

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

It appears that no House Principle is affected by the bill.

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 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
- 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 ("FWCC") 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 FWCC 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 FWCC 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 FWCC 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 FWCC 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

Gill and Entangling Nets and Mesh Size

As discussed above, the Florida Constitution defines a gill net as a net with one or more walls of netting which captures saltwater finfish by entangling them in the meshes of the net by the fish’s gills. Entangling nets are defined as a drift net, trammel net, stab net, or any other net which captures saltwater finfish, shellfish or other marine animals by causing all or a part of heads, fins, legs, or other body parts to become entangled in the meshes of the net.

According to the FWCC, prior to the adoption of the net limitation amendment to the Florida Constitution, rules promulgated by the former Marine Fisheries Commission (MFC) governing the commercial mullet industry set a three-inch minimum size stretched mesh, with larger minimum mesh

¹ s. 370.021(1), F.S.

² s. 370.021(3)(b), F.S.

sizes mandated regionally during certain times of the year when mullet were larger due to the approaching spawning or roe season. However, in 1996, the MFC published a rule that established a mesh size of no larger than two inches stretched mesh as the enforceable size of legal nets. MFC staff had recommended that in order to reduce waste and entangling by-catch, mesh sizes should be reduced from the original allowable three-inch size. Although challenged by the fishing industry, the two-inch mesh size has yet to be overturned by any court and has been continued in force by the FWCC (Rule 68B-4.0081, F.A.C.). For example, a 1999 case challenging the MFC mesh size rule (Pringle v. Marine Fisheries Commission, 732 So. 2d 395 – Fla. App.1 Dist.) was upheld by the Court.

According to the FWCC, the net limitation amendment to the Florida Constitution prevents the FWCC from permitting the use of any fishing gear that uses gilling or entanglement as its primary means of harvesting fish. A mesh-size greater than two inches, in seine-like nets increases the likelihood that the net will be used to entangle or gill fish. Any increase in the mesh size, according to the FWCC, will compromise the intent of the net limitation amendment by allowing the use of gill or entangling net gear.

The commercial fishing industry takes issue with the FWCC on the use of two-inch mesh size netting for the harvesting of fish. According to the commercial fishing industry, using a net with a two-inch mesh harvests a greater number of unwanted smaller fish, or by-catch, than the use of a net with a larger mesh size. According to a December 2003 report prepared by Paul Johnson and Associates as a companion document to a documentary film produced by Seidler Productions, Inc., a study in which fishers using legal nets (500 square feet with a two-inch stretched mesh size) recorded the extent to which unwanted by-catch were harvested. The study concluded that significant numbers of non-target fish (by-catch) were caught in the net and that some fish were entangled and were inadvertently injured and may have died following their release. Using a legal net resulted in the unintentional capture and loss of marine life in the commercial fishing for mullet. The study recommended that the FWCC should strongly consider a larger mesh size (3 inch minimum) that would more efficiently capture legal size mullet and allow smaller juvenile and non-target fish to not be netted. The study also recommended that the FWCC conduct research on the use of different net mesh sizes used for the harvesting of mullet.

Impacts of the Net Limitation Constitutional Amendment

According to a February 2005 Interim Project report by the House Water and Natural Resources Committee, the purpose of the net limitation constitutional amendment was to protect the unnecessary killing, over-fishing and waste of saltwater finfish and other marine animals. Based on available data, the report concluded that certain selected species, most notably striped mullet, sheepshead, and Spanish mackerel have shown signs of increasing their population. The report concluded that there is evidence that recreational fishing is having an increasing impact upon the reduction in fish stocks relative to the impacts from commercial fishing. The report also concluded that any success of the net limitation amendment in increasing the fish population has come with a significant negative impact on the commercial fishing interests in Florida with the greatest negative impacts being the economic and social impacts upon the commercial fishing families and local coastal communities.

EFFECT OF PROPOSED CHANGES

The bill amends s. 370.093, F.S., related to the illegal use of nets by permitting the use of any net constructed of braided or twisted nylon, cotton, linen twine, or polypropylene twine, regardless of its mesh size and not exceeding 500 square feet, to be used to harvest mullet in state waters.

C. SECTION DIRECTORY:

Section 1: Amends subsection (2) of s. 370.093, F.S., related to the illegal use of nets; states that any net constructed of braded or twisted nylon, cotton, linen, twine, or polypropylene twine, regardless of its mesh size and not exceeding 500 square feet, shall not be considered a gill or entangling net; and authorizes the use of such nets to harvest mullet in waters of the state.

Section 2: The act would take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Permitting the use of fishing nets with mesh sizes larger than the current required mesh size of two-inches may have a positive effect upon the harvesting of marketable fish and thus increase revenues for the commercial fishing industry and ancillary commercial industries and businesses such as the fish processing and packaging industry and restaurants.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill appears to raise issues under two provisions of the Florida Constitution, Article X, Section 16 and Article IV, Section 9.

Allowing the use of nets with mesh sizes larger than the size allowed by FWCC rule, may constitute the use of a gill or entangling net and thus be in violation of Article X, Section 16 of the Florida Constitution.

Article IV, Section 9 of the Florida Constitution grants the FWCC the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and also grants the FWCC the power to exercise regulatory and executive powers of the state with respect to marine life. This section of the Constitution prohibits the Legislature from adopting statutes in conflict with FWCC rules. The bill could be construed to violate Article IV, Section 9.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES