



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: ODNR Division of Wildlife

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Prohibited places and times for using nets in Lake Erie

Rule Number(s): 1531:31-3-04

Date of Submission for CSI Review: October 7, 2019

Public Comment Period End Date: October 28, 2019

Rule Type/Number of Rules:

New/___ rules

No Change/___X___ rules (FYR? X)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?
The rule(s):**

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

This rule establishes restricted dates, times and areas around certain reefs, islands, harbors, and limited fishing zones in Lake Erie fishing district which prohibits the placement or use of commercial fishing nets, trotlines and seines. Additionally, the rule prohibits placing commercial fishing nets and trotlines within ½ mile of piers and breakwaters associated with federally maintained navigation channels in Lake Erie. No change to the current regulation is proposed.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Ohio Revised Code 1531.06, 1531.08, 1533.48, 1533.55 1533.69

4. **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?**

N/A

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

N/A

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- 6. 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 establishes reasonable regulations regarding the times and locations for the use of nets, seines, and trotlines in the Lake Erie fishing district. These regulations are needed for the protection, preservation, or propagation of fish. Additionally, this rule seeks to minimize vessel/net collisions, minimize private property damage, and reduce boater health and safety risks associated with commercial fishing and boating on Lake Erie.

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

Success of the regulation is determined by the actual harvest of commercial fish from Lake Erie and monitored by the reporting of commercial fish harvest in the Ohio waters of Lake Erie. The agency completes annual assessments of the fish populations and reproduction to document and evaluate the resource. Success of the regulation will be determined through tracking of vessels using the Vessel Monitoring System and ensuring that no net placement occurs on designated reefs or in restricted areas. The agency will work with the ODNR Division of Watercraft and United States Coast Guard to monitor reports and investigations of vessel/net collisions.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

N/A

Development of the Regulation

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

On July 25, 2019 the agency mailed a letter to all commercial trap net and seine licensees notifying them of the five-year review of this rule and they were informed of the intent of the ODNR Division of Wildlife to propose no changes to the regulation. Additionally, the licensees were invited to a meeting to review the rule and provide their input.

On August 29, 2019 nine commercial fishing licensees; Holly Szuch, Stan Cutcher, Darryl Trent, Randy Swartz, Dean Koch, James Swartz, Drew Koch, Stanley Cutcher, and Jeff Herr, which represented both the trap net licensees and seine licensees attended the meeting to review the rule and provide their input. All stakeholders were provided an opportunity to provide their comments about the rule to the agency in person, in writing or via email.

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

One stakeholder requested the agency review the allowable times each day when trap nets can be hauled or lifted. The agency will review this request and may consider this change during a future review. One stakeholder requested a change in the penalties that may be imposed as a result a conviction for violating this rule. This is not subject to amplification by rule. No other comments were received. After consideration the agency determined that no change was appropriate.

11. 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 data is being used, as no changes are proposed.

12. 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 requirements for net, seine, and trotline placement are in place.

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

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

14. 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 regarding the taking of fish. The laws and rules of the agency were reviewed for potential conflict.

15. 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

16. 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.

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

This rule limits the times and locations for the use of nets, seines, and trotlines in the Lake Erie fishing district. 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.

- 17. 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

- 18. 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.

- 19. 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.

- 20. 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.