SUPREME COURT OF FLORIDA

CASE NO.: 85,880

L.T. CASE NO.: 94-0450-CA

DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL.,

Appellants,

vs.

BRUCE MILLENDER, ET AL.,

Appellees.

FLORIDA CONSERVATION ASSOCIATION'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

This case comes to this Court on appeal from the Final Declaratory Judgment of the Second Judicial Circuit, Franklin County, P. Kevin Davey, Judge, rendered on May 11, 1995. (R. 569-579) Following the filing of timely notices of appeal by Appellants, and in response to Motions by Appellants requesting Certification pursuant to Rule 9.125, Florida Rules of Appellate Procedure, this matter was certified to this Court by the First District Court of Appeal as one involving a question of great public importance. This Court, by an order dated June 20, 1995, has accepted jurisdiction.

The parties will be referred to as follows. Appellees, collectively as Appellees and individually as, Bruce Millender - Millender; Ronald Fred Crum - Crum; Timmy McLain - McLain, Appellants, State of Florida, Department of Environmental Protection and its division, Florida Marine Patrol - DEP; Florida Marine Fisheries Commission - MFC and Florida Conservation Association - FCA. The record in the trial court will be cited as (R. ___) referring to page numbers. References to the transcript of the trial on 3/24/95 will be cited as (T. ____) referring to page numbers.

Appellees filed this declaratory judgment action seeking a declaration of the meaning of certain provisions of Article X, Section 16 of the Florida Constitution. (R. 2-10) This provision of the Florida Constitution is an amendment resulting from the approval, by the voters of Florida, of an initiative petition placed on the November 1994 general election ballot. (R. 570) The Appellees are all involved in the shrimp fishing trade in the Florida Panhandle and sought a determination as to whether a certain shrimp trawl, manufactured to their specifications, complies with the restrictions

effective July 1, 1995 under the cited Constitutional provision. (R. 2-10)

Appellees contracted with Mr. Buford Golden, a professional net maker, to manufacture a specific net, to certain specifications, using a predetermined amount of raw netting material. (T. 128) Having created the resulting net, they have contended that it complies with the restrictions of Article X, Section 16. The trial court, in determining that the "Crum net" as it was referred to in the trial proceeding, did in fact comply with the applicable restrictions, construed certain provisions of Article X, Section 16. Specifically, it construed portions of Article X, Section 16(b)(2) and (c)(2). (R. 574) In making these constructions, the trial court made certain factual determinations. It determined that the intent of the voters, in enacting the subject Section, was to allow commercially feasible shrimp netting operations within the strictures of the Section. (R. 576) It determined that the language of the Section that imposed maximum square footage limits on shrimp trawls should be interpreted to include and contemplate specific measurement methods not set forth in the Section. (R. 577) Finally, it determined that a particular and specific method of measurement should be used to determine compliance with the Section. (R. 577)

The trial testimony shows that the shrimp fishing industry and the netting manufacturers use a common method to measure shrimp trawls and that the Appellees themselves have uniformly used the same method to measure shrimp trawl nets. (T. 37, 43, 54, 55, 56, 59, 73, 83, 87, 118, 120, 121, 157) The evidence at trial shows that the method used by the trial court in determining that the Crum net is legal under Article X, Section 16, is different than that used by the Appellees themselves. (R. 577)

The trial record shows that shrimp trawls are constructed from multiple sections of raw netting material which is cut into sections of various size and shape and then sewn together to form

a trawl. (T. 122-125) The shape and size of particular trawls varies but all are generally shaped to form a truncated cone. In fact, upon completion, a shrimp trawl looks most like an elongated sock. It is "fished" by being towed through the ocean, close to the sea bottom, with the shrimp being funneled through the open "mouth" of the net and being captured in the closed end or "bag" of the net. (R. 571) In between the mouth and the bag are placed turtle excluded devices (TED's) which are essentially trapdoors to allow the escape or exclusion of sea turtles captured by the nets. (T. 120-122)

The net in question is undoubtedly a trawl net. (R. 572) The Constitutional Section in question dictates the method of measuring the circumference of such nets. The sole material issue in dispute in the trial proceeding is the proper method of measuring the length of shrimp trawls in general and the Crum net in particular. The trial court heard testimony as to the proper method of measurement of such nets. There was no dispute as the proper method of measuring the opening or circumference of the net. In its Final Judgment, the trial court applied a specific method of measurement, thereby determining that there was a specific method intended and required by the language of Article X, Section 16. The trial court then applied the method it had determined was proper to the Crum net and thus, determined that the Crum net fell within the restrictions of the Section and was, therefore, lawful for use after July 1, 1995. (R. 578)

At the trial, three different methods of measurement were advocated by the parties as being correct. In reaching its determination, the trial court rejected all three methods and crafted a different one. (R. 569-577) It determined that any contrary construction or the adoption of one of the three methods argued by the parties would have the result of rendering portions of the Section "nugatory" or, alternatively, the banning commercially feasible shrimp fishing in the inshore and nearshore

waters of Florida. The issue of commercial feasibility was raised by the trial court and not by the parties. (R. 466-522) The application of this requirement was a material factor in the trial court's determination.

SUMMARY OF ARGUMENT

The Florida Conservation Association contends by this appeal, that the trial court erred in considering commercial feasibility and further erred in its determination of the common methods of measurement used in the netting industry and thereby erred in its determination that the Crum net was lawful for use under Article X, Section 16. Measured by either of the two methods proposed by Appellants, the net is in excess of the maximum limitations of the section and is not lawful for use after July 1, 1995. The FCA asks by its appeal that this court reverse the trial court and determine that the net is unlawful and further, determine that the correct method of net length measurement is by the stretched mesh method as intended by Article X, Section 16 of the Florida Constitution. Lastly, the trial court erred in not allowing FCA to present or examine witnesses. If reversed for a new trial, it should be with directions that presentation and examination of witnesses be allowed.

I. THE TRIAL COURT ERRED IN ITS CALCULATION OF NET SIZES

The essential issue in this case at trial was a determination of the method of measurement to be used in determining any trawl net's compliance with Article X, Section 16 of the Florida Constitution. In reaching its determination, the trial court examined the language of the Amendment, examined the evidence adduced at trial and made certain assumptions regarding the intent of the voters who enacted Article X, Section 16. In so doing, the trial court made two errors. First, it assumed that the intent of the voters was to create a constitutional provision which limited

net fishing, but only to the extent that commercially feasible fishing was still available within those limits. Second, the trial court misinterpreted the operative language of the Amendment and the evidence at trial relating to that language. The ultimate result of the court's errors is a net measurement formula which allows use of shrimp trawls which are nearly double the size actually allowed under Article X, Section 16. The nature of these errors are explained below.

A. The Trial Court Improperly Considered Commercial Feasibility

The issue of commercial feasibility of the subject net and those allowed within the Amendment generally, was first raised by the Court during the argument on the Motion for Summary Judgment filed by MFC. (R. 466-522) Neither the Complaint in this case nor any Answer by a Defendant or Intervenor raises or mentions this issue. At the Summary Judgment hearing, where the trial court set forth the issues it thought were proper for trial, this aspect surfaced for the first time. It is improper for the trial court to, sua sponte, raise or insert an issue not raised by the parties.

Rule 1.510, Florida Rules of Civil Procedure, requires that any summary judgment of the Court or its determination of the issues remaining for trial be determined ". . .by examining the pleadings and the evidence before it and by interrogating counsel. . ." Rule 1.510(d) The issue pleadings of the parties herein do not raise this issue. Accordingly, it was not appropriate for inclusion in the court's determination. Allstate Insurance Company v. Flickingen, 322 So. 2d 638 (Fla. 3d DCA 1975)

> "An issue that has not been framed by the pleadings, noticed for hearing, or litigated by the parties is not a proper issue for the court's determination. Cortina v. Cortina, 98 So. 2d 334 (Fla. 1957); State v. Department of Health and Rehabilitative Services, Office of Child Support Enforcement v. McNabb, 501 So. 2d 709 (Fla. 2d DCA 1987); Hart v. Hart, 458 So. 2d 815 (Fla. 4th DCA 1984); Fickle v. Adkins, 394 So. 2d 461 (Fla. 3d DCA 1981)"

Gordon v. Gordon, 543 So. 2d 428, 429 (Fla. 2d DCA 1989).

> "We hold again that the issues in a cause are made solely by the pleadings and that the function of a motion for summary judgment is merely to determine if the respective parties can produce sufficient evidence in support of the operative issues made in the pleadings to require a trial to determine who shall prevail . . .
>
> The science of pleading is considerably less exacting and much simpler than in the days when Professor Crandall taught the intra caries of Stephen's Rules of Pleadings. Nevertheless, pleadings under present rules are intended to serve the same purpose. This purpose is to . . . present, define and narrow the issues, and to form the foundation of, and to limit, the proof to be submitted at trial 71 C.J.S. Pleading Section 1.

Hare Properties, Inc. V. Slack, 159 So. 2d 236, 239 (Fla. 1963).

> Under existing rules the only instance in which legal issues not raised is the pleadings may be tried and decided is where the issue, although not pled, is tried by consent of the parties.

Id at 239.

No Defendant or intervenor consented to the trial of the issue of commercial feasibility of the nets comporting with Article X, Section 16.

The magnitude of this error is clear when the Final Declaratory Judgment is reviewed. The trial court's determination on the issue of commercial feasibility became the lynchpin of its decision. The elimination of this issue would dramatically after the Final Judgment. The judgment of the trial court should be reserved on this basis.

B. The Nets Permitted under Article X, Section 16 are Commercially Viable

At trial, substantial evidence was elicited from both sides regarding the commercial feasibility of the Crum net vis a vis the Appellees. The Defendants presented evidence in opposition to that of the Plaintiffs without waiving their objection on this issue. FCA was nearly totally barred

from presenting evidence or examining witnesses.[1] This issue figured significantly in the decision process of the trial court, as shown by the language of the Final Declaratory Judgment.

> "Finally, the Court finds additional support for the interpretations and determinations herein. Unquestionably, the clear intent of this amendment to Article X is to limit not prohibit commercial fishing by trawl. While Defendants objected to the introduction of evidence demonstrating the impracticality or commercial unfeasibility of the small nets which they contend are mandated by the amendment, this evidence was legally relevant to the issues raised in this action. The "Golden-Crum" net represents a significant reduction in size of trawl net historically used by Florida's shrimpers. Such a reduction is clearly intended by the amendment to Article X. There is however, no evidence of an intent by the people of Florida in adopting this amendment to functionally prohibit shrimp trawling in the near shore and inshore waters of the State by rendering it commercially unfeasible. The Court likewise finds no evidence of an intent by proponents of this amendment to prohibit shrimp trawling. If such a result were intended, then the ballot, title and summary approved by the Supreme Court were facially and constitutionally defective." (footnotes omitted)

Final Declaratory Judgment. (R. 576-577)

The trial court's error in arriving at this conclusion is obvious. The language of Article X, Section 16 contains no reference to commercial or non-commercial operations. The specific intent of the amendment is set forth in subsection (a) which states "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 generation. To this end, the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater fin fish, shell fish, and other marine animals from unnecessary killing, overfishing and waste." While the court concluded that the intent of the

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[1] The trial court's determination to not allow FCA and other intervenors to examine or present witnesses and the resulting error are discussed in detail later in this brief.

voters was to not eliminate commercial shrimping in the inshore and nearshore waters given the evidence adduced at trial, such a conclusion is suspect at best. The language of the amendment puts a strict and specific limitation on shrimp trawls and all other nets excepting gill nets and entangling nets, permitting only those containing 500 square feet of mesh area or less. Gill and entangling nets of all sizes are prohibited. Clearly, that type of commercial net fishing is prohibited. The testimony at trial makes any determination about the commercial feasibility of a particular net speculative at best.

The testimony at trial related to the use of particular nets on vessels of a particular size and assuming catches of certain volumes of shrimp. Other testimony indicated that the actual commercial benefit to be derived from the use of any particular net involves multiple variables; the weather, the season, environmental factors affecting shrimp populations, topography of the marine area in which shrimp are fished for, and the efficiency of the given vessel and commercial operation which employs the net and event, the type of shrimp being sought. Given the tremendous number of variables and their widely ranging affects, a conclusion and assumption that the voters intended not to eliminate commercially viable shrimp fishing operations within the framework of the amendment, leads to a very dangerous method of construing the language of the Florida Constitution. Specifically, it assumes that a shrimp trawl of 500 square feet of mesh area will always be viable for commercial shrimp fishing operations. Alternatively, if no shrimp trawl of 500 feet or less is commercially viable, then how is the trial court's conclusion supportable? No testimony adduced at trial supports this conclusion. Indeed, the Plaintiffs were uniform in their testimony that a shrimp trawl of 500 square feet of mesh area, measured by the methods proposed by Defendants and intervenor, FCA, would not be commercial viable in their individual shrimp operations. This

is particularly troubling when the evidence shows that the method proposed at trial by FCA is the very one that has been in common usage by both those in the shrimp fishing industry, including Appellees, and the State of Florida in its regulatory activities for many, many years. If the trial court's conclusion that commercial shrimp fishing operations were not intended to be barred by the amendment, and FCA's position with regard to the net measurement method are both correct, an irretrievable conflict exists between those two positions. The trial court concluded that such a conflict would mean that the ballot summary language approved this Court[2] would in such an instance be defective. Interestingly, again, no such argument was raised by any party in the trial court. Once again, the trial court inserted an issue for the first time in its final judgment which was neither argued by the parties nor as to which any evidence was presented at the trial.

The magnitude of the trial court's error in proceeding upon this assumption is obvious. The trial court's Final Declaratory Judgment may be summarized as saying that since commercially feasible shrimp fishing must be allowed in the wake of Article X, Section 16's adoption, and since the net measurement methods proposed by Defendants would result in nets which are, by the court's definition not commercially viable, then Defendants' net measurement methods must be incorrect. Such a conclusion is unsupported in law and in fact contradicted by the evidence presented at trial.

Assuming that commercial viability is to be considered on its merits, the evidence at trail showed that nets of the size permitted after July 1, 1995 are already in use in the area of the State fished by Plaintiffs. Lt Whaley of the Florida Marine Patrol testified to witnessing their use. (T. 258) Appellees contention is that their current shrimping operations are set up to use nets of certain

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[2]Advisory Opinion--Limited Marine Fishing, 620 So. 2d 997 (Fla. 1993).

size and configuration and that a substantial change will impact, both immediately or permanently, their profitability. Assuming that this is true, there are many alternatives. First, the net restriction is only for inshore and nearshore waters. Fishing further offshore is not restricted by Article X, Section 16. Use of more economical boats will also improve short term commercial results.

In summary, the trial court by concluding the commercial viability was contemplated by the voters and then measuring the extent of such viability by the circumstances of the three Appellees, has made their circumstances the bright line for all how use trawls in Florida inshore and nearshore waters. Following the Court's reasoning leads to arbitrary results. It suggests that as time passes and factors change, the standard for measurement must change too or the amendment was somehow defective in the first instance. No legal authority was cited by the court or any party in support of such a result. It is plain error and requires a reversal of the trial court's ruling.

II. THE TRIAL COURT ERRED IN NOT EMPLOYING THE STRETCHED MESH METHOD OF MEASUREMENT.

The task squarely presented to the trial court during the trial was the interpretation of portions of the language in Article X, Section 16(c)(2). Two sentences within that paragraph required the Court's attention. Specifically, the first sentence of (c)(2) which states "'mesh area' of a net means the total area of netting with the meshes open to comprise the maximum square footage." Additionally, the fourth sentence of that paragraph which states: "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."

In its opinion the trial court considered only a part of the definitional language defining "mesh area." The entire provision and not just isolated phrases must be interpreted. State ex. rel.

City of Casselberry v. Mager, 356 So. 2d 267 (Fla. 1978). Each part must be construed so as to give a reasonable and harmonious result. Ozark Corp. V. Pattishall, 185 So. 333, 135 Fla. 610 (Fla. 1939); Snively Goves v. Mayo, 184 So. 839, 135 Fla. 300 (Fla. 1939). The omission, by the trial court, of the remainder of the sentence is material.

The sentence shows an intent of the Section to measure mesh area so as to maximize the resulting "area" calculation of a given net's measurement. Section 16 then goes forward to require the use of standard mathematical formulas in making such calculations. When dealing with rectangular nets such as gill nets, the result is obvious. The net is to be stretched to its maximum length and width and the measured. The result is to attribute to any given net the maximum square footage possible.

The result should be the same for trawls. The only difference suggested by Article X, Section 16 is the formula to be used. For trawls, Section 16 require placing into the formula for the area of a cone just two numbers. First, the "maximum circumference of the net mouth to the tail end of the net." Article X, Section 16(c)(2), Florida Constitution.

The trial court followed this language for the measurement of the net mouth. Coincidentally, this was the very measurement calculated by Appellees. Why then should the rule be different when measuring the length of the net? It should not be. Yet this is what the trial court did. The "maximum length" of the net in question is at least 29 feet. This was Mr. Crum's testimony at trial. (T. 37) It is also the length shown on Exhibit A to the Complaint (R. 10) In disregarding this language the court gave improper significance and priority to part of the constitutional provision while ignoring this language. This it cannot do. Indeed, the ruling of the trial court makes the language of Section 16(c)(2) which follows "with the meshes open" meaningless and for legal

purposes nugatory. "It is a cardinal rule of statutory interpretation that courts should avoid readings that would render part of a statute meaningless." Forsythe v. Longboat Key Beach Erosion, 604 So. 2d 452, 456 (Fla. 1992); Cilento v. State, 377 So. 2d 663, 666 (Fla. 1979).

Even assuming, arguendo, that there are two or more methods of measurement which can be used, (c)(2) requires that the length be the maximum length. This is not the method used by the trial court and this failure was error, as a matter of law.

A. The Evidence at Trial Shows Plaintiffs' Net is Unlawful under Article X, Section 16

At the trial in this action, several witnesses testified as to the configuration, size and construction of the net illustrated in Exhibit A to the Complaint and admitted as Plaintiffs' Exhibit 3 at trial. The testimony of all of the witnesses was not only consistent, but identical. The method of measurement used by netting manufacturers, net makers and the fishermen themselves is by a "stretched mesh" method. Mr. Crum, when asked what the length of his net was, replied that his measurement was 29 feet and that he measured the net by laying it out on the ground and using a tape measure. (T. 87) Most significantly, when asked about his method (using a tape measure applied to the stretched net) he stated "Feasibly, that's the only way to do it." (T. 87).

Earlier in his testimony, Mr. Crum stated that the circumference of the net mouth was 65.75 feet. He also confirmed that using these two measurements and applying the formula set forth in Article X, Section 16 yielded a net size in excess of 950 square feet. The conclusion is obvious. Not a single witness at trial disputed this factual information and legal conclusion. Indeed, every witness which testified regarding the actual size of the net in question was either a Plaintiff or produced at trial by them. Every witness testified about specific nets in terms of their headrope size (net mouth

circumference) and their length. It is no coincidence that the Constitution uses the same terms and measurements in describing what the maximum legal net will be after July 1, 1995. Indeed, the information provided to the voters, as shown in the memorandum talked about by Mr. Forsgren, highlighted this issue and showed why that language was used. See, Defendant's Exhibit 4. This Court need look no further than the Complaint filed by Appellees. The very net which is the subject of this appeal is depicted in Exhibit A to the Complaint (R. 10) It shows that the net in question is 29 feet measured by the "stretch mesh" method.

The uncontradicted testimony of multiple witnesses cannot be ignored without a sufficient reason. Cornette v. Shadybrook Development Corp., 400 So. 2d 567 (Fla. 2d DCA 1981); Hill v. Parks, 373 So. 2d 376 (Fla. 2d DCA 1979); Edwards v. Hardin Properties, Inc., 313 So. 2d 82 (Fla. 2d DCA 1975). No reason was given by the trial court as to why this undisputed evidence was disregarded.

In failing to apply the stretched mesh method of measurement the trial court made two clear errors. First, it found that the issue was . . . "the interpretation of the phrase "with the meshes open."" Here the Court omitted a key portion of the constitutional language as noted above. The full sentence reads, "'mesh area' of a net mean the total area of netting with the meshes open to compose the maximum square footage." (emphasis added) The omitted language is significant. A reading of the Final Declaratory Judgment shows that of the theories advanced by the parties, that of FCA results in the "maximum square footage." The trial court's erroneous omission is clear and, because it forms a material basis for its final determination requires reversal as shown above.

The second error of the trial court on this issue was the interpretation of the testimony of Mr. Golden. The trial court states:

> "According to Mr. Golden an expert with vast experience in the net industry, nets are measured (and priced) in the open mesh (flaccid) position rather than the closed mesh (stretched) position (See Exhibit 4) (R. 574)"

This restatement of Mr. Golden's testimony is exactly the opposite of the actual testimony. The following passage from the trial testimony of Mr. Golden illustrates the error.

> Q. Mr. Golden, can you tell us what two ways there are that the net is measured in common usage?
>
> A. Well, we buy our netting and sell it by the stretched measurement. The gill netters and some shrimpers use bar measurement. (T. 119)

Plaintiffs (Appellees) Exhibit 14, introduced through Mr. Golden, is a shipping tag from a roll of raw netting material--showing that it was sold by a stretch mesh measurement.

At the trial court's prompting, Mr. Golden was next asked the key question.

> Q. What are the two ways that you measure nets dealing with the industry.
>
> A. When I buy and sell netting, it is the stretch mesh.

(T. 120) (emphasis added)

> Q. Mr. Golden, the common usage in the net industry of the diagonal, is the diagonal used as the measurement of nets or netting, or is it always by the bar or by the stretch mesh
>
> A. Well now, buying and selling, again, it's always by the stretch mesh.

(T. 121)

Mr. Golden, and every other witness, was unequivocal on this point. In the netting and shrimping industry, nets are measured by a stretched mesh method. This is in fact, the method dictated by the State of Florida for certain purposes. Rule 62N-200.001(4), Florida Administrative

Code.

The testimony by Mr. Golden and the other trial witnesses is further significant. Shrimp trawls are constructed of normal pieces of raw netting material. As they are pieced together the direction or "grain" of the netting changes. Some are by "on the diagonal", some are "on the bar" and some are by "on the taper". (T. 124). The trial court accepted and adopted this testimony (R. 575) It used this testimony to dismiss the theory advanced by the MFC because the nets were not of a "consistent geometric pattern." (R. 575 footnote 12). The glaring problem with the trial court's determination of the "proper" method of measurement is that it too requires that nets be of a "consistent geometric pattern." It assumes that every single mesh in the net is hung on the bar. Because the court's ruling is self contradictory on this point it is clearly in error.

The slant height (or length) of the net in question is 29 feet measured by the stretched mesh method. (R. 573) The trial Court found that the length of the Crum-Golden net, "With the meshes open" is 14.5 feet. There was no witness who testified that this was in fact the actual measurement. There was trial testimony that, when looking at a single mesh square, the "bar" measurement was exactly one-half of that mesh's stretched mesh length. Thus the trial court concluded that, if the Crum-Golden net was 29 feet in stretched mesh length, then, if the meshes were "opened" to the bar position, the net would measure one-half that, or 14.5 feet. The basic error in their assumption is that few if any of the meshes of this or any trawl are hung on the bar. The trial court has included in its reasoning the exact same flaw that it used to discard the measurement theory offered by the MFC! In so doing, its conclusion not only fails to be properly supported by the trial evidence, it is contradictory to all of the evidence.

The evidence at trial was clear. The trawl net in question is only properly, accurately and

consistently measured by the stretched mesh method. This method, beside being in use for decades, removes all variables in materials, mesh sizes, configuration and shapes. It has the additional benefit of being simple and can be used by anyone.

The measurement of netting by the stretched mesh method has also been dictated in aspects of the net fishing industry by the Florida Legislature and by administrative agencies of the State of Florida. Section 370.11(3(c), Section 370, 153(4)(c) and Section 370.15(6), Florida Statutes, all employ the term as a requirement of nets including shrimp trawls. Florida Administrative Code Rule 62N-20.001(4) even specifies a method for testing compliance with the stretch mesh size requirement.

The Court is obligated to give effect to this language according to its meaning and what the people must have understood it to mean when they approved it. Advisory Opinion to the Governor, 156 Fla. 48, 22 So. 2d 398 (1945); In Re Advisory Opinion to the Governor, Fla., 223 So. 2d 35 (1969) "If the language is clear and not entirely unreasonable or illogical in its operation we have no power to go outside the bounds of the constitutional provision in search of excuses to give a different meaning to words used therein." City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So. 2d 817 (Fla 1970), citing, Vocelle v. Knight Bros. Paper Co, 118 So. 2d 664 (Fla.1st DCA 1960); Cassady v. Consolidated Naval Stores Co., 119 So. 2d 35 (Fla. 1960).

Since a failure to comply with Article X, Section 16 is punishable as a criminal offense, ordinary persons must be able to understand its meaning and conform their actions accordingly. The measurement of a shrimp trawl by the stretched mesh method requires nothing more than a tape measure and a flat area. No further calculations are necessary. This is the method which should have been adopted by the trial court. The reasoning of the trail court was, unfortunately, flawed and

must be reversed.

III. THE TRIAL COURT ERRED IN BARRING FCA'S EXAMINATION OF WITNESSES.

As noted earlier, the trial court refused to allow FCA to examine or present witnesses, with only a single exception. It allowed the testimony of Ted Forsgren solely to authenticate a document. In refusing to allow examination of witnesses, the trial court committed fundamental error. Porter v. State, 386 So. 2d 1209 (Fla. 3d DCA 1980). While the almost sacred right to examine witnesses and in particular, to cross examine them, is discussed most often in the context of criminal trials, it is the very cornerstone of the adversarial system. Bova v. State, 392 So. 2d 950 (Fla. 4th DCA 1980).

> "It is well established that the cross-examination of a witness is one of the safeguards to accuracy and truthfulness. When a witness has been examined in chief, the other party has a right to cross-examine for the purpose of ascertaining the truth of matters about which the witness testified. The scope of cross-examination, among many other things, is the interest of the witness in the litigation, his motives, his inclinations, prejudices, his mens of obtaining a correct and certain knowledge of the facts about which he has borne testimony, his power of discernment, memory and description. The purpose of the cross-examination is to test the truth of witness, to sift, modify, or explain what has been said, to develop new or old facts in a view favorable to the cross-examiner, or even to discredit the witness.

Burns v. Freund, 49 So. 2d 592 (Fla. 1950).

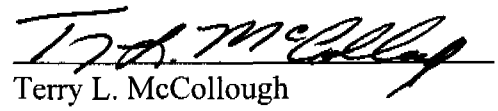
The trial court clearly erred in this respect. If reversed for a new trial, it should be with instructions to allow full examination and presentation of witnesses.

IV. CONCLUSION

The trial court, while clearly attempting to render a correct and equitable determination of the requirements of Article X, Section 16 nevertheless committed several errors. The record below

and authorities cited mandate a reversal with directions to enter judgment declaring the subject net unlawful for use in the inshore and nearshore Florida waters. Any different result is contrary to both the spirit and the letter of the constitutional provision adopted by the voters of the State of Florida.

DATED this 10th day of July, 1995.



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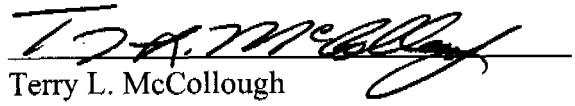
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 10th day of July, 1995 to Jonathan A. Glogau, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida, 32399-1050, J. Patrick Floyd, Esquire, 408 Long Avenue, Post Office Drawer 950, Port Saint Joe, Florida, 32456; Alfred O. Shuler, Esquire, Post Office Box 850, Apalachicola, Florida, 32329; and Ronald A. Mowrey, P.A., 515 North Adams Street, Tallahassee, FL 32301-1111.



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