

3-1-2000

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Recommended Citation

Lisa Kabula, *GAME AND FISH Fish: Prohibit Gill Net Landing of Certain Species of Fish*, 17 GA. ST. U. L. REV. (2000).
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GAME AND FISH

Fish: Prohibit Gill Net Landing of Certain Species of Fish

CODE SECTION:	O.C.G.A. § 27-4-7 (amended)
BILL NUMBER:	HB 1124
ACT NUMBER:	806
GEORGIA LAWS:	2000 Ga. Laws 1290
SUMMARY:	The Act prohibits vessels that harvest certain species of marine finfish by means of a gill net, regulated under Code section 27-4-301.1, from landing those fish in Georgia. Conservation rangers or other peace officers of the State will seize and confiscate gill nets. However, an exception lies for licensed fishermen to use gill nets in certain specified circumstances.
EFFECTIVE DATE:	May 1, 2000 ¹

History

Like a few other states, Georgia currently prohibits gill nets in state waters.² However, the federal government, through the National Marine Fisheries Service, has allowed the use of gill nets in federal waters adjacent to Georgia for years.³ Because federal waters lie just beyond the three-mile jurisdiction off the Georgia coast, the use of gill nets in federal waters jeopardizes the conservation of Georgia marine life.⁴

1. See 2000 Ga. Laws 1290, §§ 2-3, at 1291. The Act took effect upon approval by the Governor. See *id.*

2. See Telephone Interview with Rep. Greg Morris, House District No. 155 (June 30, 2000) [hereinafter Morris Interview]. Other states that ban gill nets are Alabama, California, Louisiana, South Carolina, Texas, and Washington. See Mike Williams, *Caught in the Gill-net Ban; Florida Fishermen Say Conservation Is Ending a Way of Life*, ATLANTA J. & CONST., July 3, 1995, at B7.

3. See Morris Interview, *supra* note 2; Interview with Susan Shipman, Chief, Marine Fisheries Section, Coastal Resources Division, Georgia Department of Natural Resources (June 9, 2000) [hereinafter Shipman Interview].

4. See Shipman Interview, *supra* note 3.

Beginning in 1992 and thereafter, gill nets have presented a problem for Georgia.⁵ Since that time, Florida fishermen⁶ have used drift gill nets to commercially harvest sharks in federal waters off the coast of Georgia.⁷ This fishing occurred each year in the late spring and summer.⁸ As a result, it coincided with the migration and nesting of sea turtles, the tournament season for king mackerel, and the fishing season for tarpon.⁹ Once these drift gill nets appeared in the early 1990's, carcasses of red drum, tarpon and sea turtle washed ashore along the Georgia coastline.¹⁰ In addition, these Florida fishermen would throw overboard their "bycatch," some of which would be swept to shore.¹¹ Thus, the Department of Natural Resources (DNR) concluded that gill nets caused these red drum and tarpon strandings because it was highly improbable that they came from shrimp trawlers.¹²

Drift gill nets are different from hook and line fishing, as they are indiscriminate with a high level of bycatch.¹³ Drift gill nets are very long nets, sometimes up to a mile or a mile-and-a-half

5. See Audio Recording of House Proceedings, Jan. 26, 2000 (remarks by Rep. Greg Morris) <<http://www.ganet.org/services/leg/audio/2000archive.html>>.

6. See *id.*; Morris Interview, *supra* note 2. Representative Greg Morris estimates that between three and five Florida boats use gill nets off the Georgia coast in federal waters. See Morris Interview, *supra* note 2.

7. See Morris Interview, *supra* note 2; Shipman Interview, *supra* note 3; see also Williams, *supra* note 2 (discussing the ramifications of the Florida legislature's decision to ban gill nets from the "three-mile zone off the Atlantic Coast and the nine-mile zone off the Gulf Coast"). Opposition to the ban on gill nets came from fishermen who predominantly used gill nets in "shallow bay or near-shore waters to catch inexpensive fish such as mullet, spot and whiting." *Id.* State officials estimated that "about 2,500 commercial fishermen [would] be directly affected by the ban, while the industry groups put the number as high as 5,000." *Id.* "Some netters . . . vowed to ignore the ban and keep fishing. . . . Some have hinted at violence." *Id.*

8. See Shipman Interview, *supra* note 3.

9. See *id.*

10. See *id.* Sea turtles are an endangered species. See Morris Interview, *supra* note 2.

11. See Shipman Interview, *supra* note 3. Bycatch is the undesired marine life caught in the net. See *id.* The "Georgia DNR suspects the bycatch of important, threatened, endangered, and protected species and sport fish is higher than is documented by the current National Marine Fisheries Service observer program." *Id.* Due to this perceived miscalculation, the Georgia DNR feels that the "observer methodology" must be revamped. See *id.*

12. See Morris Interview, *supra* note 2; Shipman Interview, *supra* note 3.

13. See Shipman Interview, *supra* note 3. Georgia's charter fishing industry deems gill nets unacceptable due to their high level of bycatch. See *id.*

in length, which are suspended in the water by buoys and anchored in place by weights.¹⁴ The mortality rate of marine species caught by gill nets is higher than that caused by hook and line fishing because gill nets can entrap marine life for hours, whereas hook and line fishing gear generally allows caught fish to be released alive within a few minutes.¹⁵

Fishermen in Georgia's charter fishing industry voiced economic concerns because they perceived they were losing fish, such as: "[t]arpon, cobia, and king mackerel, which are documented bycatch in the fishery, [and] are vitally important to Georgia's traditional and expanding charter fishery."¹⁶ In fact, during the summer of 1999, fishermen using drift gill nets fished in the center of Georgia's optimum tarpon fishing areas.¹⁷

Other fishermen also dislike the use of gill nets due to "spatial conflicts."¹⁸ For example, there are several reported incidents of sportfishing boats and shrimp trawlers becoming entangled in gill nets.¹⁹ Further, the use of this gear at night in federal waters adjacent to Georgia's jurisdiction makes it difficult to enforce the state's gill net prohibition.²⁰

The DNR reported that it is not imperative that shark harvesters use gill nets because there are alternative means for harvesting sharks, such as longlining or hook and line.²¹ In addition, shark stocks are in "stressed status."²² The federal government also prohibits gill net fishing for swordfish, tuna, and South Atlantic king mackerel in federal waters.²³

These environmental and economic concerns prompted the Georgia General Assembly to introduce HB 1124 during the 2000 legislative session.²⁴

14. See Morris Interview, *supra* note 2; Audio Recording of Senate Proceedings, Feb. 10, 2000 (remarks by Sen. Hugh M. Gillis) <<http://www.ganet.org/services/leg/audio/2000archive.html>>.

15. See Shipman Interview, *supra* note 3.

16. *Id.* Fishermen would call the Coastal Resources Division of DNR to complain that their fishing was "off" when gillnet boats were in the area. *See id.*

17. *See id.* Optimum tarpon fishing areas are the Altamaha River delta and off St. Simons Island. *See id.*

18. *See id.*

19. *See id.* In the summer of 1999, four vessels reportedly became entangled in gill nets off Georgia's nearshore waters. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*

24. *See id.*

*HB 1124**Introduction*

Representatives Bob Lane, Greg Morris, Terry Barnard, and Buddy DeLoach, of the 146th, 155th, 154th, and 172nd House Districts, respectively, sponsored HB 1124.²⁵ HB 1124 was introduced on January 11, 2000, and assigned to the House Committee on Game, Fish & Parks.²⁶ The Committee favorably reported the bill, as substituted, and the House passed the bill after adopting the Committee substitute.²⁷

The bill was introduced in the Senate on January 27, 2000.²⁸ The Senate Natural Resources Committee favorably reported the bill, as amended, on February 3, 2000.²⁹ The Senate adopted the Committee amendment and passed the bill on February 10, 2000.³⁰

Before the House approved the Senate's changes, Representative Lane introduced another amendment to the bill, and the House adopted his floor amendment.³¹ Then, the House agreed to the Senate version, as amended by the House, on February 23, 2000.³² The Senate then agreed to the House amendment on March 22, 2000,³³ and forwarded the bill to Governor Roy Barnes, who signed HB 1124 into law on May 1, 2000.³⁴

Consideration by the House

After introduction, the House assigned the bill to its Game, Fish & Parks Committee.³⁵ The original version of the bill added a new Code section prohibiting the possession of, the landing of,

25. See HB 1124, as introduced, 2000 Ga. Gen. Assem.

26. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

27. See Georgia House of Representatives Voting Record, HB 1124 (Jan. 28, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

28. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

29. See *id.*

30. See Georgia Senate Voting Record, HB 1124 (Feb. 10, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

31. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000; see also HB 1124 (HFA), 2000 Ga. Gen. Assem.

32. See Georgia House of Representatives Voting Record, HB 1124 (Feb. 23, 2000).

33. See Georgia Senate Voting Record, HB 1124 (Mar. 22, 2000).

34. See 2000 Ga. Laws 1290, § 3, at 1291.

35. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

or the offer of sale in Georgia of any species of fish caught by gill net, excepting certain species of shad and sturgeon.³⁶ The House Committee substitute narrowly defined the original terms “any species of fish” as those regulated fish specifically enumerated in Code section 24-4-130.1,³⁷ excepting sturgeon in accordance with Code section 27-4-91(d).³⁸ The House passed the bill, as substituted, on January 26, 2000, by a vote of 161 to 6.³⁹

Consideration by the Senate

The bill was introduced in the Senate on January 27, 2000.⁴⁰ On February 3, 2000, the Senate Natural Resources Committee favorably reported the bill.⁴¹ The Committee amended the bill to make it unlawful to “knowingly” possess, land, offer for sale, or sell certain species of fish captured by a gill net.⁴² The Senate unanimously passed the bill, as amended, on February 10, 2000.⁴³

Representative Bob Lane’s Floor Amendment

After the Senate passed the bill but prior to the House approving the Senate version, Representative Lane proposed an amendment to the Senate version.⁴⁴ This amendment was

36. See HB 1124, as introduced, 2000 Ga. Gen. Assem.

37. Compare HB 1124, as introduced, 2000 Ga. Gen. Assem., with HB 1124 (HCS), 2000 Ga. Gen. Assem. Code section 24-4-130.1 includes regulation of the following finfish species: spanish mackerel, king mackerel, cobia, red snapper, gag grouper, amberjack, black sea bass, bluefish, sheepshead, sailfish, blue marlin, white marlin, tarpon, Atlantic sturgeon, spotted sea trout, red drum, dolphin, sand tiger shark, small sharks composite (Atlantic sharpnose, bonnethead, and spiny dogfish), other sharks, and red porgy. See O.C.G.A. § 27-4-301.1 (1997). See *id.* § 27-4-301.1(c) for additional species.

38. Compare HB 1124, as introduced, 2000 Ga. Gen. Assem., with HB 1124 (HCS), 2000 Ga. Gen. Assem. Code section 27-4-91 specifies that sturgeon must be caught in “sturgeon nets.” See O.C.G.A. § 27-4-91. These nets must have “a single net or webbing of mesh of not less than six inches on the square, provided that such nets must be situated so as to allow one-third of the stream width to remain open and free for the passage of fish.” *Id.* In addition “sturgeon nets” must have “a tag bearing the name, address, and commercial fishing license number of the person using any such gear” attached to them. *Id.*

39. See Georgia House of Representatives Voting Record, HB 1124 (Jan. 26, 2000).

40. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

41. See *id.*

42. Compare HB 1124 (HCS), 2000 Ga. Gen. Assem., with HB 1124 (SCA), 2000 Ga. Gen. Assem.

43. See Georgia Senate Voting Record, HB 1124 (Feb. 10, 2000).

44. Compare HB 1124 (SCA), 2000 Ga. Gen. Assem., with HB 1124 (HFA), 2000 Ga. Gen. Assem.

twofold.⁴⁵ First, it struck all provisions pertaining to the “possession” or “offer for sale” or “to sell” certain species of fish.⁴⁶ However, the amendment preserved the prohibition of “landing” certain fish in Georgia.⁴⁷ Second, this amendment redacted the knowledge requirement, as set forth in the Senate version, and defined the term “to land” to mean fish “[brought] to shore in this State in the boat or vessel utilized in taking the fish by means of a gill net, regardless of the jurisdiction from which the fish were taken.”⁴⁸ The House adopted the amendment and passed the bill on February 23, 2000.⁴⁹ The Senate agreed to the House amendment on March 22, 2000.⁵⁰

The Act

The Act amends the Game and Fish provisions of Title 27 of the Georgia Code by adding subsection (b) to Code section 27-4-7.⁵¹ This subsection narrows the prohibition of gill net landing

45. See HB 1124 (HFA), 2000 Ga. Gen. Assem.

46. Compare HB 1124 (SCA), 2000 Ga. Gen. Assem., with HB 1124 (HFA), 2000 Ga. Gen. Assem. This amendment was created in an effort to avoid potential Commerce Clause issues for the wholesale fish industry, whereby individuals who might have “landed” the fish by gill nets in other states but sought to transport their catches across state lines in an effort to sell them, would not be prohibited from doing so. See Morris Interview, *supra* note 2; Shipman Interview, *supra* note 3.

47. Compare HB 1124 (SCA), 2000 Ga. Gen. Assem., with HB 1124 (HFA), 2000 Ga. Gen. Assem.

48. Compare HB 1124 (SCA), 2000 Ga. Gen. Assem., with HB 1124 (HFA), 2000 Ga. Gen. Assem. This piece of the legislation is crucial to produce its intended effect of dissuading Florida fishermen from fishing in federal waters off the Georgia Coast. See Morris Interview, *supra* note 2; Shipman Interview, *supra* note 3. By prohibiting the “landing” of gill netted fish on Georgia soil, the fishermen’s bounties are more likely to spoil. See Morris Interview, *supra* note 2; Shipman Interview, *supra* note 3. It is not feasible for fishermen to store their catch and land them on Georgia’s adjoining coastlines; therefore, gill net fishermen are deterred from fishing in federal waters off the Georgia coast. See Morris Interview, *supra* note 2; Shipman Interview, *supra* note 3.

49. See Georgia House of Representatives Voting Record, HB 1124 (Feb. 23, 2000); see also State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

50. See Georgia Senate Voting Record, HB 1124 (Mar. 22, 2000); see also State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

51. Compare 1977 Ga. Laws 396, § 1, at 466 (formerly found at O.C.G.A. § 27-4-7 (1997)), with O.C.G.A. § 27-4-7(b) (Supp. 2000).

to certain species of fish.⁵² The subsection further defines the term “landing” as it applies to the taking of fish.⁵³

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52. *Compare* 1977 Ga. Laws 396, § 1, at 466 (formerly found at O.C.G.A. § 27-4-7 (1997)), with O.C.G.A. § 27-4-7(b) (Supp. 2000).

53. *Compare* 1977 Ga. Laws 396, § 1, at 466 (formerly found at O.C.G.A. § 27-4-7 (1997)), with O.C.G.A. § 27-4-7(b) (Supp. 2000).

54. The author wishes to express her gratitude to Representative Greg Morris and Susan Shipman of the Department of Natural Resources for their invaluable assistance with this *Peach Sheet*.