

By Senator Haridopolos

26-1625A-04

See HB

1                                   A bill to be entitled  
2           An act relating to use of illegal nets;  
3           amending s. 370.021, F.S.; revising civil and  
4           criminal penalties for use of certain illegal  
5           fishing nets; providing civil and criminal  
6           penalties for flagrant violations; providing a  
7           definition; reenacting ss. 370.092(3) and (4)  
8           and 370.093, F.S., relating to illegal use of  
9           nets, to incorporate the amendment to s.  
10          370.021, F.S., in references thereto; providing  
11          an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

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15           Section 1. Paragraph (b) of subsection (3) of section  
16 370.021, Florida Statutes, is amended to read:

17           370.021 Administration; rules, publications, records;  
18 penalties; injunctions.--

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

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

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

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

27           c. A third or subsequent violation is a felony of the  
28 third degree, punishable as provided in s. 775.082 or s.  
29 775.083.

30           2. Notwithstanding subparagraph 1., a flagrant  
31 violation of any rule or statute that implements s. 16(b),

1 Art. X of the State Constitution shall be considered a felony  
2 of the third degree, punishable as provided in s. 775.082 or  
3 s. 775.083. For purposes of this paragraph, a flagrant  
4 violation shall be the illegal possession or use of a  
5 monofilament net or a net with a mesh area larger than 2000  
6 square feet. A violation means any judicial disposition other  
7 than acquittal or dismissal.

8 3.(b) In addition to being subject to the other  
9 penalties provided in this chapter, any violation of s. 16(b),  
10 Art. X of the State Constitution, or any statute or rule ~~rules~~  
11 of the commission which implements ~~implement~~ the gear  
12 prohibitions and restrictions specified therein shall be  
13 considered a major violation; and any person, firm, or  
14 corporation receiving any judicial disposition other than  
15 acquittal or dismissal of such violation shall be subject to  
16 the following additional penalties:

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

21 b.2. For a second major violation under this  
22 subparagraph ~~paragraph~~ charged within 7 years of a previous  
23 judicial disposition, which results in a second judicial  
24 disposition other than acquittal or dismissal, a civil penalty  
25 of \$5,000 and suspension of all saltwater products license  
26 privileges for 12 months shall be imposed.

27 c.3. For a third or subsequent major violation under  
28 this subparagraph ~~paragraph~~, charged within a 7-year period,  
29 resulting in a third or subsequent judicial disposition other  
30 than acquittal or dismissal, a civil penalty of \$5,000,  
31 lifetime revocation of the saltwater products license, and

1 forfeiture of all gear and equipment used in the violation  
2 shall be imposed.

3 d. For a first flagrant violation under this  
4 subparagraph, a civil penalty of \$5,000 and a suspension of  
5 all saltwater license privileges for 12 months shall be  
6 imposed. For a second flagrant violation under this  
7 subparagraph, a civil penalty of \$5,000, a lifetime revocation  
8 of the saltwater products license, and the forfeiture of all  
9 gear and equipment used in the violation shall be imposed.

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11 A court may suspend, defer, or withhold adjudication of guilt  
12 or imposition of sentence only for any first violation of s.  
13 16, Art. X of the State Constitution, or any rule or statute  
14 implementing its restrictions, determined by a court only  
15 after consideration of competent evidence of mitigating  
16 circumstances to be a nonflagrant or minor violation of those  
17 restrictions upon the use of nets. Any violation of s. 16,  
18 Art. X of the State Constitution, or any rule or statute  
19 implementing its restrictions, occurring within a 7-year  
20 period commencing upon the conclusion of any judicial  
21 proceeding resulting in any outcome other than acquittal shall  
22 be punished as a second, third, or subsequent violation  
23 accordingly.

24 Section 2. For the purpose of incorporating the  
25 amendment to section 370.021, Florida Statutes, in references  
26 thereto, subsections (3) and (4) of section 370.092, Florida  
27 Statutes, are reenacted to read:

28 370.092 Carriage of proscribed nets across Florida  
29 waters.--

30 (3) Notwithstanding subsections (1) and (2), unless  
31 authorized by rule of the Fish and Wildlife Conservation

1 Commission, it is a major violation under this section,  
2 punishable as provided in s. 370.021(3), for any person, firm,  
3 or corporation to possess any gill or entangling net, or any  
4 seine net larger than 500 square feet in mesh area, on any  
5 airboat or on any other vessel less than 22 feet in length and  
6 on any vessel less than 25 feet if primary power of the vessel  
7 is mounted forward of the vessel center point. Gill or  
8 entangling nets shall be as defined in s. 16, Art. X of the  
9 State Constitution, s. 370.093(2)(b), or in a rule of the Fish  
10 and Wildlife Conservation Commission implementing s. 16, Art.  
11 X of the State Constitution. Vessel length shall be determined  
12 in accordance with current United States Coast Guard  
13 regulations specified in the Code of Federal Regulations or as  
14 titled by the State of Florida. The Marine Fisheries  
15 Commission is directed to initiate by July 1, 1998, rulemaking  
16 to adjust by rule the use of gear on vessels longer than 22  
17 feet where the primary power of the vessel is mounted forward  
18 of the vessel center point in order to prevent the illegal use  
19 of gill and entangling nets in state waters and to provide  
20 reasonable opportunities for the use of legal net gear in  
21 adjacent federal waters.

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

26 Section 3. For the purpose of incorporating the  
27 amendment to section 370.021, Florida Statutes, in a reference  
28 thereto, section 370.093, Florida Statutes, is reenacted to  
29 read:

30 370.093 Illegal use of nets.--

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

5           (2)(a) Beginning July 1, 1998, it is also unlawful to  
6 take or harvest, or to attempt to take or harvest, any marine  
7 life in Florida waters with any net, as defined in subsection  
8 (3) and any attachments to such net, that combined are larger  
9 than 500 square feet and have not been expressly authorized  
10 for such use by rule of the Fish and Wildlife Conservation  
11 Commission. The use of currently legal shrimp trawls and purse  
12 seines outside nearshore and inshore Florida waters shall  
13 continue to be legal until the commission implements rules  
14 regulating those types of gear.

15           (b) The use of gill or entangling nets of any size is  
16 prohibited, as such nets are defined in s. 16, Art. X of the  
17 State Constitution. Any net constructed wholly or partially of  
18 monofilament or multistrand monofilament material, other than  
19 a hand thrown cast net, or a handheld landing or dip net,  
20 shall be considered to be an entangling net within the  
21 prohibition of s. 16, Art. X of the State Constitution unless  
22 specifically authorized by rule of the commission. Multistrand  
23 monofilament material shall not be defined to include nets  
24 constructed of braided or twisted nylon, cotton, linen twine,  
25 or polypropylene twine.

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

28           (3) As used in s. 16, Art. X of the State Constitution  
29 and this subsection, the term "net" or "netting" must be  
30 broadly construed to include all manner or combination of mesh  
31 or webbing or any other solid or semisolid fabric or other

1 material used to comprise a device that is used to take or  
2 harvest marine life.

3 (4) Upon the arrest of any person for violation of  
4 this subsection, the arresting officer shall seize the nets  
5 illegally used. Upon conviction of the offender, the arresting  
6 authority shall destroy the nets.

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

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

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