

By the Committee on Criminal Justice; and Senators Haridopolos and Pruitt

307-2238-04

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; providing for civil penalties for  
8           violations of certain statutes considered major  
9           violations; reenacting ss. 370.092(3) and (4)  
10          and 370.093, F.S., relating to illegal use of  
11          nets, to incorporate the amendment to s.  
12          370.021, F.S., in references thereto; providing  
13          an effective date.

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

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17           Section 1. Paragraph (b) of subsection (3) of section  
18 370.021, Florida Statutes, is amended to read:

19           370.021 Administration; rules, publications, records;  
20 penalties; injunctions.--

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

22           (b)1. A flagrant violation of any rule or statute that  
23 implements s. 16(b), Art. X of the State Constitution shall be  
24 considered a felony of the third degree, punishable as  
25 provided in s. 775.082 or s. 775.083. For purposes of this  
26 paragraph, a flagrant violation shall be the illegal  
27 possession or use of a monofilament net or a net with a mesh  
28 area larger than 2,000 square feet. A violation means any  
29 judicial disposition other than acquittal or dismissal.

30           2. In addition to being subject to the other penalties  
31 provided in this chapter, any violation of s. 16(b), Art. X of

1 the State Constitution, or any statute or rule ~~rules~~ of the  
2 commission which implements ~~implement~~ the gear prohibitions  
3 and restrictions specified therein shall be considered a major  
4 violation; and any person, firm, or corporation receiving any  
5 judicial disposition other than acquittal or dismissal of such  
6 violation shall be subject to the following additional  
7 penalties:

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

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

18 c.3. For a third or subsequent major violation under  
19 this subparagraph ~~paragraph~~, charged within a 7-year period,  
20 resulting in a third or subsequent judicial disposition other  
21 than acquittal or dismissal, a civil penalty of \$5,000,  
22 lifetime revocation of the saltwater products license, and  
23 forfeiture of all gear and equipment used in the violation  
24 shall be imposed.

25 d. For a first flagrant violation under this  
26 subparagraph, a civil penalty of \$5,000 and a suspension of  
27 all saltwater license privileges for 12 months shall be  
28 imposed. For a second or subsequent flagrant violation under  
29 this subparagraph, a civil penalty of \$5,000, a lifetime  
30 revocation of the saltwater products license, and the  
31

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

3  
4 A court may suspend, defer, or withhold adjudication of guilt  
5 or imposition of sentence only for any first violation of s.  
6 16, Art. X of the State Constitution, or any rule or statute  
7 implementing its restrictions, determined by a court only  
8 after consideration of competent evidence of mitigating  
9 circumstances to be a nonflagrant or minor violation of those  
10 restrictions upon the use of nets. Any violation of s. 16,  
11 Art. X of the State Constitution, or any rule or statute  
12 implementing its restrictions, occurring within a 7-year  
13 period commencing upon the conclusion of any judicial  
14 proceeding resulting in any outcome other than acquittal shall  
15 be punished as a second, third, or subsequent violation  
16 accordingly.

17 Section 2. For the purpose of incorporating the  
18 amendment to section 370.021, Florida Statutes, in references  
19 thereto, subsections (3) and (4) of section 370.092, Florida  
20 Statutes, are reenacted to read:

21 370.092 Carriage of proscribed nets across Florida  
22 waters.--

23 (3) Notwithstanding subsections (1) and (2), unless  
24 authorized by rule of the Fish and Wildlife Conservation  
25 Commission, it is a major violation under this section,  
26 punishable as provided in s. 370.021(3), for any person, firm,  
27 or corporation to possess any gill or entangling net, or any  
28 seine net larger than 500 square feet in mesh area, on any  
29 airboat or on any other vessel less than 22 feet in length and  
30 on any vessel less than 25 feet if primary power of the vessel  
31 is mounted forward of the vessel center point. Gill or

1 entangling nets shall be as defined in s. 16, Art. X of the  
2 State Constitution, s. 370.093(2)(b), or in a rule of the Fish  
3 and Wildlife Conservation Commission implementing s. 16, Art.  
4 X of the State Constitution. Vessel length shall be determined  
5 in accordance with current United States Coast Guard  
6 regulations specified in the Code of Federal Regulations or as  
7 titled by the State of Florida. The Marine Fisheries  
8 Commission is directed to initiate by July 1, 1998, rulemaking  
9 to adjust by rule the use of gear on vessels longer than 22  
10 feet where the primary power of the vessel is mounted forward  
11 of the vessel center point in order to prevent the illegal use  
12 of gill and entangling nets in state waters and to provide  
13 reasonable opportunities for the use of legal net gear in  
14 adjacent federal waters.

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

19 Section 3. For the purpose of incorporating the  
20 amendment to section 370.021, Florida Statutes, in a reference  
21 thereto, section 370.093, Florida Statutes, is reenacted to  
22 read:

23 370.093 Illegal use of nets.--

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

28 (2)(a) Beginning July 1, 1998, it is also unlawful to  
29 take or harvest, or to attempt to take or harvest, any marine  
30 life in Florida waters with any net, as defined in subsection  
31 (3) and any attachments to such net, that combined are larger

1 than 500 square feet and have not been expressly authorized  
2 for such use by rule of the Fish and Wildlife Conservation  
3 Commission. The use of currently legal shrimp trawls and purse  
4 seines outside nearshore and inshore Florida waters shall  
5 continue to be legal until the commission implements rules  
6 regulating those types of gear.

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

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

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

26 (4) Upon the arrest of any person for violation of  
27 this subsection, the arresting officer shall seize the nets  
28 illegally used. Upon conviction of the offender, the arresting  
29 authority shall destroy the nets.

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

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

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

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7                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8   COMMITTEE SUBSTITUTE FOR  
9   Senate Bill 2334

10 Limits new criminal penalties to the marine net fishing  
11 limitations contained in s. 16, Art. X of the State  
12 Constitution and the statutes or rules implementing that  
13 provision, and revises the civil penalties to make them  
14 applicable to flagrant violation subsequent to a second  
15 violation.