

# CHAPTER 2004-61

## House Bill No. 1313

An act relating to use of illegal nets; amending s. 370.021, F.S.; providing civil and criminal penalties for flagrant violations; providing a definition; reenacting 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; providing an effective date.

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. A flagrant violation of any rule or statute which implements s. 16(b), Art. X of the State Constitution shall be considered a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this paragraph, a flagrant violation shall be the illegal possession or use of a monofilament net or a net with a mesh area larger than 2000 square feet. A violation means any judicial disposition other than acquittal or dismissal.

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

a.1. 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.

b.2. For a second major violation under this subparagraph 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.

c.3. For a third or subsequent major violation under this subparagraph 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.

d. For a first flagrant violation under this subparagraph, a civil penalty of \$5,000 and a suspension of all saltwater license privileges for 12 months

shall be imposed. For a second or subsequent flagrant violation under this subparagraph, a civil penalty of \$5,000, a lifetime revocation of the saltwater products license, and the forfeiture of all gear and equipment used in the violation shall be imposed.

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 s. 16, Art. X of the State Constitution, 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.

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

370.092 Carriage of proscribed nets across Florida waters.—

(3) Notwithstanding subsections (1) and (2), unless authorized by rule of the Fish and Wildlife Conservation Commission, it is a major violation under this section, punishable as provided in s. 370.021(3), 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), or in a rule of the Fish and Wildlife Conservation Commission implementing s. 16, Art. X of the State Constitution. Vessel length shall be determined in accordance with current United States Coast Guard regulations specified in the Code of Federal Regulations or as titled by the State of Florida. The Marine Fisheries Commission is directed to initiate by July 1, 1998, rulemaking to adjust by rule the use of gear on vessels longer than 22 feet where the primary power of the vessel is mounted forward of the vessel center point in order to prevent the illegal use of gill and entangling nets in state waters and to provide reasonable opportunities for the use of legal net gear in adjacent federal waters.

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

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

370.093 Illegal use of nets.—

(1) 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.

(2)(a) 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 rule of the Fish and Wildlife Conservation Commission. The use of currently legal shrimp trawls and purse seines outside nearshore and inshore Florida waters shall continue to be legal until the commission implements rules regulating those types of gear.

(b) 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 s. 16, Art. X of the State Constitution unless specifically authorized by rule of the commission. Multistrand monofilament material shall not be defined to include nets constructed of braided or twisted nylon, cotton, linen twine, or polypropylene twine.

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

(3) 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.

(4) 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.

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

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

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

Approved by the Governor May 13, 2004.

Filed in Office Secretary of State May 13, 2004.