

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

State of Maine
119th Legislature
Second Regular Session

Final Report of the Staff Study to Explore Disability Access Issues
in Relation to Outdoor Sporting Activities
to the Joint Standing Committee on Inland Fisheries and Wildlife

January 2000

Prepared by: Alison L. Ames, Legislative Researcher and
David Webb, Legislative Analyst
Office of Policy and Legal Analysis

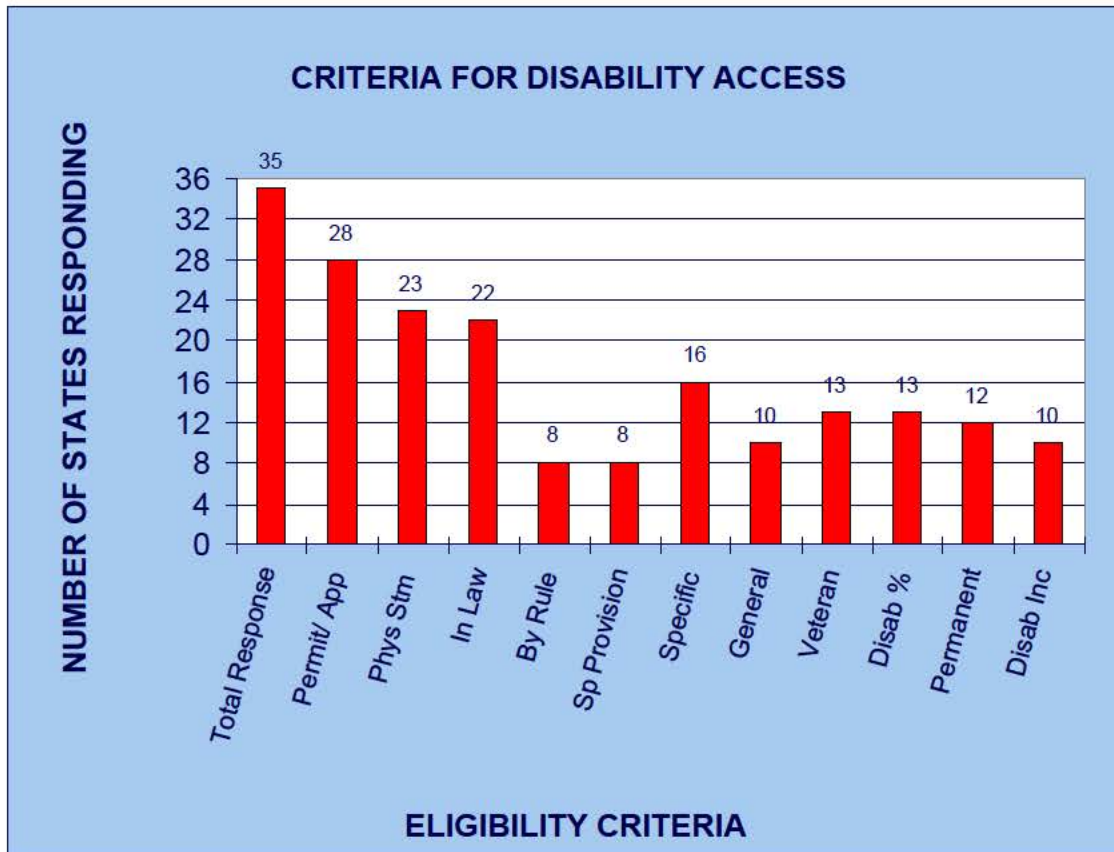
Table of Contents

	Page
Executive Summary	i
Table 1 Criteria for Disability Access	i
Table 2 Type of Disability Accommodation	ii
Introduction	1
Table 3 119 th Legislation Dealing with Disability Access to Outdoor Sporting Activities	2
Methodology	3
Background	3
Federal Disability Law	3
"Qualified Individual"	4
State's Obligation	5
Specific Accommodations	5
Obligations Under MHRA	5
Access to Public Services	6
Findings	7
A. Original Mail Survey	7
Similarities	7
Table 1 Criteria for Disability Access	8
Table 2 Type of Disability Accommodation	9
Differences	10
B. Telephone Survey	11
Timing Relative to ADA	11
Program Utilization	12
Miscellaneous Comments	12
Concerns	13
Conclusion	13
Appendices	
A. Map of Respondent States	
B. Letter of Request for Information	
C. Telephone Survey Information	
D. Telephone Survey General Questions	
E. Participating Advocacy Groups	
F. Oregon's Legislation	
G. Key for Explanation of Table and Chart Column Titles	
H. Eligibility Criteria Chart	
I. Accommodations Chart	

EXECUTIVE SUMMARY

The purpose of this report is to assist the Joint Standing Committee on Inland Fisheries and Wildlife in understanding the State's obligations and options regarding disability access issues as they relate to outdoor sporting activities, such as hunting and fishing. Many bills were introduced in the First Regular Session of the 119th Legislature that dealt with some aspect of access to outdoor activities by individuals with disabilities. In late January 1999, Representative Matthew Dunlap, House Chair of the Joint Standing Committee on Inland Fisheries and Wildlife, sent a letter of request for information to the fish and wildlife agencies of the other states. Representative Dunlap asked the Office of Policy and Legal Analysis to assist in the compilation and analysis of the survey and other relevant information. In total, 34 states responded to the letter with information about disability access in their states. The resulting information provides an overview of the types of sporting accommodations other states are currently providing to their residents with disabilities along with a general representation of the types of criteria states use to determine eligibility. Although the states report a wide spectrum of programs and procedures, the most common types of eligibility criteria and special accommodations are listed in Tables 1 and 2 below.

Frequently reported criteria for eligibility TABLE 1



[See Appendix G: Key for Explanation of Table and Chart Column Titles]

Frequently reported accommodations provided TABLE 2



[See Appendix G: Key for Explanation of Table and Chart Column Titles]

A primary objective of this report is to provide a cornerstone of information that would help identify questions to be examined by the Joint Standing Committee on Inland Fisheries and Wildlife for discussion of the bills related to disability access for outdoor sporting activities in the Second Regular Session of the 119th Legislature. The following questions were studied during the legislative interim under the guidance of the Chairs of the Committee:

- What are the outdoor disability access requirements under federal and state law?
- Is Maine meeting the access requirements as they relate to sporting activities?
- What are the wildlife access needs of individuals with disabilities in Maine?
- What is the intent of ADA as it relates to outdoor recreational activities?
- What options are available for Maine's wilderness areas where services are limited or nonexistent?

From the information gathered, the following are questions for the committee to consider in determining public policy issues related to disability access to outdoor sporting activities.

- Should Maine's access legislation merely fulfill the legal obligation of the current ADA interpretation--or should Maine undertake other steps beyond the minimum

requirements to provide full access to disabled individuals for outdoor sporting activities?

- How does Maine appropriately balance access by the disabled community that may require special accommodations and stewardship of the natural wilderness habitat that may require special protection and limited use or access?

It is the task of the committee to formulate a framework for disability access policy as it relates to outdoor sporting activities.

INTRODUCTION

The purpose of this report is to assist the Joint Standing Committee on Inland Fisheries and Wildlife in understanding the Legislature's obligations and options regarding disability access issues as they relate to outdoor sporting activities (hunting and fishing). During the First Regular Session of the 119th Legislature bills concerning the application of the Americans with Disabilities Act (ADA) to inland fisheries and wildlife activities were introduced and referred to the Joint Standing Committee on Inland Fisheries and Wildlife. One bill (LD 1225: Resolve, to Direct the Department of Inland Fisheries and Wildlife to Review Rules for Compliance with The Americans with Disabilities Act.) proposed to specifically address the need to monitor current departmental practices for compliance with disability access standards. The other bills (for example, LD 8: An Act to Allow Hunting from Motor Vehicles for Persons Limited in Their Ability to Walk; LD 730: An Act to Allow Certain Disabled Persons to Fly-fish With Open-Faced Reels; and LD 1026: An Act to Allow Crossbow Use During Archery Season by a Person Who Has Lost the Use of a Hand) sought to increase disability access by allowing specific accommodations to disabled individuals to certain sporting activities. [See Table 3 for a complete list of disability-related bills proposed during the First Regular Session of the 119th Legislature that were referred to the Joint Standing Committee on Inland Fisheries and Wildlife.] These bills raised legal and policy questions about the connection of ADA and the state's goal to increase disability access. The following questions led to the decision to study this policy issue more fully:

- What are the requirements for disability access accommodations under federal and state law?
- Is Maine meeting the disability access requirements?
- What is the intent of ADA as it relates to outdoor recreational activities?
- Which standard more closely adheres to Maine's vision of 'quality of life'?
- What options are available to individuals with disabilities for Maine's wilderness areas where services are limited or nonexistent?

By vote of the Joint Standing Committee on Inland Fisheries and Wildlife, the disability related bills were recommended to be carried over until the Second Regular Session of the 119th Legislature to allow for a more comprehensive study of this policy issue. This report is the compilation of information received from other states in response to a letter from Representative Matthew Dunlap, House Chair of the Joint Standing Committee on Inland Fisheries and Wildlife requesting information on disability access issues in other states, a follow-up telephone survey of selected states conducted by the Office of Policy and Legal Analysis, and additional research on the legal implications of the ADA requirements. [See Appendix A for a Map of the Respondent States, Appendix B for a copy of the Letter of Request for Information, Appendix C for Telephone Survey Information, and Appendix D for the Telephone Survey General Questions.]

<u>TABLE 3</u>

119th Legislation Dealing With Disability Access to Outdoor Sporting Activities

Referred to the Joint Standing Committee on Inland Fisheries and Wildlife

- LD 8; An Act to Allow Hunting from Motor Vehicles for Persons Limited in Their Ability to Walk. (Sponsor: Senator Libby)
- LD 371; An Act to Allow A Disabled Person to Use a Crossbow during Archery Hunting Season. (Sponsor: Representative Mack)
- LD 730; An Act to Allow Certain Disabled Persons to Fly-fish With Open-faced Reels. (Sponsor: Representative Berry)
- LD 1026; An Act to Allow Crossbow Use During Archery Season by a Person who has Lost the Use of a Hand. (Sponsor: Representative Cowger)
- LD 1052; An Act to Assist Disabled Fly-fishing Anglers. (Sponsor: Senator Nutting)
- LD 1225; Resolve, to Direct the Department of Inland Fisheries and Wildlife to Review Rules for Compliance with the Americans with Disabilities Act. (Sponsor: Representative Berry)
- LD 1338; An Act to Provide a Free Hunting License to a Person Who Has Lost the Use of One Arm. (Sponsor: Representative Ahearne)
- LD 1390; An Act to Expand Hunting Options for Disabled Military Veterans. (Sponsor: Representative Bragdon)

Referred to the Joint Standing Committee on Agriculture, Conservation and Forestry

- LD 1699; An Act to Ensure Compliance With Disability Access Laws by the Baxter State Park Authority. (Sponsor: Representative Clark)

The ADA states “the Nations [sic] proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals”. (42 U.S.C. 12101 Sec. 2 (a) (8)) Questions of disability access in wildlife areas are instrumental in shaping a framework necessary to formulate public policy related to the bills carried over to the Second Regular Session of the 119th Legislature.

- Should Maine’s access legislation merely fulfill the legal obligation of the current ADA interpretation--or should Maine undertake other steps beyond the minimum requirements to provide full access to the disabled for outdoor sporting activities?
- If Maine provides complete access to its wildlife resources will those areas lose the special quality that inherently defines them as ‘wild’?, or
- Will certain types of disability access erode the value of pristine wilderness?
- How does Maine appropriately balance access by the disabled community that may require special accommodations and stewardship of the natural wilderness habitat that may require special protection?

METHODOLOGY

This review examined the text of the ADA (42 U.S.C. 12101 et seq.), the federal Wilderness Accessibility for People with Disabilities study required by the ADA, the Maine Human Rights Act (5 § 4551 et seq.), and the information received from a survey of other states. Representative Dunlap initiated the study by seeking information from fish and wildlife officials in other states in late January 1999. [See the Appendix section for charts of state criteria and accommodations allowed, as well as a map indicating the respondent states.] In total, 34 states responded to the letter with information about disability access in their states. The abundance of information received and the rapid response rate of this informal survey suggests this topic also shares the attention of other states' wildlife agencies.

The state data in Tables 1 and 2 (pages 8 and 9) was collected as the result of a letter of request sent to each of the other states' inland fisheries and wildlife agencies. Materials returned by the states in response to the letter included:

- copies of state statutes, rules, and regulations;
- various public handouts including wildlife hunting, trapping, and fishing guides, access maps, and special disability pamphlets and publications;
- copies of applications and permit requests; and
- various newsletters, newspaper, and magazine articles chronicling the progress of state disability access programs.

At the request of the House Chair of the Joint Standing Committee on Inland Fisheries and Wildlife, this information was reviewed and compiled by the Office of Policy and Legal Analysis to identify the similarities and differences experienced by other states regarding disability access. Additional information was collected from the analysis of various government publications and web sites, both state and federal, that dealt with disability issues. This report is based on a synthesis of quantitative data gleaned from the individual state responses, the various articles and interpretations of the ADA impact on disability access, and the responses of representatives of various disability advocacy groups. (See Appendix E for the Participating Advocacy Groups)

BACKGROUND

Federal Disability Law. ADA refers to the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) that was enacted by the United States Congress to provide for certain rights for individuals with disabilities. The Americans with Disabilities Act became effective in January of 1992. The basic intent of the ADA is to enable people with disabilities to gain more complete access to the everyday life activities that are available to nondisabled individuals. ADA is divided into five titles and covers the major topics of employment, public services (such as public transit), public accommodations

(whether owned or operated publicly or privately), telecommunications, and 'miscellaneous' provisions.

Section 2 of the Americans with Disabilities Act (ADA) applies to "public entities" which includes state or local government, and gives each "qualified individual with a disability" the following rights:

1. Not to be *excluded from participation* in the services, programs, or activities of a public entity because of the disability,
2. Not to be *denied the benefits* of the services, programs, or activities of a public entity because of the disability, and
3. Not to be *subjected to discrimination* by a public entity because of the disability.

42 U.S.C. §12132 (1994)

The Department of Justice's regulations for implementing the ADA state that a "public entity" shall "operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a).

The services, programs and activities of a public entity defined in ADA include access to public recreation and wildlife areas. Galusha v. New York State Dept. of Environmental Conservation, 27 F.Supp. 2d 117 (N.D.N.Y. 1998). Furthermore, "program or activity" is defined in the ADA as all of the operations of ...a state or of a local government." 29 U.S.C. § 794(b)(1)(A).

Who is a "Qualified Individual With a Disability" Under the ADA?

"Disability" is defined as a "physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. §12115 (c)(2). In workplace discrimination cases, a plaintiff must initially prove he or she is *qualified to perform essential functions of a job*. This standard has been specifically applied to "recreational" access issues in San Diego Unified Port District v. Gallagher 73 Cal. Rptr. 2d 30 (1998). (relating to Port District's duty to consider special anchorage sites to accommodate a recreational boat owner with a walking disability)

In essence, therefore, in order for the ADA to apply, the disabled person must be able to safely and effectively perform the activity after the accommodation is in place.

What are the State's Obligations to Provide Access to Recreational Opportunities? First, under Title 2 of the ADA, a public entity is not required to make changes requested by a disabled person if those changes would "fundamentally alter the character of the program or would cause an undue burden". A state's obligations to

provide access to its programs and services has been defined as a “balance” that must be struck between the “statutory rights of the handicapped to be integrated into society and the legitimate interests [of the State] in preserving the integrity of [a public] program.” Galusha v. New York State Dept. of Environmental Conservation, 27 F.Supp. 2d 117 (N.D.N.Y. 1998).

Reasonable accommodations are those that do not require either a modification of the essential nature of a program or impose an undue burden on the program provider. Galusha at 124, citing Easley v. Snider, 36 F.3d. 297, 302 (3d. Cir. 1994).

Likewise, each "facility" need not be accessible; rather each "program" must be accessible with respect to existing facility. 28 CFR §35.150 (3). Viewing a program in its entirety, in essence, means that not all existing programs need to be made accessible. Accordingly, assuming that hunting and fishing are considered “programs or activities”, the state could arguably meet its access goal under the ADA by ensuring that eligible disabled individuals had at least some access or accommodation to hunting and fishing in the state.

Specific Accommodations to Participate in Hunting, Fishing and Trapping Activities. As discussed, all of the services, programs, and activities of a state are subject to the ADA, which include hunting, fishing and trapping activities. The questions raised by a number of the bills carried over from the First Regular Session of the 119th Legislature revolve around the state’s obligations (or opportunities) to “modify” its laws to allow disabled people to participate in hunting, fishing and trapping activities.

While no case law was located which specifically addressed a state’s obligations to “modify” its hunting, fishing and trapping laws, it follows the state is nonetheless responsible under the ADA to make “reasonable modifications to rules, policies, or practices” in order for disabled persons to enjoy the “participation in programs or activities provided by a public entity.” 42 U.S.C. §12115.

Any analysis of legislative or rules modifications should take into account several key points: First, the modification should pertain to persons qualified to safely perform the “essential functions” of the activity. In addition, any proposed change should be considered in light of the fact that the state is only required to make changes if those changes would not "fundamentally alter the character of the program or cause an undue burden"

Obligations Under the Maine Human Rights Act. On the state level, the Maine Human Rights Act (MHRA) bans discrimination on the basis of disability (as well as on the basis of race, color, sex, age marital status, religion, ancestry and national origin.) Among other things, the MHRA prohibits discrimination with regard to access to places of public accommodation. (both privately and publicly owned places) 5 M.R.S.A. § 4591.

To understand the interplay between the ADA and the MHRA it is important to note that the ADA preempts only *weaker* state provisions, not stronger ones. 42 U.S.C. 12201(b). Accordingly, the citizens of Maine have *at least* the rights enumerated within the ADA.

Access to Public Services and Accommodations. The basic approach to the MHRA with regard to public accommodations and access is similar to the approach covered by the ADA. A public entity as defined in the MHRA specifically includes “the state or any local government”. 5 M.R.S.A. §4553 sub-section 8-C. The “facilities” that fall within the purview of the MHRA appear to be more limiting than the broad coverage of the ADA in that the only apparent reference to wilderness access is within the term “parks” and “other places of recreation”. It is unclear if all state owned lands, or only designated “parks” fall into this category. In addition, the MHRA contains a major exception for physical barriers in facilities existing since 1974. Thus, under the MHRA, the state would theoretically not be obligated to make a facility accessible if it was in place in 1974. The ADA, on the other hand, began requiring the removal of barriers to accessibility in existing facilities in 1992, provided the removal was “readily achievable.”

The MHRA likewise contains certain limitations. For example, it specifically does not require an entity to “permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that entity when the individual poses a direct threat to the health or safety of others.” 5 M.R.S.A. § 4592 . In addition, the MHRA contains an “undue hardship” exception, defined in section 4553 (9-B). (While the references to this exception appear to be directed to private entities, it appears from related language that this exception would also cover public entities.)

The state’s obligation to review and modify hunting, fishing and trapping rules would likewise come under MHRA requirements. The MHRA also contains a specific reference to unlawful discrimination which includes the “failure to make reasonable modifications in policies, practices or procedures, when modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities”. 5 M.R.S.A. This requirement imposed on the state is virtually identical to the ADA requirement for covered entities to make “reasonable modifications to rules, policies, or practices” in order for disabled persons to enjoy the “participation in programs or activities provided by a public entity.” 42 U.S.C. §12115.

In sum, under the ADA the MHRA, the state is required to make reasonable modifications to its rules, policies, or practices in order for qualified disabled persons to participate in its programs and activities, provided that the modification does not “fundamentally alter” or cause an “undue burden” on the facility or program

FINDINGS

A. Original Mail Survey. The following information and findings are based on the voluntary response of 34 states to a letter sent to their fish and wildlife agencies and

information gathered by the Office of Policy and Legal Analysis. Notably, all states responding identified the need for some type of special accommodation for individuals with disabilities who wish to participate in certain outdoor sporting activities, as illustrated by the existence in states of some type of exceptions due to disability. Hawaii and Pennsylvania were the only states responding that indicated they were currently in the process of developing such standards. Oregon enacted legislation in April 1999 that re-defined and expanded their definition of “physical disability”. (See Appendix F for Oregon's legislation.)

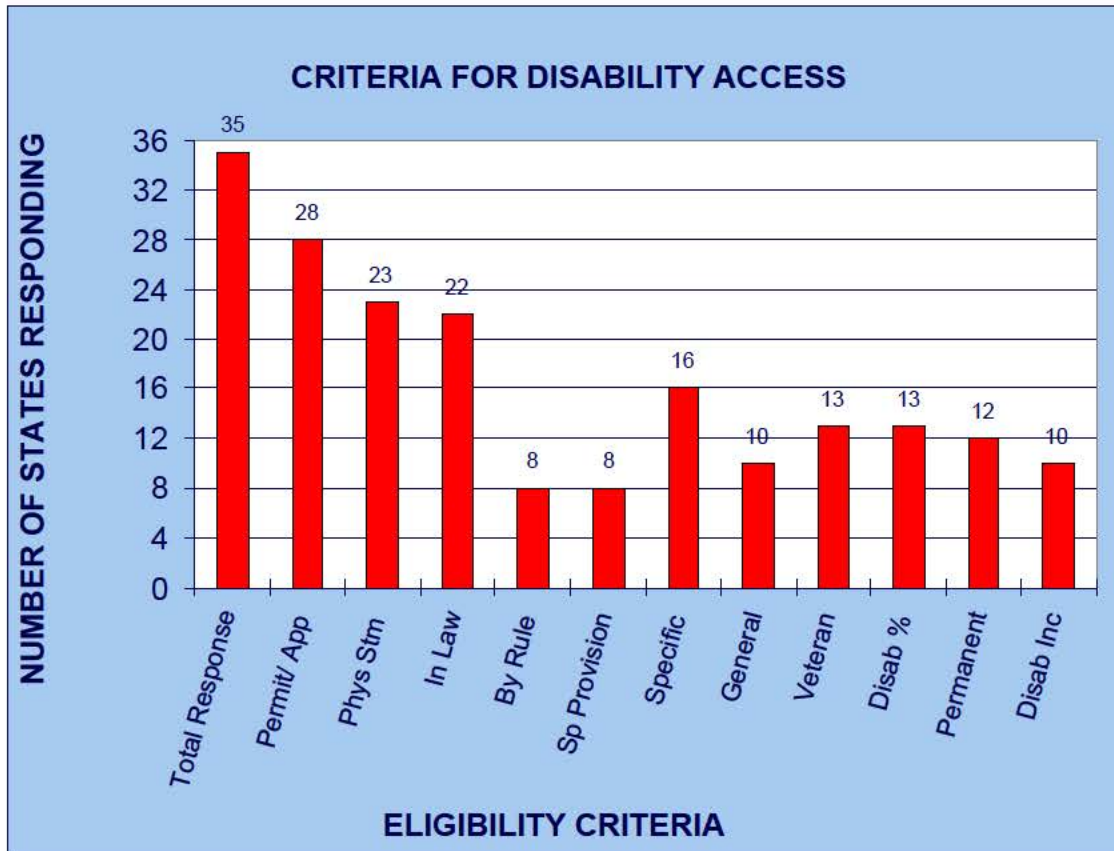
Similarities. In general many of the states have adopted similar mechanisms to increase accessibility to outdoor sporting activities for those with disabilities although specific differences in terminology and extent make for a wide range of practical applications. For example, 13 states indicate some sort of percentage of disability required for consideration of access accommodations, yet the percentage of disability required fluctuates widely with a range from 10% (if service connected) in Illinois to 100% in Pennsylvania. [See Appendix H -- Eligibility Criteria Chart.] Other similarities include requiring some form of documentation or physicians' statement attesting to the existence and extent of the disabling condition (23 states), although variations exist--even within states. Both Mississippi and South Dakota require a physician's statement for cross bow accommodation, but do not require a physician's statement for a vehicle permit.

Frequently reported criteria for eligibility: (See Table 1)

- the need for a permit or special application (28 states)
- the need for a physician's statement (23 states)
- the authority for disability accommodation is established by law (22 states)
- the use of specific wording of criteria of disabling conditions for allowance of accommodation (16 states)
- the differentiation between a disabled veteran and other disabled individuals (13 states)
- the use of a specific ‘percentage of disability’ (13 states)
- the requirement to be permanently disabled (12 states)
- the requirement that accommodation be based on receipt of some form of disability income (10 states)
- the use of general wording of criteria of disabling conditions for allowance of accommodation (10 states)
- the authority for disability accommodation is established by special provision (8 states)
- the authority for disability accommodation is established by rule (8 states)

The following table (Table 1) shows the number of states that reported the types of access criteria used for receiving a disability permit or license. Appendix H shows which states are included in the various totals.

TABLE 1



[See Appendix G: Key for Explanation of Table and Chart Column Titles]

Accommodations Allowed. The most common types of special accommodations are: the permission to hunt from a stationary vehicle (28 states) and the allowance to use a cross bow during the archery hunting season (27 states). [See Appendix I for Accommodations Chart.] Another of the more frequent considerations is offering free or reduced price licenses for an individual with a disability (14 states.) However Alaska is the only state that currently offer a ‘no charge’ hunting or fishing license as the *only* form of special consideration or access accommodation to an individual with a disability. Some states have created special hunting and fishing seasons, activities, or maintained special areas (often exclusively) for individuals with disabilities.

Frequently reported accommodations provided: (See Table 2)

- the permission to hunt from a stationary vehicle (28 states)
- the allowance to use a cross bow during the archery hunting season (27 states)
- the allowance of some type of accommodation for fishing (16 states)
- the offer of free or reduced licenses (14 states)
- the creation of special areas with disability access (10 states)
- the allowance for individuals with disabilities to enlist an aide, assistant, or proxy (9 states)
- the allowance for individual special requests to the department or a committee (8 states)

- the creation of special activities for individuals with disability (4 states)
- the accommodations are still in the process of being determined (2 states)

The following table (Table 2) shows the number of states that reported the types of accommodations available for individuals with disabilities. Appendix I shows which states are included in the various totals.

TABLE 2



[See Appendix G: Key for Explanation of Table and Chart Column Titles]

Thirteen states differentiate between services for disabled veterans and accommodations for individuals whose disability arose from other causes. Occasionally states connect the receipt of disability income (whether veteran or otherwise, depending on the state) to the allowance of access accommodations (10 states.) Some states even distinguish between ‘the loss of the use of’ an arm or leg as distinct from ‘the loss of an arm or leg’. (There are no specific statistics included on this situation because of the irregularity of data reported indicating the frequency of occurrence.) Another factor that appeared repeatedly was the mention of a ‘permanent’ condition (12 states) contrasting with a ‘temporary’ condition, although not all states indicated whether this was a criterion in their state or not. One other frequent occurrence (9 states) was the ability of the disabled individual to select a proxy or have the assistance of an aide while participating in the regular hunting or fishing season.

Differences. One characteristic that varied greatly among states was the amount of flexibility or discretion given to the wildlife agency in allowing accommodations. Some states, notably Colorado, Kentucky, Missouri and North Carolina, give broad discretion to administrators to decide requests for disability accommodations. North Carolina's regulations specifically allow its wildlife commission to "make any reasonable exemption in order to permit a disabled person ... to hunt or fish." In fact, other states are so flexible their applications do not mention particular accommodations -- they simply include a question requiring applicants to request the type of accommodation they want. Indiana's application includes a section to "Describe your disability or handicap" and another section asks "With a Handicapped Hunter Permit, describe exactly your requested method of hunting."

The level of documentation required from the physician also varies. For example, the physician's certification section of Maryland's application simply asks "Does the applicant's condition prevent them from walking or standing for long periods of time?" Yet as flexible as some states were, other states had very precise definitions and eligibility requirements. Wisconsin and Louisiana, for example, both utilize different classification systems of impairment with distinct criteria allowing for different permissions. Mississippi has specific criteria for each of the accommodations granted to individuals with disabilities. In Mississippi, cross bow hunting is allowed for individuals who are totally and permanently disabled and have accompanying documentation from two physicians. Special vehicle access in Mississippi is available for paraplegics, hemiplegics, complete single leg amputees, and those individuals requiring the permanent use of a wheelchair, crutches, or other assistive devices. However, these individuals do not need a physician's statement. Special vehicle access is also available in Mississippi to certain individuals with cardio or pulmonary conditions if they provide a physician's statement. Other state requirements follow similar patterns and utilize similar descriptions.

Less common, but an interesting occurrence that was mentioned by a few states is the existence of a special review committee or a process to review special requests on a case-by-case basis and then determine an appropriate accommodation in response to that request. Another characteristic mentioned was a reciprocity clause with other states. Most state policies included language that indicated the disability access accommodations were limited to state residents. Several states mentioned honoring other states' residents if the state in question would also provide a reciprocal accommodation agreement to their residents. Kansas appeared to be the only state that connected requirement for disability accommodations to eligibility for a special handicap motor vehicle license plate. Only Oklahoma mentioned a need to restrict special accommodations for protection of their wildlife habitat resources. Michigan was the only state that indicated it has experienced any difficulty with suspected fraudulent cross bow applications and antlerless deer applications. Michigan stated that its accommodations did not go far enough in providing access to all deserving groups.

B. Telephone Survey. Based on the initial information received (See interim report dated May 19, 1999) it was not clear what processes the states used to develop

their current policies, the effectiveness of those policies or the difficulties the states have encountered while implementing those policies. For example, questions raised by the initial review of other state's policies included:

- How long have other states had their laws?
- Were their regulations in existence prior to the ADA (indicating the state had already recognized the need to address the inequity of access)?
- Were the accommodations in response to the ADA or some other type of discrimination situation experienced by the state?
- Has there been difficulty or controversy when trying to implement policies?

The follow-up survey of selected states explored some of those questions. Six states were selected for a variety of reasons: Mississippi for its narrow law with very specific guidelines; New Hampshire for proximity and ease of comparability; North Carolina for its broad law allowing very flexible case-by-case determinations; Oregon for its recently enacted statute changes; Wisconsin for its similar study started just prior to Maine's study; and Wyoming for its dealings with specialty hunts.. Each state shared their experiences and provided advice and assistance in the area of disability access to outdoor sporting activities.

Timing Relative to the ADA. Each of the six states provided some type of disability accommodations for many years and their original provisions all pre-dated passage of the ADA. However, the ADA did cause those states to look more closely at their existing laws and many of those states amended their laws in response to the ADA. New Hampshire stated its disability accommodation laws had been in effect "forever" and Mississippi said that its most recent update in 1997 was an attempt to make its laws more consistent with each other and with ADA. No state indicated their accommodations were in response to any sort of discrimination charge, although North Carolina and Oregon stated the most specific reasons for the existence of their statutes. North Carolina's current laws that took effect in 1994 were the results of the ADA, their General Assembly, and their governor's challenge to the state's Disability Advisory Council. Oregon's new law that just took effect in January 2000 was that state's response to a growing number of constituent calls to the Department of Fish and Wildlife.

Program Utilization. None of the states called could provide accurate counts of the number of people actually taking advantage of the disability licenses or permits. Wisconsin permits are issued for 5 years initially, followed by a 10 year renewal period; Wyoming and New Hampshire offer lifetime permits; and Oregon's law is too new to have a count of users, thus each situation offered its own difficulty in tallying the number of people with disabilities using the permits. New Hampshire provided the only numbers (totals of their various disabled licenses issued in 1999) and stated that those numbers were not an actual reflection of the entire number of users as they issue permanent licenses and they do not know how many of the licenses issued in previous years are still active. New Hampshire's numbers of their various disabled licenses issued in 1999 are:

- Disabled Veterans 60
- Paraplegic 12
- Blind Fishing 11
- Crossbow Permit 95
- Hunt from Motor Vehicle 5
- Complimentary Fishing 84

Oregon, whose law took effect in January 2000, was the only state that mentioned a process for tracking numbers. Oregon will track the number of permits issued and also, through hunter surveys, determine how many of the permits issued resulted in taking game. Then, after 3 years of collecting and evaluating data, they will determine if they need to adjust the permitting system or the requirements. Oregon is also the only state that distinguished between the number of permits issued and the number of "successful" permits.

Miscellaneous Comments. Both North Carolina and Oregon expressed positive experiences in their dealings with their states' "disability advisory committee/council." These groups appeared to be a diverse group representing all disability organizations within the state and they were helpful in providing expertise in all areas dealing with disability related issues. Oregon specifically stated that its advisory committee was instrumental in the development of the legislation and the speed of implementation. The disability advisory committee in Oregon offered practical information and advice especially dealing with the wording of specific definitions. In Oregon, to get the precise wording correct, the definitions took the most time and posed the greatest difficulty of the legislative process.

Wisconsin commented on the number of increased opportunities and accessible facilities created over the past ten years. While they acknowledge that not 100% of their state parks or state outdoor facilities are completely handicapped accessible, they do not have the money to upgrade all of their facilities at the same time. Their focus has been:

- to require new state outdoor facilities meet accessibility guidelines;
- to upgrade existing state sites as they undergo regular maintenance or repair; and
- to install certain priority facilities in all state outdoor sites (such as handicapped accessible phones, toilet and water facilities, and parking areas.)

Concerns. The six states mentioned the following concerns about implementing disability access policies:

- the ease of getting a physician's note or signature. Be specific about the extent and types of disabling condition covered.
- the need to keep track of the number of users.
- inconsistencies between provisions for Veterans and non-veterans. All hunters and anglers with physical disabilities have access needs regardless of how their disabilities occurred.

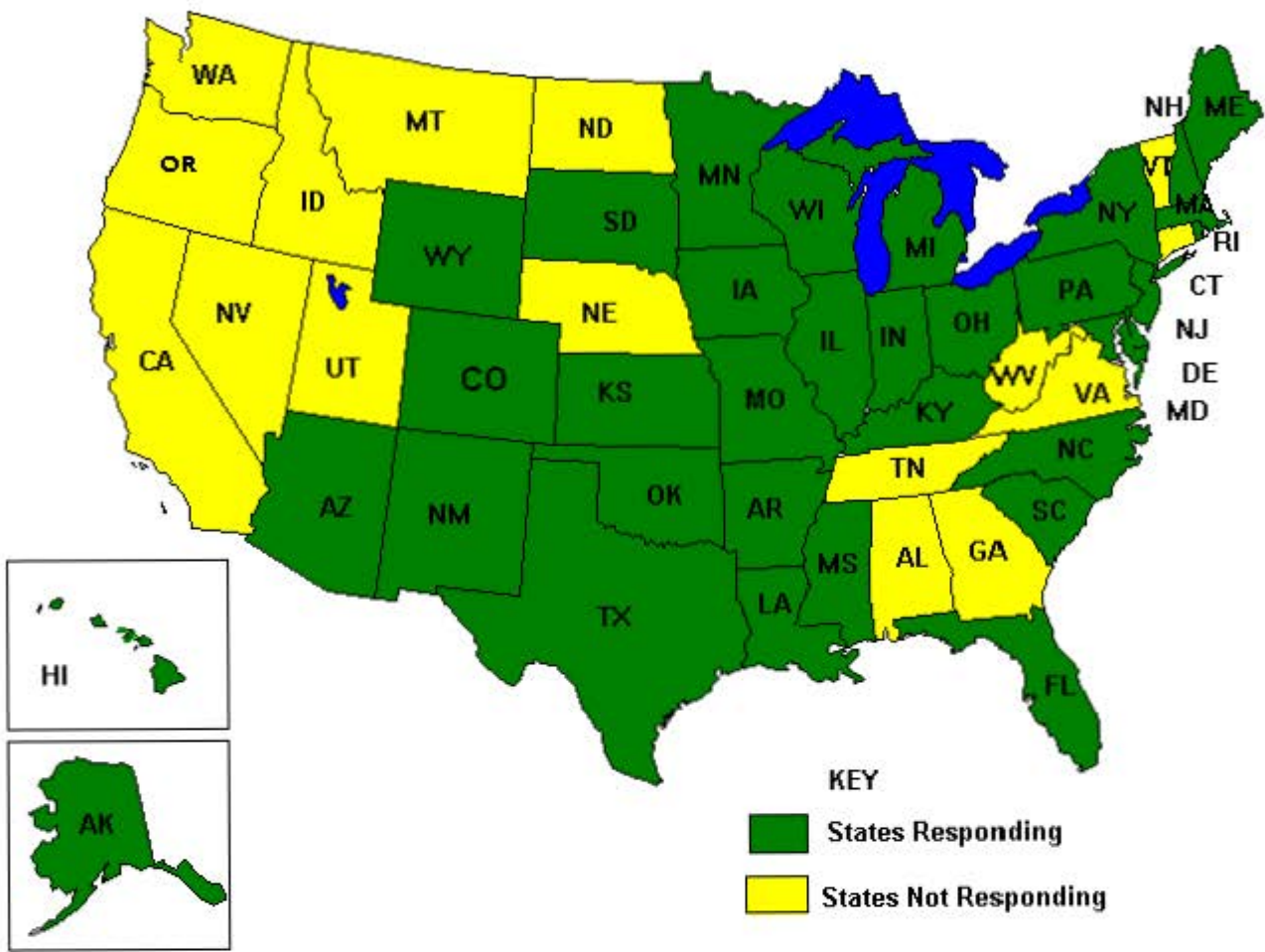
North Carolina, included in the telephone survey because of its flexible, case-by-case policy, stated that the case-by-case system is cumbersome to implement for a state where hunting and fishing is a popular activity. In fact, North Carolina may decide to move away from an annual license in favor of special documentation from a physician to alleviate some of the administrative burden. Oregon passed its new legislation in April 1999 with an implementation date of January 2000. Oregon cautioned about implementing a law too quickly as Oregon could have used more time for all the adjustments and issues related to the new law, such as: database changes for records within the department; public relations contacts with the medical community, consumers, and enforcement agencies; and time to prepare publications and forms for distribution. Allowing more time between passage and implementation of the policies would ensure a smoother transition to a new system.

CONCLUSION

Rules and laws exist in other states to provide greater access opportunities for outdoor sporting activities to persons with disabilities. Hunting from a stationary vehicle and crossbow use are the two most common accommodations. Most states also provide some accommodations for fishing, especially ramps to piers and accessible parking. The ADA and the MHRA require Maine to make reasonable modifications to its rules, policies, or practices in order for qualified disabled persons to participate in its programs and activities. The ADA and the MHRA does not require modifications that "fundamentally alter" or cause an "undue burden" on the facility or program. Most states recognize the expense involved in trying to update all state outdoor facilities at once and many states are following Wisconsin's 'plan'. Wisconsin requires that new state outdoor facilities are built to meet accessibility guidelines; existing state sites are upgraded as they undergo regular maintenance or repair; and that certain necessary facilities are installed in all state outdoor sites (such as handicapped accessible phones, toilet and water facilities, and parking areas) as time and money allows.

Careful consideration of disability definitions, veteran issues, tracking procedures, and timing measures can assist the Legislature in adopting a sound policy of disability access for Maine. Development over time and changes in ADA laws and interpretations may cause the need for periodic adjustment to those public policies. A helpful resource other states have used when developing disability access policy is a 'disability advocacy council'. Proper planning of disability access issues with the support of an established disability advocacy council would aid the legislature in developing a framework of disability access policy as it relates to outdoor sporting activities.

Appendices



Appendix C

Telephone Survey Information

Mississippi Department of Wildlife Fisheries and Parks

- Some form of accommodation for many years, current laws since 1997
- process/reason--intent to increase consistency and close loopholes, while providing greater opportunity to hunters with disabilities
- no idea of #s, no special license or form required (hunter's just carry certification of permanent disability from Social Security Administration, Veterans Administration, or Railroad Administration), no way to track
- reciprocity—not specifically addressed in statute but if nonresidents pay for the out of state license and qualify for disability through SSA, VA, or RA they can take advantage of the disability accommodations
- things to do differently
 - no complaints with the current laws, just add different programs for youth hunts and more specialty hunts
- things to keep in mind
 - need to maintain some way of tracking the number of people using the disability provisions

New Hampshire Fish and Game Department

- Laws pre-ADA
- #s—many permanent, no need to renew, impossible to tell how many still active
- reciprocity with Vermont
- things to do differently
 - stricter requirements for Veterans (currently decided by Veteran Service officers with no input from State Agency)
 - more flexible guidelines for hunting from vehicle (currently paraplegics only, straightforward but unfortunate for those who don't qualify)
 - Crossbow setup "horrendous", unmanageable, make stricter (too easy to get doctor's sign off, administratively spend too much time checking physician's forms and intent)
- things to keep in mind
 - Veterans groups have strong lobbies and other physically disabled hunters have access needs regardless of how their disabilities occurred

North Carolina Wildlife Resources Commission

- Laws effective since 1994
- process/reason
 - ADA
 - momentum from disability advocacy groups
 - Governor's challenge for Disability Advocacy Council
 - legislation submitted by handicapped member of the General Assembly
- difficult to know #s, although it grows each year (started in the dozens, then hundreds, now thousands)

- things to do differently
 - possible intent in state to broaden accommodations (to just a special form from a doctor) and to eliminate the annual license fee
- things to keep in mind
 - doctors notes seem easy to acquire (for any number of common complaints) and hard to control
 - administratively, a case-by-case permitting system is cumbersome to implement—especially if hunting is a popular activity

Oregon Department of Fish and Wildlife

- New legislation passed in April 1999
- process/reason
 - Disability Advocacy Committee focus
 - requests by disabled individuals
- anticipating increase of abt 2000 permits—won't know for sure until next yr (1st yr of new program)
 - contacted DMV for # of permits (different definition there with no breakdown between permanent/temporary)
 - will do hunter surveys and maintain standards for 3 years, then make adjustments as necessary
 - Counts will include # of permits issued,
 - # of successful permits
- reciprocity—legislation does not distinguish between resident and nonresident. If out of state residents pay the out of state license fee and comply with all other hunting and fishing requirements, they can take advantage of the disability permit.
- things to do differently
 - so new, difficult to provide technical changes
 - allow more time between passage of law and implementation (The Oregon legislation passed in April 1999 with an implementation date of January 1, 2000. This was not enough time to deal with all the issues affected by the change.
 - Database changes for new records
 - Public Relations
 - Medical Community
 - Consumers
 - Enforcement Agencies and other affected Agencies
 - Applications/Forms and Publications
- things to keep in mind
 - allow plenty of time for implementation
 - utilize 'Disability Advocacy Council' made up of diverse representation of various disability groups

Wisconsin Department of Natural Resources and the Disability Advisory Council

- Laws pre-ADA, some form of accommodation at least since 1979 or so, yet continuously changed and refined
- process
 - Advisory Council member requested new information (previous survey done in early '90s)
 - Citizens asking for more accommodations
- no idea of #s, permits have no fee, issued for 5 and 10 year periods
 - permits have increased over the year with increased opportunity and accessibility, more special hunts, greater advertising, and more people asking for accommodations
- reciprocity not currently available but intend to implement pilot project with neighboring states
- things to do differently
 - eliminate inconsistencies and inequities (Veteran vs. non-Veteran, Fishing permit rates—reduced for some groups, not all)
 - Broaden Class A (for the permanent and often the more severe forms of disability) to include permanent but less serious conditions such as Cerebral Palsy or Multiple Sclerosis
 - Change Class B (for the temporary or less severe forms of disability) to include the time limited disabling conditions
- things to keep in mind
 - Disability Advisory Council is a great resource for providing pertinent information about necessary and helpful accommodations
 - Volunteer groups—especially disability advocacy groups—are often willing to help build, retrofit, and reconstruct sites and facilities to help increase access
 - Wisconsin's new ADA state survey (similar to Maine's report) is due out in the spring of 2000

Wyoming Game and Fish Department

- Laws pre-ADA (probably 30 years) (Helluva Hunt for disabled hunters since 1985, recognized by state yet run by individuals)
- no #s, fluctuates up and down, sometimes as few as a couple dozen
- reciprocity if documents provided from home state
- things to do differently
 - more flexible guidelines that would allow for case-by-case determinations
 - more flexibility to grant other than lifetime or permanent permits
- things to keep in mind
 - be aware of the activities performed by 'aide' or 'assistant' as a fine line between license "to hunt" and "to kill" (such as if aide is allowed to fire gun for blind hunter)

Appendix D

Telephone Survey General Questions

How long have your state's disability accommodations provisions for outdoor wildlife activities been in effect? (Did they pre-date the ADA?)

What catalyst caused your state to develop these provisions? (Were there specific issues in the state brought about by advocacy groups, veteran requests, or others?)

How many special licenses or permits are issued annually? (Do you know the size or the proportion of the number of persons with disabilities that live in your state?)

Did your state have any specific projections of the number of licenses or permits they might issue before they implemented these provisions? (Were there surprises?)

Has there been a change in the level of participation over the years?

Does your state offer reciprocity with other states?

What would you do differently?

What should a state keep in mind when considering implementing disability accommodations provisions?

Do you have any general comments?

Appendix E
Participating Advocacy Groups

- Alpha – One
- Autism Society
- Center for Community Inclusion
- International Paper
- Maine Disability Rights Center
- Maine Forests Products Council
- Multiple Sclerosis Society
- National Alliance for the Mentally Ill (NAMI)
- Natural Resource Council of Maine
- Sportsmens Alliance of Maine

Appendix F:

**Oregon's Legislation on Wildlife Licenses for Persons with Disabilities
(available in printed report)**

Appendix G

Key for Explanation of Table and Chart Column Titles

Aide Does the state allow individuals with disabilities to enlist an aide, assistant or proxy while hunting or fishing?

By Rule Did the responding state send a copy of specific rules or mention the rules granting authority to provide accommodations for certain individuals with disabilities?

Disab Inc Is disability income considered as criteria for consideration of an accommodation?

Disab % Does the state use a specific percentage of disability impairment as a criterion for consideration of an accommodation?

Free/Reduced Does the state offer free or reduced licenses as an accommodation to certain individuals with disabilities?

General Does the state establish general disability criteria and allow for flexibility based on circumstances for consideration of an accommodation?

Hunting and Fishing

No Charge indicates a free license is available to certain individuals with disabilities.

Cross bow indicates the possibility of using a cross bow during archery season for certain individuals with disabilities.

Mech bow indicates the possibility of using a mechanized bow during archery season for certain individuals with disabilities.

Vehicle indicates the possibility of using a vehicle during hunting season for certain individuals with disabilities.

Fishing indicates some type of accommodation (i.e., different facilities, different equipment, different season) for certain individuals who fish.

Elec Motor indicates the possibility of using an electric motor during certain fishing activities for certain individuals with disabilities.

In Law Did the responding state send a copy of specific laws or mention the law granting authority to provide accommodations for certain individuals with disabilities?

In Progress Did the state indicate they were currently working on disability access issues?

Permanent Is a permanently disabling condition required for consideration of an accommodation?

Permit/App Is a permit or application for access accommodation required?

Phys Stm Is a physician's statement required as documentation of a disabling condition?

Sp Activity Does the state coordinate special activities exclusively for certain individuals with disabilities?

Special Area Does the state provide specially designed or maintained areas for use by certain individuals with disabilities?

Sp Provision Did the state indicate there were special provisions in the laws or rules that allowed them to consider requests for access accommodation?

Sp Req Does the state allow for individuals to make special accommodation requests to the agency or a committee?

Specific Does the state establish specific disability criteria for consideration of an accommodation?

Veteran Does the state use different criteria if the disabling condition is a result of their veteran status?

Eligibility Criteria for Wildlife Sporting Activities From State Survey

State/Abbreviation	Response	Permit/App	Phys Stm	Law	Rule	Sp Provision	Spcf Crit	Gen'l Crit	Vet	Disab %	Perm Disab	Disab Inc	
Alaska	AK	02/17/99	Yes	Yes		Yes			Yes	70		Yes	
Arizona	AZ	02/15/99	Yes	Yes		Yes				90	Yes		
Arkansas	AR	02/04/99	Yes	Yes		Yes	Yes				Yes		
Colorado	CO	03/12/99	Yes	Yes		Yes			Yes	60	Yes	Yes	
Delaware	DE	02/09/99	Yes	Yes		Yes	Yes		Yes		Yes		
Florida	FL	02/22/99	Yes	Yes		Yes	Yes			80	Yes		
Hawaii	HI	02/01/99											
Illinois	IL	02/22/99	Yes	Yes	Yes				Yes	10*	Yes	Yes	
Indiana	IN	02/04/99	Yes	Yes		Yes		Yes					
Iowa	IA	02/02/99	Yes	Yes	Yes	Yes		Yes	Yes			Yes	
Kansas	KS	02/12/99	Yes			Yes							
Kentucky	KY	02/04/99	Yes	Yes		Yes		Yes					
Louisiana	LA	02/01/99	Yes	Yes	Yes		Yes						
Maryland	MD	02/10/99	Yes	Yes		Yes		Yes					
Massachusetts	MA	02/11/99	Yes		Yes	Yes**	Yes						
Maine	ME	OPLA	Yes		Yes		Yes		Yes	70-100			
Michigan	MI	03/17/99	Yes		Yes		Yes	Yes		80			
Minnesota	MN	02/18/99		Yes	Yes							Yes	
Mississippi	MS	yes		Yes***	Yes					100			
Missouri	MO	02/17/99				Yes	Yes						
New Hampshire	NH	02/17/99	Yes		Yes		Yes		Yes		Yes		
New Jersey	NJ	02/10/99	Yes		Yes		Yes				Yes		
New Mexico	NM	02/26/99	Yes	Yes	Yes		Yes		Yes		Yes	Yes	
New York	NY	02/11/99	Yes	Yes	Yes				Yes	40		Yes	
North Carolina	NC	02/11/99	Yes		Yes			Yes					
Ohio	OH	02/08/99			Yes		Yes	Yes					
Oklahoma	OK	02/03/99	Yes	Yes	Yes		Yes		Yes	60-100	Yes	Yes	
Pennsylvania	PA	02/19/99	Yes	Yes	Yes		Yes		Yes	100	Yes		
Rhode Island	RI	02/19/99				Yes							
South Carolina	SC	03/04/99	No	Yes	Yes			Yes					
South Dakota	SD	02/03/99	Yes	Yes***	Yes								
Texas	TX	02/11/99	Yes		Yes		Yes		Yes	60		Yes	
Virginia	VA	04/26/99	Yes	Yes	Yes	Yes		Yes	Yes	100	Yes		
Wisconsin	WI	02/17/99	Yes	Yes	Yes		Yes					Yes	
Wyoming	WY	02/04/99	Yes	Yes	Yes			Yes					
	TOTAL	35	28	23	22	8	8	16	10	13	13	12	10

* If disability is service connected

** Rules do not currently address fishing issues although rule making capacity exists, if necessary.

*** Physician statement necessary for some accommodations but not for others

See Key for Explanation of Column Titles

Accommodations to Wildlife Sporting Activities From State Survey

State/Abbreviation		Hunting		Fishing	Free/Reduced	Aide	Sp Area	Sp Req	Sp Activity	In Progress
Alaska	AK	No Charge		No Charge	Yes	Yes				
Arizona	AZ	Vehicle	Cross bow							
Arkansas	AR	Vehicle					Yes	Yes		
Colorado	CO	Vehicle		No charge	Yes	Yes		Yes		
Delaware	DE	Vehicle	Cross bow	Fishing			Yes			
Florida	FL	Vehicle	Cross bow	Fishing				Yes	Yes	
Hawaii	HI									Yes
Illinois	IL	Vehicle	Cross bow					Yes		
Indiana	IN	Vehicle	Cross bow			Yes		Yes		
Iowa	IA	Vehicle	Cross bow		Yes					
Kansas	KS	Vehicle	Cross bow			Yes				
Kentucky	KY	Vehicle	Cross bow	Fishing						
Louisiana	LA	Vehicle	Cross bow				Yes			
Maryland	MD	Vehicle	Cross bow	Fishing			Yes			
Massachusetts	MA	Vehicle	Cross bow	Fishing*	Yes				Yes	
Maine	ME	No Charge		No Charge	Yes					
Michigan	MI	Vehicle	Cross bow							
Minnesota	MN	No Charge	Cross bow	Fishing	Yes	Yes			Yes	
Mississippi	MS		Cross bow				Yes			
Missouri	MO	Vehicle	Cross bow	Fishing						
New Hampshire	NH	Vehicle	Cross bow	Fishing			Yes			
New Jersey	NJ	Vehicle	Cross bow	Fishing						
New Mexico	NM	Vehicle			Yes	Yes		Yes		
New York	NY	Vehicle	Mech. bow		Yes			Yes		
North Carolina	NC	Vehicle	Cross bow	Fishing				Yes		
Ohio	OH	Vehicle				Yes	Yes			
Oklahoma	OK	Vehicle	Cross bow	Fishing						
Pennsylvania	PA	Vehicle	Cross bow				Yes			Yes
Rhode Island	RI					Yes	Yes			
South Carolina	SC		Cross bow							
South Dakota	SD	Vehicle	Cross bow			Yes				
Texas	TX	Vehicle	Cross bow		Yes					
Virginia	VA	Vehicle	Cross bow	Fishing	Yes		Yes			
Wisconsin	WI	Vehicle	Cross bow	Elec Motor	Yes				Yes	
Wyoming	WY	Vehicle	Cross bow							
TOTAL	35	28	27	16	14	9	10	8	4	2

* Free fishing license for blind, MR, or paraplegic individuals.

See Key for Explanation of Column Titles