

Report Highlights

Why DLA Performed This Audit

The audit was requested to address concerns about BOG's regulatory outcomes and decision process. The audit evaluated whether DFG, BOG, and ACs followed established procedures and whether BOG decisions were made in compliance with State law. The audit also determined the extent DFG complied with legislative intent by making comments, reports, data, and recommendations available prior to a BOG meeting and prior to ACs' consideration of proposals. Further, the audit determined the degree to which AC regulatory recommendations agreed with DFG recommendations and the degree to which BOG decisions were upheld by the courts. Satisfaction with, and knowledge of, the BOG regulatory process was evaluated by surveying AC and BOG members.

What DLA Recommends

1. BOG's executive director should update the AC manual to define "reasonable public notice" and provide training to AC members.
2. BOG's executive director should ensure information updates are clearly identified on BOG's website.

A Special Review of the Department of Fish and Game (DFG), Board of Game (BOG) Regulatory Process

September 23, 2019

Audit Control Number 11-30085-19

REPORT CONCLUSIONS

The audit concluded that BOG, Advisory Committees (AC), and DFG followed established procedures and complied with State laws governing the regulatory process. AC member survey respondents generally believed BOG's decision making process was effective, but were less satisfied with the transparency, objectivity, and thoroughness of BOG deliberations. The audit found AC meetings were consistently conducted in accordance with laws and procedures, except for public noticing. (Recommendation No. 1) Over a ten year period, few BOG regulatory decisions were challenged in court. The courts upheld the majority of board decisions.

The audit also concluded that DFG comments, reports, data, and recommendations were not routinely made available to ACs via BOG's website at the time ACs considered proposals; however, a biologist was generally in attendance at AC meetings. Auditors noted that information on BOG's website may be updated without clearly identifying the update. (Recommendation 2) For most of the recommendations reviewed by auditors, ACs agreed with DFG recommendations. Philosophical differences between DFG staff and AC members may lead to different proposal recommendations regardless of the availability of DFG information.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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October 11, 2019

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, we have reviewed the Board of Game Regulatory Process and the attached report is submitted for your review.

DEPARTMENT OF FISH AND GAME BOARD OF GAME REGULATORY PROCESS

September 23, 2019

Audit Control Number
11-30085-19

The audit evaluated whether the Department of Fish and Game, the Board of Game, and Advisory Committees followed established procedures and whether the board complied with State laws. The audit also examined the extent the department complied with legislative intent by making comments, reports, data, and recommendations available prior to a board meeting and prior to Advisory Committees' consideration of proposals. Further, the audit evaluated the degree to which Advisory Committee regulatory recommendations agreed with department recommendations and the degree to which board decisions were upheld by the courts.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1: Thirty of 126 Advisory Committee (AC) meetings reviewed for the period July 2009 through March 2018 (24 percent) were public noticed less than seven days before the scheduled meetings. Per AS 44.62.310 (a) and (e), AC meetings are open to the public and reasonable public notice must be given. Without timely notice, the ability for the public to participate is restricted.

BOG's executive director should update the AC manual to define "reasonable public notice" and provide training to AC members.

Board support staff maintain a procedure manual which is available to AC members via the Board of Game's (BOG) website. The manual includes, in part, a brief guide to Robert's Rules of Order that should be used during AC meetings, an overview of AC uniform rules of operation, and a checklist to guide AC meetings. Auditors noted that the manual does not direct ACs to public notice non-election meetings within a specific timeframe. However, the manual requires ACs to public notice election meetings at least 14 days in advance.

We recommend BOG's executive director update the AC manual to define "reasonable public notice" and provide training to AC members to ensure reasonable public notice is provided for all AC meetings.

Recommendation No. 2: The audit found that Department of Fish and Game (DFG) comments, reports, data, and recommendations posted on BOG's website in advance of the BOG meeting may be updated and overwritten. DFG information for nine of 21 regular meetings reviewed for the period July 2009 through March 2018 was overwritten, at least in part. The publish date displayed via BOG's website corresponded with the date DFG information was originally posted, if not changed. If the information was changed, the posting date was as of the change.

BOG's executive director should ensure information updates are clearly identified on BOG's website.

The audit found that original information posted to the website was not consistently maintained, making it difficult for auditors to ascertain when DFG information was made available. The website did not always identify that information was updated and what specifically was updated. Without clear notification, AC members and the general public may not recognize that information was

updated and may rely on outdated information when considering proposals and making recommendations.

The duties of the DFG commissioner, as stated in AS 16.05.050(a)(4), include a duty to collect, classify, and disseminate statistics, data, and information. Additionally, per legislative intent language effective July 2015, DFG is to provide comments, reports, data, and recommendations on proposals for public examination at least 60 days prior to a BOG meeting.

We recommend BOG's executive director ensure DFG information updates are clearly identified on BOG's website, including what information was updated and the date the information was originally provided.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of the Board of Game (BOG or board) Regulatory Process.

Objectives

The objectives were to:

- Determine whether board decisions complied with State law and legislative intent.
- Determine whether Advisory Committee (AC) recommendations were rooted in Department of Fish and Game (DFG) research. This includes determining whether AC intensive management (IM) recommendations concerning IM actions were supported by DFG scientific data and identifying reasons for any misalignment.
- Determine whether BOG, ACs, and DFG consistently followed established procedures.
- Determine whether the participants in the decision process have a clear and accurate understanding of their respective roles.
- Determine if proposal pre-vetting was effective and/or efficient.
- Identify the degree BOG decisions have been upheld by the courts over a 10 year period.
- Determine availability of DFG's comments, reports, data, and recommendations to ACs concerning IM proposals before committee recommendations are due to BOG.

Scope

The audit reviewed the BOG regulatory process from July 1, 2009, through March 31, 2018. The audit reviewed court decisions regarding BOG decisions from July 1, 2007, through March 31, 2018.

Methodology

To address the objectives, auditors:

- Reviewed DFG statutes, regulations, and website to gain an understanding of BOG's activities and decision making process.
- Reviewed newspaper articles to identify potential issues pertaining to BOG's decision making process.
- Obtained a listing of BOG court cases from July 2007 through March 2018 from Department of Law to determine the number, nature, and status of BOG regulatory decisions challenged through the Alaska Court System. The completeness and accuracy of the information was verified through the Alaska Court System website.
- Reviewed and evaluated availability of DFG comments, reports, and data prior to BOG meetings held from July 2015 through March 2018 as required by legislative intent operating budget language. Additionally, reviewed and evaluated the availability of DFG comments, reports, data, and recommendations prior to select BOG meetings held from July 2009 through June 2015 to ascertain whether DFG procedures changed after intent language passed.
- Evaluated a random sample of 22 of the 257 proposals excluded from proposal books from July 2009 through March 2018 to review compliance, effectiveness, and efficiency of the pre-vetting process. The sample size was based on a 90 percent confidence level, with zero expected deviations, and a ten percent tolerable deviation rate. Test results were projected to the population.
- Compiled listing of board proposals from published DFG proposal books from July 2009 through March 2018 to identify the universe of proposals considered by the board.
- Conducted a random sample of 29 of 103 IM proposals considered by the board during the audit period. Sample size was based on a small population (less than 250). Testing results were projected to the population. The selected proposals were reviewed to:

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- Assess availability of DFG comments, reports, data, and recommendations 60 days before BOG meetings.
 - Identify AC recommendations for the selected proposals (130 AC recommendations) to:
 - ◆ Determine the degree DFG and AC proposal recommendations were aligned when DFG recommendations were not neutral and determine the reasons for misalignment,
 - ◆ Assess availability of DFG comments, reports, data, and recommendations before AC meetings, and
 - ◆ Identify biologist attendance at related AC meetings based on a review of meeting minutes when available.
 - Evaluate the regulatory process by listening to 29 BOG audio meeting minute recordings for selected meetings and proposals.
 - Conducted a random sample of 42 of 1820 non-IM proposals considered by the board during the audit period. Sample size was based on a 90 percent confidence level, with one expected deviation and a nine percent tolerable deviation rate. Testing results were projected to the population. The selected proposals were reviewed to:
 - Assess BOG and DFG compliance with Alaska Statutes, regulations, and established procedures, as well as DFG compliance with legislative intent.
 - Identify AC recommendations for the selected proposals (190 AC recommendations) to:
 - ◆ Assess AC compliance with Alaska Statutes, regulations, and established procedures,
 - ◆ Determine the degree DFG and AC proposal recommendations were aligned when DFG

recommendations were not neutral and reasons for misalignment,

- ◆ Assess availability of DFG comments, reports, data, and recommendations before AC meetings, and
 - ◆ Identify biologist attendance at related AC meetings based on a review of meeting minutes when available.
- Evaluate the regulatory process by listening to 42 BOG audio meeting minute recordings for selected meetings and proposals.

Surveys of BOG and AC members were conducted to assess members' satisfaction with and knowledge of the BOG regulatory process. Surveys were open from June 6, 2018, through March 6, 2019, with several reminders sent to members throughout this timeframe. A survey was provided to 820 AC members (as of May 2018), whose contact information was obtained from DFG. Three hundred forty members responded to the survey (42 percent response rate). A separate survey was provided to 10 BOG members active during July 2015 through May 2018 and eight members responded (80 percent response rate).

During the course of the audit, interviews were conducted with DFG staff and select BOG and AC members to gain an understanding of the regulatory decision making process. Additionally, interviews were held with DFG staff to gain an understanding of specific proposals and the process for posting DFG comments, reports, data, and recommendations.

No controls significant to the audit objectives were identified or tested.