CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: ODNR Division of Wildlife

Regulation/Package Title: Limitations on size of mesh of fishing devices.

Rule Number(s): 1501:31-3-10

Date: May 20, 2016

Rule Type:

- ☐ New
- ☐ Amended
- X 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- ☐ Rescinded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.**
   This rule specifies the minimum mesh size (no less than ¼") and maximum mesh size (no more than 4") in the back of the crib or car of all fyke or trap nets, and minimum mesh size (no less than 4") for seine nets.

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

   O. R. C. 1531.08, 1533.49, 1533.62, 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?**
   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 regulation specifies the minimum and maximum mesh sizes on specific types of commercial fishing nets and 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 monitor 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.**
   Commercial trap net and seine licensees were mailed a letter detailing the language of the section of OAC subject to the five-year rule review process. They were informed of the intent of the ODNR Division of Wildlife to propose no changes to the regulation. Comments were solicited from commercial licensees within 10 days of the mailing.

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

   No comments were received from commercial licensees on the proposal.

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 new scientific date is being used, as no changes are 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?**

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

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 limitations on the size of mesh of fishing devices. Review shows that no other law is applicable and no duplication takes place***.**

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.

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);**
       This rule establishes the size and type of fishing nets that may be used in the commercial fishing industry. Commercial fisherman must comply by using the specified size and type of nets however there will be no new adverse impacts as there are no amendments proposed for this section of the O.A.C.
    c. **Quantify the expected adverse impact from the regulation.**
       There will be no new adverse impacts as there are no amendments proposed for this section of the O.A.C.

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 additional 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 violation.

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.