

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1313 w/CS Use of Illegal Nets
SPONSOR(S): Gardiner
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 2334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Natural Resources	18 Y, 0 N w/CS	Camechis	Lotspeich
2) Public Safety & Crime Prevention		Cole	De La Paz
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

This bill revises the criminal and civil penalties applicable to flagrant 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. A "flagrant violation" is defined as the illegal possession or use of a monofilament net or a net with a mesh area larger than 2000 square feet.

The bill does not appear to have a direct fiscal impact on state government. However, there may be an indeterminate fiscal impact on county governments depending on whether more violators are prosecuted as felony offenders and incarcerated in county jails as a result of the bill's passage, or whether the bill serves as deterrent and less violations are prosecuted. Increased fines for flagrant violations and potential forfeiture of gear and equipment used in committing certain violations, possibly including vessels, will result in a negative fiscal impact on convicted offenders.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1313b.ps.doc
DATE: March 22, 2004

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, over fishing 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 FWCC’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:

There is a possibility that the words " a flagrant violation shall be the illegal possession or use of a monofilament net or a net with a mesh area larger than 2000 square feet." in Section 1 could be misconstrued by both FWC and the fishing industry. It could be interpreted to mean a single fishing net not more than 2000 square feet, or a series of nets with a total length of 2000 square feet. Depending upon the view of FWC when they make the rule on how this statute will be enforced, this interpretation could result in further conflict between them and the fishing industry.

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

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.

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

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

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.

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.

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

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.

Amendment 2: Deleted criminal and civil penalties for nonflagrant violations.