

Hon. Carl L. Rosier
Commissioner
Dep't of Fish and Game

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Applicability of the
Americans with Disabil-
ities Act to regulations
of the Boards of Fish
and Game

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You have asked several questions about what the Joint Boards of Fisheries and Game and the Department of Fish and Game can do to ensure that hunting and fishing regulations in Alaska comply with the Americans with Disabilities Act (ADA). This memorandum will explore the general requirements of the ADA, address whether the boards may delegate to the commissioner the authority to accommodate persons with disabilities (they can), and suggest procedures that the boards may adopt to enable hunters and fishers with disabilities to request reasonable modifications to policies they feel are discriminatory.¹

I. GENERAL REQUIREMENTS OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT AND THE IMPLEMENTING REGULATIONS

Congress enacted the Americans with Disabilities Act (ADA), 42 U.S.C.A. • 12101 *et seq.* (Supp. 1992), because among other things "discrimination against individuals with disabilities continue[s] to be a serious and pervasive social problem; . . . individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion . . . [and the] failure to make modifications to existing facilities and practices . . . ; [and] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity . . . to pursue those opportunities for which our free society is

¹ This memorandum does not try to address the full impact of the ADA upon the boards and the department. For example, the potential need for wheelchair access to board meetings or sign language interpreters for informational programs of the department is not addressed. The scope of this memorandum is limited to the potential impact of the ADA upon hunting and fishing regulations in Alaska, and the procedures the boards and department may adopt to insure that those regulations do not discriminate against the disabled.

justifiably famous" 42 U.S.C.A. • 12101(2), (5), and (9). To ensure its provisions are complied with, the Act provides persons who have suffered discrimination because of their disabilities the same remedies, procedures, and rights that are available under the Civil Rights laws. See 42 U.S.C.A. • 12132. As with those laws, the Department of Justice has broad enforcement authority.

Title II of the ADA, 42 U.S.C.A. • 12131 *et seq.* (Supp. 1992), prohibits public entities from discriminating against individuals with disabilities when providing public services:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C.A. • 12132.

A "qualified" individual with a disability is an individual with a disability who meets the "essential eligibility requirements" of the agency's program, service, or activity.² Generally, there are no "essential eligibility requirements" to sport hunt or fish in Alaska other than the possession of a valid sport hunting or fishing license. Thus, virtually anyone with a disability may be qualified to hunt or fish in Alaska. "Disability" means, with respect to an individual, "a physical or

² A "qualified individual with a disability" is defined as one who,

with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C.A. • 12131(2) (Supp. 1992).

mental impairment that substantially limits one or more of the major life activities of such individual"³

³ The definition of disability found in the Department of Justice's title II regulations provides in full:

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase physical or mental impairment means--
(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase physical or mental impairment does not include homosexuality or bisexuality.

(2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

The antidiscrimination provisions of title II of the ADA clearly apply to the Department of Fish and Game and the Boards of Fisheries and Game. For purposes of title II, a "public entity" includes any state or local government, and any department, agency, or other instrumentality of a state or local government. 42 U.S.C. • 12131(1)(A) & (B) (Supp. 1992). It is also likely a court would find that the regulations promulgated by the boards, such as those identifying the areas and the methods and means for taking fish and game, are part of a "service," "program," or "activity," since sport hunting and fishing must take place in conformance with those regulations.⁴

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(4) The phrase is regarded as having an impairment means--

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term disability does not include--

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania;
or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

28 C.F.R. • 35.104, 56 Fed. Reg. 35717 (1991).

⁴ While neither the ADA nor the regulations promulgated

Congress directed the Department of Justice to adopt regulations implementing title II of the ADA, see 42 U.S.C. • 12134(a) (Supp. 1992), and those regulations have been codified at 28 C.F.R. part 35. Section 35.130 sets forth the general prohibition against discrimination, and provides, in part, as follows:

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not . . . on the basis of disability-(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; [or] (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others . . . ; [or]. . . (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

These regulations also provide that an agency may not employ "methods of administration" that have the effect of denying persons with disabilities the ability to enjoy the benefits of an agency's programs:

A public entity may not . . . utilize criteria or methods of administration:

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pursuant to the ADA define these terms, the 1988 amendments to the Rehabilitation Act of 1973 define "program or activity" to mean "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a state or of a local government" 29 U.S.C.A. • 794(b) (Supp. 1992).

Because of the close relationship between the Rehabilitation Act of 1973 and the ADA, courts may look to this definition when interpreting the ADA.

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or]

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities

28 C.F.R. • 35.130(b)(3).

There is a dearth of case law interpreting the ADA, due of course to its recent enactment. Nevertheless, it is possible to obtain substantial insight into the scope and meaning of Title II by examining case law interpreting its precursor, section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394, 29 U.S.C.A. • 794 (1985 and Supp. 1992). Section 504 is virtually identical to section 202 of the ADA, 42 U.S.C.A. • 12132, except that section 504 applies only to state agencies receiving "Federal financial assistance." The Department of Justice, in the comments preceding the regulations implementing title II of the ADA, describes title II as "essentially extend[ing] the nondiscrimination mandate of section 504 to those State and local governments that do not receive Federal financial assistance" ⁵

In determining whether a particular regulation is

⁵ 56 Fed. Reg. 35694 (1991). As a result, the Department of Justice's regulations implementing title II of the ADA "[hew] closely to the provisions of existing section 504 regulations." *Id.* This approach is in fact mandated by section 204 of the ADA, which provides that the regulations implementing Title II must be consistent with the Department of Health, Education, and Welfare's coordination regulation for section 504, now codified at 28 C.F.R. Part 41, and, with respect to "program accessibility, existing facilities," and "communications," with the Department of Justice's section 504 regulations for its federally conducted programs and activities, codified at 28 C.F.R. Part 39. 42 U.S.C.A. 12134(b) (Supp. 1992). See 56 Fed. Reg. 35694 (1991). In addition, section 203 of the ADA, 42 U.S.C.A. 12133 (Supp. 1992), provides that the remedies, procedures, and rights available under section 504, set forth in section 794a of Title 29, shall be the remedies, procedures, and rights for any person alleging discrimination on the basis of disability in violation of 42 U.S.C.A. • 12132.

consistent with the ADA, the primary issue will be whether the person with a disability has been given "meaningful access" to the benefit or service at issue. See *Alexander v. Choate*, 469 U.S. 287, 301 (1985). In *Choate*, the United States Supreme Court, interpreting • 504 of the Rehabilitation Act, held that the balance between the rights of the handicapped to be integrated into society and the legitimate interests of agencies in preserving the integrity of their programs is met where "an otherwise qualified individual [is] provided with meaningful access to the benefit the [agency] offers." 469 U.S. at 301.

The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the [agency's] program or benefit may have to be made.

Id. See *Southeastern Community College v. Davis*, 442 U.S. 397, 410-13 (1979). In determining the appropriate scope of the benefit at issue, and whether it is "readily accessible to and usable by individuals with disabilities," the regulations implementing title II provide that the service, program, or activity must be "viewed in its entirety."⁶

⁶ 28 C.F.R. • 35.150(a) provides:

General. 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. The paragraph does not--

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens

The principle of meaningful access is illustrated in *Baker v. Department of Environmental Conservation* 634 F. Supp. 1460, 1464-66 (N.D.N.Y. 1986), where a number of handicapped individuals alleged that a regulation prohibiting the use of "mechanically propelled vessels and aircraft" on certain bodies of water within the Adirondack State Park discriminated against them in violation of • 504 of the Rehabilitation Act. The court rejected the handicapped individuals' arguments on the grounds that "over fifty-one percent of the Park land is classified . . . [to] allow the use of motorized vehicles and float planes . . . [and e]ighty-three percent of the publicly usable Adirondack lake/pond surface water is open to motors" 634 F. Supp. at 1465. As a result, "it is clear the handicapped do have *meaningful access to the Adirondack Park as a whole.*" *Id.* (emphasis added). The analysis employed by the court in *Baker* illustrates the analysis the boards and the department should use to determine whether a particular hunting or fishing regulation denies persons with disabilities a meaningful opportunity to hunt or fish.

If there is no meaningful access to the service or benefit at issue, federal regulations require the agency to "make *reasonable* modifications in policies, practices, or procedures when the modifications are *necessary* to avoid discrimination on the basis of disability" 28 C.F.R. • 35.130(b)(7), 56 Fed. Reg. 35718-19 (1991) (emphasis added). See *Choate*, 469 U.S. at 300. Modifications do not have to be made, however, if the agency "can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity," 28 C.F.R. • 35.130(b)(7), or would result in "undue financial and administrative burdens."⁷ These regulations mirror
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(Emphasis added.)

⁷ 28 C.F.R. 35.150(a)(3). When a public entity believes that complying with the ADA will fundamentally alter the nature of its program or result in undue administrative burden or expense, it has the burden of proof and must make specific findings that support its conclusion:

In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the

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burden of proving that compliance with • 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

28 C.F.R. 35.150(a)(3). The Department of Justice's regulations further suggest methods a public agency may use to comply with the regulations:

A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of •35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

28 C.F.R. 35.150(B)(1).

the *Choate* and *Davis* decisions, where the Supreme Court held that "while a[n agency] need not be required to make 'fundamental' or 'substantial' modifications to accommodate the handicapped, it may be required to make 'reasonable' ones." *Choate*, 469 U.S. at 300.

While it is impossible to predict with certainty the effect these principles will have upon fish and game management in Alaska, it is more likely than not that few, if any, modifications to existing regulations will be required. To illustrate a circumstance where modification of a regulation might be required, imagine the Board of Game permitted but a single moose hunt in Alaska, in an area traversed by roads and trails, but limited access exclusively to access by foot. Modification of the hunt to permit a hunter with a disability to use pack animals or an off-road vehicle would probably be required by the ADA, since a meaningful opportunity for persons with disabilities to take moose would not otherwise exist, and allowing one or more persons with disabilities to use pack animals or an off-road vehicle probably would not fundamentally alter the hunt or cause undue administrative burdens or expense. Notice, however, that the modification relates to a barrier created by the Board, *i.e.*, the prohibition of access except by foot. Let us assume that in this hypothetical hunt any form of access was permissible, but that because of rugged terrain and thick brush, *i.e.*, barriers created by nature, access by persons with disabilities was as a practical matter precluded. In our view the ADA would not require modification of the hunt, since there is nothing in that Act to indicate an intent that public entities cure the disparate impact natural barriers have upon persons with disabilities.⁸

⁸ This is evidenced in part by • 507(c)(1) of the ADA, which deals with access to federal wilderness areas:

Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act *no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.*

42 U.S.C.A. • 12207(c)(1) (emphasis added).

II. THE BOARDS MAY DELEGATE TO THE COMMISSIONER THE AUTHORITY TO ACCOMMODATE REQUESTS FROM PERSONS WITH DISABILITIES FOR MODIFICATIONS TO EXISTING HUNTING AND FISHING REGULATIONS AND POLICIES

You have asked whether "the boards [can] establish eligibility criteria and delegate to the commissioner the authority to accommodate disabled persons." If by "establish[ing] eligibility criteria" you are referring to a process to determine who does or does not have a disability, the answer is yes, as long as the boards do not establish criteria that are any more rigorous or less comprehensive than required by the ADA's definition of "disability." The boards also can empower the commissioner to determine whether a particular hunter or fisher fits within the ADA's definition, and may further delegate to the commissioner the authority to make reasonable accommodations for persons with disabilities. This should not, however, discourage the boards from addressing the concerns of persons with disabilities in the first instance, when proposals for particular hunting or fishing regulations are initially considered.

The Boards of Fisheries and Game were created for purposes of conservation and development of the fishery and game resources of the state. AS 16.05.22(a)(b). Pursuant to AS 16.05.251, the Board of Fisheries may adopt regulations it considers advisable for "establishing open and closed seasons and areas for the taking of fish," AS 16.05.251(a)(2); "establishing the means and methods employed in the pursuit, capture and transport of fish," AS 16.05.251(4); and "regulating commercial, sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries," AS 16.05.251(a)(12). The Board of Game has similar powers with respect to the state's game resources. See AS 16.05.255(2), (3), and (10). For the purpose of administering AS 16.05.251 and 16.05.255, each board has been given specific authority to "delegate authority to the commissioner to act in its behalf." AS 16.05.270.

Requests for accommodation from hunters and fishers

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However, if the Board of Game chose to establish a hunt in a particular area simply because that area was inaccessible to the disabled, that would be an act of purposeful discrimination prohibited by the ADA.

with disabilities will necessarily affect the boards' regulations governing, among other things, the methods and means of taking the state's fish and game resources. Since it is possible the boards will not be able to address every request for accommodation -- because of the limits imposed by the boards' schedules, or because the impacts of a particular regulation were not obvious at the time it was adopted, or for other reasons -- procedures should be in place that enable the department to address requests for accommodation as they arise. Because neither the department nor the boards have the discretion to ignore the ADA's requirements, the boards' failure to adopt adequate procedures probably will not be a defense to a lawsuit alleging the state failed to make a reasonable accommodation. AS 16.05.270 provides the necessary authority for the boards to adopt such procedures. So long as these procedures are consistent with the ADA and reasonably necessary to carry out that statute's purpose, the boards' approach will be upheld. See *Trustees for Alaska v. State, Department of Natural Resources*, 795 P.2d 805, 812 (Alaska 1990) (regulations delegating a statutory determination to another agency will be upheld where they are consistent with and reasonably necessary to carry out the purposes of the statute).

III. SUGGESTED PROCEDURES FOR ENABLING THE DEPARTMENT TO HANDLE REQUESTS FOR ACCOMMODATION UNDER TITLE II OF THE ADA

A number of states have grappled with the issue of how to effectively accommodate the concerns of persons with disabilities in their desire to hunt and fish. For our present purposes, the approach adopted by the Missouri Conservation Commission (the rough equivalent of Alaska's Boards of Fisheries and Game) is probably the most helpful. The relevant provision of the Missouri Wildlife Code provides as follows:

3 CSR 10-7.411 Special Methods for Handicapped Persons.

(1) The director may issue special authorization to physically handicapped persons to allow them to hunt and take wildlife by methods not prescribed in hunting rules in accordance with the following:

(A) Any handicapped person may make application to the director for a special exemption using a form provided by the department which describes the physical handicap and the type of exemption desired

and is signed by a licensed physician. If granted, the authorization will be in writing and describe in detail the handicap and the type of special method authorized. This written authorization shall be carried by the person at all times while hunting.

(B) The person must have the physical disability described in the special authorization and the disability must be to such an extent that hunting by prescribed methods is impossible.

Under this approach, the person with a disability submits an application for an exemption from the requirements of a specific hunting restriction (a typical example might be the general rule against hunting from a motorized vehicle), and includes with the application a physician's verification of the disability. If the exemption is granted, the person with a disability carries written authorization for the exemption while hunting.⁹ A copy of the form developed by the Director of the Missouri Department of Conservation is attached to this memorandum.

The Department of Law believes that the approach adopted by Missouri is essentially sound, and provides a useful starting point for the development of a similar approach by the Boards of Fisheries and Game under the ADA. We would recommend slightly modifying Missouri's approach, as follows:

1. The boards and the department should take all necessary steps to ensure that the regulations and policies they adopt or propose to adopt comply with the ADA. A person with a disability (or personal representative of the person with a

⁹ Under the Missouri regulation, the applicant must carry at all times a "detailed description" of the applicant's disability. We believe such a requirement would raise serious concerns under Alaska's constitutional right of privacy, Alaska Const., art. I, • 22. The written authorization should therefore omit any description of the applicant's disability or should limit the description to the minimum necessary to allow enforcement in the field; the description of the exemption or modification can be as detailed as the circumstances require. The Missouri regulation also refers only to physical disabilities. The ADA applies to both physical and mental disabilities.

disability) who believes a proposed or existing regulation or policy is inconsistent with the ADA should, if possible, submit an alternate proposal (under the normal schedule for submitting proposals or by petition) to the relevant board that (a) explains why the regulation or policy prohibits meaningful access to a program, service, or benefit; and (b) suggests modifications to the regulation or policy that will reasonably accommodate the needs of persons with disabilities. The boards should use the standards set forth in paragraphs 5, 6, and 7, below, to evaluate their regulations, policies and proposals.

2. A person with a disability (or personal representative of the person with a disability) who believes an existing regulation or policy prohibits meaningful access to a program, service, or benefit, should submit an application, on a form developed and made available by the commissioner, that contains:

- (a) the statement of a physician or other competent documentary evidence sufficient to enable the commissioner to ascertain the nature and extent of the individual's disability;

- (b) a statement by the person with a disability that identifies the regulation or policy at issue and explains why the individual feels the regulation or policy prohibits meaningful access to a program, service, or benefit; and

- (c) a statement by the person with a disability requesting an exemption from the regulation or policy, or suggesting one or more modifications to the regulation or policy that the individual feels are necessary to reasonably accommodate the individual's disability.

3. An application requesting an exemption from or modification to an existing regulation or policy should be submitted to the commissioner at least 30 days prior to the date the person with a disability wants to hunt, fish, or participate in the activity that is the subject of the application. This deadline will enable the commissioner to evaluate the application and the effects, if any, that granting the exemption or modification may have upon the conservation, development, or utilization of the fish and game resources of the state. The commissioner should be given the discretion to accept applications that are submitted after the deadline where there is a legitimate reason for not

complying. An obvious example would be a hunt that has been modified by an emergency regulation.

4. The commissioner should determine whether to grant an exemption or modification as soon as practicable after receiving an application, and where possible at least two weeks prior to the date the applicant wishes to hunt, fish, or participate in the activity that is the subject of the application.
5. The commissioner need not grant an exemption or modification where the regulation or policy does not, when viewing the relevant program, service or benefit as a whole, prohibit the person with a disability from obtaining meaningful access to the program, service, or benefit.
6. In deciding whether to grant the relief requested, the commissioner is not limited to the form of the exemption or modification requested by the person with a disability. The commissioner may, when necessary to avoid discrimination, adopt any exemption or modification that provides the person with a disability meaningful access to the program, service, or benefit at issue.
7. If an existing regulation or policy prohibits a person with a disability from meaningful access to a program, service, or benefit, but the commissioner finds that the person cannot be accommodated without (a) fundamentally altering the program, service, or benefit; or (b) incurring undue administrative burdens and expense, the commissioner should set forth, in writing, all facts that support the decision. The decision must be made after considering all resources available for use in the funding and operation of the service, program, or benefit. The commissioner should take any other action that would not result in such an alteration or burdens but that nevertheless provides persons with disabilities the benefits or services at issue.
8. If the commissioner decides to grant all or part of the relief requested in the application, the commissioner should provide a written description of the authorized exemption or modification to the handicapped individual. The written authorization should be carried by the person at all times while hunting or fishing.

The procedure outlined above attempts to incorporate many of the terms and specific requirements of the ADA. The

procedure is illustrative only, and we do not suggest this procedure is the only possible means of carrying out the ADA's obligations. Nevertheless, the approach ultimately adopted by the boards should be adopted as regulations and should contain the substance of the procedure described above. Finally, please note that this memorandum, by setting forth the minimum requirements of the ADA, should not be construed as discouraging the boards or the department from doing *more* than the ADA requires to provide persons with disabilities opportunities to hunt and fish in Alaska.

IV. CONCLUSION

The Boards of Fisheries and Game and the Department of Fish and Game must ensure that their regulations and policies do not preclude persons with disabilities from a meaningful opportunity to hunt and fish in Alaska. The boards may delegate to the commissioner the authority to grant reasonable exemptions from or modifications to existing regulations or policies when those exemptions or modifications are necessary to accommodate persons with disabilities and avoid discrimination. No exemptions or modifications are necessary where existing regulations or policies do not impose artificial barriers upon hunters and fishers with disabilities, or where such exemptions would fundamentally alter the program, service, or benefit at issue, or cause undue administrative burdens or expense.

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