

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: ODNR, Division of Wildlife

Regulation/Package Title: Limited Entry of Commercial Fishermen

Rule Number(s): 1501:31-3-03

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Rescinded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 states that only previously licensed commercial fishers will be issued commercial fishing licenses. Additional trap net units are only issued if they have been issued previously. The rule also specifies that licenses can be placed in reserve for up to five years, that licenses will be issued for the type and amount of gear issued the previous season, that the right to renew is lost if the license is not renewed or placed in reserve by the first day of the fishing season, and that this rule does not apply to trotline or carp apron licenses.*

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

*ORC 1531.08, 1533.342, 1533.69*

**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)?**

*This rule insures that commercial licenses are only issued to commercial fishers that have the gear and experience to fish on Lake Erie and its connected waters and ensures appropriate commercial fishing effort to maintain both industry and resource sustainability.*

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

*This rule will maintain a viable commercial fishery in Ohio waters of Lake Erie and will maintain the amount of licensed effort to levels licensed in past seasons to ensure resource sustainability. Reported effort and harvest will be monitored and compared to past seasons.*

**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.*

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

*Stakeholder comments related to this rule revolved around use of the term “may” instead of “shall”, relative to the chief’s authority to put licenses in reserve or re-issue licenses that have been lost.*

- 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 as no amendment is being proposed for this OAC section.*

- 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?**

*Alternatives, other than changes in terminology listed above, have not been suggested by the commercial fishing industry. The Agency is not proposing an amendment to address these concerns.*

- 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 licensure and appropriate level of fishing effort for the commercial fishing industry. 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, licensing will continue annually as it has in past years.*

### **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 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 allows for commercial fishing licenses to be issued upon application only when a commercial fishing license was issued the previous fishing season, unless*

*such license was placed in reserve. 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.**

*All the annual licensing fees are established in the Revised Code. 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.*

**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.*