

V. Regulations, 321 CMR 2.08

321 CMR: DIVISION OF FISHERIES AND WILDLIFE

321 CMR 2.00: MISCELLANEOUS REGULATIONS RELATING TO FISHERIES AND WILDLIFE.

321 CMR 2.08: USE OF CERTAIN TRAPS FOR THE TAKING OF FUR-BEARING MAMMALS.

(1) Definitions: for the purposes of 321 CMR 2.08, the following words and phrases have the following meanings:

Agriculture or agricultural use means farming or agriculture as defined in G.L. c. 111, § 1.

Cage or box type trap means a trap that confines the whole animal without grasping any part of the animal.

Conibear type trap means "Conibear" model traps and similar body-gripping traps and devices, whether or not enclosed in or comprising part of a box, tube, or other enclosing device.

Department of Environmental Protection means the Department of Environmental Protection within the Executive Office of Environmental Affairs, as provided for in G.L. c. 21A, § 7.

Department of Public Health means the Department of Public Health within the Executive Office of Health and Human Services, as provided for in G.L. c. 6A, § 7G.

Director means the Director of the Division of Fisheries and Wildlife, as provided for in G.L. c. 21, § 7G.

Division means the Division of Fisheries and Wildlife within the Department of Fisheries, Wildlife and Environmental Law Enforcement, as provided for in G.L. c. 21A, § 8.

Federal department of public health means the United States Public Health Service.

Fur-bearing mammals means all mammals in the Class Mammalia, as defined in G.L. c. 131, § 1.

Municipal Board of Health means a board of health as defined in G.L. c. 111, § 1.

Municipal Conservation Commission means a conservation commission as provided for in G.L. c. 40, § 8C, provided that, if a town or city does not have a conservation commission, the authority thereof shall be exercised by the board of selectmen in a town or the mayor in a city.

Permissible traps means cage or box type traps, common type mouse and rat traps, and net traps.

Prohibited traps means all traps used for the capture of fur-bearing mammals except cage or box type traps, common type mouse and rat traps, and net traps.

Restricted traps means conibear type traps.

(2) Use of certain traps prohibited. Except as provided in G.L. c. 131, § 80A, and 321 CMR 2.08, a person shall not use, set, place, maintain, or possess for the purpose of capturing fur-bearing mammals, any prohibited trap in any wood, field, or waters of Massachusetts or in any other place where fur-bearing mammals may be found.

(3) Health and safety exceptions. Notwithstanding the provisions of 321 CMR 2.08(2), the

Department of Public Health, the federal department of public health, or a municipal board of health may use prohibited traps for the purpose of protection from threats to human health and safety.

(4) Criteria for determining threats to human health and safety. A threat to human health and safety may include, but not be limited to, one or more of the following situations:

- (a) beaver or muskrat occupancy of a public water supply;
- (b) beaver or muskrat-caused flooding of drinking water wells, wellfields, or water pumping stations;
- (c) beaver or muskrat-caused flooding of sewage beds, septic systems, or sewage pumping stations;
- (d) beaver or muskrat-caused flooding of a public or private way, driveway, railway, or airport runway or taxiway;
- (e) beaver or muskrat-caused flooding of electrical or gas generation plants or transmission or distribution structures or facilities, telephone or other communications facilities, or other public utilities;
- (f) beaver or muskrat-caused flooding affecting the public use of hospitals, emergency clinics, nursing homes, homes for the elderly, or fire stations;
- (g) beaver or muskrat-caused flooding affecting hazardous waste sites or facilities, incineration or resource recovery plants, or other structures or facilities whereby flooding may result in the release or escape of hazardous or noxious materials or substances;
- (h) the gnawing, chewing, entering, or damage to electrical or gas generating or transmission equipment, cables, alarm systems, or facilities by any beaver or muskrat;
- (i) beaver or muskrat-caused flooding or structural instability on property owned by the applicant if such animal problem poses an imminent threat of substantial property damage or income loss, which shall be limited to: 1. flooding of residential, commercial, industrial or commercial buildings or facilities; 2. flooding of or access to commercial agricultural lands which prevents normal agricultural practices from being conducted on such lands; 3. reduction in the production of an agricultural crop caused by flooding or compromised structural stability of commercial agricultural lands; 4. flooding of residential lands in which the municipal board of health, its chair or agent or the state or federal department of health has determined a threat to human health and safety exists.

(5) Special permits to use restricted traps or other means of relief. A person or his duly authorized agent may apply for a permit to use restricted traps or other means of relief, as follows:

- (a) to the municipal board of health, in situations involving a threat to human health and safety, in accordance with 321 CMR 2.08(6) through (14);
- (b) to the director, in situations not involving a threat to human health and safety, in accordance with 321 CMR 2.08(16) through (18).

(6) Emergency permit to use restricted traps, breaching of water impedance structures, or

water flow control devices. An applicant or his duly authorized agent may apply to the municipal board of health for an emergency permit to immediately alleviate a threat to human health and safety pursuant to 321 CMR 2.08(4), on property owned, leased, or lawfully occupied by the applicant, **provided, that in the case of a tenant or lessee, such applicant shall secure the authorization of the property owner prior to making such application.**

(7) Authorizations under an emergency permit. Such emergency permit shall authorize the applicant or his duly authorized agent, as named in the permit, to immediately remedy the threat to human health and safety, by one or more of the following options, for a period not to exceed 10 consecutive days:

(a) the use of restricted traps or permissible traps, subject to the provisions of 321 CMR 2.08(21);

(b) the breaching of dams, dikes, bogs or berms, so-called, subject to the determinations and conditions of municipal conservation commissions pursuant to provisions of G.L. c. 131, § 40;

(c) the employment of any non-lethal management control devices or water flow control devices, subject to the determinations and conditions of municipal conservation commissions pursuant to provisions of G.L. c. 131, § 40.

(8) Determination of threat to human health and safety and issuance of emergency permit. The municipal board of health shall, after receipt of an application for an emergency permit pursuant to 321 CMR 2.08(6), and after making a determination that such threat exists, and subject to the provisions of 321 CMR 2.08(7)(b) and (c), immediately issue said emergency permit for a period not to exceed 10 consecutive days.

(9) Exception to determination of threat to human health and safety. Notwithstanding the provisions of 321 CMR 2.08(8), the department of environmental protection shall make any determination of a threat to a public water supply, pursuant to 321 CMR 2.08(4)(a). The municipal board of health and the department of public health shall receive such determination from the department of environmental protection prior to issuing an emergency permit for such public water supply.

(10) Denial of application for an emergency permit to use restricted traps. If an application for such emergency permit is denied, an applicant may:

(a) appeal to the department of public health, if the denial involves a determination as to the existence of a bona-fide threat to human health and safety. If such alleged threat involves a public water supply, the department of public health shall consult with the department of environmental protection prior to rendering a decision on the appeal.

(b) if the department of public health determines that a bona-fide threat to public health and safety exists, **it shall render such decision to the municipal board of health, which shall,** subject to the provisions of 321 CMR 2.08(7)(b) and (c), immediately issue said emergency permit for a period not to exceed 10 consecutive days.

(c) appeal to the director, if the municipal board of health determines that a bona-fide threat to human health and safety exists, but the board's denial involves a question as

to whether the threat is caused by the activities of beaver or muskrat.

(d) if the director determines that such threat to human health and safety is caused by the activities of beaver or muskrat, he shall render such decision to the municipal board of health, which shall, subject to the provisions of 321 CMR 2.08(7)(b) and (c), immediately issue said emergency permit for a period not to exceed 10 consecutive days.

(11) Extension of existing emergency permit. In the event that a threat to human health and safety, as specified in an emergency permit issued pursuant to 321 CMR 2.08(8), has not been abated or alleviated within the authorized 10 day period, the applicant or his duly authorized agent, with the concurrence of the municipal board of health, shall apply to the director for an extension to such permit for a period not to exceed 30 consecutive days. If the director determines that a bona-fide threat to human health and safety exists, as advised by the municipal board of health, the department of public health, or the department of environmental protection, as the case may be, he shall immediately issue such extension permit for a period not to exceed 30 calendar days.

(12) Development of abatement plans. If the director determines that an extension to an emergency permit should be issued, he shall, within 30 days of such decision, develop a **plan using alternative, non-lethal management techniques** to address the beaver or muskrat problem which instigated the issuance of the permit. Such plan shall:

(a) be developed with the participation and assistance of the applicant or his duly authorized agent, the municipal board of health, and the municipal conservation commission as required pursuant to G.L. c. 131, § 40; and

(b) describe measures which may be employed to address said beaver or muskrat problem, using barriers, fencing, or other alternative non-lethal management techniques, water flow control devices, if appropriate to the situation, subject to the determinations and conditions of municipal conservation commissions pursuant to G.L. c. 131, § 40, and, if necessary, continued use of permissible traps to provide a long-term solution.

(c) The director shall, after development of such a plan, provide such reasonable technical advice, assistance, and support as shall be necessary for the applicant or his agent to implement the abatement plan.

(13) Additional emergency permits. Notwithstanding the provisions of 321 CMR 2.08(6) through (12), an applicant or his duly authorized agent may apply to the municipal board of health for additional emergency permits, provided:

(a) the applicant states in writing that there exists on property owned, leased or lawfully occupied by him a beaver or muskrat problem which the applicant or his authorized agent has: 1. attempted to address using alternative, non-lethal management techniques or permissible traps, and the problem cannot reasonably be abated by the continued use of such alternative, non-lethal management techniques or permissible traps; or 2. the applicant has applied for and is awaiting an extension emergency permit pursuant to 321 CMR 2.08(11).

(b) an applicant or his duly authorized agent, in the case of application for an additional emergency permit pursuant to 321 CMR 2.08(13)(a)1., shall be eligible for only two such additional emergency permits, in accordance with 321 CMR 2.08(14).

(14) Authorizations under an additional emergency permit. An additional emergency permit shall be authorized and valid as follows:

(a) application shall be made in the same manner as provided for in 321 CMR 2.08(6),(8) and (9);

(b) the first such permit shall authorize the applicant or his duly authorized agent, as named in the permit, to use any or all of the measures specified in 321 CMR 2.08(7). Said additional emergency permit shall be valid for a period of 10 consecutive days;

(c) if the director has not approved an extension emergency permit within the 10 day period provided in 321 CMR 2.08(14)(b), the applicant or his duly authorized agent may apply for a second additional emergency permit. Such second additional emergency permit shall authorize the applicant or his duly authorized agent, as named in the permit, to use only those measures proved for in 321 CMR 2.08(7)(b) and (c). Such additional emergency permit shall be valid for a period not to exceed 10 consecutive days, or until the date on which the director renders his decision regarding the applicant's extension emergency permit, whichever period is shorter.

(15) Recommended subregulatory guidelines and standards. For the purposes of 321 CMR 2.08(5) through (14), the director, in consultation with the departments of environmental protection and public health, may recommend guidelines and standards for permits, applications, reports, site inspections, dam or dike breaching periods, and water flow control structure installation. Such guidelines and standards may be set forth or distributed to boards of health, municipal conservation commissions, applicants or their agents, by postal mail or agency websites, or otherwise, and may include reference to published or unpublished agency documents, brochures, or handouts relevant to such activities. Such standards and guidelines may be issued jointly with the departments of environmental protection and public health. Such standards and guidelines, where not repugnant to law, shall be construed consistently with the provisions of 321 CMR 2.08 and G.L. c. 131, § 80A. Nothing in 321 CMR 2.08(15) shall be construed to limit the powers and authorities of the departments of environmental protection and public health.

(16) Non-emergency special permit to use restricted traps in situations not involving threats to human health and safety. The director may authorize an applicant or his duly authorized agent, as named in the permit, to use restricted traps to abate animal problems on property owned by the applicant, in accordance with 321 CMR 2.08(16) through (18).

(17) Application procedure for obtaining non-emergency special permit to use restricted traps.

The applicant shall apply to the director in writing and the application shall contain the following information:

(a) name, address, and telephone number of the applicant where the applicant may be reached between the hours of 9:00 A.M. and 5:00 P.M. and name of corporation or business represented by the applicant, if any;

(b) name, address, and telephone number of the property owner or lessee, if different;

(c) a statement by the applicant that there exists on property owned or leased by him, or on which the applicant intends to act as agent for the owner or lessee, a problem caused by fur-bearing mammals which cannot reasonably be abated by the use of permissible traps;

(d) a statement by the applicant that he, or the owner or lessee, has attempted to abate the problem using permissible traps and has failed to make such abatement;

(e) description of the type of damage caused by fur-bearing mammals, and the kind of mammal;

(f) street address or geographical location where the mammal damage is occurring;

(g) trap registration number of the applicant, if required pursuant to G.L. c. 131, § 80;

(h) the date the application was executed;

(i) the applicant's signature, executed under the pains and penalties of perjury; and

(j) the signature of the property owner or lessee, if different, executed under the pains and penalties of perjury.

(18) Review and approval procedure for obtaining non-emergency special permit.

When the director receives an application for a non-emergency **special** permit to use a restricted trap, as provided for in 321 CMR 2.08(17), he shall:

(a) review the application and the type and circumstances of the mammal problem described therein and may, at his discretion, additionally cause a field inspection to be made of the situation; and shall further, if he determines that the circumstances warrant issuance of such permit,

(b) cause the applicant to demonstrate that he has used permissible traps for a period of at least 15 consecutive days, and that usage of such traps has failed to abate the mammal problem, and a signed statement by the applicant, signed under the pains and penalties of perjury, shall be accepted by the director as sufficient evidence of such permissible trap usage; and shall further, if he determines that the circumstances warrant issuance of such permit,

(c) cause the applicant to demonstrate that he has attempted to resolve the mammal problem with alternative, non-lethal management techniques, including, where appropriate, flow devices, exclosures, barriers, or harassment, and that usage of such alternative, non-lethal techniques has failed to abate the problem, and a signed statement by the applicant, signed under the pains and penalties of perjury, shall be accepted by the director as sufficient evidence of such usage of alternative, non-lethal techniques; and

(d) when the applicant has complied with 321 CMR 2.08(18)(a) through (c), to the satisfaction of the director, the director may authorize in writing the use, setting, placing, tending, and maintenance of restricted traps, of such number and type as he shall determine, and subject to the provisions of 321 CMR 2.08(21), for a period not to exceed 30 consecutive days at the address or location specified in the application by the named applicant.

(e) At the conclusion of the 30 day period, the applicant shall make a report in

writing to the director, and shall state the number of days and/or trap-nights during which restricted traps were used, the success or failure of trap usage, and the number and kind of fur-bearing mammals trapped, if any, their disposition, and any other information as shall have been required by the director in the permit.

(f) If the applicant was unsuccessful in abating the mammal problem in accordance with such non-emergency **special** permit, the applicant may reapply and shall again comply with provisions of 321 CMR 2.08(18)(a) through (c).

(19) Procedure for reviewing complaints of damage by fur-bearing mammals. If a report is received by the division of damage by or problems with beaver, muskrat, or other fur-bearing mammals:

(a) the circumstances of the complaint shall be ascertained; and

(b) if the complaint or problem is alleged to pose a threat to human health and safety as provided for in 321 CMR 2.08(4), the complainant shall be referred to the municipal board of health in the city or town in which the problem occurs, or, if on federal property, to the federal department of public health; or

(c) if the complaint or problem is alleged not to pose a threat to human health and safety, as provided for in 321 CMR 2.08(4), the division may record the complaint data and may thereafter provide technical information, conduct a site visit, issue a dam-breaching permit pursuant to 321 CMR 2.02(6) subject to the determinations and conditions of municipal conservation commissions pursuant to provisions of G.L. c. 131, § 40, refer the complainant to a licensed hunter or trapper for harvest using firearms or permissible traps during the lawful open season, refer the complainant to a licensed problem animal control agent for taking with firearms or permissible traps, issue a permit to the applicant or a duly authorized agent to control the animal out of season using firearms, advise the complainant of the process for obtaining a non-emergency **special** permit to use restricted traps as provided for in 321 CMR 2.08(17) and (18), or take such other actions or provide such advice as is deemed appropriate to the situation.

(20) Denial of non-emergency special permit to use restricted traps. Where not repugnant to provisions of G.L. c. 30A, the procedure for appealing the denial of a non-emergency **special** permit to use restricted traps shall be as provided in 321 CMR 2.02(11).

(21) Use of traps and firearms. Traps and firearms may be used, set, placed, maintained, tended, or possessed for the capture of fur-bearing mammals in accordance with G.L. c. 131, §§ 4, 5, and 37, and 321 CMR 2.14 and 3.02(5), provided that a person lawfully using traps pursuant to permits issued under provisions of 321 CMR 2.08 shall:

(a) register all traps used, placed, set, maintained, possessed or tended on land of another, in accordance with provisions of G.L. c. 131, § 80.

(b) use restricted traps with a jaw spread not less than four inches and not greater than seven inches, provided such traps are used only when completely submerged in water or when set inside a dwelling or other building with the permission of the owner or occupant thereof. When set inside a building, such traps must have two functioning springs. Notwithstanding the foregoing, restricted traps with a maximum jawspread not greater than 10 inches may be used for the trapping

of beaver only, provided that such traps are used only when completely submerged in water.

(c) use permissible traps only when in conformance with the provisions of 321 CMR 2.14(24) and 3.02(5)(c), unless otherwise allowed by law.

(d) for the purposes of 321 CMR 2.08, determine the jaw spread of a trap by measuring midway across the open jaws at right angles to the hinges between the extreme outside edges; and all persons subject to c. 131 shall

(e) use firearms only when in conformance with the provisions of 321 CMR 2.14(24)(f) and 3.00, and G.L. c. 140, unless otherwise allowed by law.

(22) Use of certain alternative management techniques. Notwithstanding the provisions of G.L. c. 131, § 80A and 321 CMR 2.08, a person not wishing to obtain an emergency permit or non-emergency special permit to use restricted traps pursuant to 321 CMR 2.08 shall not otherwise be required to obtain a permit to use certain alternative, non-lethal management techniques for the abatement or alleviation of problems caused by fur-bearing mammals, including, but not restricted to, barriers, exclosures, repellents registered and applied consistent with provisions of G.L. c. 131, § 43, and c. 132B, harassment, and similar techniques not otherwise repugnant to law, and subject to the determinations and conditions of municipal conservation commissions pursuant to provisions of G.L. c. 131, § 40, and the determinations and conditions of the division pursuant to 321 CMR 2.02(6).

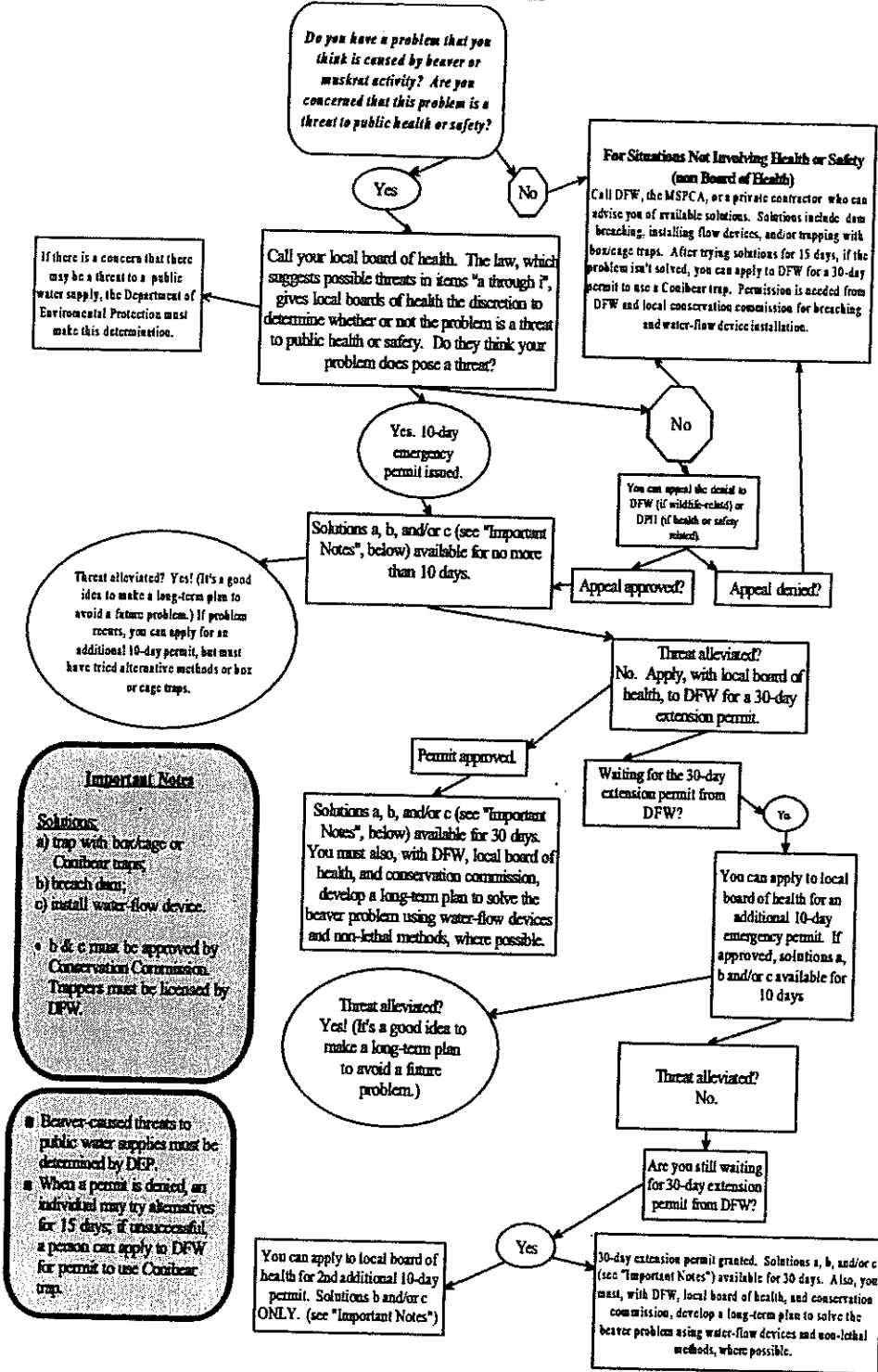
(23) Agents. Licensed trappers, including licensed problem animal control agents, may act as agent for an applicant pursuant to 321 CMR 2.08, provided that such agent shall comply with the trapper training provisions of 321 CMR 2.14(24)(b) and (26), and 3.02(5)(c) and (f), and such other provisions of 321 CMR as shall be applicable.

(24) Incidental Capture. Any person taking a fur-bearing mammal or any other vertebrate animal under provisions of a permit issued pursuant to 321 CMR 2.08 shall, if the animal is killed in the trap, surrender the entire carcass of such animal within 48 hours to the Division, provided that if the animal is a beaver or a muskrat, or such other fur-bearing mammal as shall be specifically named in the permit as causing a threat to human health and safety, the permittee may retain the animal subject to relevant provisions of 321 CMR and G.L. c. 131. If an animal other than a beaver, a muskrat, or other fur-bearing mammal as shall be specifically named in the permit is taken alive in a trap, such animal shall immediately be released at the site of capture.

(25) Validity of permits. Except where a shorter time period is specified in G.L. c. 131, § 80A and 321 CMR 2.08, all permits issued pursuant to 321 CMR 2.08 shall be issued and may be reapplied for consistent with provisions of G.L. c. 131, § 32.

Regulatory Authority: G.L. c. 131, § 80A.

**Procedure for Alleviating Beaver or Muskrat Related Conflicts Under
M.G.L. Ch. 131 sec. 80A**



Important Notes

Solutions:

- a) trap with barage or Conibear trap;
- b) breach dam;
- c) install water-flow device.

- b & c must be approved by Conservation Commission. Trappers must be licensed by DFW.

- Beaver-caused threats to public water supplies must be determined by DEP.
- When a permit is denied, an individual may try alternatives for 15 days, if unsuccessful, a person can apply to DFW for permit to use Conibear trap.