for violations occurring under their vessel license in their absence.⁷

At the February 4-6, 2004 meeting of the FWC, the Commission voted to include legislation modeled after this bill in its 2004 Legislative Package. The FWC provided the following comments in its Legislative Analysis of this bill:

Currently there is no legal mechanism to distinguish, and subsequently assess, differential penalties based on the "degree" to which a person violated the restrictions and limitations placed on net gears. The criminal and civil penalties for a violation involving a 500 square foot net and one involving a 5000 square foot net are the same. Violations involving possession or use of gill or entangling nets in excess of 2000 square feet mesh area are not uncommon even eight years after the restrictions went into place, and some have been cited multiple times for violations of these net gear restrictions. Civil penalty assessments are often ignored and fishing continues without the required licenses.

* * *

The provisions of this bill will impact all persons who use nets prohibited by law and state and local entities that will enforce the provisions of this legislation. Since the 2003 Session, FWC conducted four workshops with representatives of the commercial and recreational saltwater fishing groups in developing the legislation. The bill is supported by the Coastal Conservation Association, an association of saltwater recreational anglers.

The Coastal Conservation Association. The CCA provided the following comments in support of HB 1313:

The Constitutional ban on gill and entanglement nets was approved by an overwhelming 72% of voters and was implemented nearly 9 years ago. However, flagrant, illegal netting is a continuing and serious problem in many areas of the state.

* * *

The Florida legislature must enact more stringent penalties for illegal netting.

Under current Florida law a huge double standard exists in the marine violation penalties. If an individual "molests" a crab trap or other commercial fishing gear it is

⁶ FWC *Update on Enforcement of Laws Governing Marine Net Fishing*, Sept. 3-5, 2003 Commission Meeting, p.4.

⁷ FWC *Update on Enforcement of Laws Governing Marine Net Fishing*, Sept. 3-5, 2003 Commission Meeting, p.4.

a felony. However, if an individual uses a 600 yard gill net to illegally take 7,000 lbs. of mackerel in state waters it is only a misdemeanor. There is no rationale to justify such a disparity. The penalties for such blatant violations of the netting restrictions should certainly be no less stringent than the penalties for "molesting" a crab trap.

Mr. Ronald Crum, Wakulla Fisherman's Association. The following comments regarding HB 1313 were provided by Mr. Ronald Crum, a member of the Wakulla Fisherman's Association, on March 7, 2004:

Recommended instead of felonies:

1. I suggest 2 rectangular nets made of twisted nylon hung with meshes open, and only 500 sq. ft Rectangular nets do not have a mesh size limit.
2. Allowing under size fish to escape alive and unharmed.
3. At least 1" separation between nets or netting.
4. Maximum of 10% allowance for stretching.

This will create an atmosphere of cooperation between FWC enforcement and fishermen resolving problems of prosecution, repeat or flagrant violations and stop discrimination to citizens with limitations.

Reasons:

- CCA proposed reason for felony is repeat or flagrant violation!
- Col. Jones statement is that cases are hard to get prosecuted.
- Felonies to remove flagrant violations or when FWC is able to get prosecuted to have severe penalties.

Our Country is a land of opportunity and choices. Opportunity to be licensed to harvest marine animals. Choices to harvest within law or violate laws. The problem of enforcement began with rules of unsound principles. The basis of all rectangular nets are that nets constructed over 2" stretch mesh are illegal. The very foundation of these laws are unrefuted from all evidence that citizens cannot carry out their commercial activity within them. The Net Limitation allowed 2 seines or other rectangular nets 500 sq. ft. hung with meshes open. The Florida Statutes define nets made of monofilament or multistrand monofilament as gill and entanglement. The 1997 Legislature clearly exempted nets made of twisted nylon. In 1996 the FMC proposed a rule requiring seines to have only 2" stretch mesh. In 1997 Administrative Law Judge Ella Jane P. Davis upheld that the FMC had the authority. ALJ Davis warned in finding of facts:

1. Existing rules or the MFC require that the main body of a seine net be constructed of 2" mesh or smaller. Wings with larger mesh may be used. (Rule 46-4.0081(1)(g),FAC) The challenge rule amendment (proposed rule 46-4.0081(2)(d)) deletes the provision that allows a wing with larger mesh to be attached to a two-inch mesh seine.
2. The unrefuted evidence is that the proposed rule amendment will reduce the "catchability rate" of a single such seine net for many types of fish and not be commercially feasible for mullet, except possibly "roe season" and that a seine net as currently permitted with larger mesh in the wings only is commercially feasible for mullet as well as other fish.

Fishermen had a choice to use seines of twisted 500 sq ft rectangular nets until 2003 when the FWC mad rule 68B-4.0082. Carriage of nets across Florida

waters(1)(d) Any net, other than a cast net, with a mesh size greater than 2 inches stretch mesh.

It is unrefuted from all evidence that there is no gear women, senior citizens, disabled or other citizens that cannot deploy cast nets will be able to carry out their life's activity of commercial fishing.

68B-4.0082(2)(5) Allows four seines containing 500 sq. ft. each or 2000 sq. ft. total. It is unrefuted that these 2" stretch seines are not viable unless altered. ALJ Davis' warning and FAC made by the FWC will imprison all commercial fishermen.

Mr. David Grix, Wakulla Fisherman's Association. Mr. Grix provided the following comments regarding HB 1313:

- (1) The FWCC has now made the transporting of legal, large mesh rectangular nets that were provided to the fishermen by the Legislature illegal to transport.
- (2) The FWCC ignored every standard of fishermen's "due process" as listed in FS 370.025 to create this rule.
- (3) The FWCC decided to allow (4) 500 square foot seine nets to be transported in 2003. (4 x 500 = 2,000)
- (4) It is NO MISTAKE that HB1313 creates a felony out of carrying more than 2,000 feet of net.

No officer or jurisdiction measures nets in the same manner, so...

A fisherman can be 100% legal under the law, and an officer would be able to stop him without ever having seen the fisherman use the net because the value of the charge will be raised to FELONY standards under HB1313.

Since no officer, jurisdiction, or court can seem to measure nets the same way (despite the Supreme Court in Millender and the Constitution), innocent men are in jeopardy of having severe penalties assessed against them under HB1313.

Even honest miscalculations of netting by FWCC officers can lead to criminal prosecution and penalties applied against innocent citizens.

Ms. Camechis, if I were to stand before you with Colonel Julie Jones, it is highly unlikely that Colonel Jones would want you to know everything that has happened to me through her corrupt officers. I am an honest citizen and I can prove corruption from the officer level to the court system. (This does not include Colonel Jones. I believe she is an honest FWCC Commander put in an awkward position of trying to clean up an awful situation.) I have no doubt that you would believe every word I say when confronted with the proof I possess. The FWCC knows this also.

Having said that, fishermen must fear the corrupt officers that still exist on the force, and corrupt Judges within the system. (Yes, I have proof of this also.) HB 1313 making felonies out of misdemeanors will give those aforementioned corrupt officers the right to harass and even jail innocent citizens. We cannot afford to lose any more protection of the law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2004, the Committee on Natural Resources adopted two amendments as follows:

- Amendment 1: Established civil penalties for a second “or subsequent” flagrant violation.
Amendment 2: Deleted criminal and civil penalties for nonflagrant violations.