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Bill Analysis
Legislative Service Commission

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Sens. Grendell, Spada, Mumper, Harris, D. Miller, Niehaus, Roberts, Sawyer, Schaffer, Schuler, Smith, Buehrer, Morano, Padgett, R. Miller, Wilson, Mason, Faber

BILL SUMMARY

- Revises the requirements for application for a new commercial fishing license and renewal of a commercial fishing license and for application for a permit to handle commercial fish or other fish bought or sold at wholesale, including the addition of a requirement that an applicant cannot have a prior conviction of or guilty plea to a felony concerning commercial fishing activities for a violation of state or federal law.
- Revokes permanently by operation of law all commercial fishing licenses and all permits to handle fish at wholesale issued under the Hunting and Fishing Law to a person when the person is convicted of or pleads guilty to a felony related to commercial fishing activities for a violation of state or federal law.
- Replaces certain existing provisions related to suspension and revocation of a commercial fishing license or a permit to handle fish at wholesale with new suspension and revocation requirements for such licenses and permits, and consolidates them in one statute.
- Requires the clerk of the court before which a person is convicted of or pleads guilty to specified violations to send notice of the conviction or plea to the Chief of the Division of Wildlife.
- Authorizes the Chief or any authorized employee of the Division of Wildlife to inspect sealed criminal conviction records for the purpose of the issuance or renewal of a commercial fishing license or the issuance of a permit to handle commercial fish or other fish at wholesale.

- Establishes additional conditions for the transfer of a commercial fishing license issued under Ohio law.
- Prohibits a commercial fishing licensee, on and after March 1, 2008, from using or engaging in fishing with commercial gear unless the licensee uses vessel and catch monitoring devices in accordance with requirements and procedures established by the Chief, requires the Chief to establish by rule requirements and procedures for such devices, and requires a commercial fishing licensee to pay the costs of purchasing, installing, and maintaining the devices.
- Eliminates the annual fee for a license for a commercial fishing dip net.
- Requires a commercial fishing licensee to record daily catch data on a daily report form rather than on a monthly report form as in current law.
- Removes mullet from the types of fish that may be taken with a seine.
- Eliminates the legal length limits for buffalo fish, suckers, and cohos.
- Revises certain requirements that guide the Chief and the Wildlife Council in determining the apportionment of the maximum allowable annual taking of fish between the sport and commercial fisheries under the quota management system, and revises certain requirements that the Chief and the Council must consider in determining the distribution of the apportionment of fish within the commercial fishery under the system.

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CONTENT AND OPERATION

Application requirements for commercial fishing licenses

Current law

Current law states that any person, other than persons licensed during the prior fishing season, prior to making application for an Ohio commercial fishing license, first must satisfy the following qualifications to the satisfaction of the Chief of the Division of Wildlife in the Department of Natural Resources: 90 days' Ohio residency immediately preceding application; two years' commercial fishing gear experience or holder of an Ohio commercial license of another gear; and posting of a \$1,000 performance bond or cash deposit in a like amount (sec. 1533.342). When a person applies to the Chief for a license, the Chief, upon receiving the proper fees, may issue the license (sec. 1533.34). A person who was issued an Ohio commercial fishing license in the prior fishing season, upon proper application, must be issued a license of the same type for the current fishing season unless the issuance of the license is prohibited by the Hunting and Fishing Law, the Division of Wildlife Law, or a Division of Wildlife rule (sec. 1533.342). A license remains in force and entitles the holder of it to fish as permitted by law from the date of issuance to and including the last day of the season for which the license was issued (sec. 1533.34).

The bill

The bill revises the requirements for application for a commercial fishing license. Under the bill, any person, prior to making application for an Ohio commercial fishing license, first must satisfy the following qualifications to the satisfaction of the Chief: over 18 years of age; no prior conviction of or plea of

guilty to a felony concerning commercial fishing activities for a violation of state or federal law; 90 days' Ohio residency immediately preceding application; two years' commercial fishing gear experience or holder of an Ohio commercial license of another gear; and posting of a \$1,000 performance bond or cash deposit in a like amount (sec. 1533.342). When a person applies to the Chief for a license, the Chief may issue the license if the person satisfies those qualifications and the Chief receives the proper fees (sec. 1533.34). Under the bill, a person who was issued an Ohio commercial fishing license in the prior fishing season must satisfy the above qualifications in addition to submitting proper application. A person who complies with those requirements must be issued a license of the same type for the current fishing season unless the issuance of the license is prohibited by the Hunting and Fishing Law, the Division of Wildlife Law, or a Division rule. (Sec. 1533.342.)

Application requirements for permits to handle commercial fish or other fish at wholesale

Current law specifies that any person may apply for a permit to handle commercial fish or other fish that may be bought or sold at wholesale. A fish is handled at wholesale when it is on a premises within the state and is being held, stored, handled, or processed for the purpose of sale to a person who ordinarily resells the fish. The Chief of the Division of Wildlife must issue an annual permit granting the applicant the privilege to handle fish at wholesale at one or more designated premises upon filing an application on a form prescribed by the Chief and payment of a \$65 fee. (Sec. 1533.631.)

The bill revises the requirements for a permit to handle commercial fish or other fish bought or sold at wholesale. Under the bill, a fish is handled at wholesale when it is on a premises within the state and is being held, stored, handled, or processed for the purpose of sale to a person who resells the fish rather than to a person who ordinarily resells the fish. In addition, the bill adds that prior to making application for such a permit, a person first must satisfy the following qualifications to the satisfaction of the Chief: over 18 years of age, no prior conviction of or plea of guilty to a felony concerning commercial fishing activities for a violation of state or federal law, and 90 days' Ohio residency immediately preceding application. The Chief must issue an annual permit granting the applicant the privilege to handle fish at wholesale at one or more designated premises upon satisfaction of the pre-application qualifications added by the bill, filing of an application on a form prescribed by the Chief, and payment of a \$65 fee. (Sec. 1533.631.)

Forfeiture of commercial fishing licenses and permits to handle fish at wholesale

The bill permanently revokes by operation of law all commercial fishing licenses issued under the Hunting and Fishing Law and all permits to handle commercial fish or other fish at wholesale issued under that Law to a person when the person is convicted of or pleads guilty to a felony related to commercial fishing activities for a violation of state or federal law (sec. 1533.641(A)).

Suspension and revocation of commercial fishing licenses and permits to handle fish at wholesale

Current law

Quota management system. Current law authorizes the Chief of the Division of Wildlife with the approval of the Wildlife Council to establish by Division rule a quota management system that consists of determining the species and number or pounds of the maximum allowable annual taking of the Lake Erie fishery resources or parts of those resources in order to prevent over exploitation of any species and assure the conservation and wise use of all species and the determination of the distribution of the maximum allowable annual taking between and within sport and commercial interests. It requires compliance with any quota set, other provisions of the statute governing the quota management system, and applicable Division rules (see also "**Determination of apportionment and distribution under quota management system,**" below).

Current law states that the license of any person who is convicted of two violations of the law pertaining to the quota management system within a 12-month period is suspended upon the second such conviction for a period of 60 fishing season days. The license of any person who is convicted of three or more violations of that law within a 12-month period is suspended upon the third or subsequent such conviction for a period of 18 fishing season months. Any person whose license has been suspended or revoked pursuant to any provision of the Hunting and Fishing Law or the Division of Wildlife Law is not eligible to apply for or receive a new license during the period of suspension or revocation. (Sec. 1533.341.)

Commercial fishing reports for each day's catch. Current law requires commercial fishing licensees to keep accurate reports for each day's catch on forms provided by the Chief of the Division of Wildlife and establishes procedures and requirements for purposes of reporting each day's catch. It also requires compliance with any statutory report procedure, other provisions of the statute governing reporting, and applicable Division rules (see also "**Daily catch report,**" below).

Current law states that the license of any person who is convicted of two violations of the law pertaining to reports for each day's catch within a 12-month period is suspended upon the second such conviction for a period of 60 fishing season days. The license of any person who is convicted of three or more violations of that law within a 12-month period is suspended upon the third or subsequent such conviction for a period of 18 fishing season months. (Sec. 1533.42.)

Use of seines and nets. Current law establishes requirements concerning the dimensions and specifications for seines and the locations where seines and nets may be used. It requires compliance with those requirements and with applicable Division rules (see also "**Fish that may be taken with seine,**" below).

Current law states that the license of any person who is convicted of two violations of the law pertaining to seines and nets within a 12-month period is suspended upon the second such conviction for a period of five fishing days. The license of any person who is convicted of three or more violations of that law within a 12-month period is suspended upon the third or subsequent such conviction for a period of 20 fishing season days. (Sec. 1533.62.)

Legal length and weight of certain fish. Current law establishes permissible lengths and weights of specified types of fish that may be taken, bought, and sold, other requirements concerning the taking, buying, and selling of specified types of fish, and other miscellaneous requirements related to specified types of fish. It requires compliance with those requirements and applicable Division rules (see also "**Legal length of buffalo fish, sucker, and coho,**" below).

Current law states that the license of any person who is convicted of two violations of the statute related to the legal length and weight of certain types of fish, other than those relating to 10% by weight of undersized fish, that occurred within a 12-month period is suspended upon the second such conviction for a period of 60 fishing season days. The license of any person who is convicted of three or more violations of that statute, other than those relating to 10% by weight of undersized fish, that occurred within a 12-month period is suspended upon the third or subsequent conviction for a period of 18 fishing season months.

In addition, the license or permit of any person who is convicted of two violations of that statute relating to walleye or sauger is suspended upon the second such conviction for a period of 20 days. The license or permit of any person who is convicted of three violations of that statute relating to walleye or sauger is suspended upon the third conviction for a period of 60 days.

Any person who is convicted of four violations of that statute relating to walleye or sauger imported from outside Ohio that occurred within a 36-month

period is prohibited upon the fourth conviction from transporting, buying, selling, or dealing in walleye and sauger for a period of 60 months. The license or permit of any person who is convicted of four violations of that statute relating to walleye or sauger, other than walleye or sauger imported from outside Ohio, is revoked upon the fourth conviction and the person is permanently barred from obtaining another license or permit of the type revoked.

Furthermore, current law states that the license of any person who is convicted of three or more violations of that statute relating to 10% by weight of undersized fish that occurred within a 12-month period is suspended upon the third or subsequent conviction for a period of 20 fishing season days.

For purposes of determining any license or permit suspension or revocation required under that statute, multiple convictions resulting from violations of that statute that occurred at the same time, on the same day, and at the same location are deemed to be a single conviction of one violation (sec. 1533.63).

Permit to handle commercial fish or other fish at wholesale. Current law establishes fees and requirements concerning permits to handle commercial fish or other fish that may be bought or sold at wholesale. It requires compliance with any statutory provision related to permits to handle fish at wholesale and with applicable Division rules (see also above). (Sec. 1533.631.)

Current law states that the permit of any person who is convicted of two violations of the statute pertaining to permits to handle fish at wholesale within a 12-month period is suspended upon the second such conviction for a period of five fishing season days. The permit of any person who is convicted of three or more violations of that statute within a 12-month period is suspended upon the third or subsequent such conviction for a period of 20 fishing season days. (Sec. 1533.631.)

Property rights in fish. Current law establishes that fish lawfully confined in a net or by another authorized device are the property of the owner or person operating the net or other device and cannot be taken by another person when the fish are so confined. It requires compliance with that requirement and applicable Division rules. (Sec. 1533.64.)

Current law states that the license of any person who is convicted of two violations of the statute pertaining to lawfully confined fish within a 12-month period is suspended upon the second such conviction for a period of 60 fishing season days. The license of any person who is convicted of three or more violations of that statute within a 12-month period is suspended upon the third or subsequent such conviction for a period of 18 fishing season months. (Sec. 1533.64.)

Other penalties. All of the statutes discussed above state that the penalties established by them are in addition to other penalties provided in the Revised Code (secs. 1533.341, 1533.42, 1533.62, 1533.63, 1533.631, and 1533.64).

The bill

The bill replaces all of the provisions discussed above related to suspension and revocation of commercial fishing licenses and permits to handle fish at wholesale with new suspension and revocation requirements and consolidates them in one statute. Under the bill, if a commercial fishing licensee, a licensee's authorized representative, a person that has been issued a permit to handle fish at wholesale, or a permittee's authorized representative is convicted of or pleads guilty to a violation of any of the statutes governing commercial fishing that are discussed above, or any Division rule pertaining to those statutes, the licensee's license or the permittee's permit, as applicable, must be suspended for a period of 15 fishing season days. If a person is convicted of or pleads guilty to a second violation within ten years after being convicted of or pleading guilty to the first violation, the applicable licensee's license or permittee's permit must be suspended for a period of 30 fishing season days. If a person is convicted of or pleads guilty to a third violation within ten years after being convicted of or pleading guilty to the first violation, the applicable licensee's license or permittee's permit must be revoked. Furthermore, the bill requires the Chief to suspend or revoke, as applicable, the license or permit not later than seven days after receipt of the court's notification of the conviction or plea (see "**Court notification of violations,**" below). (Sec. 1533.641(B).)

The bill also consolidates and relocates to the new statute language that is currently found in all of the above statutes and that provides that during any period of suspension of a license or permit under the bill as discussed above, no person is permitted to use or engage in fishing with commercial gear, or in handling commercial fish or other fish at wholesale with equipment, owned, used, or controlled at the time of conviction or plea by the licensee or the licensee's authorized representative or by the permittee or the permittee's authorized representative, as applicable (sec. 1533.641(C)). Similarly, the bill relocates to the new statute and slightly revises language under which a person whose license has been suspended by operation of law pursuant to any provision of the Hunting and Fishing Law or the Division of Wildlife Law or Division rule is not eligible to apply for or receive a new commercial fishing license or permit to handle fish at wholesale during the period of the suspension (sec. 1533.641(D)).

In addition, the bill moves to the new statute language currently in the statute governing the legal length and weight of specified types of fish (see above) that states that for purposes of determining a license or permit suspension or revocation for a violation of that existing statute, multiple convictions resulting

from violations of that statute that occurred at the same time, on the same day, and at the same location are deemed to be a single conviction of one violation (sec. 1533.641(E)).

Finally, the bill applies all of the above provisions that are in the new consolidated statute to anyone who violates the bill's vessel and catch monitoring devices requirements (see "*Vessel and catch monitoring devices*," below) and the existing statute establishing commercial fishing seasons (secs. 1533.343, 1533.41, not in the bill, and 1533.641(B), (C), and (D)).

Court notification of violations

The bill requires the clerk of the court before which a person is convicted of or pleads guilty to a felony related to commercial fishing activities for a violation of state or federal law as discussed above or is convicted of or pleads guilty to any specified provision of the Hunting and Fishing Law or any Division of Wildlife rule pertaining to those provisions as discussed above to send written notification to the Chief of the Division of Wildlife of the conviction or plea together with the person's name and address not later than ten days after the date of conviction or plea (sec. 1533.641(F)).

License and royalty fees

Current law establishes license fees for commercial fishing devices. It also establishes royalty fees for catfish, white bass, and yellow perch when taken commercially. Current law prohibits anyone from failing to comply with any of those provisions or an applicable Division rule.

Current law states that in addition to other penalties provided in the Revised Code, the license of any person who is convicted of one or more such violations must be suspended for a period of 18 fishing season months. During any period of suspension, no person can use or engage in fishing with commercial gear owned, used, or controlled at the time of conviction by the licensee. The bill repeals those provisions. (Sec. 1533.35.)

Inspection of sealed criminal conviction records

Existing law provides certain protections when criminal conviction records are sealed. When the records are sealed, inspection of the sealed records may be made only by specified persons for limited, specified purposes. The bill adds to the list of persons who may inspect such records by authorizing the Chief of the Division of Wildlife or any authorized Division employee to inspect sealed criminal conviction records for the purpose of the issuance or renewal of a

commercial fishing license or the issuance of a permit to handle commercial fish or other fish at wholesale. (Sec. 2953.32(D).)

Transfer of commercial fishing license

Existing law states that notwithstanding any other provision in the Revised Code and except as otherwise provided by Division rule, a licensee holding a commercial fishing license issued under the Hunting and Fishing Law may transfer that license to a person holding a commercial fishing license issued under Ohio law or to a person meeting the qualifications established in current law governing applications for commercial fishing licenses (revised by the bill as discussed above). The qualifications include all of the following: (1) 90 days' Ohio residency immediately preceding application, (2) two years' commercial fishing gear experience or holder of an Ohio commercial license of another gear, and (3) posting of a \$1,000 performance bond or cash deposit in a like amount. Furthermore, a transfer is subject to specified conditions. The conditions include the following:

(1) The transferred license is limited to the type of commercial fishing gear for which the original license was issued;

(2) The transfer does not affect any other commercial fishing license privilege possessed by the transferor, and the transferor, as permitted by law, may continue to renew and use any license not transferred;

(3) Application for the transfer may be made at any time and must be made simultaneously by the transferor and transferee on forms provided by the Division of Wildlife;

(4) When a license is transferred during the open commercial fishing season, the transferee may be issued a license only upon the Division's receipt of payment of the applicable annual license fees plus any unpaid fees that have not been paid by the transferor at the time of transfer;

(5) A license can be transferred only upon payment to the Division of the royalty fees imposed under current law that have accrued to the date of transfer;

(6) A license may be transferred at any time, but it cannot be transferred if the license is suspended at the time transfer is sought or if the licensee has been charged with a violation that could result in license suspension; and

(7) After determining that a transfer is proper, the Chief must effect the transfer by revocation of the license of the transferor and simultaneous issuance of the appropriate license to the transferee.

The bill adds the following two conditions: (1) the transferred license cannot be sold, offered for sale, or bartered to any person, and (2) the Chief, with the approval of the Director of Natural Resources, must determine if any quota species of fish are transferable with the transferred license. In making the determination, the Chief must use biological, social, and economic data. In addition, the bill revises current law condition (2) above by removing the authority for the transferor to continue to renew and use any license not transferred. (Sec. 1533.36(B).)

Vessel and catch monitoring devices

The bill prohibits a commercial fishing licensee, on and after March 1, 2008, from using or engaging in fishing with commercial gear unless the licensee uses vessel and catch monitoring devices in accordance with requirements and procedures established by the Chief of the Division of Wildlife. The Chief must establish requirements and procedures concerning vessel and catch monitoring devices by Division rule. A licensee must pay the costs of purchasing, installing, and maintaining the devices. (Sec. 1533.343.)

Daily catch report

Current law

Current law requires every commercial fishing licensee to keep an accurate record of each day's catch on a monthly report form. The report must include at least the number of pounds of each kind of fish taken, the locality fished, the kind and amount of fishing gear lifted, the number of fishing nights, the number of lifts, and any other data the biologists employed by the Division of Wildlife require. The licensee must report each month's data to the Chief. (Sec. 1533.42.)

The daily catch data must be recorded accurately on the respective date on a report form approved by the Chief no later than noon on the day following the day in which the fish were taken. The monthly report and any other report that may be required must be submitted to the Division no later than the 15th day of the month following the end of the calendar month in which the fish were taken. (Sec. 1533.42.)

The bill

The bill instead requires every commercial fishing licensee to keep an accurate record of each day's catch on a daily report form. The report must include at least the number of pounds of each kind of fish taken, the grid fished, the kind and amount of fishing gear lifted, the number of lifts, and any other data the biologists employed by the Division require. The licensee must report each

day's data to the Chief. The daily catch data must be recorded accurately in a manner and on a form prescribed by the Chief in Division rule. (Sec. 1533.42.)

Fish that may be taken with seine

Current law authorizes a licensee to take carp, buffalo fish, mullet, suckers, sheepshead, goldfish, bowfin, and gizzard shad with a seine in specified waters. The bill removes mullet from the types of fish that may be taken with a seine. (Sec. 1533.62.)

Legal length of buffalo fish, sucker, and coho

Current law establishes the permissible lengths of specified types of fish that may be taken, caught, bought, sold, transported, or possessed. Of the specified types of fish, current law prohibits a person from taking a buffalo fish less than 15 inches in length, a sucker less than ten inches in length, or a coho less than 25 inches in round length or 21½ inches when headless. The bill eliminates the legal length limits for buffalo fish, suckers, and cohos. (Sec. 1533.63.)

Dip net license fee

Current law establishes annual fees for the issuance of commercial fishing device licenses. The fee for each dip net is \$100. The bill eliminates the license fee for a dip net. (Sec. 1533.35(A).)

Determination of apportionment and distribution under quota management system

Current law authorizes the Chief of the Division of Wildlife with the approval of the Wildlife Council to establish a quota management system to manage the Lake Erie fishery resources. One aspect of the quota management system is the determination on an equitable basis of the distribution of the maximum allowable annual taking between and within sport and commercial interests. The bill instead provides that the distribution of the maximum allowable annual taking is between and within the sport and commercial fisheries.

Under current law, in determining and establishing the apportionment of the maximum allowable annual taking of a species between the sport and commercial interests under the system, the Chief and the Council must be guided by the proportional sport and commercial taking of the species during the immediately preceding five years and other pertinent scientific, economic, and social data. The bill instead requires the Chief and the Council to be guided only by pertinent scientific, economic, and social data rather than both as in current law. In addition, the bill replaces references to sport and commercial interests with sport and commercial fisheries.

Similarly, current law requires the Chief and the Council, in determining the distribution of the apportionment within the commercial industry under the system, also to consider the proportional commercial taking of the species within the commercial industry during the immediately preceding five years and other pertinent scientific, economic, and social data. The bill instead requires the Chief and the Council to consider only pertinent scientific, economic, and social data. In addition, the bill replaces references to the commercial industry with the commercial fishery. (Sec. 1533.341.)

Intent clause

The bill states that in enacting the bill, it is the intent of the General Assembly to protect the resources of Lake Erie and provide for the reasonable regulation of commercial fishing and not to eliminate commercial fishing in Ohio (Section 3).

HISTORY

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