



Common Sense
Initiative

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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):

Bait and bait dealers.

Rule Number(s): 1501:31-13-04

Date of Submission for CSI Review: June 30, 2023

Public Comment Period End Date: July 19, 2023

Rule Type/Number of Rules:

New/ rules

No Change/ rules (FYR?)

Amended/X rules (FYR? X)

Rescinded/ rules (FYR?)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.

It is proposed to amend this rule to allow bait dealers to sell hybrids of green sunfish obtained through aquaculture or another legal source. Green sunfish readily hybridize with bluegill and other sunfishes, it's difficult for fish producers to ensure that the bluegill and green sunfish they are selling as bait are truly pure species and not hybrids. This proposal is intended to expand opportunities for bait sales and simplify the bait dealer rules.

It is further proposed to simplify and remove redundant language within the rule.

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.

Statutory Authority: 1531.06, 1531.08, 1531.10

Rule Amplifies: 1531.06, 1531.08, 1531.10, 1533.40

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?

No / Not applicable.

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

Not applicable.

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 specifies the species of fish and other aquatic life which may be collected from the wild or raised in captivity and sold as bait. In addition, this rule specifies those records which must be kept by bait dealers to provide protection for wild populations as well as tracking for potential invasive species.

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

The rule's success will be measured through communication with impacted businesses and comments/concerns from the public. Additionally, the agency conducts facility inspections and will monitor and review violation reports.

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?

No.

Development of the Regulation

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

During the weeks of March 29, and April 3, 2023, a letter was both mailed and emailed to 459 holders of a current Aquaculture Class A, Aquaculture Class B, Bait Dealer, Fish Transportation, and/or a Fish Wholesale license holders with the proposal to add hybrid green sunfish to allowable bait fish. The mailings requested comments be returned by Monday, May 1, 2023.

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

Feedback from stakeholders was generally neutral, indicating that the proposed code change would not negatively affect their business.

There was some confusion among three (3) bait dealers who clearly misunderstood/misread the proposed change. Subsequent follow up with those individuals to explain the intent of the code change resulted in positive, supportive, feedback.

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?

Currently, both bluegill and green sunfish can be sold as bait. Because green sunfish readily hybridize with bluegill and other sunfishes, it's difficult for fish producers to ensure that the bluegill and green sunfish they are selling as bait are truly pure species and not hybrids. This proposal is intended to expand opportunities for bait sales and simplify the bait dealer rules.

Standard fish population assessment data, routinely collected by the Division of Wildlife fisheries staff, indicates that naturally occurring green sunfish hybrids are a common component of the sunfish assemblages in reservoirs and rivers throughout Ohio. Therefore, allowing green sunfish hybrids to be used as bait is not expected to have any negative consequences for Ohio's native fish communities.

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?

The only other alternative considered was to not change the current rule. However, the proposed change will allow additional bait fish sales while removing the burden of separating hybrids from pure stock of blue gill and green sunfish. This change lessens the burden on impacted businesses.

A performance-based regulation is not applicable.

13. 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 with the authority to designate and regulate the sale of bait fish. The laws and rules of the Division were reviewed for potential conflicts. The agency is proposing to remove redundant language within this rule.

14. 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.

Regulations will be applied consistently across Ohio via the agency's permitting process. Communication will continue with all permit holders impacted by this change.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and**

The ODNR Division of Wildlife contacted 459 potentially impacted businesses to determine whether this proposal would adversely impact their business. The agency did not receive any negative feedback from stakeholder engagement as this proposal will lessen the regulatory burden for impacted businesses.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

Regulations under this section are already in place, including penalties. Since the proposed change will allow additional bait fish sales, there are no new negative impacts to businesses.

This rule allows the sale of certain species of fish for use as bait if the seller possesses a bait dealer permit issued under ORC 1531.40. Bait dealers are required to keep records of transactions with other bait dealers and aquaculture facilities, but not for retail sales. These records do not have to be turned in or reported but instead are to be made available for inspection.

The penalties for violating the regulatory sections are a misdemeanor of the fourth degree or a felony of the fifth degree if the violation involves the buying, selling, or offering for sale of any wild animals or parts of wild animals, the minimum value of which animals or parts, in the aggregate, is one thousand dollars or more as established under section 1531.201 of the Revised Code. These penalties are established in section 1531.99 of the Revised Code.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).

The proposed rule change will reduce the regulatory burden for impacted businesses by allowing additional bait fish sales and eliminating the need to screen bait fish for green sunfish hybrids.

It is further proposed to remove redundant language and simplify some of the language within the rule, which will also improve readability.

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

This rule specifies the species of fish and other aquatic species which may be collected from the wild or raised in captivity and sold as bait. In addition, this rule specifies those records which must be kept by bait dealers to provide protection for wild populations as well as tracking for potential invasive species. The regulatory intent is to allow the collection and sale of certain aquatic species while protecting the resource from injurious aquatic invasive species and disease transmission; however, these regulations also support the perpetuity and profitability of the industry. The limited adverse regulatory impacts to the industry are offset by the long-term benefits of defining species eligible for collection and sale and documenting

their use, thereby establishing a level playing field for all industry participants and providing a viable source of organisms collected in the wild or raised in captivity.

Regulatory Flexibility

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

There are no exemptions or alternatives for small businesses.

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 violations.

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

Businesses may consult the ODNR Division of Wildlife for guidance by personal contact with the wildlife officer assigned to their county of operation and may personally visit or call any of the five district offices, the Lake Erie office, or the headquarters. Information is also available on the internet and through email.