

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: ODNR, Division of Wildlife

Regulation/Package Title: Commercial Fishing Seasons

Rule Number(s): 1501:31-3-01

Date: May 20, 2016

Rule Type:

New

5-Year Review

Amended

Rescinded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.

This rule specifies a number of restrictions associated with commercial fishing seasons in Lake Erie including 1) the commercial fishing season for Lake Erie is March 1 – December 10; 2) the commercial Yellow Perch fishing season is May 1 – December 10; and 3) the commercial seine season is March 1 – June 14 and the Wednesday following Labor Day – December 10. There are no proposed amendments to this rule.

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

Ohio Revised Code 1501.08, 1533.41

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- 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?**

Not applicable

- 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 regulation specifies certain times when commercial licensees may engage in commercial fishing using certain gear types and harvesting certain species. The regulation is necessary to ensure the sustainability of the Lake Erie fisheries resources for all Ohioans.

- 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 monitoring fish populations in Lake Erie for sustainability.

Development of the Regulation

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

Stakeholders present at a November 16, 2015 meeting to discuss this section of OAC included trap net licensees – Dean Koch, Rich Stinson, Jim Swartz, Randy Swartz, Ken King, and Todd Reynolds; seine licensees – Dean Koch, Stan Kutcher Sr., Stan Kutcher Jr., Jim Swartz, Randy Swartz, Daryl Trent, Ken Buehler, and Dennis Buehler. Additionally, Sam Sidoti (Smith and Lehrer Law Offices) was present. In addition to this meeting, staff had consultations on July 7, 2015 with commercial seine licensees (Daryl and Dale Trent) to discuss potential options for modification of the commercial seine season.

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

During the July 7 and November 16, 2015 meetings, stakeholders requested that the commercial seine season be modified to include an allowance for seining from June 15 to the Tuesday following Labor Day. Primary justification for this request was that it was an additional economic opportunity for the industry. Currently the industry believes that they

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have a suitable market for all harvestable, but unsellable “by-catch” from the fishery, an organic fertilizer company located in Wisconsin. Because unsellable “by-catch” would not be discarded back into the system, the licensees believe that adverse impacts of by-catch mortality to adjacent property owners would be minimized, and allow for additional economic development of the industry. Staff considered the request, by examining a number of factors including economic viability/active licenses of the seine industry, potential impacts to recreational boating, and potential impacts to the sustainability of the resource. First, the economic value of the seine fishery was examined. The current economic value of the commercial seine fishery has remained relatively stable over the previous five years. Additionally, the number of active seine licenses in the industry has remained relatively stable over the previous five years. Both of these pieces of information suggest that the current commercial seine industry is being managed sustainably. The impacts of the request on recreational boater safety continue to be a concern, particularly if seine activity were to be allowed during the busy recreational boating season (Memorial Day – Labor Day). Lastly, staff had concerns over the impact of added commercial seine activity on by-catch mortality of non-harvestable, released species (including black bass, crappie, etc.). Increasing potential mortality for these species is not consistent with sustainable resource management. One commercial seine licensee expressed similar concerns as staff (see comments).

One licensee requested an “early allocation” of yellow perch quota to the industry, to allow for harvest of yellow perch prior to May 1. This would constitute a modification to this section of OAC. Staff considered the request, and believes that the current biological justification for implementing the May 1 – December 10 commercial yellow perch season continues to be applicable. The May 1 commercial yellow perch season start was implemented in 1993 to protect yellow perch during their reproductive season and this rationale continues to be relevant.

Other input on this section of OAC included a discussion on Management Unit demarcations and yellow perch harvest from seines. Neither of these items is related to this section of OAC.

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?

No additional scientific data were used to develop the rule as no amendment is being proposed.

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?

Two alternative regulations (or specific provisions) were considered based upon stakeholder input. These two alternatives included modification of the commercial seine season to allow for seining from June 15 to the Tuesday following Labor Day and modifying the yellow perch commercial fishing season to allow for harvest during March/April. However, due to the continued economic viability of both commercial seine and trap net industries, and concerns over resource sustainability, these two alternatives are not recommended.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

No, the Agency did not feel that this was applicable.

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 only Agency that regulates the commercial fishing industry in regards to establishing commercial fishing seasons. The laws and rules of the Agency were reviewed for potential 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.

No amendment to the regulation is being proposed; therefore current measures for application are in place.

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;

There are currently 18 commercial trap net licenses held by 12 individuals/corporations and 27 commercial seine licenses held by 14 individuals/corporations.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

This rule establishes commercial fishing seasons. Commercial fish license holders can only operate during the specified season. There will be no new adverse impacts as there are no amendments proposed for this rule.

c. Quantify the expected adverse impact from the regulation.

There will be no new adverse impacts as there are no amendments proposed for this rule.

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

The regulatory intent justifies the adverse impact to the regulated business community so that Ohio has a sustainable fish population in Lake Erie for future use.

There will be no new adverse impacts as there are no amendments proposed for this rule.

Regulatory Flexibility

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

There are currently no alternatives or exemptions for compliance with this regulation.

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 violations 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?

The industry may contact the ODNR Division of Wildlife office in Sandusky Ohio for clarification or explanation of the rule. Information is also available on the internet and through email.