

HB 1313

2004

1 A bill to be entitled
 2 An act relating to use of illegal nets; amending s.
 3 370.021, F.S.; revising civil and criminal penalties for
 4 use of certain illegal fishing nets; providing civil and
 5 criminal penalties for flagrant violations; providing a
 6 definition; reenacting ss. 370.092(3) and (4) and 370.093,
 7 F.S., relating to illegal use of nets, to incorporate the
 8 amendment to s. 370.021, F.S., in references thereto;
 9 providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (3) of section 370.021, Florida Statutes, is amended to read:

370.021 Administration; rules, publications, records; penalties; injunctions.--

(3) PENALTIES FOR USE OF ILLEGAL NETS.--

(b)1. Any violation of any rule or statute which implements s. 16(b), Art. X of the State Constitution shall be punishable as follows:

a. A first violation is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

b. A second violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

c. A third or subsequent violation is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

2. Notwithstanding subparagraph 1., a flagrant violation of any rule or statute which implements s. 16(b), Art. X of the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 State Constitution shall be considered a felony of the third
 31 degree, punishable as provided in s. 775.082 or s. 775.083. For
 32 purposes of this paragraph, a flagrant violation shall be the
 33 illegal possession or use of a monofilament net or a net with a
 34 mesh area larger than 2000 square feet. A violation means any
 35 judicial disposition other than acquittal or dismissal.

36 3.(b) In addition to being subject to the other penalties
 37 provided in this chapter, any violation of s. 16(b), Art. X of
 38 the State Constitution, or any statute or rule ~~rules~~ of the
 39 commission which implements ~~implement~~ the gear prohibitions and
 40 restrictions specified therein shall be considered a major
 41 violation; and any person, firm, or corporation receiving any
 42 judicial disposition other than acquittal or dismissal of such
 43 violation shall be subject to the following additional
 44 penalties:

45 a.1- For a first major violation within a 7-year period, a
 46 civil penalty of \$2,500 and suspension of all saltwater products
 47 license privileges for 90 calendar days following final
 48 disposition shall be imposed.

49 b.2- For a second major violation under this subparagraph
 50 ~~paragraph~~ charged within 7 years of a previous judicial
 51 disposition, which results in a second judicial disposition
 52 other than acquittal or dismissal, a civil penalty of \$5,000 and
 53 suspension of all saltwater products license privileges for 12
 54 months shall be imposed.

55 c.3- For a third or subsequent major violation under this
 56 subparagraph ~~paragraph~~, charged within a 7-year period,
 57 resulting in a third or subsequent judicial disposition other
 58 than acquittal or dismissal, a civil penalty of \$5,000, lifetime

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59 revocation of the saltwater products license, and forfeiture of
 60 all gear and equipment used in the violation shall be imposed.

61 d. For a first flagrant violation under this subparagraph,
 62 a civil penalty of \$5,000 and a suspension of all saltwater
 63 license privileges for 12 months shall be imposed. For a second
 64 flagrant violation under this subparagraph, a civil penalty of
 65 \$5,000, a lifetime revocation of the saltwater products license,
 66 and the forfeiture of all gear and equipment used in the
 67 violation shall be imposed.

68
 69 A court may suspend, defer, or withhold adjudication of guilt or
 70 imposition of sentence only for any first violation of s. 16,
 71 Art. X of the State Constitution, or any rule or statute
 72 implementing its restrictions, determined by a court only after
 73 consideration of competent evidence of mitigating circumstances
 74 to be a nonflagrant or minor violation of those restrictions
 75 upon the use of nets. Any violation of s. 16, Art. X of the
 76 State Constitution, or any rule or statute implementing its
 77 restrictions, occurring within a 7-year period commencing upon
 78 the conclusion of any judicial proceeding resulting in any
 79 outcome other than acquittal shall be punished as a second,
 80 third, or subsequent violation accordingly.

81 Section 2. For the purpose of incorporating the amendment
 82 to section 370.021, Florida Statutes, in references thereto,
 83 subsections (3) and (4) of section 370.092, Florida Statutes,
 84 are reenacted to read:

85 370.092 Carriage of proscribed nets across Florida
 86 waters.--

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87 (3) Notwithstanding subsections (1) and (2), unless
 88 authorized by rule of the Fish and Wildlife Conservation
 89 Commission, it is a major violation under this section,
 90 punishable as provided in s. 370.021(3), for any person, firm,
 91 or corporation to possess any gill or entangling net, or any
 92 seine net larger than 500 square feet in mesh area, on any
 93 airboat or on any other vessel less than 22 feet in length and
 94 on any vessel less than 25 feet if primary power of the vessel
 95 is mounted forward of the vessel center point. Gill or
 96 entangling nets shall be as defined in s. 16, Art. X of the
 97 State Constitution, s. 370.093(2)(b), or in a rule of the Fish
 98 and Wildlife Conservation Commission implementing s. 16, Art. X
 99 of the State Constitution. Vessel length shall be determined in
 100 accordance with current United States Coast Guard regulations
 101 specified in the Code of Federal Regulations or as titled by the
 102 State of Florida. The Marine Fisheries Commission is directed to
 103 initiate by July 1, 1998, rulemaking to adjust by rule the use
 104 of gear on vessels longer than 22 feet where the primary power
 105 of the vessel is mounted forward of the vessel center point in
 106 order to prevent the illegal use of gill and entangling nets in
 107 state waters and to provide reasonable opportunities for the use
 108 of legal net gear in adjacent federal waters.

109 (4) The Fish and Wildlife Conservation Commission shall
 110 adopt rules to prohibit the possession and sale of mullet taken
 111 in illegal gill or entangling nets. Violations of such rules
 112 shall be punishable as provided in s. 370.021(3).

113 Section 3. For the purpose of incorporating the amendment
 114 to section 370.021, Florida Statutes, in a reference thereto,
 115 section 370.093, Florida Statutes, is reenacted to read:

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116 370.093 Illegal use of nets.--

117 (1) It is unlawful to take or harvest, or to attempt to
 118 take or harvest, any marine life in Florida waters with any net
 119 that is not consistent with the provisions of s. 16, Art. X of
 120 the State Constitution.

121 (2)(a) Beginning July 1, 1998, it is also unlawful to take
 122 or harvest, or to attempt to take or harvest, any marine life in
 123 Florida waters with any net, as defined in subsection (3) and
 124 any attachments to such net, that combined are larger than 500
 125 square feet and have not been expressly authorized for such use
 126 by rule of the Fish and Wildlife Conservation Commission. The
 127 use of currently legal shrimp trawls and purse seines outside
 128 nearshore and inshore Florida waters shall continue to be legal
 129 until the commission implements rules regulating those types of
 130 gear.

131 (b) The use of gill or entangling nets of any size is
 132 prohibited, as such nets are defined in s. 16, Art. X of the
 133 State Constitution. Any net constructed wholly or partially of
 134 monofilament or multistrand monofilament material, other than a
 135 hand thrown cast net, or a handheld landing or dip net, shall be
 136 considered to be an entangling net within the prohibition of s.
 137 16, Art. X of the State Constitution unless specifically
 138 authorized by rule of the commission. Multistrand monofilament
 139 material shall not be defined to include nets constructed of
 140 braided or twisted nylon, cotton, linen twine, or polypropylene
 141 twine.

142 (c) This subsection shall not be construed to apply to
 143 aquaculture activities licenses issued pursuant to s. 370.26.

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144 (3) As used in s. 16, Art. X of the State Constitution and
145 this subsection, the term "net" or "netting" must be broadly
146 construed to include all manner or combination of mesh or
147 webbing or any other solid or semisolid fabric or other material
148 used to comprise a device that is used to take or harvest marine
149 life.

150 (4) Upon the arrest of any person for violation of this
151 subsection, the arresting officer shall seize the nets illegally
152 used. Upon conviction of the offender, the arresting authority
153 shall destroy the nets.

154 (5) Any person who violates this section shall be punished
155 as provided in s. 370.021(3).

156 (6) The Fish and Wildlife Conservation Commission is
157 granted authority to adopt rules pursuant to s. 370.025
158 implementing this section and the prohibitions and restrictions
159 of s. 16, Art. X of the State Constitution.

160 Section 4. This act shall take effect July 1, 2004.