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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING



DANIEL EICHINGER
DIRECTOR

SUBMITTED: January 13, 2020
RESUBMITTED: February 18, 2020



MEMORANDUM TO THE NATURAL RESOURCES COMMISSION

Subject: Use of Electronic Trap Monitors for Wildlife Damage and Nuisance Animal Control Businesses
Wildlife Conservation Order Amendment No. 2 of 2020

Authority:

The Natural Resources and Environmental Protection Act, 1994 PA 451, authorizes the Director and the Commission to issue orders to manage wild animals in this state.

Discussion and Background:

Under the authority of the Natural Resources and Environmental Protection Act and the Wildlife Conservation Order, the Department administers a permit system for wildlife damage and nuisance control when hunting and trapping cannot alleviate problems. The permit system allows nuisance wild animals and wild animals causing damage to property to be taken during times of the year and by methods not normally allowed under the regular hunting and trapping rules.

Under the permit system for wildlife damage and nuisance control, the Department issues a Wildlife Damage and Nuisance Control Permit to private nuisance animal control businesses, public agencies, and other organizations. The Wildlife Damage and Nuisance Control permit pre-authorizes these businesses to undertake control measures on specific species in certain areas and at certain times upon complaint of a person suffering damage without individual inspections and individual permits being issued by Department staff.

The Department received a request from a group of licensed nuisance animal control operators to allow businesses licensed under a Wildlife Damage and Nuisance Control permit to use electronic trap monitors while conducting wildlife control measures on private lands. Electronic trap monitors are a tool that can potentially increase the efficiency of wildlife trap checks. The devices may consist of small radio transmitters that emit unique pulse rates, cell phone data notification, or a device that sends text messages when an animal is captured in a trap.

The Department recommends allowing businesses licensed under a Wildlife Damage and Nuisance Control permit to monitor traps lawfully permitted to take or capture nuisance wild animals with an operational electronic device under certain conditions with a three-year sunset clause. A three-year sunset clause will allow time for the Department to review the use and effectiveness of these devices.

The Department recommends allowing electronic trap monitors to be used under all of the following conditions by a licensed business permittee provided that the trap is physically checked in person at least once every 72 hours:

- The electronic trap monitor remains in continuous operation while in use and shall be able to provide trap status at least once every 24 hours.
- The electronic trap monitor shall be checked electronically at least once every 24 hours.
- The electronic trap monitor has notification alarms that report real-time trap information including trap door closed activity and trap door open activity within one hour after detection via email or text-based messaging systems.
- The electronic trap monitor has notification alarms that report system health issues via email or text-based messaging.
- The electronic trap monitor has on-demand control unit testing capabilities for determining trap status, signal strength, and battery condition via remote system check-in.
- If the electronic trap monitor notification alarm reports a trap closure, the permittee is required to physically visit the trap within 24 hours of the time the trap was reported closed.
- If the electronic trap monitor reports a system health issue, the permittee is required to physically check the trap within 24 hours of the last time a notification alarm was received.
- Electronic monitoring devices shall be marked with the permittee's identification, specifically the permit number, business name, and business phone number.
- Permittees shall maintain records as provided by section 5.54 of the Wildlife Conservation Order. This also includes alert notifications and trap status check via the centralized application database. All records shall be available for inspection at any reasonable time by a state or law enforcement agency, or its employees, or a tribal conservation officer.
- An individual who displays records using an electronic device is not presumed to have consented to a search of the electronic device. This state, a law enforcement agency, a tribal conservation officer, an employee of this state or a law enforcement agency is not liable for damage to or loss of an electronic device that occurs as a result of viewing records.
- A state or law enforcement agency, or its employees, a tribal conservation officer is not liable for damage to an electronic trap monitor or an electronic device that occurs as a result of inspecting the electronic trap monitor or electronic device.

Issues Pros and Cons

Electronic trap monitors allow for the remote monitoring of traps. Such remote technologies will save time in monitoring traps by reducing travel time, reducing time spent checking empty traps, and may relieve the stress of having to manage several traps at once. Nuisance control companies

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alleviate the burden of wildlife calls from the Department, freeing officers' and biologists' time to concentrate on priority species.

Electronic trap monitor technologies may have systematic issues, such as signal strength, battery power, and inaccurate readings. In addition, electronic trap monitors may be damaged by animals caught in traps and traps may be sprung without catching animals that may activate the device.

Other States

The Department reviewed regulations in Illinois, Indiana, Ohio, Missouri, and Wisconsin to determine if electronic trap monitors are legal for nuisance animal control businesses. The results were the following:

- Illinois: Electronic monitoring systems may be used in lieu of physical visits for nuisance animal control businesses under certain conditions.
- Indiana: Electronic monitoring systems are illegal.
- Ohio: Electronic monitoring systems are legal for nuisance animal control businesses.
- Missouri: Electronic monitoring systems are illegal.
- Wisconsin: Electronic monitoring systems are illegal.

Biological

The Department does not expect a biological impact to wildlife populations.

Social

The Department has received support from a select number of licensed wildlife damage and nuisance animal control businesses.

Economic

The Department does not expect any significant economic impacts.

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Relevant Divisions have contributed to the preparation of this order. This order was submitted for information on February 13, 2020, at the Natural Resources Commission meeting. This item appeared on the Department's January calendar and may be eligible for approval on March 19, 2020.

Daniel Kennedy, Acting Chief
Wildlife Division

Gary Hagler, Chief
Law Enforcement Division

Deb Begalle, Chief
Forest Resources Division

Ronald A. Olson, Chief
Parks and Recreation Division

James Dexter, Chief
Fisheries Division

Shannon Hanna
Natural Resources Deputy

I have analyzed and discussed these recommendations with staff and concur as to matters over which the Director has authority.

Daniel Eichinger, Director

Date

WILDLIFE CONSERVATION ORDER

Amendment No. 2 of 2020

By authority conferred on the Natural Resources Commission and the Director of the Department of Natural Resources by sections 40107 and 40113a of 1994 PA 451, MCL 324.40107 and 324.40113a, it is ordered that effective March 20, 2020, the following section(s) of the Wildlife Conservation Order shall read as follows:

5.52 Nuisance animal control businesses, public nuisance animal control agencies and non-profit nuisance animal control organizations, permit issuance; requirements.

Sec. 5.52 The department's wildlife permit specialist may issue a permit to a reputable nuisance animal control business, public nuisance animal control agency, or non-profit nuisance animal control organization for the purpose of taking certain animals causing damage to personal or real property. A person issued a permit under this section is subject to all of the following requirements:

(1) Permits shall expire on the third March 31 after the date of issue, except as noted in section 5.52b and 5.52d of this order.

(2) Permittees may, upon verifying the complaint of any person suffering damage or nuisance, effect control measures at any time of year within cities, villages, or townships closed to hunting or prohibiting the discharge of firearms. In other areas of the state, permittees may, upon verifying the complaint of any person suffering damage or nuisance, effect control measures from April 1 to September 30. Notwithstanding the other provision of this subsection, permittees may, upon verifying a complaint of damage or nuisance, effect control measures at any time of year within the curtilage of the complainant. For the purposes of this subsection, "curtilage" means the dwelling house, associated buildings, and associated yard used for domestic purposes. Control measures in areas and at times not otherwise provided by this subsection shall only be initiated on those complaints referred to the permittee by a wildlife biologist or conservation officer.

(3) Permittees shall be authorized to undertake control measures on the premises of the complainant for the control of bats that are not threatened or endangered and the control of coyote, fox, weasels, mink, raccoon, skunk, opossum, woodchuck, badger, muskrat, squirrels, ground squirrels, rabbits, English sparrows, feral pigeons, starlings, and crows. Permittees shall also be authorized to undertake control measures on the premises of the complainant on beaver on private lands in zone 3 during the closed season; however, beaver shall not be live trapped and relocated or translocated without authorization of the wildlife management unit supervisor. Control of damage by other wildlife shall be undertaken only as authorized by a wildlife biologist or conservation officer. Control of damage caused by protected migratory birds shall require a federal permit, except as noted in section 5.52b and 5.52d of this order.

(4) To effect control measures, permittees may use foothold traps, body gripping or conibear type traps, live traps, firearms if possessed and used in compliance with all applicable state, local, and federal firearm laws and colony or multiple-catch traps for species other than muskrat. Colony traps may be used for muskrat if used in compliance with subsection 3.600(5). To affect control measures, permittees may also use snares the entire year if one or more of the following conditions are met:

(a) Permitted species is within the curtilage of the complainant.

(b) Permitted species is trapped upon the premises of the complainant in completely submerged underwater sets.

(c) For the control of fox and coyote outside the curtilage upon the premises of the complainant in the Lower Peninsula if the snare meets the requirements of subsection 3.609(2), subdivisions (b) through (j).

(5) Permittees may sell live nuisance feral pigeons live trapped during legitimate nuisance control operations.

(6) A dead animal taken by means other than pesticides during the open season for that animal may be disposed in any manner provided by section 4.3 of this order if the person disposing of the animal is licensed to take the animal

under part 435, hunting and fishing licensing, of the natural resources and environmental protection act, 1994 PA 451.

(7) Non-profit nuisance animal control organizations shall comply with all rules and regulations for permittees. The permit shall be issued in the name of an official of the organization. The person to whom the non-profit nuisance animal control permit is issued shall not authorize any employee or volunteer of the organization to undertake control measures without providing the employee or volunteer a copy of the permit countersigned by that person. An employee or volunteer undertaking nuisance animal control measures shall produce a copy of the countersigned permit upon demand of a police or peace officer.

(8) All live traps, foot-hold traps, and other catching devices designed and used in a manner to trap or capture animals alive shall be checked daily except as provided in subsection (8)(a). All traps and catching devices used under the authority of a permit issued under this section shall be marked as provided by section 3.600, subsections (2) and (3), except that the trap or catching device shall be marked "permit no." followed by the permittee's permit number, and the business name, and business phone number of the permittee.

(a) Electronic trap monitors may be used under all the following conditions provided that the trap is physically checked in-person by the permittee at least once every 72 hours:

(i) The electronic trap monitor remains in continuous operation while in use and shall be able to provide trap status at least once every 24 hours.

(ii) The electronic trap monitor shall be checked electronically at least once every 24 hours.

(iii) The electronic trap monitor has notification alarms that report real-time trap information including trap door closed activity and trap door open activity within one hour after detection via email or text-based messaging systems.

(iv) The electronic trap monitor has notification alarms that report system health issues via email or text-based messaging.

(v) The electronic trap monitor has on-demand control unit testing capabilities for determining trap status, signal strength, and battery condition via remote system check-in.

(vi) If the electronic trap monitor notification alarm reports a trap closure, the permittee is required to physically visit the trap within 24 hours of the time the trap was reported closed.

(vii) If the electronic trap monitor reports a system health issue, the permittee is required to physically check the trap within 24 hours of the last time a notification alarm was received.

(viii) Electronic trap monitoring devices shall be marked with the permittee's permit number, and the business name, and business phone number of the permittee.

(ix) Permittees shall maintain records as provided by section 5.54 of this order. This also includes alert notifications and trap status check via the centralized application database. All records shall be available for inspection at any reasonable time by a state or law enforcement agency, or its employees, or a tribal conservation officer.

(x) An individual who displays records using an electronic device is not presumed to have consented to a search of the electronic device. This state, a law enforcement agency, a tribal conservation officer, an employee of this state or a law enforcement agency is not liable for damage to or loss of an electronic device that occurs as a result of viewing records.

(xi) This state, a law enforcement agency, a tribal conservation officer, an employee of this state or a law enforcement agency is not liable for damage to an electronic trap monitor or an electronic device used to inspect records that occurs as a result of inspecting the electronic trap monitor or electronic device.

(xii) Section (8)(a) shall be rescinded on February 28, 2022.

(9) Captured animals shall not be released from or upon a public roadway or right of way. Captured animals shall not be released upon the lands of another person, whether private or public lands, without the consent of the landowner or land manager.

(10) All animals, which the permittee is authorized to take, shall be taken and disposed of in a manner to ensure humane handling or killing. Captured animals shall not be held longer than 24 hours unless requested by a department representative, or by a physician or public health official for public health reasons. Captured animals shall not be euthanized except by methods recommended and approved by the department.

(11) Any control measures undertaken by the permittee shall be considered a contractual agreement between the permittee and the complainant. The cost of control effected under the authority of a permit is the responsibility of the permittee.

(12) The department shall not be liable for any damage suffered by a complainant as a result of the performance of the permittee operating under the authority of a permit.

Issued on this 19th day of March, 2020.

Approved as to matters over which the Natural Resources Commission has authority.

_____, Chair
Natural Resources Commission

Approved as to matters over which the Director has authority.

Daniel Eichinger
Director