

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: ODNR Division of Wildlife

Regulation/Package Title: Reptiles and Amphibians Regulations

Rule Number(s): Ohio Administrative Code 1501:31-25-04

Date: 8 January 2016

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

O.A.C. 1501:31-25-04 – This rule regulates the taking and possession of reptiles and amphibians from the wild in Ohio. The proposed amendments adjust the season for legal harvest of snapping and softshell turtles to July 1 through December 30; prohibits the taking, collection or possession of snapping and softshell turtle eggs unless legally acquired from outside the state or propagated under the authority of a commercial or noncommercial propagating license; prohibits taking of snapping and softshell turtles with a straight-line

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

carapace length of less than 11 inches; prohibits the export of any live snapping or softshell turtles taken from the wild in Ohio; and prohibits the use of archery equipment as a method of take.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

O.R.C. 1531.08

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not Applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of this regulation is to ensure the sustainability of Ohio reptile and amphibian populations. The proposed amendments specifically address snapping and softshell turtle populations through: protection of the breeding capacity of these species through eliminating harvest potential during their breeding period; insuring these species can successfully nest through eliminating the taking of their eggs; and allowing these species an opportunity to reproduce through protection of reproducing individuals until they reach an 11-inch minimum carapace length.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Agency will continue to monitor compliance with the regulation through enforcement and through increased monitoring of Ohio snapping and softshell turtle populations. Additional Ohio-specific research is planned to help inform future adjustments to the minimum carapace length and management decisions with respect to these turtle species.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Division of Wildlife convened a Turtle Regulation Advisory Work Group consisting of turtle scientists and turtle harvesters to provide advice, perspective and input on potential snapping and softshell turtle management regulatory adjustments, explore opportunities for improvement, discuss ideas, and explore impacts of potential regulations. Members of this advisory work group included: Keith Daniels (Ohio State Trappers Association President), Larry Davis (Commercial Harvester), Joe Parr (Harvester), Sally Parr (Harvester), Gregg Lipps (Herpetologist), Greg Schmenk (Herpetologist), Carolyn Caldwell (Midwest Association of Fish & Wildlife Agencies - Convention on International Trade in Endangered Species Representative), Ron Ollis (ODNR Division of Wildlife), and Rich Carter (ODNR Division of Wildlife). This advisory work group met on four occasions in 2015: January 28, April 1, May 20 and June 8. The regulatory modifications proposed in this rule package were all developed with input and advice from this work group.

The potential snapping and softshell turtle management regulatory adjustments contained in this rule adjustment were presented at the October 17, 2015 Turtle Summit. Participants at this summit included turtle scientists, turtle enthusiasts and turtle harvesters, including: Willem M. Roosenburg (Department of Biological Sciences - Ohio University), Charles Estedt, John Neidemire, Jeffrey Davis, Logan Masters (Clark County Park District – Naturalist), Devin Hendricks, Tim Matson, Keith Daniels (Ohio State Trappers Association – President), Carolyn Caldwell (Midwest Association of Fish & Wildlife Agencies - Convention on International Trade in Endangered Species Representative), Greg Lipps (Herpetologist), Wayne Hanahan, Keith Strayer, Kate Parsons (ODNR Division of Wildlife), Ron Ollis (ODNR Division of Wildlife), Rich Carter (ODNR Division of Wildlife), Ron Trivisonno, John Schilliar, and Kent Becker (Toledo Zoo – Herpetologist).

In addition, approximately 400 letters were mailed to businesses and constituents that the Division could identify that might be impacted by these rule changes. An internet mailing was also facilitated through the Ohio State Trappers Association and the Turtle Regulation Advisory Work Group to identify additional impacted entities. Five email comments were received.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Input with respect to the proposed suite of regulation adjustments was favorable. Although all input received was in support of a minimum carapace length adjustment from the existing 13-inch limit, there was significant discussion and input about whether the appropriate reduction should be to a 12-inch or 11-inch minimum carapace length. An initial minimum carapace length adjustment to 12 inches was presented at the October 17, 2015 Turtle Summit. Constituency involved in the harvest of turtles expressed that they favored an 11-inch minimum carapace length; and turtle scientist favored a 12-inch minimum.

Five email comments were received from the individuals contacted as part of this Business Impact Analysis. Four of the comments expressed support for an 11-inch minimum carapace length and one support for a 10-inch minimum carapace length. None indicated an adverse impact to their business.

While existing research does suggest that a minimum carapace length is necessary to protect snapping and softshell turtle populations, this research is minimal and not specific to Ohio; and can therefore be used to partially inform a management decision with respect to the minimum carapace length. It is noted that additional Ohio-specific research is planned to help inform future adjustments to the minimum carapace length and management decisions with respect to these turtle species.

The Division has carefully considered the comments with respect to the minimum carapace length, and finds that an adjustment to an 11-inch minimum carapace length is sufficient at this time to protect Ohio's snapping and softshell resource.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Scientific data used in this evaluation included studies of snapping and softshell turtle populations conducted in Michigan and Missouri, as well as recent US Fish & Wildlife Service data documenting extensive international shipment of live turtles to Asian markets. There are currently no studies of turtle populations available for Ohio.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The only alternative considered was to not make any changes, it was determined that this was not in the best interest of the agency, the industry or the public. This suite of regulatory adjustments was supported by the constituents that provided input through the October 17, 2015 Turtle Summit and Turtle Regulation Advisory Work Group.

11. Did the Agency specifically consider a performance-based regulation? Please explain. Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

A performance-based regulation is not applicable in this situation.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The ODNR Division of Wildlife is the sole agency with authority under the ORC to regulate the take and possession of wild animals. The other laws and rules under the authority of the ODNR Division of Wildlife were reviewed to avoid conflict.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Direction will be provided to Division of Wildlife employees on the application of the rule. Communication has been and will continue to be made with constituents interested in the management of snapping and softshell turtles, including additional meetings with the Turtle Regulation Advisory Work Group to discuss potential future research and modifications.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The proposed rule will affect approximately 12,600 individuals identified through a survey of licensed anglers (a fishing license is required to harvest snapping and softshell turtles). There are no additional license fees or compliance time required as a result of these regulations.

The Division of Wildlife conducted a law enforcement survey of likely businesses that would process turtles that might be impacted by the prohibition of live export provision of this rule change, and determined that there are currently no Ohio businesses that are exporting live snapping and softshell turtles. It is noted that there may be out-of-state entities that operate clandestinely in purchase of snapping and softshell turtles for out-of-state markets, but these entities are not known to Ohio businesses and could not be identified through known channels. The Division also received no comments through Division outreach to potentially affected entities as part of this Business Impact Analysis that indicated these rule modifications would have an adverse impact to their business. Reduction of the minimum carapace length from 13 inches to 11 inches is expected to provide additional opportunity for turtle harvesters and economic benefit. Based on the above information, the regulation adjustments do not appear to have a cost to, or adverse impact on, business.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Based on evaluation this regulation does not appear to have an adverse impact on business.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No alternatives exist.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

*Enforcement action by law enforcement is reserved for egregious violation and only after consultation with the prosecuting attorney. **First time offenders of record keeping requirements will be provided guidance on proper record keeping requirements and warned of the violations.***

18. What resources are available to assist small businesses with compliance of the regulation?

Businesses may consult the ODNR Division of Wildlife for guidance by personal contact with the Wildlife Officer assigned to their county of operation, may personally visit or call any one of five district offices, the Lake Erie office or the headquarters. Information is also available on the internet and through email.