Compensation for the Commercial Fishermen in the Wake of the 1994 Florida Constitutional Amendment Limiting Marine Net Fishing

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I. OVERVIEW

This note discusses the Florida constitutional amendment which banned the use of gill nets and other entangling nets in Florida waters and the “Net Ban Assistance Plan” that was enacted by the Florida Legislature to compensate commercial fishermen who have lost their jobs as a result of this amendment. Part II discusses the evolution of the net ban. Part III focuses on two programs that were passed by the legislature to compensate commercial net fishermen for their losses related to the net ban, the economic assistance for loss of income program, and the net buy-back program. Part IV explains where eligible fishermen can go for compensation and the procedures for obtaining compensation. Part V ends with a summary of what the compensation programs mean to commercial fishermen.

II. INTRODUCTION

The commercial and recreational fishing industries became sharply divided in 1994 during the fight to ban commercial fish-netting off the Florida coast. The hot issue was a proposed amendment to the Florida Constitution which would limit the use of fishing nets in Florida coastal waters. A petition drive, which was initiated by Karl Wickstrom, publisher of Florida Sportsman magazine, resulted in Amendment Three (as it was...
known on the ballot) being placed on the ballot. Wickstrom and other sport fishermen had unsuccessfully lobbied the Florida Legislature to obtain a ban on gill netting, and began the petition drive in 1992. In the months leading up to the November 8, 1994 state election, the two sides took cheap shots at one another, each arguing that the other side’s platform could not be substantiated. In the end the more powerful sportfishing lobby won. Article X, section 16 of the Florida Constitution became a reality.

1. See Karl Wickstrom, Constitution Here We Come, FLA. SPORTSMAN, Nov. 1992, at 18.
4. FLA. CONST. art. X, § 16. The text of the amendment reads as follows:

§ 16. Limiting marine net fishing

(a) The 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, overfishing, and waste.

(b) For purposes of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters:

(1) No gill nets or other entangling nets shall be used in 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.

(c) For purposes of this section:

(1) “gill net” means 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, trammel 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 or an entangling net;

(2) “mesh area” of a net means 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 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.
Florida voters voted by an overwhelming 71.7% margin to ban all gill nets and other entangling nets from use in Florida waters. Florida waters extend three miles out from the Atlantic coast and nine miles into the Gulf of Mexico. The ban prohibits the use of other nets containing more than 500 square feet of mesh area in nearshore and inshore Florida waters. Nearshore and inshore Florida waters extend one mile out from the Atlantic coast and three miles out into the Gulf of Mexico. Gill nets are walls of netting which capture saltwater finfish by ensnaring or entangling them in...
the meshes of a net by the fish’s gills. A entangling nets are described 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 part of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes of the net . . .” A drift net is a form of gill net. It is “a large net that is arranged to drift with the tide or current and that is either buoyed up by floats or attached to a drift boat.” A trammel net is “constructed of two or more walls of netting hung from the same cork and lead lines, with one wall having a larger mesh than the other(s), which traps a fish in a pocket of netting when the fish pushes the smaller wall through a mesh in the larger wall.” A stab net is “a gill or trammel net, that sinks to the bottom when placed, set, or fished in water deeper than its hanging depth.”

Other types of nets which are not specifically referenced in the constitutional amendment, but which are nevertheless illegal as a result of the net ban, are beach, purse, and seine nets, and shrimp trawls. This is because they fall under section 16(b)(2) of the amendment, which prohibits the use of other types of nets containing more than 500 square feet of mesh area in nearshore and inshore waters. In general terms, a seine is a “small-meshed net suspended vertically in the water, with floats along the top margin and weights along the bottom margin, which encloses and concentrates fish, and does not usually entangle them in the meshes.” More specifically, a beach or haul seine is a “seine that is hauled or dragged over the bottom into shallow water or onto the beach, either by hand or with power winches.” Purse seines are seines that are “pulled into a circle around fish with rings attached to the lower margin below the lead line to allow a purse line to be drawn to close the bottom of the seine.”

9. FLA. CONST. art. X, § 16(c)(1). The Florida Administrative Code similarly describes a gill net as “a wall of netting suspended vertically in the water, with floats across the upper margin and weights along the bottom margin which captures fish by entangling them in the meshes, usually by the gills.” FLA. ADMIN. CODE ANN. r. 46-4.002(2) (1995).
10. FLA. CONST. art. X, § 16(c)(1).
11. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 690 (1971).
13. Id. r. 46-4.002(10).
15. FLA. CONST. art. X, § 16(b)(2).
17. Id. r. 46-4.002(8)(a).
18. Id. r. 46-4.002(8)(b).
effect is that a pouch is created allowing the fish to be pulled out of the water. A trawl is "a large conical net with a device for keeping its mouth open that is dragged along the sea bottom in gathering fish or other marine life."19

III. THE NET BAN ASSISTANCE PLAN

Throughout all of the turmoil associated with the constitutional amendment and petition drive, both sides agreed that if the net ban amendment passed, it would be important that the Florida Legislature take steps to provide economic support to the fishermen who would be forced to enter new fields of employment. The "Save Our Sealife" ("SOS") Committee, an organization started by Karl Wickstrom to lobby for the passage of the net ban amendment, suggested that a surcharge be placed on sport fishing licenses as a way to raise money to help those most hurt by the ban.20 The amendment does not specifically provide for such compensation, but it appears that part of the original plan was to create economic assistance programs for the net fishermen if and when the net ban passed.

The decision to compensate the fishermen who are being affected by this net ban is purely the result of legislative initiative. There is no legal requirement that these fishermen be compensated for the loss of the ability to fish coastal waters. To date, no Florida court has recognized a right to fish in public waters, nor has any court recognized a property right in the fish that swim off the Florida coast.21 Those arguing to have this constitu-

20. See Karl Wickstrom, Victory for the Sea, FLA. SPORTSMAN, Dec. 1994, at 10, 11 (recommending a three dollar surcharge on sport and commercial fishing licenses, licensing of shore anglers to raise additional funds, and private sector donations to help "full-time, veteran net-users whose gear is the type eliminated from use in nearshore waters"); see also Wickstrom, supra note 1, at 19.

A surcharge on fishing licenses was used in California in a voter initiative that banned gill nets in California waters. CAL. CONST. art. XB, §§ 1-16. California voters adopted the Marine Resources Protection Act of 1990 which initially limited the use of gill nets and trammel nets in certain California waters, and eventually banned the use of such nets in those waters on January 1, 1994. Id. § 3. In passing the California net ban, the voters also implemented a license buy-back program. Id. § 7. Because section 7 required enabling legislation to put this program in motion, the California Legislature passed section 8610.7 of the California Fish and Game Code. Id. § 7(d); CAL. FISH & GAME CODE § 8610.7 (Deering Supp. 1995). This program is funded in part through three dollar surcharges on certain fishing licenses and in part through contributions and donations from those wishing to contribute to the buy-back program. Id. § 8610.8(c)-(e).

21. See State v. Lee, 41 So. 2d 662, 663 (Fla. 1949) (holding that taking or use of wild animals, ferae naturae, for private purposes is subject to governmental regulation for the
tional amendment overturned are claiming that the fishermen have property rights in their nets and that they have a liberty interest in the right to fish. The Circuit Court of the Second Judicial Circuit in and for Leon County, Florida recently refused to grant a temporary injunction that would have kept the amendment from going into effect on July 1, 1995. Although it did not rule on the merits of the case, the court expressed its opinion that

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22. See Complaint at 10-12, Lane v. Chiles, No. 95-2972 (Fla. 2d Cir. Ct. filed June 20, 1995). Another lawsuit has been filed against local television stations seeking damages for the airing of paid political announcements paid for by net ban proponents. Dee Rivers, Florida Net Ban Goes into Effect, NAT'L FISHERMAN, Sept. 1995, at 13, 72. The claim is that these commercials contained falsehoods about the Florida net fishing industry. Id. One of the advertisements showed footage of a University of Georgia study of shrimp trawl bycatch. Letter from David L. Harrington, Associate Director, University of Georgia Marine Extension Service (Nov. 7, 1994) (on file with Nova Law Review) [hereinafter Letter from David L. Harrington]. “Bycatch,” also known as “by-kill,” is a term used to describe the fish that are unintentionally caught through the net fishing process. Florida's Bycatch Reflects Global Emergency, FLA. SPORTSMAN, Nov. 1994, at 22, 22. David L. Harrington of the University of Georgia Marine Extension Service indicated that the footage shown to Florida voters was not a true representation of the situation in Florida. Letter from David L. Harrington, supra. According to Harrington, they “were testing . . . in an area where no sensible fishermen would trawl when this particular video footage was filmed.” Id.

Other arguments being made center around the subject matter of this amendment and the sufficiency of the explanation of the amendment placed on the voting ballot. Complaint at 8-10, Lane (No. 95-2972). These two issues were considered by the Supreme Court of Florida prior to the November 8, 1994 election pursuant to the Florida Constitution. See Advisory Opinion to the Attorney General Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993). The court ruled in favor of the sport fishermen. Id. at 999.

For an interesting discussion of possible constitutional arguments against the amendment, see Alexandra M. Renard, Will Florida's New Net Ban Sink or Swim?: Exploring the Constitutional Challenges to State Marine Fishery Restrictions, 10 J. LAND USE & ENVTL. L. 273 (1995).

23. Order Denying Motion for Temporary Injunction, Lane v. Chiles, No. 95-2973 (Fla. 2d Cir. Ct. decided June 29, 1995). The Circuit Court of the Second Judicial Circuit in and for Leon County, Florida denied the motion for temporary injunction on the grounds that the plaintiffs failed to prove the existence of the four elements necessary for the issuance of a temporary injunction. Id. at 2. The court said that there was no proof that there was no adequate remedy at law, that irreparable harm will result if the injunction is not granted, that they were likely to succeed on the merits of the case, and that the injunction will serve the public interest. Id. at 2-4 (citing City of Jacksonville v. Naegle Outdoor Advertising Co., 634 So. 2d 750 (Fla. 1st Dist. Ct. App. 1994), aff'd, 659 So. 2d 1046 (Fla. 1995)).
a regulatory takings argument would likely prove unsuccessful. If the court decides in favor of the commercial fishermen on the takings issue once the full case is heard on its merits, the state will be required to compensate the fishermen for their losses related to the net ban. Until that time, however, the only type of compensation that these fishermen can receive from the State of Florida will come from legislatively enacted compensation programs.

In response to the call for compensation, the Florida Legislature passed House Bill 1317, the “Net Ban Assistance Program,” on June 18, 1995. The purpose of this program, which is to be administered and enforced by the Florida Department of Labor and Employment Security (“DLES”), is “to provide economic assistance to commercial saltwater products licensees suffering certain losses in income as a result of the amendment, to purchase commercial fishing gear rendered illegal or useless by the amendment, and to retrain commercial fishermen economically displaced by the amendment.” “Every person, firm, or corporation which sells, offers for sale, barters, or exchanges for merchandise any saltwater products, or which harvests saltwater products with certain gear or equipment as specified by law, must have a valid saltwater products license.” In restricting eligibility for economic assistance to holders of saltwater products licenses, the legislature apparently has pinpointed the group that it believes will be

24. Id. at 5-6.
25. Ch. 95-414, 1995 Fla. Sess. Law Serv. at 2660 (to be codified at FLA. STAT. § 370.0805).
26. Id. § 1, 1995 Fla. Sess. Law Serv. at 2661 (to be codified at FLA. STAT. § 370.0805(1)(a)).
27. Ch. 95-148, § 983, 1995 Fla. Sess. Law Serv. 773, 1155 (West) (amending FLA. STAT. § 370.06(2)(a)). Such licenses can be issued in the name of an individual or to a valid boat registration number. Id. The fees for such licenses are $50 and $100 respectively. Id. Where the license is attached to an individual’s name, no other fisherman can legally sell fish to a licensed wholesale dealer under that license. Telephone Interview with Ken Baer, Legislative Liaison, DLES, Division of Unemployment Compensation (Aug. 14-15, 1995) [hereinafter Interview with Ken Baer]. In contrast, the license that is registered to a vessel allows multiple fishermen to work on the boat. Id. The fishermen will then make arrangements as to how much they each make for their aggregate fishing activities. Id. Technically, the catches are being sold by the boat, allowing the fishermen to fish without a license. Id. A team of fishermen could choose to share the cost of a boat and the attached license, or the boat owner could choose to hire fishermen to work off his boat for a percentage of the catch. Id. Similarly, several individual licensees could choose to work from one vessel, each with the ability to sell his own catch. Interview with Ken Baer, supra.
most harshly affected by this net ban and which it can afford to compensate.28

The two major economic assistance programs created by Florida House Bill 1317, which are the focus of this note, are the “net buy-back program” and “economic assistance for loss of income” programs. Economic assistance is to come in the way of retroactive unemployment compensation under chapter 443 of the Florida Statutes.29 The buy-back of nets is to be funded through an appropriation of twenty million dollars to the Seafood Workers Economic Assistance Account within the Special Employment Security Administration Trust Fund.30 Additionally, the bill acts to clarify the eligibility of the displaced fishermen for Job Training Partnership Act (“JTPA”) services.31 The JTPA was passed by the federal government to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation.32

28. Other groups of people who will be adversely affected by this net ban were to be given economic assistance in early versions of this assistance plan. Fla. HB 1317, § 1 (draft of Mar. 7, 1995). Evidently, the legislature believed that the state could not support a compensation program that would have allowed more of those who will be affected by the ban to receive financial assistance. The original version of House Bill 1317 would have provided compensation to wholesale and first level retail saltwater product dealers who are licensed under section 370.07 of the Florida Statutes. Id.

Although the net ban amendment will directly affect the net fishermen, those who make a living buying and selling fish from commercial fishermen are losing a valuable source of income. Many fish markets deal primarily in the types of fish that are caught using gill nets and will be forced to buy and sell more expensive types of fish to compensate for the loss in supply. These stores sell to low income customers who will most likely be unable to absorb the increased prices. See Robert Johnson, Economic Focus: Fish Industry, Consumers Feel Bite From Net Ban, WALL ST. J., Oct. 4, 1995, at F1 (discussing the adverse effects that have been felt since the net ban went into effect).

29. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2662 (to be codified at FLA. STAT. § 370.0805(4)(a)).

30. Id. § 3, 1995 Fla. Sess. Law Serv. at 2664.

31. Id. § 1, 1995 Fla. Sess. Law Serv. at 2661 (to be codified at FLA. STAT. § 370.0805(1)(b)). Because the focus of this paper is the state programs which have been created to assist the fishermen in making the transition away from gill net fishing and into both related and unrelated professions, the intricacies of the Job Training Partnership Act will not be addressed.

The legislature has also directed various state agencies and private economic development entities to make a concerted effort to create new employment opportunities in related fields or other unrelated industries for the fishermen who have lost their livelihoods as a result of this ban.\textsuperscript{33} Finally, there is a call to the Department of Environmental Protection to work with the Department of Commerce and the Department of Community Affairs to identify grant and low interest loan programs that would be available to fishermen who would like to stay in the fishing industry but who will need capital in order to fund the conversion of their existing equipment into legally permissible fishing equipment.\textsuperscript{34}

To make the economic assistance program most effective for those who have been directly affected by the net ban, the Florida Legislature saw the need to create eligibility restrictions which would control the number of people who could qualify for unemployment compensation. Besides the licensing requirements mentioned above, anyone who has violated a Marine Fisheries Commission rule or any provision under chapter 370 of the \textit{Florida Statutes} three or more times in a single license year since 1991, or more than four times between 1991 and 1995, inclusive, is ineligible for benefits under these programs.\textsuperscript{35} Additionally, the fisherman must have been a resident of Florida on November 8, 1994, the date of the election in which article X, section 16 of the \textit{Florida Constitution} was passed by

\textsuperscript{33} Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2661 (to be codified at FLA. STAT. § 370.0805(1)(c)). The focus of this note does not allow for an in-depth discussion of the various programs referenced in the net ban assistance plan. For information regarding available training and retraining services, fishermen can go to their local Jobs and Benefits office or Private Industry Council, or can contact Sonya Seay by phone at (800) 633-3572 and by mail at Division of Jobs and Benefits, 1320 Executive Center Drive, Suite 200, Atkins Building, Tallahassee, Florida 32399-0667. FLA. DEP'T LABOR & EMPLOY. SEC., NET FISHING FACTS 2 (June 1995) [hereinafter NET FISHING FACTS].

\textsuperscript{34} Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2661 (West) (to be codified at FLA. STAT. § 370.0805(1)(d)). Those interested in information regarding small business loans and other government assisted financing programs should contact the Florida Department of Commerce at (800) 342-0771, (904) 922-8639, or (904) 488-9357. NET FISHING FACTS, supra note 33, at 3.

\textsuperscript{35} Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2661 (to be codified at FLA. STAT. § 370.0805(2)(a)). The constitutional amendment prescribes penalties for violation of the net ban. FLA. CONST. art. X, § 16(e). Violators are to punished pursuant to the penalties stated in § 370.021(2)(a), (b), (c), & 7., and (e) of the \textit{Florida Statutes}. Id. The penalties come in the form of fines, imprisonment, and the suspension or revocation of fishing licenses. FLA. STAT. § 370.021 (Supp. 1994).
Florida voters. One rationale for the residency requirement might be to keep fishermen from other states from coming to Florida to sell nets that had previously been banned in their respective states, and for which there were no programs implemented to buy-back the nets. With regard to the net buy-back program, only those nets which were useable on June 30, 1995 and which have been rendered illegal by the amendment can be sold back to the state.

Applications for unemployment compensation or to sell back illegal nets are being taken on a “first-come, first-served basis.” Holders of saltwater product licenses have until December 31, 1995 to apply with the DLES in order to receive unemployment benefits under this plan. Those with saltwater products licenses and those with resident commercial fishing licenses under section 372.65 of the Florida Statutes could begin to apply for net buy-back assistance on July 1, 1995 and have until December 31, 1995 to utilize the program. Given that a finite amount of money has been appropriated for the buy-back program, it behooves the fishermen to apply as soon as possible to sell back their nets.

36. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2661 (to be codified at FLA. STAT. § 370.0805(2)(b)).
37. For example, when the Texas Legislature banned the use of gill nets in Texas waters in 1988, the government did not create a net buy-back program. FLA. DEP’T LABOR & EMPLOYMENT SEC., A REPORT TO THE GOVERNOR AND LEGISLATURE: ECONOMIC ASSISTANCE AND RETRAINING NEEDS RESULTING FROM THE NOVEMBER 8, 1994 PASSAGE OF CONSTITUTIONAL AMENDMENT 3 (NET FISHING BAN), vol. 2 at 64-65 (Feb. 1995) [hereinafter ECONOMIC ASSISTANCE AND RETRAINING NEEDS]. These fishermen were left with nets that could not be transformed into legally useable nets for other purposes and which had no resale value. Id. at 65.
38. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(5)(b)).
39. Id. § 1, 1995 Fla. Sess. Law Serv. at 2661 (to be codified at FLA. STAT. § 370.0805(3)(a)).
40. Id.
41. Id. § 1, 1995 Fla Sess. Law Serv. at 2661-62 (to be codified at FLA. STAT. § 370.0805(3)(b)).
42. There has been some concern over fishermen choosing to delay their applications for the net buy-back program until the Florida courts have ruled on the legality of this constitutional amendment. Waiting to apply may result in a loss of compensation for their now illegal nets. Those involved with the net buy-back program are encouraging all eligible fishermen to apply now so as to improve their chances of reaping some economic benefit before the funds run out. Telephone Interview with Sharon Barney, Seafood Industries Specialist, Netban Task Force, Div. of Labor, Employ., and Training, Fla. Dep’t of Labor & Employm. Sec. (Aug. 15, 1995) (Barney is one of many commercial fishers that have been employed by the DLES to assist in the application for net buy-backs and unemployment...
A. Economic Assistance for Lost Income

As noted above, the economic assistance for lost income resulting from the net ban is to come from the Unemployment Compensation Trust Fund ("Fund"). Under this new legislation, those who hold valid saltwater products licenses can apply for retroactive elective coverage, pursuant to section 443.121(3)(a), by paying unemployment taxes to the state Fund. What this means is that the failure on the part of fishermen to pay unemployment taxes prior to becoming unemployed does not deny them of the right to claim unemployment benefits.

One might ask why it was necessary for the legislature to affirmatively state that these fishermen can now become eligible for unemployment coverage, and why it is that these fishermen are not already eligible to receive unemployment benefits. The reason that it was necessary for the legislature to enact legislation which enables fishermen to claim unemployment benefits is that the fishing industry is not presently covered by the laws that govern unemployment compensation. Section 443.036(19)(n) of the Florida Statutes explains that certain jobs do not constitute "employment" so as to qualify the worker for unemployment compensation. Fishing is one of those excluded professions. Thus, fishermen do not

compensation.) [hereinafter Interview with Sharon Barney].

43. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2662 (to be codified at FLA. STAT. § 370.0805(4)(a)).
44. FLA. STAT. § 443.121(3)(a) (1993).
45. A question that arises when considering the use of unemployment compensation to support these commercial fishermen, is why should someone who has never contributed any money to the Fund now be able to come forward and collect unemployment benefits that will essentially be paid for by all those who have supported the Fund in years past? It seems unfair to those who have been forced by law to pay into the Fund to have to support a group of individuals who were not intended to receive unemployment benefits. While this is a valid concern that might be considered in the future by lawmakers, there is nothing in the present unemployment compensation system that prohibits retroactive elective coverage.
46. Id. § 443.036(19)(n)(3) (Supp. 1994).
47. Id. § 443.036(19)(n).
48. See id. § 443.036(19)(n)(3). This subsection explains that:
Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:
a. Service performed in connection with the catching or taking of salmon or halibut for commercial purposes.
b. Service performed on, or in connection with, a vessel of more than 10 ten net tons. . . .
qualify for unemployment benefits, and there is no requirement that fishermen with employees pay taxes to the fund. Also, those fishermen who work independently do not have to pay unemployment taxes because the self-employed cannot receive unemployment compensation.49 Given that the law does not mandate the coverage of fishermen or the self-employed, any fisherman who wants to collect unemployment must now retroactively "elect" coverage pursuant to section 443.121(3)(a).50

Members of the Florida Legislature questioned representatives of the federal government as to the legality of retroactive elective coverage when it was considering the passage of this plan.51 Initially, the federal government officials were skeptical about the legality of such a program.52 The federal government was concerned about the detrimental effect that widespread use of retroactive elective coverage could have on the resources available to pay out unemployment benefits.53 Just as insurance companies would be unable to survive if a law was passed which required them to write policies for those who have already suffered injury, so too would the national unemployment system run out of money in the event that anyone could qualify for unemployment compensation retroactively.

Upon review of current federal unemployment compensation law, however, the federal government officials were unable to locate any provision that would prohibit an individual from retroactively electing coverage.54 Given the harmful effect that this net ban will have on those fishermen who have spent their lives fishing and who will have difficulty making a transition into a new profession, the federal government officials

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49. See Hartenstein v. Florida Dep't of Labor & Employ. Sec., 391 So. 2d 386, 387 (Fla. 2d Dist. Ct. App. 1980) (holding that self-employment does not constitute "employment" under chapter 443 of the Florida Statutes).

50. FLA. STAT. § 443.121(3)(a) (1993).

51. Interview with Ken Baer, supra note 27.

52. Id.

53. Id.

54. Id. According to Mr. Baer, the United States Department of Labor, Legislative Review Office was consulted. After reviewing the Federal Unemployment Tax Act and the Social Security Act, that office concluded that retroactive elective coverage is permissible. Id.
agreed that unemployment compensation would be an acceptable way to allow these individuals to be compensated while they seek replacement work. Florida is thus currently the only state in the country with a plan that allows for the use of retroactive elective coverage. Arguably, if this ban directly affected a larger group of people than it appears it will affect, the federal government officials might have fought harder against retroactive elective coverage.

Every person who is eligible to receive unemployment compensation, whether by law or by election, receives between ten and twenty-six weeks of unemployment compensation. The duration of benefits is determined by looking at the number of weeks that an individual has worked during his "base period." The base period is the "first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year." The benefit year is the "1-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits . . ." What this means is that if fisherman X applied for benefits on July 1, 1995, the length of time that he will receive benefits will depend upon the number of weeks in which X worked during his base period beginning April 1, 1994 and ending March 31, 1995. If X makes contributions to the Fund for the fifty-two weeks in which he worked his gill nets off the Naples, Florida coastline between April 1, 1994 and March 31, 1995, he is entitled to twenty-six weeks of unemployment compensation. A claimant receives benefits for the period equal to half the number of weeks worked during his base period. The law requires that the individual who is claiming unemployment benefits have been employed at least twenty weeks during the applicable base period. Thus, another commercial fisherman, who only worked twenty weeks during that same base period would only be entitled to the minimum ten weeks of benefits.

The calculation of the weekly benefit amount that a claimant is entitled to receive is based on the average amount of wages paid to that claimant weekly throughout his base period. The claimant receives one-half of his
average weekly wage, biweekly, for the duration of his benefit year. The minimum amount that one can receive in benefits is $10 and the maximum is $250, meaning that a person who earns less than $20 per week is ineligible. Using this formula, if X (from the example above) earned $26,000 during his fifty-two week base period, he would receive the maximum $250 per week for the twenty-six weeks in his benefit year. The $26,000 salary he received is divided by fifty-two, resulting in an average weekly wage of $500 and a weekly benefit amount of $250 for twenty-six weeks. Pursuant to the law, X will receive a check in the amount of $500 every two weeks for twenty-six weeks.

In order to buy into the Fund, the fisherman will have to pay contributions equal to 2.7% of the first $7000 of gross wages. For a fisherman who earned in excess of $7000 in gross pay during his base period, the maximum contribution for the year will be $189. The fisherman who earns below $7000 during his base period pays a lesser amount in taxes because his benefits will be less than that received by a higher paid individual.

Under the loss of income assistance plan, an individual fisherman can elect to be covered for the years 1994 and 1995. Because of the July 1, 1995 startup date for the loss of income assistance program, a fisherman who elects coverage only for his 1994 landings can receive a maximum of nineteen weeks of full benefits. There is a maximum of thirty-nine possible weeks in which this fisherman could have possibly worked between April 1, 1994 and December 31, 1994, the period of time in which he would be able to claim unemployment if he filed a claim on July 1, 1995. Partial benefits are paid to the claimant for the thirty-ninth week.

One rationale for only claiming the weeks worked in 1994 may be that the fisherman did not earn an appreciable amount in the first calendar quarter of 1995, which would be the fourth calendar quarter in the base period for a fisherman applying on July 1, 1995. By disregarding the time he worked in 1995, he will be able to avoid paying unemployment taxes to the Fund for work done in 1995 and will be able to increase his average weekly payment of benefits. Although he will receive benefits for a shorter

64. Id. § 443.111(1)(b), (2)(a).
65. Id. § 443.111(2)(a).
66. Id. § 443.131(2)(a); NET FISHING FACTS, supra note 33, at 1.
67. NET FISHING FACTS, supra note 33, at 1.
68. See id.
69. Interview with Ken Baer, supra note 27.
70. Id.
period of time than he would if he elects both 1994 and 1995 coverage, the
fisherman may have financial obligations for which he needs to receive the
maximum amount of benefits for which he is eligible.

The fisherman who was unable to work the minimum twenty weeks
required to receive benefits in 1994 does not have the option of electing
only for 1994 coverage. He will need to use the weeks he worked in 1995
to qualify for unemployment benefits. The fisherman who chooses, or is
forced, to elect coverage for both the 1994 and 1995 calendar years will be
required to pay up to $378 in taxes to initiate his benefits, depending upon
how much he made in 1994 and 1995. Again, the fisherman is required to
make contributions equal to 2.7% of the first $7000 of gross income he
earned in a given year. The maximum of $378 would be required of a
fisherman who earned in excess of $7000 in both years.

Electing coverage for only the 1995 calendar year is not an option for
someone applying prior to October 1, 1995 because that individual will not
have been able to work the minimum twenty weeks required for eligibility.
This may be the only choice for a fisherman who was unable to work during
the latter part of 1994, and may be the best choice for the fisherman who
made little money in 1994, but was having a prosperous 1995 net fishing
season up until the time that the net ban went into effect. By applying after
October 1, 1995, the latter fisherman gains an additional thirteen weeks to
increase his 1995 earnings. The result is that both his average weekly wage
and duration of benefits will increase. Ken Baer, an employee of the DLFS,
Division of Unemployment Compensation, explained that the department is
using all the income that the commercial fisherman brought in during the
applicable base period to arrive at the average weekly wage that is used in
calculating how much a fisherman is entitled to receive.71 At first glance,
the language contained in section 370.0805(4)(a) appears to suggest that
only recorded landings of species affected by the net ban will be used to
determine earnings during the base period.72 However, a closer reading of
the text indicates the fisherman must only show that at least some of his
income during the base period came from sales of affected species.73

In the event that a fisherman’s average weekly wage cannot be
determined by using the formula stated above, section 370.0805(4)(b) directs
the DLFS to calculate unemployment wages by “multiplying [the] total
pounds of catch per calendar year as recorded on trip tickets by the

71. Id.
§ 370.0805(4)(a)).
73. Id.
unadjusted average annual coded species-grouping values published in the Marine Fisheries Information System’s Annual Landings Summary” limited to certain enumerated species. The DLES is instructed to use only income generated from catches of the affected species of fish. However, in an effort to replace as much of the eligible fisherman’s lost income as possible, the DLES is using any income generated by a fisherman during his

74. Id. § 1, 1995 Fla. Sess. Law Serv. at 2662 (to be codified at Fla. Stat. 370.0805(4)(b)). Every time a commercial fisherman sells his catch to a dealer, a trip ticket must be filled out by the dealer buying the fish. Economic Assistance and Retraining Needs, supra note 37, vol. II at 79-80. The information contained on these tickets is used primarily for conservation purposes by the Marine Fisheries Commission. Id. The mandatory information entered on these tickets, which includes the fisherman’s saltwater products license number, the wholesale or retail seafood dealer’s license number, the date of the sale, the amount of time spent fishing, the range of counties in which the species is usually caught, the type of gear used and how much of it used, species codes, size codes, and total amount caught, allows for the development of fishing quotas and restricted fishing areas. Id. This data, along with other non-mandatory data (area fished, depth, unit price, and dollar value), is invaluable to the DLES in determining the amount of benefits due to the fisherman. By using the average price that has been paid throughout the state for the specific species affected by the ban and the landing information entered on the trip tickets, the DLES can establish how much unemployment compensation is due to a particular fisherman during his benefit year.

The “average annual coded species-grouping values” are average prices for which the various species of fish caught in the state are sold for by commercial fishermen. Interview with Ken Baer, supra note 27. A term that is used synonymously with annual coded species-grouping value is “ex-vessel value.” Id. Just as the price of orange juice rises and falls on the commodity markets, so too does the price of fish in the fish markets. By using an average value, the DLES can democratically issue benefits to the affected commercial fishermen who have elected coverage.

The following is a list of species under § 370.0805(4)(b) which represent the types of fish that are most commonly caught with the types of nets that have been banned as a result of the amendment: bait fish, ballyhoo, bluefish, blue runner, croaker, black drum, flounders, grunts, jacks, ladyfish, Spanish mackerel (if landed on Florida’s west coast), menhaden (if landed on Florida’s east coast or in Tampa Bay), mullet, pinfish, pompano, Spanish sardines (not landed in Tampa Bay), scaled sardines, scad, shad, sheepshead, spot, seatrouts, whiting, miscellaneous industrial fish, white shrimp, Spanish mackerel (landed on Florida’s east coast and for which trip ticket amounts do not exceed 1500 pounds per ticket), brown shrimp (if trip ticket amounts do not exceed 500 pounds per ticket), pink shrimp (if trip ticket amounts do not exceed 500 pounds per ticket), and bait shrimp (landed on Florida’s east coast). Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2662-63 (to be codified at Fla. Stat. § 370.0805(4)(b1.-29.).

75. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at Fla. Stat. § 370.0805(4)(c)).
The goal is to help replace as much of the eligible fisherman's lost income as possible.

Partial unemployment benefits are available to a fisherman who is working only part-time and whose weekly income generated from that part-time job is less than his weekly benefit amount. The amount of income generated from the part-time job is subtracted from his weekly benefit amount. Additionally, if a person finds a temporary job, his benefits can be postponed until the job has ended. Presently, some of these fishermen who have been employed by the DLES to assist in implementing the net buy-back assistance program are utilizing the postponement option.

The final eligibility requirement for this economic assistance program is that the fisherman must also be accepted and enrolled in an approved training program or have completed such a program, or be registered in a DLES job search program. This requirement is not unique to this program. Anyone who makes a claim for unemployment benefits has the duty to look for a suitable replacement for his lost job. Unemployment compensation is intended to sustain an individual who has lost his job and is not meant to be a replacement for employment. To insure that the individual is making an effort to find replacement employment, individuals are required to report the status of job searches to the DLES, Division of Unemployment Compensation. Failure to do so will render the claimant ineligible for future benefit checks.

76. Interview with Ken Baer, supra note 27.
77. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2662 (to be codified at FLA. STAT. § 370.0805(4)(a)); FLA. STAT. § 443.111(3)(b) (Supp. 1994).
78. Interview with Ken Baer, supra note 27.
79. Id.
80. Id.
81. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(4)(d)). Approved training programs include aquaculture research and training programs, opportunities under the Job Training Partnership Act, DLES employment programs, or courses offered at state universities, community colleges, and vocational schools. Id.
82. FLA. STAT. § 443.111(1)(b).
83. Id. Every two weeks the claimant must report as to the status of his job search. If he fails to do so, he is not eligible to receive further benefit checks. He is required to "attest to the fact that he is able and available for work, has not refused suitable work, and is seeking work and, if he has worked, to report earnings from such work." Id.
84. Id.
B. The Net Buy-Back Program

The legislature created the net buy-back program to compensate the owners of nets which have been rendered illegal or useless by the passage of Amendment Three. "The primary goals of equipment buy outs are to ensure compliance with new fishing restrictions and to equitably recompense the fishers' capital investment in their gear." The buy-back program has been limited to the compensation of only those commercial saltwater product licensees and resident commercial fishing licensees "who can document an annual gross income of $2500 or more from net-caught landings of saltwater products during the period beginning July 1, 1991, and ending June 30, 1995." The net buy-back program's expansive coverage allows both saltwater products license holders and freshwater commercial fishermen to sell back their nets. However, the lost income assistance discussed above is only available to saltwater commercial fishermen. In order to sell freshwater fish, a resident commercial fishing license must be obtained at a cost of $25. It is unclear why the buy-back program is open to both groups of people while unemployment is only available to the one group.

85. ECONOMIC ASSISTANCE AND RETRAINING NEEDS, supra note 37, vol. I at 5. In this report the DLES, expressed concerns over the temptation to continue to use the gill nets because of the absence of substitute employment. Id. at 40. Additional concern was raised over the possibility that these nets might be discarded in ways that are detrimental to the environment. Id. Fishermen might cast them into the ocean or deposit them in a nearby wooded area. Id. By offering to purchase these nets, the state can better prevent this type of activity from occurring.

86. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(5)(a)).

87. Four families living on the St. Johns River in northern Florida are eligible to sell their nets back because they have recorded landings of affected species. Some of the affected species (e.g., mullet) swim up the river into brackish water and were caught by these families using gill nets and the like. Given that one of the main goals of the constitutional amendment was to control the harvesting of depleting fish populations, it is beneficial for the state to buy-back these nets as well. Interview with Ken Baer, supra note 27.

It is unfortunate that these families are not eligible for retroactive elective unemployment coverage because they are being directly affected by this net ban. When the net ban assistance plan went into effect on July 1, 1995, one of these families applied for retroactive coverage and was denied. The Governor's office has been notified of this situation and efforts are being made to solve the problem. Ken Baer, from the DLES, believes that in the rush to get the programs passed before the regular session ended, the legislature overlooked these families. Id.


89. The Final Bill Analysis and Economic Impact Statement, prepared by the Florida House of Representatives, Committee on Commerce, does not shed any light on the
Two possible explanations center around enforcement and conservation concerns. Because there are concerns that some fishermen will not honor the ban, purchasing nets from as many people as possible reduces the threat that the nets will continue to be used.90 The buy-back of the nets also helps insure their safe disposal.91 After examining trip ticket data compiled by the Department of Environmental Protection, the DLES determined that it could help those most harmed by the net ban if it limited eligibility to those who used net fishing as their primary source of income.92 The DLES concluded that a threshold level of $2500 per year would separate those earning a living through net fishing and those purchasing fishing licenses for other purposes.93 A substantial number of those who own saltwater product licenses are recreational fishermen who purchase their licenses to circumvent size limits and bag limits which are more restrictive on recreational fishing.94 There are others who do in fact use their licenses for commercial purposes, but only as a means of supplementing their income.95 Of the 6103 fishermen who held commercial licenses in 1991 and who had landings of affected species, 1699 had average yearly landings exceeding $2500 in value.96 By focusing on a smaller group of individuals, the legislature apparently feels that it can best use the money that has been appropriated to fund this buy-back program. The maximum number of nets a single license holder can sell back is predicated upon the “licensee’s average annual gross income attributable to the sale of eligible saltwater products during the 3-year period of July 1, 1991, through June 30, 1994.”97 Unlike the lost income assistance program, the DLES is using only the income produced through landings of affected species to compute the average income level of the fisherman.98

90. ECONOMIC ASSISTANCE AND RETRAINING NEEDS, supra note 37, vol. I at 40.
91. Id.
92. Id.
93. Id. at 42.
94. Interview with Ken Baer, supra note 27.
95. Id.
96. ECONOMIC ASSISTANCE AND RETRAINING NEEDS, supra note 37, vol. 1 at 42.
97. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663-64 (to be codified at FLA. STAT. § 370.0805(5)(c)). The term “eligible saltwater product” appears to be synonymous with the term “affected species” used elsewhere in the statute. Again, these are the species of fish that have traditionally been caught with gill nets and other entangling nets.
98. Interview with Ken Baer, supra note 27.
The DLES is using any type of documentation that the fisherman can produce to substantiate his landings of affected species over the past four years.\footnote{Id. The DLES is accepting trip tickets, notarized landing journals, catch receipts, share settlements, crew share receipts, etc. \textit{Id.} Share settlements reflect the amount caught by those fishing together and the amount of fish that went to each fisherman. \textit{Id.} Similarly, a crew share receipt will show how much a crewmember made for a given fishing trip. \textit{Id.}}

It is interesting to note that the time period used to determine average income for purposes of establishing which fishermen are eligible to sell their nets back differs from the time period used to calculate the average income figure which determines the number of nets a fisherman can sell. The latter average income figure is computed by averaging only three years of gross income as opposed to four. The result allows some of the eligible fishermen to sell back more nets solely because their first three years of fishing during the designated period were more profitable. By excluding the July 1, 1994 through June 30, 1995 fishing season, those fishermen who had low yearly earnings during one of the first three years of the general eligibility period are disadvantaged. The fishermen who did better in the first three years of the period have the advantage of being able to exclude the worst of the four years, but the fishermen who earned the most in the last year do not enjoy the benefit of their success. The result is that not everyone pinpointed to receive economic assistance is being given the same opportunity to cut his or her losses. According to Ken Baer, this situation could not be helped.\footnote{Interview with Ken Baer, supra note 27.}

When this program was being considered by the legislature, it became apparent that the 1994 and 1995 data would not be available for use.\footnote{Id.} The minimum amount of nets which can be sold under this program is four and the maximum is ten.\footnote{Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663-64 (to be codified at FLA. STAT. § 370.0805(5)(c)).} Licensees who made between $2500 and $4999 can sell the minimum four nets.\footnote{Id. § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(5)(c1)).} Those earning more than $5000 but less than $10,000 may sell back six nets.\footnote{Id. § 1 (to be codified at FLA. STAT. § 370.0805(5)(c2)).} Those with incomes exceeding $10,000 but lower than $20,000 may sell as many as eight

\footnote{Baer explained that the 1994 data was not available until June, 1995. It would not be possible to get the data for the first part of 1995, and thus incomes for the July 1, 1994 through June 30, 1995 fishing season could not be computed. \textit{Id.}}
Anyone earning over $20,000 but less than $30,000 is also eligible to sell eight nets. Licensees who average over $30,000 per year may sell the maximum ten nets. The DLES found a positive correlation between incomes and the number of nets owned by a particular fisherman. All licensees are limited to selling back two shrimp trawls. Putting a cap on the number of nets that can be sold was important because of the concern that a market might be created for the illegal nets. The DLES was concerned that fishermen would import worthless nets from fishermen in other states to be sold in the buy-back program. Such activity would likely limit the number of fishermen who could recover under this program.

A nonnegotiable figure has been attached to each type of net which the state is willing to buy back. Two different proposals for administering the buy-back program were presented by the DLES. The state could have chosen to appraise each net and attach a value to it or it could have attached a nonnegotiable price to each type of net eligible for buy-back. The latter plan is financially more attractive because there is less administrative cost attached to it. Past programs implementing an appraisal system have encountered legal problems. Such a problem could arise if a fisherman, unhappy with the value attached to his nets, decides to go to court to challenge the appraisal. The increased costs resulting from

105. Id. § 1 (to be codified at FLA. STAT. § 370.0805(5)(c)3.).
106. Id. § 1, 1995 Fla. Sess. Law Serv. at 2664 (to be codified at FLA. STAT. § 370.0805(5)(c)4.).
107. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2664 (to be codified at FLA. STAT. § 370.0805(5)(c)5.).
108. ECONOMIC ASSISTANCE AND RETRAINING NEEDS, supra note 37, vol. I at 42.
109. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2664 (to be codified at FLA. STAT. § 370.0805(5)(d)).
111. Id. at 43.
112. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(5)(a)). The legislature affirmatively stated in the statute that this nonnegotiable figure is not a reflection of the actual value of such a net in the retail market. Id.
113. ECONOMIC ASSISTANCE AND RETRAINING NEEDS, supra note 37, vol. I at 42.
114. Id.
administrative and court proceedings would in turn reduce the amount that can be paid to the fishermen. Unfortunately, the nonnegotiable price could negatively impact those with newer, more expensive nets since they may not receive compensation commensurate to their capital expenditures for the equipment. In contrast, fishermen with older, less expensive nets may get more than their nets are worth. The important thing is that there be a way for these fishermen to get back some of the money that they have invested in an industry that no longer exists.

As an additional control on financial resources, only certain types of nets can be sold to the state under this buy-back program. The constitutional amendment bans the use of gill nets and other entangling nets, and limits other nets to certain sizes, but it does not ban all types of nets. For example, hand-thrown cast nets can still be used and non-gill nets under 500 square feet of mesh area are acceptable. If the nets were in good working condition on June 30, 1995 and are now illegal, then they are eligible for sale. Thus, the plan requires that the nets be useable but for the ban created by the constitutional amendment. Without such restraints, it is likely the limited funds would be more quickly depleted. Consequently, some fishermen would probably not receive any compensation. Deep water and shallow water gill nets, trammel nets, beach, purse, and seine nets, and shrimp trawls which exceed the 500-square-foot limit are included in the program.

117. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(5)(a)1.-5.).
118. See FLA. CONST. art. X, § 16.
119. Id. § 16(a)(2), (c)(1).
120. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(5)(b)).
121. Id. § 1, 1995 Fla. Sess. Law Serv. at 2663-64 (to be codified at FLA. STAT. § 370.0805(5)(a)1.-5.). The legislature appears to have adopted some of the recommendations of the DLES, provided in Economic Assistance and Retraining Needs Resulting from the November 8, 1994 Passage of Constitutional Amendment 3, regarding the pricing of the nets eligible for buy-back. Economic Assistance and Retraining Needs, supra note 37, vol. I at 43. The department’s “high value” recommendations of $1000 for deepwater gillnets and trammel nets of at least 600 yards in length were chosen, while the department’s “low value” recommendation of $500 for shallow water gill nets greater than 600 yards in length was approved. Id.; ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. 2660, 2663 (West) (to be codified at FLA. STAT. § 370.0805(5)(a)1.-3.). All types of seines were attached a value of $3500. Id. (to be codified at FLA. STAT. § 370.0805(5)(a)4.). The legislative history does not indicate why the department’s high value recommendation of $750 for all types of seines was disregarded in favor of the $3500 price tag. Id.; Com. Comm. HB 1317 Staff Analysis,
Up to twenty million dollars will be available to buy back the nets of eligible fishermen. This money is to come from transfers of both "[s]tate funds that were appropriated to match federally funded programs but have not been expended as of June 30, 1995" and "[u]nlobigated and unappropriated trust fund balances of the DLES," so long as the transfer of the latter funds does not jeopardize agency operations. The Executive Office of the Governor is to place these funds into a Seafood Workers Economic Assistance Account within the Special Employment Security Administration Trust Fund. Interestingly, the statute states that funds that have not been spent at the end of fiscal year 1995-1996 are to remain in the account for use by the program in subsequent years. This statement is illogical in light of the fact that the program has a cut off date of December 31, 1995. Assuming that there is money left in the account at that time, further legislation would be necessary to extend the program.

IV. WHERE DO I GO TO GET COMPENSATION?

Fishermen who are interested in applying for either lost income assistance or selling their nets must do so at one of the twenty-three "one stop centers" located throughout the state. The DLES has set up stations in various coastal communities around the state to counsel those eligible for unemployment compensation as to the various options relating to their elective coverage, that is, whether to elect coverage for 1994 or

supra note 89; ECONOMIC ASSISTANCE AND RETRAINING NEEDS, supra note 37, vol. I at 43. Shrimp trawls of at least 500 square feet are worth $500 a piece. Ch. 95-414, § 1, 1995 Fla. Sess. Law Serv. at 2663 (to be codified at FLA. STAT. § 370.0805(5)(a)3.). Any gill net, trammel net, or seine which is less than 600 yards in length is valued proportionately. Id. § 1 (to be codified at FLA. STAT. 370.0805(5)(a)).

A fisherman who is selling back his nets must include the float line, webbing, and leadline that go along with the net being sold back, which must be cleaned and removed of its weights. Id. (to be codified at FLA. STAT. § 370.0805(5)(b)1.-2.).

123. Ch. 95-414, § 3(1), 1995 Fla. Sess. Law Serv. at 2664.
124. Id. § 3(2).
125. Id. § 3.
126. Id. § 4(2).
127. If extending the program is deemed undesirable or unnecessary, one possible use of the remaining funds would be to give economic support to those indirectly affected by the net ban, i.e., the wholesale and retail saltwater dealers.
128. NET FISHING FACTS, supra note 33, at 1, 3-4. Centers are located in Pensacola, Niceville, Panama City, Apalachicola, Crawfordville, Cross City, Crystal River, Hudson, Pinellas Park, Brandon, Bradenton, Englewood, Cape Coral, Naples, Mayport, Oakhill, Cocoa, Ft. Pierce, Riviera Beach, Ft. Lauderdale, Miami, Marathon, and Key West. Id. at 3.
The net buy-back program encompasses a two stage process. First, the fisherman must fill out an application with the department at any of the one stop centers, designating the number of applications he would like to sell to the state. The fisherman is then notified as to how many nets he is eligible to sell, and is given a time and place to return his nets. Upon surrender of the nets, a receipt is issued and a check is sent via mail to the fisherman. As of August 21, 1995, 840 miles of nets had been collected by the DLES at the various one stop centers throughout the state, a distance stretching from Florida to Chicago. On August 25, 1995, 2874 nets had been purchased by the DLES at a cost of $4,865,258.96.

V. CONCLUSION

It was important that the Florida Legislature take affirmative action to compensate the net fishermen. Although they may represent a small segment of the state population, they have been displaced from their jobs as a result of a choice made by the general population of the state. These fishermen have survived poor fishing seasons in the past, but this net ban effectively leaves them unemployed. The law does allow them to continue to fish using other means, but they have lost one of the most efficient and effective ways of doing their jobs. The law does not require that these fishermen be compensated for their loss, but notions of ethics and social policy demand that a group such as this be given financial assistance to help them make the transition into new trades. The legislature has taken important steps to assist the fishermen in getting back on their feet. The use

129. Id. at 1.
130. Id.
131. Id.
132. NET FISHING FACTS, supra note 33, at 2.
133. Id.
134. Id.
135. Id.
136. Interview with Ken Baer, supra note 27.
of retroactive elective unemployment coverage, which does not exist anywhere else in the United States, allows those who have no source of income to receive benefits that will enable them to support themselves and their families. Those qualifying for partial benefits will be able to supplement their incomes until they find replacement employment. The net buy-back program allows fishermen to mitigate their capital losses related to running their fishing businesses.

Although the constitutional amendment is being challenged in the state courts, it is important that eligible fishermen apply for the available assistance while funding is available. Even if the fishermen are successful in their lawsuit, it may be months or years before the final decision regarding the net ban has been reached. The economic assistance is available for only a short time and is limited in its funding. If the lawsuit proves to be unsuccessful, the fishermen will be left with nets that are worthless and useless much like the fishermen in Texas who were given no compensation when that state banned gill netting in Texas waters. It is unfortunate that the net fishermen have lost their jobs, but it would be foolish to let the resources available go to waste. No doubt more may need to be done in the future to help these fishermen, but economic assistance is presently available to help begin the recovery process.

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