

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2334

SPONSOR: Criminal Justice Committee and Senators Haridopolos and Pruitt

SUBJECT: Illegal Fishing Nets

DATE: March 30, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Hayes</u>	<u>Hayes</u>	<u>AGG</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	<u>Withdrawn: Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 2334 revises the criminal and civil penalties applicable to flagrant violations of the marine net fishing limitations contained in s. 16, Art. X of the State 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 CS also provides for application of current civil penalties to violations of statutes implementing s. 16(b), Art. X of the State Constitution.

This CS substantially amends s. 370.021, F.S, and reenacts ss. 370.092(3) and (4) and 370.093, F.S.

## II. Present Situation:

The Florida Fish and Wildlife Conservation Commission (hereinafter referred to as the “FWC”) reported the following information to staff regarding current penalties for illegal net gear:

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.

Provided is a summary of the law relevant to illegal net fishing:

### **State Constitution**

Section 16, Article X of the State Constitution, which was adopted by Florida voters in 1994, provides that “[t]he marine resources of the State of Florida 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. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, over fishing and waste.” s. 16(a), Art. X of the State Constitution.

Section 16(b) provides that “[f]or the purpose of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters: (1) No gill nets or entangling nets shall be used in any Florida waters; and (2) In addition to the prohibition set forth in (1), no other type of net containing more than 500 square feet of mesh area shall be used in nearshore and inshore Florida waters. Additionally, no more than two such nets, which shall not be connected, shall be used from any vessel, and no person not on a vessel shall use more than one such net in nearshore and inshore Florida waters.”

The term “gill net” is defined in Section 16 (c)(1) 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, and ‘entangling net’ means a drift net, trammell net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or part of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes of the net, but a hand thrown cast net is not a gill net or an entangling net[.]”

The term “mesh area” of a net is defined in Section 16(c)(2) as “the total area of netting with the meshes open to comprise the maximum square footage. The square footage shall be calculated using standard mathematical formulas for geometric shapes. Seines and other rectangular nets shall be calculated using the maximum length and maximum width of the netting. Trawls and other bag type nets shall be calculated as a cone using the maximum circumference of the net mouth to derive the radius, and the maximum length from the net mouth to the tail end of the net to derive the slant height. Calculations for any other nets or combination type nets shall be based on the shapes of the individual components[.]”

The term “coastline” is defined in Section 16(c)(3) as “the territorial sea base line for the State of Florida established pursuant to the laws of the United States of America[.]”

The term “Florida waters” is defined in Section 16(c)(4) as “the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any other bodies of water under the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof[.]”

The term “nearshore and inshore Florida waters” is defined in Section 16(c)(5) as “all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.”

Section 16(e) provides that “[p]ersons violating this section shall be prosecuted and punished pursuant to the penalties provided in section 370.021(2)(a),(b),(c)6. and 7., and (e), Florida Statutes (1991), unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Chapter 370, Florida Statutes (1991).”

Section 16(f) provides that “[i]t is the intent of this section that implementing legislation is not required for enforcing any violations hereof, but nothing in this section prohibits the establishment by law or pursuant to law of more restrictions on the use of nets for the purpose of catching or taking any saltwater finfish, shellfish, or other marine animals.”

**Section 370.021, F.S.**

Section 370.021(3), F.S., provides that, unless otherwise provided by law, any person, firm, or corporation who is convicted for violating any provision of ch. 370, F.S., or any FWC rule relating to the conservation of marine resources, is punished:

- ▶ For a first conviction, by imprisonment for a period of not more than 60 days or by a fine of not less than \$100 nor more than \$500, or by both such fine and imprisonment. (s. 370.021(1)(a), F.S.)
- ▶ For a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 nor more than \$1,000, or by both such fine and imprisonment. (s. 370.021(1)(b), F.S.)

Section 370.021(3)(a), F.S., provides, in part, that it is a “major violation” pursuant to that section, punishable as provided in paragraph (3)(b) for any person, firm, or corporation to be simultaneously in possession of any species of mullet in excess of the recreational daily bag limit and any gill or other entangling net as defined in s. 16(c), Art. X of the State Constitution. Simultaneous possession under this provision includes possession of mullet and gill or other entangling nets on separate vessels or vehicles where such vessels or vehicles are operated in coordination with one another including vessels towed behind a main vessel.

Section 370.021(3)(b), F.S., provides that, in addition to being subject to the other penalties provided in ch. 370, F.S., any violation of s. 16(b), Art. X of the State Constitution, or any FWC rules which implement the gear prohibitions and restrictions specified therein is considered a “major violation”; and any person, firm, or corporation receiving any judicial disposition other than acquittal or dismissal of such violation is subject to the following additional penalties:

- ▶ For a first major violation within a 7-year period, a civil penalty of \$2,500 and suspension of all saltwater products license privileges for 90 calendar days following final disposition shall be imposed. (s. 370.021(3)(b)1., F.S.)
- ▶ For a second major violation under this paragraph charged within 7 years of a previous judicial disposition, which results in a second judicial disposition other than acquittal or dismissal, a civil penalty of \$5,000 and suspension of all saltwater products license privileges for 12 months shall be imposed. (s. 370.021(3)(b)2., F.S.)

- ▶ For a third or subsequent major violation under this paragraph, charged within a 7-year period, resulting in a third or subsequent judicial disposition other than acquittal or dismissal, a civil penalty of \$5,000, lifetime revocation of the saltwater products license, and forfeiture of all gear and equipment used in the violation shall be imposed. (s. 370.021(3)(b)3., F.S.)

A court may suspend, defer, or withhold adjudication of guilt or imposition of sentence only for any first violation of s. 16, Art. X of the State Constitution, or any rule or statute implementing its restrictions, determined by a court only after consideration of competent evidence of mitigating circumstances to be a “nonflagrant” or “minor” violation of those restrictions upon the use of nets. Any violation of Section 16, or any rule or statute implementing its restrictions, occurring within a 7-year period commencing upon the conclusion of any judicial proceeding resulting in any outcome other than acquittal shall be punished as a second, third, or subsequent violation accordingly. (s. 370.021(3)(b), F.S.)

Section 370.021(3)(c), F.S., provides that, during the period of suspension or revocation of saltwater license privileges under this subsection, the licensee shall not participate in the taking or harvesting, or attempt the taking or harvesting, of saltwater products from any vessel within the waters of the state; be aboard any vessel on which a commercial quantity of saltwater products is possessed through an activity requiring a license pursuant to this section; or engage in any other activity requiring a license, permit, or certificate issued pursuant to this chapter. Any person who is convicted of violating this paragraph:

- ▶ For a first or second conviction, a first degree misdemeanor. (s. 370.021(3)(c)1., F.S.)
- ▶ For a third or subsequent conviction, a third degree felony. (s. 370.021(3)(c)2., F.S.)

Section 370.021(3)(d), F.S., provides that, upon reinstatement of saltwater license privileges suspended pursuant to a violation of subsection (3), a licensee owning or operating a vessel containing or otherwise transporting in or on Florida waters any gill net or other entangling net, or containing or otherwise transporting in nearshore and inshore Florida waters any net containing more than 500 square feet of mesh area shall remain restricted for a period of 12 months following reinstatement. Vessels subject to this reinstatement period are restricted to the corridors established by FWC rule (s. 370.021(3)(d)1., F.S.), and a violation of the reinstatement period provisions is punishable pursuant to paragraphs (1)(a) and (b). (s. 370.021(3)(d)2., F.S.) Subsection (1) provides that, unless otherwise provided by law, any person, firm, or corporation who is convicted for violating any provision of this chapter, or any FWC rule relating to the conservation of marine resources, is punished:

- ▶ For a first conviction, by imprisonment for a period of not more than 60 days or by a fine of not less than \$100 nor more than \$500, or by both such fine and imprisonment. (s. 370.021(1)(a), F.S.)
- ▶ For a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 nor more than \$1,000, or by both such fine and imprisonment. (s. 370.021(1)(a), F.S.)

**Section 370.092, F.S.**

Section 370.092, F.S., applies to all vessels containing or otherwise transporting in or on Florida waters any gill net or other entangling net and to all vessels containing or otherwise transporting in or on Florida waters any net containing more than 500 square feet of mesh area the use of which is restricted or prohibited by s. 16, Art. X of the State Constitution. This section does not apply to vessels containing or otherwise transporting in or on Florida waters dry nets which are rolled, folded, or otherwise properly stowed in sealed containers so as to make their immediate use as fishing implements impracticable. (s. 370.092(1), F.S.)

Section 370.092(2), F.S., provides that every vessel containing or otherwise transporting in or on Florida waters any gill net or other entangling net and every vessel containing or otherwise transporting in or on nearshore and inshore Florida waters any net containing more than 500 square feet of mesh area shall proceed as directly, continuously, and expeditiously as possible from the place where the vessel is regularly docked, moored, or otherwise stored to waters where the use of said nets is lawful and from waters where the use of said nets is lawful back to the place where the vessel is regularly docked, moored, or otherwise stored or back to the licensed wholesale dealer where the catch is to be sold. Exceptions are provided for docked vessels, for vessels which utilize nets in a licensed aquaculture operation, and for vessels containing trawl nets as long as the trawl's doors or frame are not deployed in the water. Otherwise, hovering, drifting, and other similar activities inconsistent with the direct, continuous, and expeditious transit of such vessels shall be evidence of the unlawful use of such nets. The presence of fish in such a net is not evidence of the unlawful use of the net if the vessel is otherwise in compliance with this section.

Section 370.092(3), F.S., provides that, notwithstanding subsections (1) and (2), unless authorized by FWC rule, it is a major violation under this section, punishable as provided in s. 370.021(3), F.S., for any person, firm, or corporation to possess any gill or entangling net, or any seine net larger than 500 square feet in mesh area, on any airboat or on any other vessel less than 22 feet in length and on any vessel less than 25 feet if primary power of the vessel is mounted forward of the vessel center point. Gill or entangling nets shall be as defined in s. 16, Art. X of the State Constitution, s. 370.093(2)(b), F.S., or in a FWC rule implementing Section 16. Vessel length shall be determined in accordance with current U.S. Coast Guard regulations specified in the Code of Federal Regulations or as titled by the State of Florida.

Section 370.092(4), F.S., requires the FWC to adopt rules to prohibit the possession and sale of mullet taken in illegal gill or entangling nets. Violations of these rules are punishable as provided in s. 370.021(3), F.S.

**Section 370.093, F.S.**

Section 370.093(1), F.S., provides that it is unlawful to take or harvest, or to attempt to take or harvest, any marine life in Florida waters with any net that is not consistent with the provisions of s. 16, Art. X of the State Constitution.

Section 370.093(2)(a), F.S., provides that, beginning July 1, 1998, it is also unlawful to take or harvest, or to attempt to take or harvest, any marine life in Florida waters with any net, as defined in subsection (3) and any attachments to such net, that combined are larger than 500 square feet and have not been expressly authorized for such use by FWC rule.

Section 370.093(2)(b), F.S., provides that the use of gill or entangling nets of any size is prohibited, as such nets are defined in s. 16, Art. X of the State Constitution. Any net constructed wholly or partially of monofilament or multistrand monofilament material, other than a hand thrown cast net, or a handheld landing or dip net, shall be considered to be an entangling net within the prohibition of Section 16 unless specifically authorized by FWC rule. Multistrand monofilament material shall not be defined to include nets constructed of braided or twisted nylon, cotton, linen twine, or polypropylene twine.

Section 370.093(3), F.S., provides that, as used in s. 16, Art. X of the State Constitution and this subsection, the term “net” or “netting” must be broadly construed to include all manner or combination of mesh or webbing or any other solid or semisolid fabric or other material used to comprise a device that is used to take or harvest marine life.

Section 370.093(4), F.S., provides that, upon the arrest of any person for violation of this subsection, the arresting officer shall seize the nets illegally used. Upon conviction of the offender, the arresting authority shall destroy the nets.

Section 370.093(5), F.S., provides that a violation of this section is punished as provided in s. 370.021(3), F.S.

### **III. Effect of Proposed Changes:**

Committee Substitute for Senate Bill 2334 amends s. 370.021, F.S., to revise the criminal and civil penalties applicable to flagrant violations of the marine net fishing limitations contained in s. 16, Art. X of the State 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.

Specifically, the CS 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 s. 16, Art. X of the State Constitution or the statutes or rules implementing s. 16 shall be punished as follows:

- ▶ **Criminal Penalty:** Third degree felony.
- ▶ **Civil Penalty:** 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.

The CS also provides for application of current civil penalties to violations of statutes implementing s. 16(b), Art. X of the State Constitution.

The CS reenacts ss. 370.092(3) and (4) and 370.093, F.S., relating to illegal use of nets, to incorporate the amendment to s. 370.021, F.S., in references thereto.

The CS takes effect July 1, 2004.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The FWC reports that “[t]here 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. 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. Government Sector Impact:

The FWC reports that “[t]here is no determinable fiscal impact. The bill is not expected to change the level of law enforcement effort and prosecution effort to enforce marine net laws, but may enhance the effectiveness of these efforts.”

The Criminal Justice Impact Conference estimates that the felony provision of the CS will likely have an insignificant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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