

ADA Muzzleloader Visual Disability Accommodation FAQs (Updated 2010)

For more information, feel free to contact Kim Jolly, kjolly@ndow.org or 775-688-1510.

1. **Question:** Why is the Nevada Wildlife Commission discussing scopes on muzzleloaders during the muzzleloader-only season?

Answer: Per the request of the United State Fish and Wildlife Service (USFWS), the Nevada Wildlife Commission is discussing a reasonable accommodation plan for a qualified person with a disability that would allow a scope during the muzzleloader-only-season, if presented a statement from a licensed physician documenting the disability and requesting that accommodation.

If someone requested of NDOW today the reasonable accommodation of a scope, current regulations would not provide for that. There also are no regulations that allow the department to grant variances to the rules; exceptions are typically spelled out in regulation. Thus, regulation changes are needed to provide for a reasonable accommodation.

2. **Question:** Why is the USFWS asking NDOW to do this, if scopes are allowed during the any legal weapon season?

Answer: As the result of a multi-state disability complaint by the North American Muzzleloader Association, the USFWS found that persons with visual disabilities would not have equal access to muzzleloader hunting program during the any legal weapon season. Recipients of federal funding (states) must provide a reasonable accommodation to qualified disabled persons.

The USFWS determined that a muzzleloader hunter with a visual disability who is denied reasonable accommodations in the special muzzleloader season is at a competitive disadvantage, screened out of the main muzzleloader activity, and effectively segregated in a different activity.

3. **Question:** Does this fundamentally change the muzzleloader program?

Answer: While the ADA does state government entities must provide reasonable accommodations as long as these accommodations do not alter the fundamental nature of the program, the USFWS stated that most states do not restrict the nature of scopes on muzzleloaders, and determined it does not fundamentally change the nature of the program.

4. **Question:** How about the preservation of the muzzleloader as a primitive weapon in muzzleloader-only season?

Answer: Although traditionalists argue that advanced adaptive equipment was not available in the earlier times and that scopes ruin the primitive weapon element of a muzzleloader, the USFWS says that argument does not trump the requirement to provide equal access to the muzzleloader program.

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5. **Question:** Does this mean that anyone should be able to use a scope just because they are older and have aging eyes?

Answer: While the issue of discrimination was brought to the attention of the USFWS by an association who wanted scopes for aged persons, the age discrimination complaint was denied. The broader issue that NDOW is being required to act on is the discrimination of people with visual disabilities, and persons would not qualify as visually disabled simply based on age.

6. **Question:** Who exactly does NDOW have to make a reasonable accommodation for, and how?

Answer: Per the USFWS for the purposes of this complaint, the person would have to be otherwise eligible to participate in muzzleloader hunting, also the person would have to meet the definition established under Federal disability rights laws of a person with a disability – substantial limitation of a major life activity, a record of the disability, or perception of a disability. Additionally, a person with limited vision which is correctible by glasses or contact lenses is not considered a qualified person with a disability.

Per the USFWS, a qualified person with a disability would have to present a statement from a licensed physician documenting the disability, and indicate the program accommodation they are requesting. The allowable accommodation is tied to the nature of the disability, on a case by case basis. A telescopic sight may or may not be the proper accommodation, depending on the situation.

7. **Question:** What are considered “major life activities” per the Federal ADA and State Law?

Answer: Specifically, the Federal ADA provides that:

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. And, Major Bodily Functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(DOI website

<http://www.dol.gov/ofccp/regs/compliance/faqs/ADAFags.htm#content.>)

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(Answer to 7 continued)

Per Nevada State Law, NRS 433.211 , Major life activities are defined as

- (a) Taking care of oneself;
- (b) Understanding and use of language;
- (c) Learning;
- (d) Mobility;
- (e) Self-direction; and
- (f) Capacity for independent living.

8. **Question:** What have the other state wildlife agencies done that were asked to comply?

Answer: The most common accommodation made by other states named in the complaint has been to allow a limited scope for only those with real visual disabilities which are not correctible by glasses or contacts, and verifiable by a statement, such as an affidavit, from a licensed physician. Other states have changed regulations to allow scopes for visually impaired (including those correctible), and some have allowed scopes to be used by anyone during muzzleloader-only season. Other states are still in the process of addressing the issue.

In larger states that have such accommodations, there have been a very small number of individuals who apply and actually get approved for the accommodation. This year (2009) the Colorado Division of Wildlife has only approved 3 special permits, and rejected 3 others that applied. Since the beginning of availability for their special permit in 2001, Colorado has only had 29 requests, and approved just 9. Nine in 9 years is very low. There simply aren't very many qualified hunters with visual disabilities in general.

9. **Question:** What are some examples of qualified visual disabilities that are not correctible by glasses or contacts?

Answer: Some examples of vision disabilities that would qualify are diabetic retinopathy, traumatic brain injury with double vision, amblyopia, and legal blindness, etc. Impairments that would not qualify include presbyopia, myopia, and hyperopia. However, a licensed physician documenting the disability would indicate the specific program accommodation related to the nature of the disability.

NDOW already has an accommodation for legally blind persons, whereby an accompanying person they select may hunt on their behalf. (NRS 502.075) *(Blind - defined for all Nevada agencies in NRS 361.085, is a person whose visual acuity with correcting lenses does not exceed 20/200 in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than 20 degrees.)*