

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: ODNR Division of Wildlife

Regulation/Package Title: 2013 Wildlife Winter-Spring

Rule Number(s): 1501:31-3-04 Prohibited places and times for using nets in Lake Erie.

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Date: April 11, 2013

**Rule Type:**

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|----------------------------------|--|
| <input type="checkbox"/> New     | <input type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded     |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 sets forth the dates and areas within the Lake Erie fishing districts where nets or trotlines may be used to take fish.

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

Ohio Revised Code 1531.06, 1531.08, 1533.48, 1533.55 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)?**

The proposed change to this rule allows commercial fishermen to use seines to take commercial fish from Sandusky Bay on Sundays, which is not allowed under ORC 1533.55 “Except as otherwise provided by division rule...” This proposed change was asked for by members of the commercial fishing industry and is viewed as a business positive change. Commercial fishermen using seines in other portions of Lake Erie are currently allowed to seine on Sundays; the proposed change will allow the fishermen that fish Sandusky Bay the same opportunity.

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

The agency will accept comments and input from the commercial fishing industry and will evaluate the catch reports from the commercial fishing industry. Historical and current catch records from commercial seines fished in Sandusky Bay and other waters of Lake Erie will be compared to ensure that changes allowing Sunday harvest are positive for the industry and have no negative effects on sustainable commercial or sport fisheries.

**Development of the Regulation**

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

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The Division of Wildlife spoke with several members of the commercial fishing industry including Darryl Trent, Dale Trent, Dean Koch, Stan Cutcher, Ken Buehler, and Jim Swartz regarding the proposed change. Conversations were held at various times and dates in person both at the Sandusky Wildlife Office and in the field.

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

The stakeholders were in favor of the changes and requested that the changes become effective as soon as possible.

**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 scientific data was used to develop the proposed change to the rule. The proposed change was developed at the request of the industry. Outcomes of the change will be able to be measured by evaluating the catch reports to determine how many more fish were caught by allowing fish to be taken all seven days of the week.

Catch records from the seine fishery in portions of Lake Erie which allow Sunday seining suggest that allowing similar activity in Sandusky Bay on Sundays will increase sustainable harvest (fishery yields) of rough fishes by providing opportunities to increase fishing effort (deploy gear more frequently if desired) by 14% or more and/or provide schedule flexibility to fishers, which is a clear socio-economic benefit.

**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 alternatives were considered other than to leave the rule as it was, without making the change to allow seining on Sunday. It was decided to make the change as it was determined to be very beneficial to the industry, and was not detrimental to the fish or their habitats or to the public.

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

No, the agency did not feel this is 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 the taking of fish. 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.**

The agency will notify the industry of the effective date of the proposed change. As this is a relaxing of a restriction of fishing, it is felt there will be no enforcement.

**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 approximately 12 commercial fishermen licensed to use seines. Of these, approximately 6 fish in Sandusky Bay.

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

It could be argued that the rule will increase competition among the commercial fishing industry. Also, a fishing operation fishing on Sunday outside of the legal times could be subject to fines.

**c. Quantify the expected adverse impact from the regulation.**

The ODNR Division of Wildlife expects little to no impact to the industry outside of a broadening of opportunity for seine net fishing operators.

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

The agency does not feel that there is an adverse impact to the industry however did determine the proposal qualified for CSI review based on the changes in fishing times for seine net operations on Sandusky Bay.

**Regulatory Flexibility**

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

There are no alternatives available other than to not make the proposed change or to further restrict the days which seines may be used in Sandusky bay. The proposed change removes the current restriction and opens up the fishing opportunity.

**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?**

The proposed change requires no records or paperwork.

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

None.