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SUBJECT			
Disabled hunting – to discharge a firearm from a vehicle and/or access areas closed to motor vehicles			

This Policy Replaces:

Policy Manual 4-7-01.09 “Disabled hunting – to discharge a firearm from a vehicle and/or access areas closed to motor vehicles,” April 1, 2015.

Staff and Organizations Affected:

Director of Wildlife and Habitat Branch / Victoria
 Deputy Director of Wildlife and Habitat Branch / Victoria
 Manager, Front Counter BC
 FrontCounter BC Staff
 Regional Fish and Wildlife Managers
 Regional Fish and Wildlife Staff
 Conservation Officer Service

Reason for this Policy:

The Ministry has established this policy to facilitate a consistent, province-wide approach to accommodating hunters with physical disabilities.

POLICY


HUMAN RIGHTS CODE

1. It is the policy of the Ministry that decision makers who consider applications for permits under sections 2(aa), 2(bb), 3(2) and 3.1(1)(a) of the Permit Regulation, are encouraged to consider the human rights of applicants who assert physical disability: discretion must be exercised in a way that complies with human rights law.

Summary of the Human Rights Code:

Human rights law as it affects discretion to issue these permits is contained in the British Columbia Human Rights Code, R.S.B.C. 1996, c. 210, as amended (the “Code”). Here is a summary.

Purposes of the Code

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POSITION Wildlife and Habitat Branch	POSITION ADM, Resource Stewardship Division		
		DATE EFFECTIVE February 17, 2021	



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The Code sets out the right of every person to participate fully and without discrimination in British Columbia society. The purposes of the Code are to eliminate discrimination, to promote a climate of mutual understanding and respect, to prevent discrimination prohibited by the Code, to identify and eliminate persistent patterns of inequality, and to provide a means of redress to individuals who are discriminated against contrary to the Code.

Scope of Code

The Code authorizes the Human Rights Tribunal to consider allegations of discrimination of a person or a group of persons, against corporations, societies, agencies, associations or trade unions that are regulated by BC law, regarding incidents that occurred in BC. This includes all the ministries of the provincial government, local and municipal government, schools and universities, hospitals and medical clinics, and private businesses. The Tribunal does not have the authority to consider allegations of discrimination against federally-regulated undertakings, or about conduct outside of British Columbia.

Protection from Discrimination

The Code prohibits discrimination in the areas of employment, employment advertisements, wages, services, tenancy, purchase of property, publication and membership in unions and associations and forbids retaliation against a person who pursues human rights.

There are fifteen prohibited grounds of discrimination: age (19 or older), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex, sexual orientation and unrelated criminal conviction. Not all grounds of discrimination apply to the areas listed above.

Duty to Accommodate

One of the central concepts in human rights law is the duty to accommodate. Accommodation means providing an opportunity to participate in employment or access a service for a person who has special requirements due to a protected ground. A duty to accommodate commonly arises in situations concerning disability.

In the context of these permits, the Province’s duty to accommodate individuals with disabilities can be met by ensuring everyone has the opportunity to participate in the regulated activities. The Province is required to accommodate to a point of “undue hardship” – a strict standard that is only reached when a value, such as protection of the environment, outweighs the goal of equal participation.

In making the assessment on accommodation, it is essential that the particular circumstances of each applicant are considered and documented.



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PHYSICAL DISABILITY

- It is the policy of the Ministry that the Director of Wildlife (or Deputy) will exercise the powers of a Regional Manager to confirm whether an applicant has a physical disability and how best to accommodate their disability within the meaning of the Code. Although physical disability is not defined in the Code, Human Rights Tribunal decisions have determined that not every medical problem constitutes a physical disability; and that those factors commonly taken into account in determining whether a given illness or medical condition amounts to a disability include whether the condition is involuntary and entails a certain measure of severity, permanence and persistence. Generally, the disability impairs a person's ability to carry out the normal functions of life to some degree. A transitory condition with a short recovery time of a few weeks is generally not considered a physical disability under the Code, *Li v. Aluma Systems Inc.* [2014] B.C.H.R.T.D. No. 270.

ASSESSMENT BY MEDICAL PROFESSIONAL

- It is the policy of the Ministry to consider the opinion of a qualified medical professional on the nature of an applicant's physical disability.

The question to be determined by the Director and/or Regional Manager is how best to accommodate the applicant with a physical disability and which permit or permits are required. The possible permits may be any one of, or a combination of, the following four:

- I. the issuance of a s.2(aa) permit to be assisted by having one or more hunting companions, track, kill, and retrieve big game wounded by, and on behalf of, the permit holder (note: the number of companions may be restricted in places with motor vehicle restrictions.)
- II. the issuance of a s. 3(2) permit to access a restricted area with a motor vehicle.
- III. the issuance of a s. 3.1(1)(a) permit to shoot from a motor vehicle.
- IV. the issuance of a s.2(bb) permit to be assisted by having one or more hunting companions, named on the permit, to shoot, track, kill and retrieve big game on the permit holder's behalf.

PERMITS ISSUED BY REGIONAL MANAGERS

- It is the policy of the Ministry for the Regional Manager of the relevant region to consider all applications for permits to use a motor vehicle and authorize hunting companions in a closed area, once the Director has confirmed that the person has a physical disability that could require accommodation by the issuance of that kind of permit.



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If an application concerns more than one region, it is the policy of the Ministry for the Director to request each Regional Manager to consider the part of the application relevant to their region and forward their decision to the Director who will compile the decisions into a single, multiple region permit issued under the Director’s signature.

4.1 Permit to use a Motor Vehicle in a Closed Area (s.3(2))

These permits are intended for applicants who are unable to walk very far without mobility assistance (e.g., cane, walker, crutches, wheelchair, or prosthetics) and therefore seek accommodation in order to access areas that are closed to the use of motor vehicles.

Physical Disability

The Director should consider the accommodation as being met if an applicant’s physical disability makes him/her unable to walk 100 meters while carrying a firearm. This threshold is only a guideline aimed at determining clear cases of disability: inability to walk 100 meters makes a strong case for disability. But just because a person can walk 100 meters does not mean that they are not disabled. If an applicant can walk further than 100 meters, further inquiry into their need for accommodation is required.

Confirming disability is just the first step. Even if an applicant is physically disabled, a permit should not be issued if issuing the permit would create undue hardship – see below.

Balance Values

When considering whether to issue a permit to use a motor vehicle in a closed area, the decision maker must balance competing values: the value that motivated the closure and the value of equal participation for all. If issuing the permit would be an undue hardship under the circumstances, the decision maker may legally exercise discretion to deny the permit. But if issuing the permit would not be an undue hardship, it would be discriminatory to refuse the permit.

This process involves identifying the value that motivated the closure. Regional managers are encouraged to do an inventory of motor vehicle closed areas in their region to catalogue the policy behind each closure. They will then be in a position to more promptly consider permit requests by referring to the inventory.

Some closures are motivated by a goal of reducing hunting pressure. If access is made more difficult by banning the use of motor vehicles, the number of animals killed tends to drop. Unfortunately this kind of management strategy can systemically discriminate against persons with physical disability who cannot practically access the area without a motor vehicle. Generally speaking, if the value of the closure is to reduce hunting pressure, it is very unlikely that giving permission to access would be an undue hardship. This is for two reasons: (1) the ministry has the option of managing hunting pressure in ways that do not result in systemic discrimination and (2) the number of persons holding these permits tends to



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be quite low and therefore the effectiveness of the closure may not be significantly reduced by giving permission.

On the other hand, some closures are motivated by a goal of protecting the environment. It may be that the friction from the tires of motor vehicles results in significant harm to rare or valuable plants. This is a value that may well result in undue hardship if compromised.

Other closures will be motivated by other values, but the required process remains the same: identify the values and try to balance them by accommodating up to the point of undue hardship.

Permit conditions

The goal of accommodation using motor vehicle access permits is to remove the effect of systemic discrimination. It is the policy of the ministry that permits to use motor vehicles in closed areas should be crafted to put the permit holder on an equal footing with a person not holding a permit – no better and no worse.

For example, a permit to access closed areas with a motor vehicle for the purpose of hunting should include terms that limit the maximum speed of the vehicle and the total distance covered in a day to the speed and distance reasonably attainable by a hunter not using a vehicle. This restriction should apply even if the area is not closed to motor vehicles for other purposes. That is because the closure is meant to make hunting more difficult for the typical user and allowing limited vehicle use should put the disabled applicant in a position equal to, not superior to, a typical user.

The permit should also limit the weight of things carried on the vehicle (excepting harvested game and items that are carried because of the physical disability) to the weight reasonably carried by a hunter not using a vehicle.

4.2 Permit to allow Hunting Companions in Closed Areas (s. 2(aa))

These permits are intended for applicants who require assistance to track, kill, and retrieve big game they have wounded in areas that are closed to the use of motor vehicles.

Duty

The permit to use a motor vehicle in a closed area should require the holder to ensure no other person uses the vehicle unless the person

- a) has a permit to do so,
- b) is merely acting as a hunting companion pursuant to the holder's permit under section 2(aa) of the Permit Regulation, or



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c) is otherwise not prohibited by law from using the vehicle.

For example, if the closure bans use of a vehicle only for hunting, the permit holder could freely carry non-hunters, i.e., if the non-hunter's use of a vehicle in the area is not barred by law. This could include a person without firearms who merely assists the permit holder to retrieve harvested game or who merely comes along for the ride.

Physical Disability

The Director should consider the accommodation threshold as being met if an applicant's physical disability makes him/her unable to walk 100 meters while carrying a firearm. This threshold is only a guideline aimed at determining clear cases of disability: inability to walk 100 meters makes a strong case for disability. But just because a person can walk 100 meters does not mean that they are not disabled. If an applicant can walk further than 100 meters, further inquiry into their need for accommodation is required.

Number of Hunting Companions in Motor Vehicle Hunting Closed Areas (MVHCA)

If the use of motor vehicles in the area is banned only for hunting purposes (also known as Vehicle Access Hunting Closures or VAHCs), and the applicant is also seeking a hunting companion permit under section 2(aa), the number of hunting companions permitted to use the vehicle while in that area should be limited to two.

Number of Hunting Companions/Companions in Motor Vehicle Closed Areas (MVCA)

If the use of motor vehicles in the area in question is banned for all purposes (also known as Access Management Areas or AMAs), the number of hunting companions or other companions permitted to use the vehicle should be limited to one while in that area, i.e., no more than one person in addition to the permit holder, whether helping the permit holder to hunt or not, should be allowed to ride in the vehicle

Additional Companions

The permit issuer should consider allowing more companions than suggested above if the applicant so requests and it is necessary for safety.

Companions who hunt for their own gain

If a hunter wishes to accompany the permit holder and hunt for their own personal gain in an area closed to use of motor vehicles (whether for hunting only or for all purposes), that hunter must not use the vehicle unless they have a permit to do so; i.e., that hunter will need to walk (or use a pack animal etc.), carry all his/her own equipment, and pack out their harvested game, all without using the motor vehicle. This applies even if the person is also a hunting companion under a section 2(aa) permit: use of the vehicle by a person hunting for their own gain is not allowed unless that person has a permit to do so.



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Type of Vehicle

It is the policy of the ministry that the permit issuer considers putting limitations on the vehicle used if appropriate due to exceptional circumstances. For example, if vegetation damage is a concern and the applicant establishes that the vehicle (or class of vehicle) proposed to be used reduces the concern to the point that a permit could be issued, the permit could specify the vehicle or class of vehicle. For most permits, the vehicle need not be identified.

Signage

The permit holder should be required to prominently display on the vehicle a sign indicating they have a permit to use the vehicle in the closed area. This is to assist enforcement efforts and to prevent others presuming vehicle use is generally permitted.

Dialogue and Documentation

If an applicant is confirmed to have a physical disability, but the application for a permit to use a motor vehicle in a closed area is denied completely or as concerns material aspects (e.g., in respect of a significant number of closed areas applied for), the decision maker should engage the applicant in an attempt to come up with an alternate accommodation (e.g., suggesting alternate areas that are more likely to be permitted).

In cases of disagreement especially, it is important that efforts to adjudicate physical disability and to accommodate are well documented. This would assist the ministry in justifying its actions if challenged by a legal process – e.g., EAB appeal or human rights complaint.

PERMITS ISSUED BY THE DIRECTOR

5. It is the policy of the Ministry for the Director of Wildlife (or Deputy) to exercise the powers of a Regional Manager for all applications for permits to shoot from a motor vehicle, to authorize hunting companions in areas without access restrictions, and to authorize the use of designated “proxy” hunters, by persons asserting physical disability.

5.1 Permit to Shoot from a Motor Vehicle (s. 3.1(1)(a))

These permits are intended for applicants who require accommodation to be exempt from the prohibitions on having a loaded firearm in a vehicle and from discharging a firearm or wounding or killing wildlife from a motor vehicle.

Physical Disability

The Director should consider the accommodation threshold as being met if an applicant’s physical disability makes him/her unable without assistance to safely exit a motor vehicle, position himself/herself on uneven terrain (including using the outside of the vehicle for



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support of the upper body), and load, hold, aim, and discharge a firearm. But a permit should not be issued if it would create undue hardship – see below.

Balance Values

When considering whether to issue a permit to shoot from a motor vehicle, the Director must balance competing values: the value that prohibiting shooting from a vehicle addresses and the value of equal participation for all. If issuing the permit would be an “undue hardship” under the circumstances, the decision maker may legally exercise discretion to deny the permit. But if issuing the permit would not be an undue hardship, it would normally be discriminatory to refuse the permit.

The prohibition against shooting from a vehicle is grounded in the value of public safety. The decision maker, before issuing a permit, should be satisfied not only that the applicant has the requisite disability, but also that the risk of harm resulting from the applicant being given the permission is not undue. For example, it may be that an applicant is not able to safely load, hold, aim, or discharge the firearm while in the motor vehicle. The risk of harm resulting from that inability may outweigh the value of equal participation.

5.2 Permit for Hunting Companions in Areas without Access Restrictions (s. 2(aa))

These permits are intended for applicants who require assistance to track, kill, and retrieve big game they have wounded in areas that are not closed to the use of motor vehicles.

Physical Disability

The Director should consider the accommodation threshold as being met if an applicant’s physical disability makes him/her unable to walk 100 meters while carrying a firearm. This threshold is only a guideline aimed at determining clear cases of disability: inability to walk 100 meters makes a strong case for disability. But just because a person can walk 100 meters does not mean that they are not disabled. If an applicant can walk further than 100 meters, further inquiry into their need for accommodation is required.

Permit Conditions

If the accommodation threshold is met, the Director should consider issuing a province-wide hunting companion permit under s. 2(aa) of the Permit Regulation, limited to areas without access restrictions. It should normally not be necessary to limit the number of hunting companions a permit holder may have in areas without access restrictions.

5.3 Permit to have a designated “proxy” hunter hunt on behalf of a disabled hunter (s. 2(bb))

These permits are intended for applicants who require assistance by a designated hunting companion to track, kill and retrieve big game on their behalf.



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Physical Disability

The Director should consider the accommodation threshold as being met if an applicant’s physical disability makes him/her physically unable to discharge a firearm or crossbow. In most cases this would involve amputation or paralysis of both arms.

Permit Conditions

The prohibition against “proxy” hunting is grounded in the wildlife management principle that the hunters should be responsible for hunting and killing their own wildlife. However, the definition of hunting under the B.C. Wildlife Act includes aspects that physically disabled hunters, even though unable to discharge firearms or crossbows, are capable of (e.g., searching for, pursuing, lying in wait for wildlife) and therefore their desire to participate in all aspects of hunting needs to be accommodated.

The Permit Regulation requires that the permit holder of a 2(bb) permit must select the big game to be killed and must remain in the presence of the designated “proxy” hunter during the initial shooting of the animal; and that the designated “proxy” hunter(s) must be named on the disabled hunter’s permit and are limited to providing “proxy” hunting assistance to one disabled hunter per licence year.

The decision maker, before using an s. 2(bb) permit, should be satisfied not only that the applicant has the requisite disability and will participate in the hunt, but also that any designated “proxy” hunter to be listed on the permit is eligible for the role and has all the necessary authorizations and abilities to perform the task.

ADVISORIES

6. It is the policy of the ministry to include advisories when issuing these permits to further describe the nature of the permit and expected conduct.

e.g., emphasize that a permit for a designated “proxy” hunter is not a permit to shoot from a vehicle or hunt in a closed area.

e.g., emphasize that a permit to shoot from a vehicle is not a permit to do so in a no shooting area

e.g., encourage a permit holder not to kill game unless he/she is able to ensure retrieval, by him/her or by a companion.

Definitions:

“**Director**” – means Director of Wildlife.

A reference to the Director includes a reference to an authorized delegate and to a Deputy Director.

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“**Regional Manager**” – means Regional Manager of the recreational fisheries and wildlife programs.

The term “**Regional Manager**” includes

- a) the Director exercising the powers of a Regional Manager under section 100 of the Wildlife Act, and
- b) an authorized delegate

as the context requires.

Policy Manual Cross-References:

None

Procedure Manual Cross-Reference:

Ministry Procedure Manual, Volume 4, Section 7 Subsection:
— 01.09 Disabled Hunting

Other Cross-References:

- Wildlife Act, R.S.B.C. 1996, c. 488, sections 19, 20, and 27(1)
- Wildlife Act, Permit Regulation B.C. Reg. 253/2000, sections 2(aa), 2(bb), 3(2) and 3.1(1)(a)
- Wildlife Act: Motor Vehicle Prohibition Regulation, B.C. Reg. 196/99
- Wildlife Act: Public Access Prohibition Regulation, B.C. Reg. 187/2003, sections 2,3,6,7,9 and 10