

January 25, 2025

Joint Committee on Agency Rule Review

77 S. High St., Concourse Level

Columbus, OH 43215

Re: Regulatory Concerns Regarding Ohio Division of Wildlife Commercial Fishing Regulations

Dear Committee Members:

I am writing to address serious violations of federal and state law by the Ohio Division of Wildlife (ODOW) and Department of Natural Resources (ODNR) regarding commercial fishing regulations.

Prior to 1949, commercial fishing was regulated by Ohio's Department of Agriculture, recognizing its primary role in food production. The 1949 transfer to ODOW (House Bill 382, 98th General Assembly) began a shift away from food production priorities, contrary to subsequent federal mandates designed to protect America's food security through commercial fishing.

Multiple federal statutes protect commercial fishing rights:

The Fish and Wildlife Act of 1956 (16 U.S.C. § 742a-754) mandates the development and protection of commercial fisheries as a vital food source. Section 742f explicitly promotes the continuation of commercial fishing operations to ensure public access to fresh, local fish. ODOW's restrictions directly contradict these requirements.

The Fish and Wildlife Coordination Act (16 U.S.C. § 661-667e) requires comprehensive consultation with the commercial fishing industry, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and other affected stakeholders before implementing fishing restrictions. ODOW has systematically failed to meet these consultation requirements, particularly in:

- Arbitrary yellow perch restrictions (2022) without industry input
- Exclusive allocation of walleye quotas to recreational fishing without required consultation with commercial operators
- Seine net seasonal closures implemented without mandated stakeholder engagement
- Failure to consult with National Marine Fisheries Service on major regulatory changes

The Submerged Lands Act (43 U.S.C. § 1311-1315) and Public Trust Doctrine (Illinois Central Railroad Co. v. Illinois, 146 U.S. 387) require state management of resources for maximum public benefit, while ORC 1531.02 codifies these requirements. ODOW's practices significantly deviate from these mandates by favoring recreational interests over public food access.

Commercial fishing licenses are established property rights, yet ODOW's restrictions have caused millions in damages. In 2022, they restricted yellow perch harvesting from my seine net licenses despite historically minimal catch volumes, then denied quota transfers while allowing similar transfers between trap nets.

The Magnuson-Stevens Act (16 U.S.C. § 1801) prohibits discrimination between recreational and commercial fishing. However, ODOW allocates federal walleye quotas exclusively to recreational licenses - serving less than 1% of Ohio's population while forcing 99% to rely on imported fish, creating a Canadian import monopoly and undermining Ohio's food independence.

ODOW's rule process lacks required economic impact analysis. Their 1980 seine net closure (June 15 to post-Labor Day) eliminated over 20 operations, leaving only three part-time operations today. These impacts remain undocumented in violation of federal consultation requirements.

In 1999, ODOW obtained legislative changes converting the mandatory 5-year rule expiration to a mere review requirement. This effectively eliminated automatic scrutiny of outdated or harmful regulations. Since then, rule reviews have become perfunctory exercises, with summaries consistently claiming "no change" despite significant negative

impacts. This system perpetuates outdated restrictions while masking their true economic and social costs. For example, rule summaries have never accurately reflected:

- The ongoing impact of the 1980 seine net closure
- Economic losses from walleye quota restrictions
- Cumulative effects of yellow perch restrictions
- Job losses in the commercial fishing sector
- Reduced public access to local, fresh fish

In 2020, ODOW improperly attempted to revoke my licenses under ORC 1533.641. I was found not guilty (Huron Municipal Court, Case No. 20-317), with a federal court confirming ODOW's targeting (October 4, 2021).

Rule 1501:31-3-15 violates federal and state law, including ORC 1531.02. As former Ohio Fish Producers Association president (through 2008), I've sought collaboration with ODOW without success. Federal litigation regarding property rights compensation is pending.

ODOW's consistent failure to conduct required consultations with the commercial fishing industry, federal agencies, and other stakeholders renders their restrictions procedurally invalid under federal law. I request JCARR's review of these violations, particularly the systematic bypass of mandatory consultation requirements, and implementation of corrective measures ensuring compliance with federal and state law. The current regulatory framework undermines Ohio's food security and economic interests while violating multiple federal statutes designed to protect commercial fishing as a vital food source for Ohio's citizens.

Sincerely,

Dean Koch

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