

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.

(Intentionally left blank)

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

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

ABBREVIATIONS

AAC	Alaska Administrative Code
AC	Advisory Committee
ACN	Audit Control Number
AS	Alaska Statute
BOG <i>or</i> board	Board of Game
CISA	Certified Information Systems Auditor
CPA	Certified Public Accountant
DFG	Department of Fish and Game
DLA	Division of Legislative Audit
GMU	Game Management Unit
IM	Intensive Management

CONTENTS

Report Sections	Organization and Function	1
	Background Information	7
	Report Conclusions	13
	Findings and Recommendations	27
	Objectives, Scope, and Methodology	29
Agency Responses	Office of the Governor	63
	Department of Fish and Game	65
	Board of Game	69
Appendices	Appendices Summary	33
	Appendix A: Advisory Committees by Region and Game Management Units	35
	Appendix B: Alaska Board of Game Court Decisions July 2007 – March 2018	42
	Appendix C: Advisory Committee Survey Questions and Responses	45
	Appendix D: Board of Game Survey Questions and Responses	55
Exhibits	Exhibit 1: Board of Game Members as of August 31, 2019	1
	Exhibit 2: Map of Advisory Committee Regions	4
	Exhibit 3: Board of Fisheries and Game FY 19 Budget	5

CONTENTS

(Continued)

Exhibit 4: Advisory Committees FY 19 Budget	5
Exhibit 5: Board of Game Three Year Meeting Cycle 2018 through 2021	7
Exhibit 6: BOG Regulatory Proposal Process Flowchart	12
Exhibit 7: Procedures for Developing Fish and Game Regulations 5 AAC 96.610	15
Exhibit 8: BOG Moratoriums 2010 through March 2018	17
Exhibit 9: Availability of DFG Information in Advance of BOG Meetings July 2009 through June 2015	20
Exhibit 10: Reasons AC Recommendations Did Not Align with DFG Recommendations for Sampled Proposals	23
Exhibit 11: AC Survey Response Rate by Region	33

ORGANIZATION AND FUNCTION

The Department of Fish and Game (DFG), the Board of Game (BOG or board), and local Advisory Committees (AC) work together to manage and allocate the State's wildlife resources.

Department of Fish and Game

DFG is the State agency responsible for managing Alaska's fish and game resources. DFG is organized into a commissioner's office, six divisions, and a boards support section. The six divisions include the Divisions of Commercial Fisheries, Sport Fish, Wildlife Conservation, Habitat, Subsistence, and Administrative Services. The Divisions of Wildlife Conservation and Subsistence, and the department's boards support section, are directly involved in the regulation of the State's wildlife resources.

Statutorily, DFG is a key participant in the wildlife regulatory process. Alaska Statute 16.05.020 states DFG's commissioner is to manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the State in the interest of the economy and general well-being of the State. Per AS 16.05.050, DFG's commissioner has the duty to collect, classify, and disseminate statistics, data, and information. The statistics, data, and other information provide the foundation upon which regulatory decisions are made.

Board of Game

BOG was created to conserve and develop Alaska's game resources. The board is composed of seven members appointed by the governor, subject to confirmation by a majority of legislators in joint session (see Exhibit 1 for a list of members). Per AS 16.05.221, the governor must

Exhibit 1

Board of Game Members as of August 31, 2019

Ted Spraker, Chair
Soldotna

Allen Barrette
Fairbanks

Jerry Burnett
Juneau

Stanley Hoffman, Jr.
Bethel

Orville Huntington
Fairbanks

Thomas Lamal
Fairbanks

Lawrence Van Daele
Kodiak

Source: Office of the Governor, Boards and Commissions website.

appoint each board member on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the board, and with a view of providing diversity of interest and points of view in the membership. The appointed members must be state residents and be appointed without regard to political affiliation or geographical location of residence.

BOG members serve staggered terms of three years and are entitled to compensation and per diem for traveling to and from a meeting and for each day in attendance at a board meeting.¹ For other meetings and conferences approved by the board, members receive compensation at a rate equal to one-half of the authorized compensation.

Per AS 16.05.255, board duties mainly include adopting regulations considered advisable for:

- setting apart game reserve areas, refuges, and sanctuaries in State water or on State land over which it has jurisdiction, subject to legislative approval;
- establishing open and closed seasons and areas for taking of game;
- establishing the means and methods employed in the pursuit, capture, taking, and transport of game, including regulations, consistent with resource conservation and development goals; and establishing means and methods that may be employed by persons with physical disabilities;
- setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game;
- classifying game as game birds, song birds, big game animals, fur bearing animals, predators, or other categories;
- providing methods, means, and harvest levels necessary to control predation and competition among game in the state;

¹ Compensation is set by AS 39.27.011. As of August 2019, the authorized compensation rate was \$36.97 per hour.

-
-
- providing watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation, and stocking of game;
 - prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;
 - establishing the times and dates during which the issuance of game licenses, permits, and registrations, and the transfer of permits and registrations between registration areas and game management units (GMU) or subunits is allowed;
 - regulating sport and subsistence hunting as needed for the conservation, development, and utilization of game;
 - taking game to ensure public safety;
 - regulating the activities of persons licensed to control nuisance wild birds and nuisance wild small mammals;
 - promoting hunting and trapping, and preserving the heritage of hunting and trapping in the state;
 - providing for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals of the board in an area; and
 - establishing population and harvest goals and seasons for intensive management of identified big game prey populations to achieve a high level of human harvest.

Joint Board of Fisheries and Game

BOG occasionally holds joint meetings with the Board of Fisheries to resolve any conflicts in the regulations of the two boards and to consider matters that require the consideration of both boards. Together the boards are known as the Joint Board of Fisheries and Game. The Joint Board of Fisheries and Game has authority under AS 16.05.260 to establish ACs throughout the state.

Local Advisory Committees

ACs provide a local forum for collecting and expressing opinions and recommendations relating to the management of fish and wildlife resources. There are 84 ACs across the state grouped into six regions with up to 15 locally elected members on each committee. Some committees have a designated number of representatives from specific communities as set out in regulation.

Exhibit 2 shows the six AC regions. Further detail is provided in Appendix A, which lists the ACs by region and GMUs.²

Exhibit 2

Advisory Committee Regions



Source: Board of Game website.

Per 5 AAC 96.040, an AC candidate must have local knowledge of, and experience with, the fish and wildlife resources and uses in order to qualify for membership on a committee. Each committee must comply with uniform rules of operation.

In general, the ACs:

- develop proposed regulations for submission to the appropriate board;
- evaluate proposed regulations and make recommendations to the appropriate board;

² GMUs are geographic areas defined by BOG for game management purposes.

- provide a local forum for fish and wildlife conservation and use, including any matter related to fish and wildlife habitat; and
- cooperate and consult with interested persons and organizations, including government agencies, to accomplish the above functions.

Board of Game Support and Budget

The BOG budget is part of a joint budget with the Board of Fisheries. The FY 19 budget for the Boards of Fisheries and Game totaled \$1.26 million and included four board support positions consisting of a full-time executive director and publications specialist for each board (see Exhibit 3 for budget details).

The AC budget of \$522,800 shown in Exhibit 4 includes five part-time regional program assistants, also known as regional coordinators.

Exhibit 3

Boards of Fisheries and Game FY 19 Budget	
Personal Services	\$ 649,100
Travel	207,000
Services	374,300
Commodities	25,400
Total	\$1,255,800
Positions: Permanent Full-Time	4

Source: Office of Management and Budget website.

Exhibit 4

Advisory Committees FY 19 Budget	
Personal Services	\$368,000
Travel	147,300
Services	5,000
Commodities	2,500
Total	\$522,800
Positions: Permanent Part-Time	5

Source: Office of Management and Budget website.

The BOG executive director and publications specialist coordinate travel, meeting times, and locations for board meetings; prepare the calls for new proposals; compile proposals into a proposal book; coordinate dissemination of DFG recommendations, technical reports, and scientific data; and help run BOG meetings. Regional coordinators provide assistance to ACs, including public noticing of AC meetings, arranging for biologists and other DFG staff to attend AC meetings, coordinating AC meetings, and submitting AC proposals and recommendations.

(Intentionally left blank)

BACKGROUND INFORMATION

Regulation of the State’s wildlife resources provides substantial opportunities for interested members of the public to participate. Board of Game (BOG or board) deliberations consider stakeholder feedback and recommendations, as well as scientific data provided by the Department of Fish and Game (DFG).

BOG adopts regulations intended to conserve and develop Alaska’s wildlife resources by first soliciting feedback from the public, Advisory Committees (AC), and DFG. The board also reviews and considers available data related to the specific region and Game Management Unit (GMU) under consideration as it determines which regulations to adopt. Proposed regulations are considered and debated at public meetings.

BOG establishes which regions, GMUs, and topics will be considered for regulatory change.

BOG defines the geographical areas to be considered for regulatory change, with all GMUs covered during a three year cycle.³ The board meeting cycle covering the calendar years 2018 through 2021 is shown in Exhibit 5. Meetings are held in the region under review.

Exhibit 5

Board of Game Three Year Meeting Cycle 2018 through 2021

2018/2019	<ul style="list-style-type: none">• Southcentral Region (GMUs 6, 7, 8, 14C, 15)• Southeast Region (GMUs 1, 2, 3, 4, 5)
2019/2020	<ul style="list-style-type: none">• Interior Region (GMUs 12, 19, 20, 21, 24, 25, 26B, 26C)• Arctic/Western Region (GMUs 18, 22, 23, 26A)
2020/2021	<ul style="list-style-type: none">• Central/Southwest Region (GMUs 9, 10, 11, 13, 14A, 14B, 16, 17)• Statewide Regulations (Cycles A & B)

Source: DFG website.

The board generally solicits regulatory proposals 12 to 15 months before a scheduled meeting date. This solicitation is known as the

³ In 2015 the board changed from a bi-annual to a three year meeting cycle.

“call for proposals.” The “call” designates which topics, regions, and GMUs are open for regulatory review. A “proposal” refers to a proposed regulation change under the purview of the board. Proposals can be submitted by individuals, ACs, State agencies, or other interested parties. The number of proposals considered at a regional BOG meeting varies. For example, the Southcentral region meeting held in March 2019 was six days long and considered 96 proposals and the Southeast region meeting held in January 2019 was five days long and considered 56 proposals.

ACs actively contribute to the regulatory process.

DFG’s boards support section is responsible for facilitating ACs’ participation in the regulatory process. Staff maintain a procedure manual which is available to AC members via BOG’s website. The manual includes information about the BOG regulatory process, tips for proposal recommendations, guidelines for offering BOG testimony, a brief guide to Robert’s Rules of Order that should be used during AC meetings, an overview of AC uniform rules of operation, a copy of the fish and game regulations, a checklist to guide AC meetings, and standard proposal and recommendation forms and templates. Board support staff post the online public notice for an AC meeting based on communications with an AC’s chairperson.

ACs meet periodically to consider fish and game conservation and management concerns, including those concerns outside an AC’s own region. At AC meetings, committee members may evaluate proposals (proposed changes to regulation), consider DFG information and recommendations regarding the proposals if available, discuss the proposals with a DFG biologist or other expert if in attendance, and vote on proposals. An AC may submit written recommendations to BOG using a standard form or may provide recommendations by submitting a copy of the AC’s meeting minutes. ACs may also submit proposals for active calls using a standard form provided by BOG.

DFG’s budget includes funds for AC representatives to travel to BOG meetings and to AC meetings. When travel is paid by the State,

DFG staff provide technical assistance and scientific data to help interested parties evaluate proposed regulations.

AC representatives are expected to participate in meetings. The FY 19 budget included \$147,300 for AC member travel.

DFG staff, including biologists, work collaboratively with the board and ACs during the regulatory process. DFG staff provide comments, technical reports, and Division of Wildlife Conservation data⁴ regarding proposals via BOG's website prior to board meetings. DFG proposal recommendations may include: adopt, amend, take no action, do not adopt, or neutral. DFG representatives, including biologists, also attend each BOG meeting to share information and discuss recommendations. A DFG biologist often attends AC meetings to discuss data and DFG recommendations.

Statutes and regulations do not specify when Division of Wildlife Conservation information must be provided in advance of a BOG meeting. According to DFG management, data is provided as soon as available, up to the day of the board meeting. Due to the timing of a proposal, up-to-date data may not be available prior to a BOG meeting.

In July 2015, the legislature passed intent language as part of the operating budget that required DFG to provide comments, reports, and data regarding board proposals at least 60 days prior to the BOG meeting. Specifically, the budget stated:

It is the intent of the legislature that all department comments, technical reports and science data on Board proposals submitted to either Board of Fish or Board of Game be filed with the respective Board and be available for public examination at least 60 days prior to start of Board's meeting.

⁴ The Division of Wildlife Conservation is the lead agency that provides recommendations, technical reports, and data; however, the division also coordinates with the Division of Subsistence to collect and submit relevant information.

During BOG meetings, board members listen to public comments and DFG presentations, ask questions, and deliberate proposals.

Time is allotted for members of the public physically present at BOG meetings to provide testimony. After hearing all public testimony, the board considers proposals. DFG staff are available to provide presentations to the board and are available for consultation during board deliberations. Department of Law staff also provide assistance to the board.

BOG members consider written and oral testimony, DFG information, and AC recommendations while deliberating a proposal. An oral vote is taken to determine board action. An audio meeting file records BOG's deliberations and votes; the file is posted on BOG's website. A summary of meeting actions is also posted on BOG's website after each meeting.

The regulatory process ends when a change to regulations or issuance of new regulations is finalized after the BOG meeting. Exhibit 6 provides a flowchart of the BOG regulatory process.

The IM regulatory process requires a feasibility assessment.

Intensive management (IM) is a term used to describe a 1994 statute and associated regulations and policies intended to achieve or maintain wild ungulate (hoofed mammal) harvests in defined areas at elevated but sustainable levels through some combinations of management practices (i.e., predation control and habitat enhancement).⁵ IM is accomplished through an IM program approved by BOG and implemented by DFG. An IM program is essentially a plan to meet ungulate population and harvest objectives within a defined timeframe using a specific treatment.

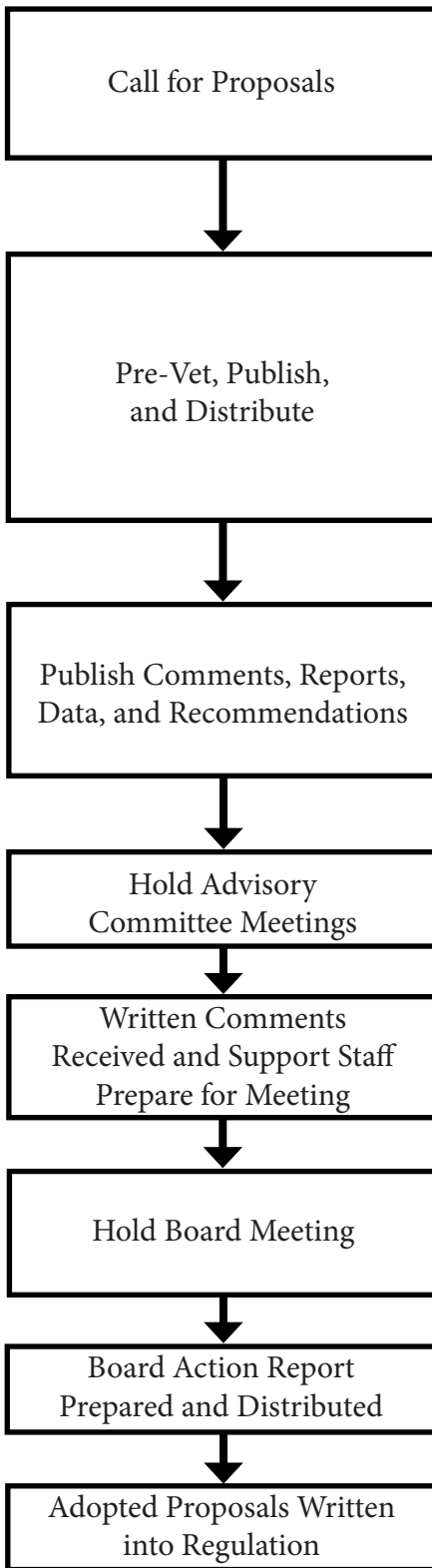
Development of IM regulations is more complex than non-IM BOG regulations. The process begins with ACs, public, or DFG submitting a proposal either requesting a new IM program or a feasibility assessment. The board considers proposals to begin a new IM program or feasibility assessment during public meetings. If approved, DFG compiles a feasibility assessment, which can

⁵ Division of Wildlife Conservation Intensive Management Protocol December 2011.

take approximately one year, and presents the assessment to the board for consideration at a future board meeting. DFG creates an operational plan for approved assessments, which includes a checklist of components necessary to implement, administer, and evaluate an IM project.

The completed operational plan is submitted as a proposal at a future BOG meeting. The board votes on the proposal. If approved, the plan is codified in regulations. Each IM plan is developed with begin dates, end dates, and biological thresholds. However, the board can offer guidance regarding IM programs at any time. Changes to existing IM programs are considered through the standard proposal process.

BOG Regulatory Proposal Process Flowchart



The board solicits regulatory proposals or comments. The board may limit sections or portions of existing regulations that will be open for change. The board provides forms to be used in preparing proposals. Notices soliciting proposals are distributed statewide. In order to be considered, a proposal must be received by the board before the designated deadline unless provided otherwise by the board.

After the deadline for receiving proposals, board support staff review each proposal to ensure the proposal meets the call (i.e., correct region and within board authority to implement). Proposals that do not meet this criteria are pre-vetted (excluded) for consideration. If excluded, notification is given as to the reason for exclusion.

Board support staff compile all proposals that meet a call in a proposal book and publish the book of proposed regulations online through the board’s website. Hard copies are available at DFG offices.

DFG posts comments, reports, data, and recommendations on regulatory proposals online through the board’s website. Effective July 1, 2015, budgetary intent language requires DFG to provide comments, technical reports, and science data on regulatory proposals at least 60 days prior to a BOG meeting for public examination. If ACs meet earlier than 60 days before a BOG meeting, the information may not be available for consideration.

ACs meet to review proposals. The ACs provide a forum for local area comment. The ACs review proposals, DFG information (if available), and may ask for additional information from DFG biologists, or other staff, if in attendance.

Prior to a board meeting, a comment deadline is published. Comments received from ACs and the general public are compiled and recorded in the board members’ meeting workbooks and online. Additional comments received after the comment deadline are provided to board members at a meeting.

The board holds a public hearing and acts on proposals or develops alternatives. During a board meeting, the board hears DFG staff reports and oral comments from AC designees and interested members of the public. The board deliberates each regulatory proposal and makes a final decision.

At the conclusion of each meeting, a report is compiled by board support staff which outlines the board’s actions on each proposal. The summary of actions report is published online and notification is given to the ACs.

After the board meeting, adopted proposals are written into proper legal regulatory form and submitted to the lieutenant governor for filing. After filing, the adopted proposals become official State regulations.

Source: BOG statutes, regulations, website materials, and inquiry with DFG staff.

REPORT

CONCLUSIONS

The audit was requested to address concerns about Board of Game's (BOG or board) regulatory outcomes and decision process. The audit evaluated whether Department of Fish and Game (DFG), BOG, and Advisory Committees (AC) 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.

To gain an understanding of stakeholder satisfaction with BOG's regulatory process and to identify potential problems, 820 AC members were surveyed and 340 responded (42 percent response rate). Further, ten BOG members were surveyed and eight responded (80 percent response rate).

The audit concluded that BOG, ACs, 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.

Detailed report conclusions are presented below.

BOG decisions were made in compliance with State law and BOG generally followed established procedures.

The audit reviewed 18 BOG regulatory meetings held from July 2009 through March 2018 and 42 related board decisions. Auditors evaluated whether the meetings and regulatory decisions complied with State law and whether the regulatory process followed the procedures specified in regulation (see Exhibit 7 for procedures outlined in regulation).

The audit concluded that the regulatory process associated with all 18 meetings complied with applicable procedures, BOG statutes, and general open meetings statutes. The board properly solicited proposals and DFG board support staff appropriately pre-vetted proposals and facilitated the requests for comments. The proposals were sent out to ACs, DFG, and the public for comments. Comments were compiled for BOG review. BOG meetings were open to the public and public notices were posted timely.⁶ BOG considered the qualified proposals and issued final decisions.

All 42 board decisions were found to align with BOG's statutory duty to conserve and develop Alaska's wildlife resources. The public and ACs were notified of actions taken through meeting summary reports and audio recordings of BOG meetings. Summary reports and audio files for meetings held FY 12 and later were posted on BOG's website and summary reports and audio files for meetings held prior to FY 12 were made available to auditors upon request.

The degree to which BOG's decisions complied with State law was also evaluated by reviewing the frequency of BOG-related litigation and outcomes over a ten year time period. The audit identified nine court challenges, plus related appeals, during the period. The challenges resulted in BOG taking corrective action four times.

⁶ One meeting was noticed at 29 days and the requirement for regulatory meetings is 30 days.

In three instances, BOG either adopted emergency regulations or repealed regulations to resolve complaints. In one instance, BOG regulations and procedures were updated and amended to remedy a violation of the Open Meetings Act associated with voting via email. Overall, the audit concluded that BOG-related litigation did not raise significant concerns regarding BOG compliance with State law or the legality of the regulatory process.

Exhibit 7

Procedures for Developing Fish and Game Regulations 5 AAC 96.610

- (a) For the purpose of developing fish and game regulations, each board will observe the procedures set out in this section. The deadlines for each phase will be set by the appropriate board for each meeting and will be announced to committees and the public.
- (b) Phase 1. Each board will solicit regulatory proposals or comments to facilitate that board's deliberations. The boards may limit those sections or portions of the existing regulations that will be open for change. The boards will provide forms to be used in preparing proposals. Notices soliciting proposals will be distributed statewide. In order to be considered, a proposal must be received by the boards before the designated deadline unless provided otherwise by a board.
- (c) Phase 2. After the deadline for receiving proposals, the boards support section shall compile all proposals received on time, including proposals from department staff and other government agencies, distribute them to the public through department offices, and send them to the committees.
- (d) Phase 3. Committees may review the proposals at a public meeting and may request technical and scientific support data and prepared testimony from the department.
- (e) Phase 4. Each board will give legal notice of timely received proposals. In accordance with the Administrative Procedure Act (AS 44.62), each board will hold a public hearing and will act on proposals or develop alternatives on the subject matter legally noticed. The final decision on all proposals remains the responsibility of a board.
- (f) Phase 5. After completion of procedures required by the Administrative Procedure Act (AS 44.62), a board will notify each committee of the actions taken on each committee's respective recommendations and proposals and the reasons for those actions.

Source: Alaska Administrative Code.

AC members generally believed BOG’s decision making process was effective, but were less satisfied with the transparency, objectivity, and thoroughness of BOG deliberations.

Auditors surveyed AC members to help gauge satisfaction with BOG’s role in the regulatory process and to help identify potential problems or deficiencies. Surveys were sent out to 820 members and 340 responded (42 percent response rate). AC survey questions and responses are summarized in Appendix C.

Eighty-nine percent of survey respondents believed BOG’s overall decision making process was at least somewhat effective (43 percent considered the process very or extremely effective). Respondents were less satisfied with the transparency of BOG’s process. Fifty-eight percent of respondents agreed or strongly agreed that BOG’s decision making process is open and transparent and provides an equal opportunity for all interested parties to participate and 12 percent disagreed or strongly disagreed with the statement. A similar level of satisfaction was reported with BOG’s objectivity. Fifty-six percent agreed or strongly agreed that BOG objectively reviewed and considered input from the various user groups when deliberating on proposals and 15 percent disagreed or strongly disagreed with the statement.

A slightly lower level of satisfaction was reported with BOG’s thoroughness. Fifty-four percent of respondents agreed or strongly agreed that BOG members thoroughly evaluate data and recommendations prior to making a decision on a proposal and 11 percent disagreed or strongly disagreed with the statement.

Survey respondents were asked to provide more information when disagreeing with the above survey statements. Most did not provide additional feedback; however, a review of 49 negative responses identified the following concerns with BOG transparency, objectivity, and thoroughness:

- AC input ignored
- BOG not transparent
- Too political

Moratoriums make the regulatory process more efficient.

- Too much emphasis on personal or special interest groups
- Too many proposals evaluated at meetings
- Some BOG members lack understanding of local issues
- Some BOG members lack understanding of their role

A moratorium is an authorized period of delay in considering a regulatory topic. Alaska regulation 5 AAC 96.610(b) authorizes BOG to limit sections or portions of the existing regulations that are open for change. The audit found BOG used moratoriums in accordance with regulations. Per BOG’s chair, the board consults with the Department of Law prior to limiting a call for proposals through moratoria. Moratoriums limited the call for proposals five times during the audit period (see Exhibit 8).

Exhibit 8

**BOG Moratoriums
2010 through March 2018**

Dates Applied	Moratorium Topic
February 2004-2010	Denali Wolf Buffer Zone Boundaries
November 2006-2016	Taking Bears in the Swan Cove/Pack Creek Area
March 2007-2017	Taking Bears in the Cape Douglas Kamishak Special Use Area
March 2007-2013	Taking Bears in the Wolverine Creek area of the Redoubt Bay Critical Habitat Area
March 2010-2016	Denali Wolf Buffer Zone Boundaries

Source: BOG chair.

Eighty-two percent of AC member survey respondents believed moratoriums were at least somewhat effective at making the BOG regulatory process more efficient (27 percent believed the moratoriums were very or extremely effective).

AC meetings were consistently conducted in accordance with law and standard procedures, except for public noticing.

According to BOG's executive director, the board issues moratoriums for topics that consume a disproportionate amount of resources and/or when more than the standard meeting cycle⁷ is needed to sufficiently evaluate a regulatory impact.

AC members review proposed regulations at public meetings⁸ which are subject to the Open Meetings Act, a law that requires reasonable public notice. The audit evaluated the degree to which AC meetings held during the audit period provided reasonable public notice and to what degree the public was provided the opportunity to participate. A total of 126 AC meetings⁹ were evaluated; however, meeting minutes were only available to auditors for 92 of the meetings. Auditors noted that statutes and regulations do not define what constitutes reasonable public notice.

Auditors used a seven day notice as the minimum to qualify as reasonable public notice. Seven days was selected based on the understanding that public participation was important to ACs' mission and the presumption that a one week notice would allow interested members of the public and DFG staff to attend. Further, seven days was considered a conservative measure of timeliness given that the AC manual required election meetings to be noticed at least 14 days in advance (the AC manual did not require a minimum public notice for non-election meetings). DFG regional coordinators were responsible for posting public notice of AC meetings based on communications with AC chairs.

The audit found that 24 percent of AC meetings (30 of 126) were not noticed at least seven days before the scheduled AC meeting. (Recommendation 1) The review of 92 meeting minutes¹⁰ found that

⁷ The standard meeting cycle was changed in 2015 from bi-annual to three years.

⁸ Per 5 AAC 96.610.

⁹ A total of 42 non-IM proposals were selected for review along with 126 AC recommendations related to the proposals. Auditors reviewed the AC meetings associated with the recommendations. Therefore, all AC meetings reviewed as part of the audit were held, at least in part, to address a BOG proposal.

¹⁰ Minutes from 34 AC meetings were not provided to BOG support staff and, consequently, were unavailable for review.

DFG staff generally made comments, reports, data, and recommendations available to the public and BOG 60 days prior to BOG meetings as required by legislative operating budget language.

the public was provided an opportunity to participate 97 percent of the time.

Eighty-six percent of AC survey respondents agreed or strongly agreed that the AC recommendation process is open and transparent and provides an equal opportunity for all interested parties to participate. Three percent disagreed or strongly disagreed with the statement.

Language was included in the State operating budget, effective July 2015, directing DFG to provide comments, reports, data, and recommendations on board proposals for public examination at least 60 days prior to a BOG meeting. The DFG information is typically provided by Division of Wildlife Conservation¹¹ biologists and posted to BOG's website by board support staff.

The audit evaluated compliance with the 60 day notice requirement. Five regular BOG meetings and one special topic BOG meeting were held from July 2015 through March 2018. The audit concluded that BOG's and DFG's standard procedures were sufficient to enable DFG to meet the 60 day notice requirement. Of the five regular meetings, three met the 60 day requirement and two had information available 59 days prior to the BOG meetings.

DFG did not meet the 60 day notice requirement for the special purpose meeting held March 18, 2017, on Copper Basin area moose and caribou hunting. This meeting was added to BOG's agenda after the regular meeting schedule was set. As such, it was not part of the standard call for proposals that is typically issued 12 to 15 months before a scheduled meeting. The call for proposals for the special meeting was published on October 31, 2016, with a due date of November 28th. The proposal book, which summarized all proposals that met the call, was made

¹¹ Information from the Divisions of Habitat and Subsistence may also be provided; however, the Division of Wildlife Conservation is the agency that coordinates with the other divisions and provides all the data to the boards support section for posting.

available on January 23, 2017, for comment. DFG staff provided comments, reports, data, and recommendations on March 2, 2017, approximately two weeks before the BOG meeting date. According to DFG management, special topic meetings have an accelerated timeline, making it difficult for DFG staff to compile and publish data in a timely manner with limited resources.

The audit also evaluated the availability of DFG information prior to implementation of the 60 day notice requirement in July 2015. Sixteen regular board meetings and one special topic regulatory meeting held from July 2009 through June 2015 were evaluated. Auditors found that DFG information was provided less

Exhibit 9

Availability of DFG Information in Advance of BOG Meetings July 2009 through June 2015

Meeting Start Date	Days in Advance of Meeting
November 13, 2009	14
January 29, 2010	24
February 26, 2010	21
October 8, 2010 (special topic)	6
March 4, 2011	24
March 26, 2011	46
November 11, 2011	59
January 13, 2012	46
March 2, 2012	18
January 11, 2013	53
February 8, 2013	56
March 15, 2013	56
January 10, 2014	56
February 14, 2014	46
January 9, 2015	31
February 13, 2015	21
March 13, 2015	21

Source: BOG website and DFG staff inquiry.

than 60 days in advance of all 17 meetings. This indicates that DFG's procedures changed after the legislative intent language was enacted. Exhibit 9 demonstrates the availability of DFG information prior to July 2015 for the 17 meetings.

Auditors noted that it was common for DFG information to be posted and then updated at a later date. In these cases, original information was not consistently maintained on the website to allow the public, ACs, and BOG to identify that the information was updated, when information was updated, and why the information was updated. (Recommendation 2)

DFG comments, reports, data, and proposal recommendations were not routinely available to ACs in time to consider the information when making recommendations; however, a biologist was generally in attendance at AC meetings.

The audit evaluated two means of providing information to ACs: 1) Division of Wildlife Conservation comments, reports, data, and recommendations posted on BOG's website; and 2) AC meeting attendance by a DFG biologist or other knowledgeable staff member.¹² The audit evaluated the extent to which information was available to ACs at the time ACs considered proposals by examining AC meeting minutes associated with a sample of 29 intensive management (IM) proposals (71 meeting minutes) and a sample of 42 non-IM proposals (92 meeting minutes).

The audit found that DFG comments, reports, data, and recommendations were made available to ACs at the time proposals were considered 37 percent of the time for IM proposals and 48 percent of the time for non-IM proposals. Information was provided by DFG biologists' attendance at a higher rate – 77 percent for IM proposals and 85 percent for non-IM proposals. The audit also noted that DFG information was not posted at the time of an AC meeting and a DFG biologist was not in attendance for 14 percent of AC meetings that considered IM proposals and 9 percent of AC meetings that considered non-IM proposals.

¹² The audit identified attendance at AC meetings, but could not identify the extent a DFG biologist provided information during a meeting.

AC recommendations for IM proposals did not agree with DFG recommendations in 19 percent of IM-related recommendations reviewed.

Per DFG management, many ACs meet a limited number of times per year. Given the time between when a proposal book is available and when DFG information is posted, it is not uncommon for ACs to meet before DFG information is posted on the website. ACs in more populated areas tend to meet more frequently and are more likely to have a DFG staff person in attendance and DFG information available at the time proposals are considered.

DFG management stated that detailed data is routinely shared with AC members through the Division of Wildlife Conservation's website and through staff discussions with AC members outside the AC meeting process. A survey of AC members found that 77 percent believed that DFG data is usually or always available to ACs before the committees must make recommendations. Further, 77 percent of AC member survey respondents reported that DFG experts (biologists, anthropologists, subsistence staff, etc.) are always or usually available to provide information during AC meetings.

The audit determined the extent AC recommendations aligned with DFG research by comparing AC recommendations associated with a sample of IM proposals submitted during the audit to DFG's recommendations. The comparison was only possible when DFG's recommendation was not neutral.¹³ A total of 104 IM-related AC recommendations associated with DFG recommendations were reviewed. The audit also determined the extent AC recommendations aligned with DFG research for a sample of non-IM-related proposals using the same process. A total of 102 AC recommendations associated with non-IM recommendations were reviewed.

The audit concluded that AC recommendations did not agree with DFG recommendations in 19 percent of IM AC recommendations reviewed (20 of 104) and in 22 percent of the

¹³ DFG submits a recommendation for every proposal. Recommendations may include adopt, amend, take no action, do not adopt, or neutral. There were 130 AC recommendations related to the sample of 29 IM proposals, of which 104 of the related DFG recommendations were not neutral. There were 190 AC recommendations related to a sample of 42 non-IM proposals, of which 102 of the related DFG recommendations were not neutral.

non-IM recommendations reviewed (22 of 102). AC member survey respondents indicated that AC recommendations do not routinely agree with DFG. Fifty-nine percent of survey respondents believed AC recommendations were always or usually supported by DFG data and another 34 percent believed the recommendations were supported some of the time.

To gain an understanding of ACs’ reasons for not agreeing with DFG, auditors reviewed AC meeting minutes and voting records. Exhibit 10 summarizes the reasons, when available, cited by ACs.

Exhibit 10

**Reasons AC Recommendations Did Not Align
with DFG Recommendations for Sampled Proposals**

Reason Cited	IM Proposals	Non-IM Proposals
ACs disagreed with DFG population objectives	5	0
ACs disagreed that IM objectives had been met	3	0
ACs supported additional predator control	0	5
ACs believed proposal was unnecessary	0	6
DFG recommended not adopting proposal until more data was obtained or DFG stated that information was lacking; ACs disagreed	6	0
ACs opposed limits for resident hunters	2	0
AC believed DFG had authority to issue permit to disabled hunter allowing baiting	0	1
Hunt area confusion	0	1
AC recommendation based on public perception and DFG based on study information	1	0
AC believed baiting was only way disabled hunter could harvest a brown bear	0	1
AC believed proposal too liberal	0	1
AC believed change would be reported inconsistently	0	1
AC believed updating language made sense and DFG disagreed	0	1
AC recommendations did not identify reason for disagreement	3	5
Total	20	22

Source: AC meeting minutes or written recommendations to BOG.

Board support staff effectively pre-vetted regulatory proposals.

Eighty-two percent of AC survey respondents agreed or strongly agreed that ACs objectively review and consider data when making recommendations on proposals. As discussed above, the audit noted that DFG comments, reports, and data were not available for AC consideration in 63 percent of IM proposals and 52 percent of non-IM proposals reviewed. The availability of data may have contributed to the degree AC recommendations were not aligned with DFG research. DFG management stated that philosophical differences between the department and AC members regarding management and allocation of resources can lead to different recommendations.

DFG board support staff pre-vets all proposals received in response to a call for proposals. Pre-vetting is a process of going through each proposal received to ensure the proposal qualifies (received within deadline, in region under review, and within board authority to implement). Proposals that do not qualify are excluded from the proposal book and board consideration. Excluding unqualified proposals prevents board and AC members from spending time evaluating invalid proposals. DFG standard procedures require board staff to provide a written denial notification to a proposal sponsor no later than 30 days after determination.

The audit determined board support staff appropriately pre-vetted proposals; however, denial notifications were not always retained. The audit reviewed 22 of the 257 proposals excluded from proposal books from July 2009 through March 2018. All 22 were found to be appropriately excluded from the proposal books. Auditors were unable to review all related denial notices because board staff did not retain eight denial notifications. Of the 14 available for review, two notices were dated over 30 days after the determination.

Six percent of AC survey respondents reported to be aware of a proposal that was disqualified without an explanation to the proposal sponsor. However, no specific proposal details were provided to allow auditors to follow up the allegations.

Participants in the BOG regulatory process appear to understand respective roles.

The BOG regulatory process appears to be operating in accordance with State law and standard procedures. Auditors listened to audio BOG recordings pertaining to 71 proposals, reviewed 126 AC public notices and 18 BOG public notices, and examined 163 AC meeting minutes. The review identified that DFG staff, BOG members, and AC members understand their respective roles in the decision making process.

AC member survey respondents believed that most AC and BOG members understand their respective roles. Six percent of AC survey respondents disagreed that AC members have a clear and accurate understanding of their respective role in the regulatory process. Nine percent of AC survey respondents disagreed that BOG members have a clear and accurate understanding of the BOG members' role in the regulatory process.

One of eight BOG survey respondents (13 percent) disagreed that AC members have a clear and accurate understanding of the AC members' role in the regulatory process. Further, one of eight respondents disagreed that BOG members have a clear and accurate understanding of the BOG members' role in the regulatory process.

Over a ten year period, few BOG regulatory decisions were challenged in court.

From July 2007 through March 2018, few BOG regulatory decisions were challenged. During this timeframe, over 2,500 proposals were considered by the board and the audit identified nine court challenges, plus related appeals. The majority of board decisions challenged were upheld by the courts. Appendix B summarizes case details.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1:

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

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.

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:

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

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.

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:

-
-
- α Assess availability of DFG comments, reports, data, and recommendations 60 days before BOG meetings.
 - α 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.
 - α 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:
 - α Assess BOG and DFG compliance with Alaska Statutes, regulations, and established procedures, as well as DFG compliance with legislative intent.
 - α 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.

APPENDICES

SUMMARY

Appendix A

Appendix A presents maps of the Advisory Committee (AC) regions, including the game management units and AC names for each region.

Appendix B

Appendix B provides a listing and status of court cases and associated appeals of Board of Game (BOG) regulatory decisions from July 2007 through March 2018.

Appendix C

A survey of AC members was conducted to determine if participants in the regulatory decision making process had a clear and accurate understanding of their roles and to measure satisfaction with the BOG regulatory process. The survey was sent to 820 AC members and open for response from June 2018 to March 2019. Responses were received from 340 AC members resulting in a 42 percent response rate. Response rates by region are listed below. Appendix C provides results of the AC member survey, along with the questions.

Exhibit 11

AC Survey Response Rate by Region			
Region	Number of AC Members	Number of Completed Surveys	Response Rate by Region
Southeast	123	60	49%
Southcentral	216	114	53%
Southwest	153	45	29%
Western	96	27	28%
Arctic	75	25	33%
Interior	157	69	44%
Total	820	340	42%

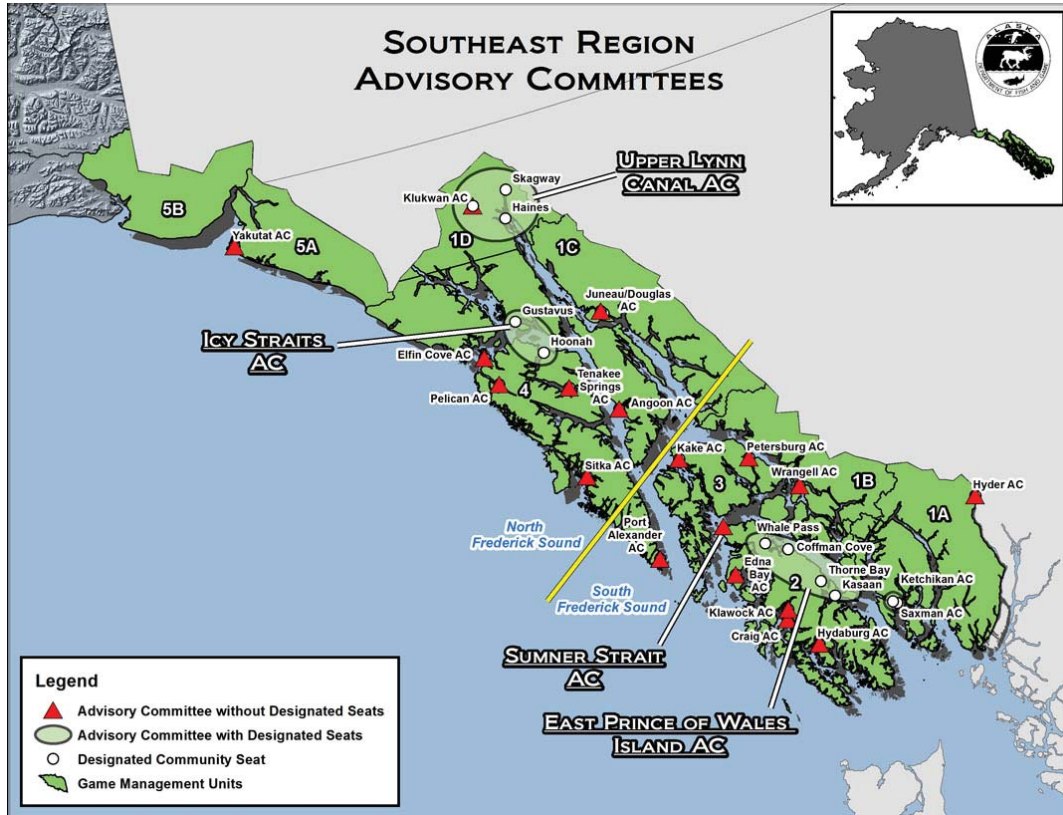
Appendix D

A survey of BOG members was conducted to determine if participants in the regulatory decision making process had a clear and accurate understanding of their roles and to measure the satisfaction with the BOG regulatory process. The survey was sent to the 10 BOG members on the board from July 2015 through May 2018 and was open for response from June 2018 to March 2019. Responses were received from eight BOG members resulting in an 80 percent response rate. Appendix D provides results of the BOG member survey along with the questions.

APPENDIX A

Advisory Committees by Region and Game Management Units

Region One is the Southeast Region consisting of 23 advisory committees.



Advisory Committee Names

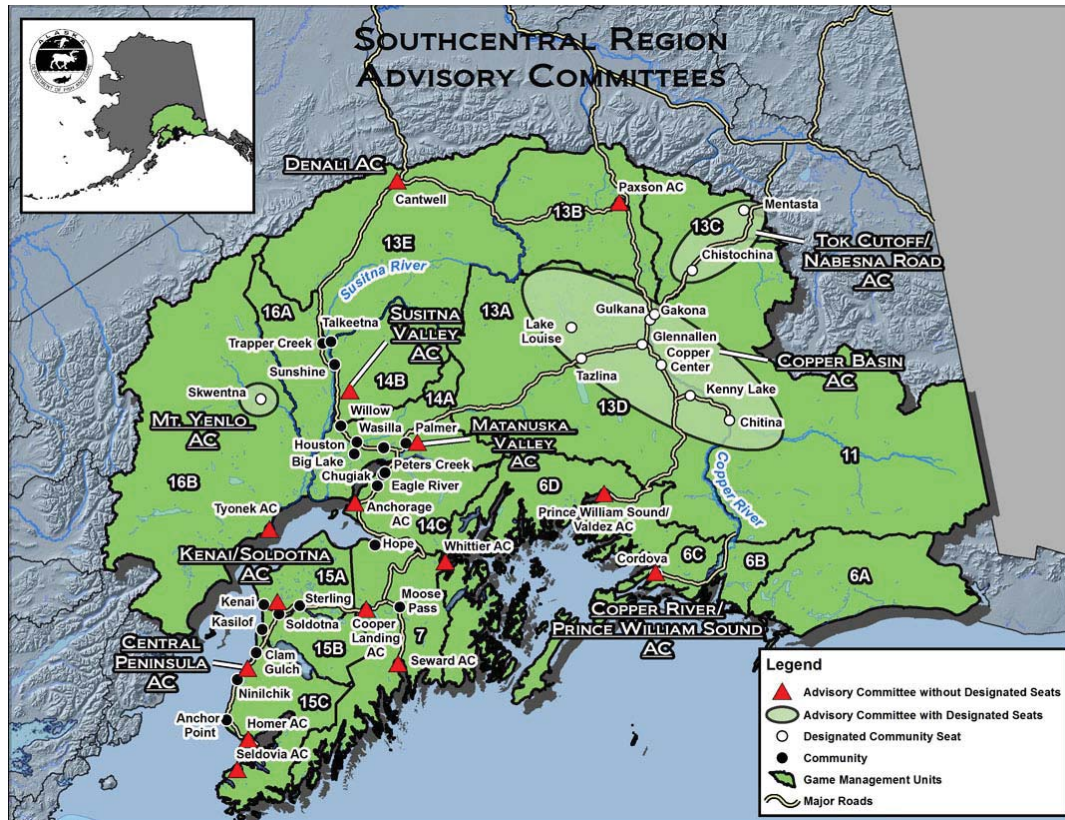
- | | |
|--|---|
| <input type="checkbox"/> Angoon | <input type="checkbox"/> Klukwan |
| <input type="checkbox"/> Craig | <input type="checkbox"/> Pelican |
| <input type="checkbox"/> East Prince of Wales Island | <input type="checkbox"/> Petersburg |
| <input type="checkbox"/> Edna Bay | <input type="checkbox"/> Port Alexander |
| <input type="checkbox"/> Elfin Cove | <input type="checkbox"/> Saxman |
| <input type="checkbox"/> Hydaburg | <input type="checkbox"/> Sitka |
| <input type="checkbox"/> Hyder | <input type="checkbox"/> Sumner Strait |
| <input type="checkbox"/> Icy Straits | <input type="checkbox"/> Tenakee Springs |
| <input type="checkbox"/> Juneau-Douglas | <input type="checkbox"/> Upper Lynn Canal |
| <input type="checkbox"/> Kake | <input type="checkbox"/> Wrangell |
| <input type="checkbox"/> Ketchikan | <input type="checkbox"/> Yakutat |
| <input type="checkbox"/> Klawock | |

Source: Department of Fish and Game Website.

APPENDIX A (Continued)

Advisory Committees by Region and Game Management Units

Region Two is the Southcentral Region consisting of 18 advisory committees.



Advisory Committee Names

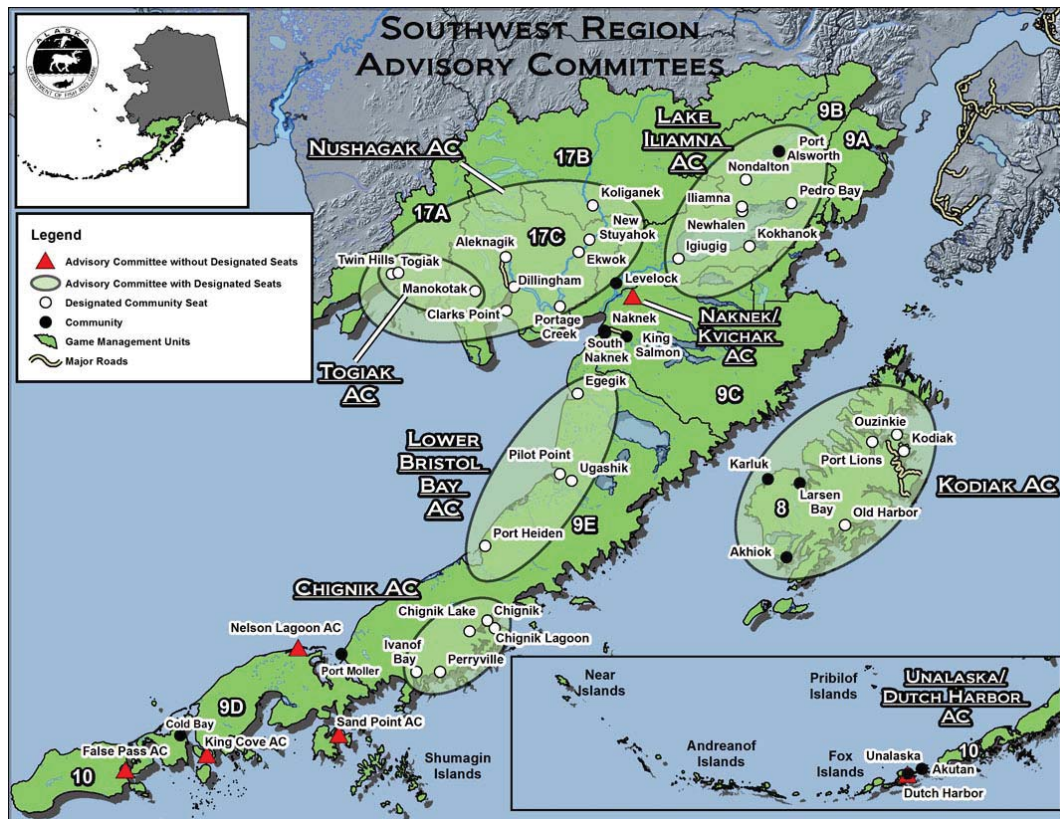
- | | |
|--|--|
| <input type="checkbox"/> Anchorage | <input type="checkbox"/> Mt. Yenlo |
| <input type="checkbox"/> Central Peninsula | <input type="checkbox"/> Paxson |
| <input type="checkbox"/> Cooper Landing | <input type="checkbox"/> Prince William Sound/Valdez |
| <input type="checkbox"/> Copper Basin | <input type="checkbox"/> Seldovia |
| <input type="checkbox"/> Copper River/Prince William Sound | <input type="checkbox"/> Seward |
| <input type="checkbox"/> Denali | <input type="checkbox"/> Susitna Valley |
| <input type="checkbox"/> Homer | <input type="checkbox"/> Tok Cutoff/Nabesna Road |
| <input type="checkbox"/> Kenai/Soldotna | <input type="checkbox"/> Tyonek |
| <input type="checkbox"/> Matanuska Valley | <input type="checkbox"/> Whittier |

Source: Department of Fish and Game Website.

APPENDIX A (Continued)

Advisory Committees by Region and Game Management Units

Region Three is the Southwest Region consisting of 12 advisory committees.



Advisory Committee Names

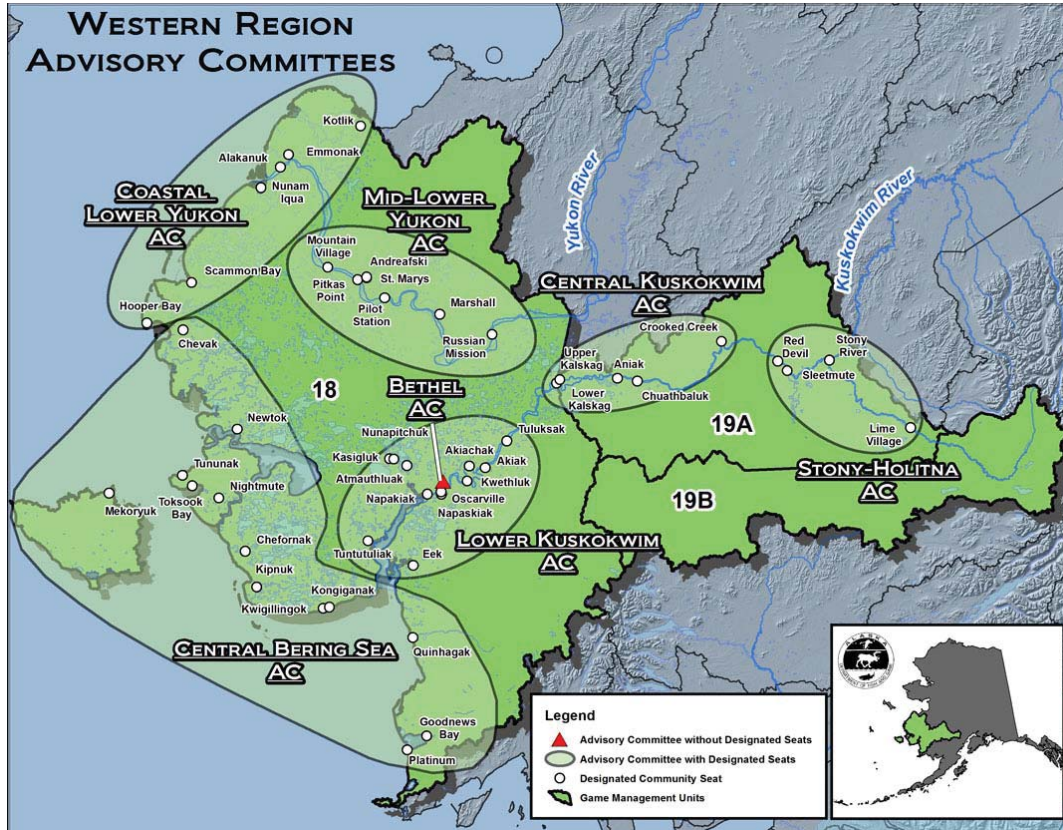
- Chignik
- False Pass
- King Cove
- Kodiak
- Lake Iliamna
- Lower Bristol Bay
- Naknek/Kvichak
- Nelson Lagoon
- Nushagak
- Sand Point
- Togiak
- Unalaska/Dutch Harbor

Source: Department of Fish and Game Website.

APPENDIX A (Continued)

Advisory Committees by Region and Game Management Units

Region Four is the Western Region consisting of 7 advisory committees.



Advisory Committee Names

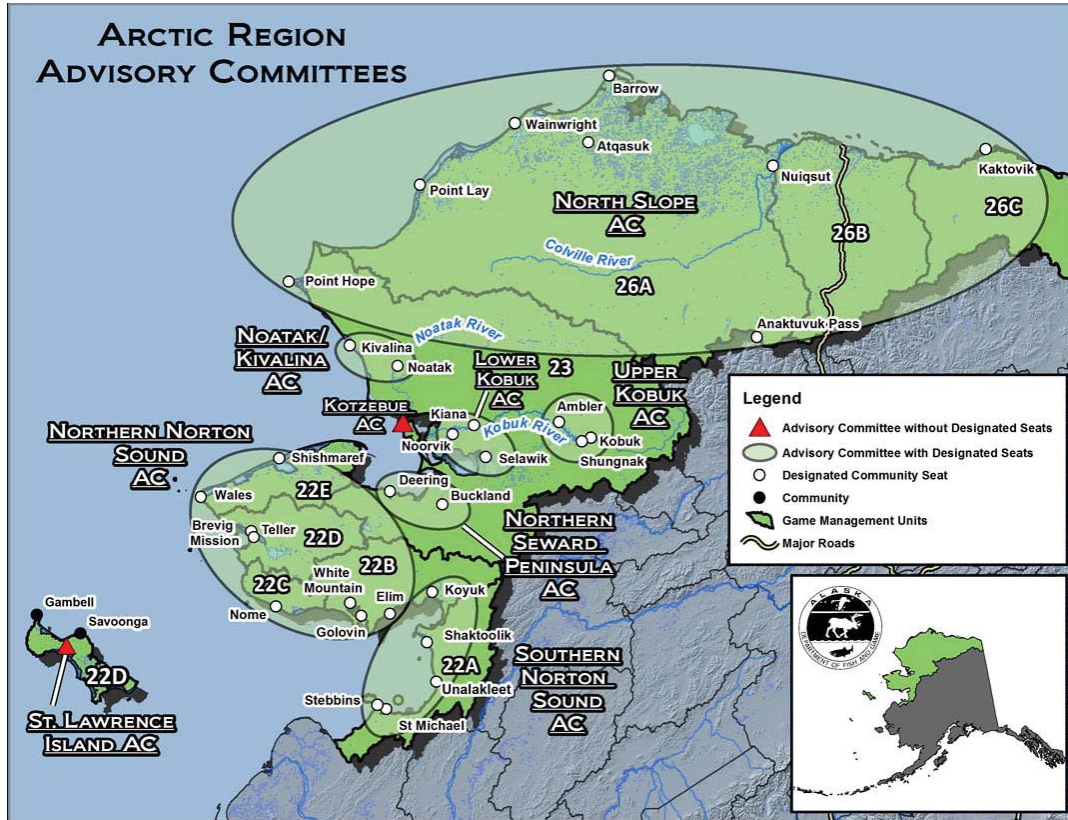
- ❑ Bethel
- ❑ Central Bering Sea
- ❑ Central Kuskokwim
- ❑ Coastal Lower Yukon
- ❑ Lower Kuskokwim
- ❑ Mid-Lower Yukon
- ❑ Stony/Holitna (Moved to Interior Region March 2019)

Source: Department of Fish and Game Website.

APPENDIX A (Continued)

Advisory Committees by Region and Game Management Units

Region Five is the Arctic Region consisting of 9 advisory committees.



Advisory Committee Names

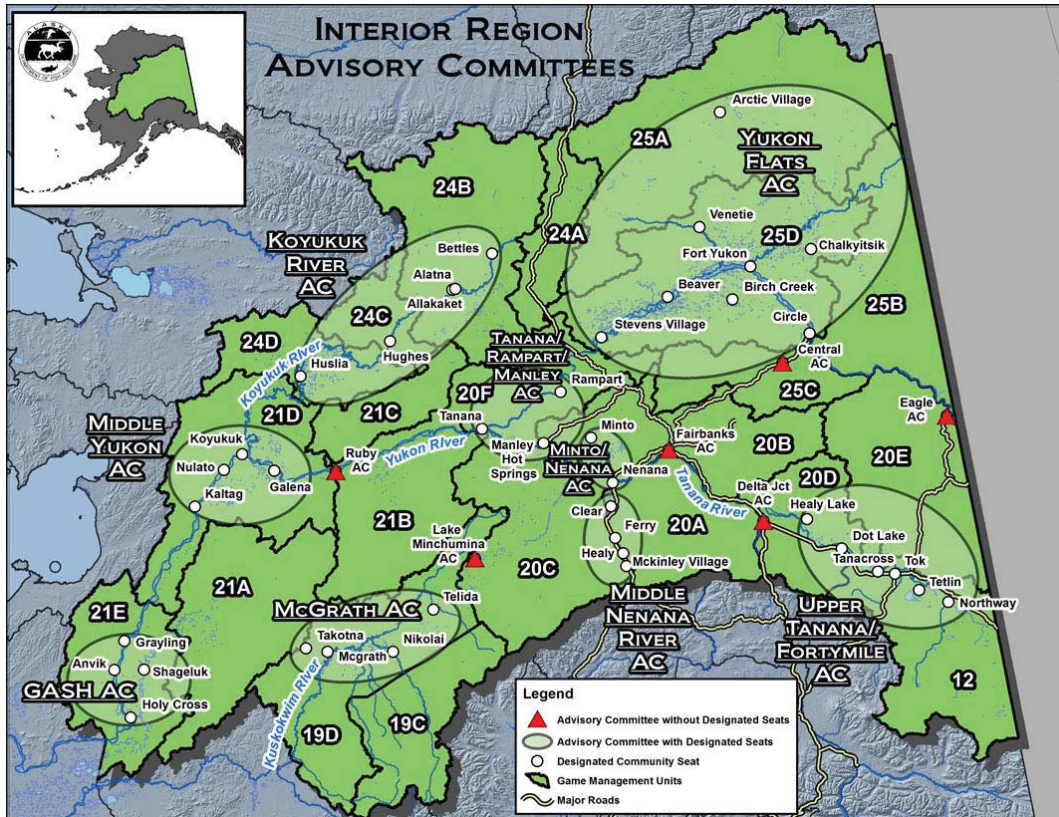
- Kotzebue
- Lower Kobuk
- Noatak/Kivalina
- Northern Norton Sound
- Northern Seward Peninsula
- North Slope
- St. Lawrence Island
- Southern Norton Sound
- Upper Kobuk

Source: Department of Fish and Game Website.

APPENDIX A (Continued)

Advisory Committees by Region and Game Management Units

Region Six is the Interior Region consisting of 15 advisory committees.



Advisory Committee Names

- Central
- Delta
- Eagle
- Fairbanks
- Grayling, Anvik, Shageluk, and Holy Cross (GASH)
- Koyukuk River
- Lake Minchumina
- McGrath
- Middle Nenana River
- Middle Yukon
- Minto/Nenana
- Ruby
- Tanana/Rampart/Manley
- Upper Tanana/Fortymile
- Yukon Flats

Source: Department of Fish and Game Website.

(Intentionally left blank)

APPENDIX B

Alaska Board of Game Court Decisions July 2007 – March 2018

Number	Court	Case Type	Case Name	Alaska's Position	Docket Number	Date Filed	Case Summary	Court Decision	Resulting Action	Decision Date
1	Superior	Original	Kenneth H. Manning v. State of Alaska Department of Fish and Game	Defendant	3AN-00-08814CI	July 2000	Plaintiff challenged certain aspects of the regulation governing the Tier II subsistence hunting permit point system. Superior Court issued a summary judgment decision declaring portion of regulation violates Sections 3 and 17 of Article VIII of the Alaska Constitution, but upheld the "food and gas" criteria in the regulation.	Split decision	State appealed and plaintiff cross-appealed, S-11170 and S-11189. See below	July 2003
1	Supreme	Appeal	State of Alaska Department of Fish and Game v. Kenneth H. Manning	Appellant	S-11170	August 2003	Challenge to Tier II criteria and request for Rule 11 sanction.	Split decision; State prevailed on 3 of 4 claims, Manning prevailed on 1 of 4 claims	BOG adopted emergency regulations at July 2, 2008 meeting to remove income from criteria for scoring Tier II hunts.	July 2007
		Cross-Appeal	Kenneth H. Manning v. State of Alaska Department of Fish and Game	Appellee	S-11189	August 2003				
2	Superior	Original	Friends of Animals Inc. and Tom Classen v. State of Alaska Department of Fish and Game, Board of Game Defenders of Wildlife, The Alaska Wildlife Alliance, Sierra Club, Friends of Animals Inc., Tom Classen v. State of Alaska Board of Game, Commissioner of Fish and Game, McKie Campbell, and Ronald T. West	Defendant	3AN-06-13087CI 3AN-06-10956CI	November 2006 August 2006	Court ruled that the Board of Game 2006 predator control plans do not violate Article VIII, Section 4 of the Alaska Constitution (Alaska's sustained yield clause) and the sustained yield mandate in AS 16.05.255 (Alaska's intensive game management statute). <i>Note - In February 2007, judge consolidated Superior Court case numbers 3AN-06-10956CI and 3AN-06-13087CI.</i>	State prevailed	Plaintiffs appealed, S-13184 and S-13343. See below	July 2008
2	Supreme	Appeal	Ronald T. West v. State of Alaska Department of Fish and Game, Board of Game, et al.	Appellee	S-13184	July 2008	Challenge to intensive management plans.	State prevailed	N/A	August 2010
		Cross-Appeal	Alaska Wildlife Alliance, et al. v. Ronald T. West, State of Alaska Board of Game, et al.	Cross-Appellee	S-13343	November 2008				
3	Superior	Original	Kenneth H. Manning v. State of Alaska Department of Fish and Game, et al. Ahtna Tene Nene	Defendant Intervenor	3KN-09-00178CI	March 2009	Challenge to Copper Basin community subsistence hunts for moose and caribou.	Plaintiff prevailed	BOG adopted emergency regulations at July 28, 2010, meeting to revise community subsistence hunt regulations and open caribou and moose seasons.	July 2010

3	Supreme	Appeal	Ahtna Tene Nene v. State of Alaska Department of Fish and Game, et al. Ahtna Tene Nene v. State of Alaska Department of Fish and Game	Appellee Appellee	S-13968 S-14297	August 2010 April 2011	Challenges the Copper Basin community subsistence hunts for moose and caribou. Also challenges the associated award of attorney fees to the parties which brought the suit.	Dismissed by court and vacated attorney fees previously awarded	N/A	November 2012
4	Superior	Original	Charles Dorman v. Denby Lloyd, Alaska Department of Fish and Game, Cliff Judkins, Alaska Board of Game, et al.	Defendant	3AN-10-04586CI	January 2010	Challenge to Board of Game amendments to 5 AAC 92.029(d)(2) and 5 AAC 85.010(a)(1) related to definition of "feral" in relation to bison.	State prevailed	Plaintiff appeal heard at S-14884. See below	August 2012
4	Supreme	Appeal	Ann Ellingson and Joanne Dorman, et al. v. Denby Lloyd, Commissioner, Alaska Department of Fish and Game, et al.	Appellee	S-14884	September 2012	Challenge to the Board of Game definition of "feral" to include bison released into the wild.	Plaintiff prevailed	BOG revised regulations at March 2015 Southcentral meeting	December 2014
5	Superior	Original	Alaska Fish and Wildlife Conservation Fund v. State of Alaska Board of Game and Ahtna Tene Nene	Defendant	4FA-11-01474CI	March 2011	Plaintiff argued that the revised Copper Basin community subsistence hunts for moose and caribou violated the Administrative Procedure Act, subsistence hunting statutes, and Article VIII of the Alaska Constitution.	State prevailed	Plaintiff appeal heard at S-14516. See below	September 2011
5	Supreme	Appeal	Alaska Fish and Wildlife Conservation Fund v. State of Alaska Board of Game and Ahtna Tene Nene	Appellee	S-14516	October 2011	Challenge to the revised Copper Basin community subsistence hunts for moose and caribou.	State prevailed	N/A	March 2015
6	Superior	Original	Kenneth H. Manning v. Alaska Department of Fish and Game, et al.	Defendant	3KN-11-00367CI	April 2011	Challenge to regulations managing caribou hunting in Game Management Unit 13 on statutory and constitutional grounds.	State prevailed	Plaintiff appealed, S-15121. See below	April 2013
6	Supreme	Appeal	Kenneth H. Manning v. State of Alaska Department of Fish and Game, et al.	Appellee	S-15121	April 2013	Challenge to the revised Copper Basin community subsistence hunts for moose and caribou. State prevailed and the case was remanded to recalculate the attorney fee award to the State.	State prevailed	Plaintiff appealed attorney fee award, S-16461. See below	August 2015
6	Supreme	Appeal	Kenneth H. Manning v. State of Alaska Department of Fish and Game, and Ahtna Tene Nene	Appellee	S-16461	September 2016	Appeal of attorney fee award by Superior Court.	As of March 2018, case awaits decision from Alaska Supreme Court	N/A	Open on appeal as of March 2018
7	Superior	Original	Kenneth H. Manning v. State of Alaska Department of Fish and Game	Defendant	3KN-13-00708CI	August 2013	Challenge to community hunts and nonsubsistence areas.	State prevailed	Plaintiff appealed and State cross-appealed, S-16511 and S-16531. See below	October 2016
7	Supreme	Appeal	Kenneth H. Manning v. State of Alaska Department of Fish and Game and Ahtna Tene Nene	Appellee	S-16511	October 2016	Appeal to challenge to community hunts and nonsubsistence areas. Cross-appealed attorney fees.	As of March 2018, case awaits decision from Alaska Supreme Court	N/A	Open on appeal as of March 2018
		Cross-Appeal	Alaska Department of Fish and Game v. Kenneth H. Manning and Ahtna Tene Nene	Appellant	S-16531	November 2016	<i>Note: Appeal and cross-appeal were consolidated.</i>			
8	Superior	Original	Alaska Wildlife Alliance, et al. v. Alaska Board of Game, Ted Spraker [Board of Game Chair], et al.	Defendant	3AN-13-05825CI	March 2013	The plaintiff challenged that the Board of Game violated the Open Meetings Act when members voted twice using email.	Plaintiff prevailed	BOG adopted a delegation of authority #2015-208-BOG and amended its agenda change request regulations (5 AAC 92.005) at March 2015 Southcentral meeting.	December 2014
9	Superior	Original	Warren E. Olson v. State of Alaska Department of Fish and Game, Board of Game	Defendant	3AN-10-09125CI	July 2010	Petition for relief from administrative agency.	Dismissed by court	N/A	March 2011

Source: Alaska Court System website, inquiries with Department of Law staff, and inquiries with Department of Fish and Game staff.

(Intentionally left blank)

APPENDIX C

Advisory Committee Survey Questions and Responses

1. How often are Advisory Committee proposal recommendations supported by data provided by the Department of Fish and Game?

Responses	Number of Responses	Percentage of Responses
Always	40	11.8%
Usually	160	47.0%
Sometimes	117	34.4%
Rarely	21	6.2%
Never	0	0.0%
Did Not Answer	2	0.6%
Total	340	100%

2. How often does the Department of Fish and Game make data available to Advisory Committees before the committees must make recommendations?

Responses	Number of Responses	Percentage of Responses
Always	100	29.4%
Usually	160	47.1%
Sometimes	61	17.9%
Rarely	14	4.1%
Never	3	0.9%
Did Not Answer	2	0.6%
Total	340	100%

APPENDIX C (Continued)

3. How often are Department of Fish and Game experts (biologists, anthropologists, subsistence staff, etc.) available to provide information during Advisory Committee meetings?

Responses	Number of Responses	Percentage of Responses
Always	109	32.1%
Usually	154	45.3%
Sometimes	58	17.0%
Rarely	17	5.0%
Never	1	0.3%
Did Not Answer	1	0.3%
Total	340	100%

4. How often do Department of Fish and Game experts (biologists, anthropologists, subsistence staff, etc.) present information in an unbiased manner at Advisory Committee meetings?

Responses	Number of Responses	Percentage of Responses
Always	103	30.3%
Usually	153	45.0%
Sometimes	56	16.4%
Rarely	19	5.6%
Never	5	1.5%
Did Not Answer	4	1.2%
Total	340	100%

APPENDIX C (Continued)

5. How often has data provided by the Department of Fish and Game conflicted with a Board of Game decision on a proposal?

Responses	Number of Responses	Percentage of Responses
Always	8	2.3%
Usually	38	11.2%
Sometimes	186	54.7%
Rarely	99	29.1%
Never	4	1.2%
Did Not Answer	5	1.5%
Total	340	100%

6. The Advisory Committee members have a clear and accurate understanding of their respective roles in the regulatory process.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	79	23.2%
Agree	180	52.9%
Neither Agree nor Disagree	53	15.6%
Disagree	17	5.0%
Strongly Disagree	3	0.9%
Did Not Answer	8	2.4%
Total	340	100%

APPENDIX C (Continued)

7. The Advisory Committee recommendation process is open and transparent and provides an equal opportunity for all interested parties to participate.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	152	44.7%
Agree	141	41.4%
Neither Agree nor Disagree	29	8.5%
Disagree	8	2.4%
Strongly Disagree	2	0.6%
Did Not Answer	8	2.4%
Total	340	100%

8. The Advisory Committees objectively review and consider data and public comments when making recommendations on proposals.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	118	34.7%
Agree	159	46.8%
Neither Agree nor Disagree	40	11.7%
Disagree	15	4.4%
Strongly Disagree	1	0.3%
Did Not Answer	7	2.1%
Total	340	100%

APPENDIX C (Continued)

9. Board of Game members have a clear and accurate understanding of their role in the regulatory process.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	44	12.9%
Agree	166	48.8%
Neither Agree nor Disagree	90	26.5%
Disagree	25	7.4%
Strongly Disagree	4	1.2%
Did Not Answer	11	3.2%
Total	340	100%

10. The Board of Game decision making process is open and transparent and provides an equal opportunity for all interested parties to participate.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	60	17.6%
Agree	139	40.9%
Neither Agree nor Disagree	91	26.8%
Disagree	33	9.7%
Strongly Disagree	7	2.1%
Did Not Answer	10	2.9%
Total	340	100%

APPENDIX C (Continued)

11. The Board of Game objectively reviews and considers input from the various user groups when deliberating on proposals.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	43	12.7%
Agree	147	43.2%
Neither Agree nor Disagree	88	25.9%
Disagree	45	13.2%
Strongly Disagree	6	1.8%
Did Not Answer	11	3.2%
Total	340	100%

12. Board of Game members thoroughly evaluate data and recommendations prior to making a decision on a proposal.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	37	10.9%
Agree	145	42.7%
Neither Agree nor Disagree	112	32.9%
Disagree	29	8.5%
Strongly Disagree	7	2.1%
Did Not Answer	10	2.9%
Total	340	100%

APPENDIX C (Continued)

13. In your opinion, how effective is the Board of Game's overall decision making process?

Responses	Number of Responses	Percentage of Responses
Extremely Effective	18	5.3%
Very Effective	127	37.4%
Somewhat Effective	158	46.4%
Not so Effective	17	5.0%
Not at All Effective	4	1.2%
Did Not Answer	16	4.7%
Total	340	100%

14. In your opinion, how effective is the Advisory Committees' overall recommendation process?

Responses	Number of Responses	Percentage of Responses
Extremely Effective	19	5.6%
Very Effective	110	32.4%
Somewhat Effective	146	42.9%
Not so Effective	46	13.5%
Not at All Effective	6	1.8%
Did Not Answer	13	3.8%
Total	340	100%

APPENDIX C (Continued)

15. In your opinion, how effective are proposal moratoriums at making the Board of Game regulatory process more efficient?

Responses	Number of Responses	Percentage of Responses
Extremely Effective	9	2.6%
Very Effective	84	24.7%
Somewhat Effective	186	54.7%
Not so Effective	31	9.2%
Not at All Effective	9	2.6%
Did Not Answer	21	6.2%
Total	340	100%

16. Overall, how satisfied are you with the support provided by the Department of Fish and Game board staff to the Advisory Committees?

Responses	Number of Responses	Percentage of Responses
Very Satisfied	121	35.6%
Satisfied	138	40.6%
Neither Satisfied nor Dissatisfied	48	14.1%
Dissatisfied	15	4.4%
Very Dissatisfied	4	1.2%
Did Not Answer	14	4.1%
Total	340	100%

APPENDIX C (Continued)

17. Are you aware of any proposals excluded from a proposal book where the submitter did not receive an explanation?

Responses	Number of Responses	Percentage of Responses
Yes	20	5.9%
No	305	89.7%
Did Not Answer	15	4.4%
Total	<u>340</u>	<u>100%</u>

(Intentionally left blank)

APPENDIX D

Board of Game Survey Questions and Responses

1. How often does the Department of Fish and Game make data available to Board of Game members during their proposal evaluation process?

Responses	Number of Responses	Percentage of Responses
Always	6	75.0%
Usually	2	25.0%
Sometimes	0	0.0%
Rarely	0	0.0%
Never	0	0.0%
Total	8	100%

2. How often are Advisory Committee proposal recommendations supported by data provided by Department of Fish and Game?

Responses	Number of Responses	Percentage of Responses
Always	1	12.5%
Usually	3	37.5%
Sometimes	4	50.0%
Rarely	0	0.0%
Never	0	0.0%
Total	8	100%

APPENDIX D (Continued)

3. How often do Department of Fish and Game experts (biologists, anthropologists, subsistence staff, etc.) present information to the Board of Game in an unbiased manner?

Responses	Number of Responses	Percentage of Responses
Always	2	25.0%
Usually	5	62.5%
Sometimes	1	12.5%
Rarely	0	0.0%
Never	0	0.0%
Total	8	100%

4. The Board of Game members have a clear and accurate understanding of their role in the regulatory process.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	6	75.0%
Agree	1	12.5%
Neither Agree nor Disagree	0	0.0%
Disagree	1	12.5%
Strongly Disagree	0	0.0%
Total	8	100%

APPENDIX D (Continued)

5. The Board of Game decision making process is open and transparent and provides an equal opportunity for all interested parties to participate.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	6	75.0%
Agree	1	12.5%
Neither Agree nor Disagree	0	0.0%
Disagree	1	12.5%
Strongly Disagree	0	0.0%
Total	8	100%

6. The Board of Game members objectively review and consider data and public comments from the various user groups when deliberating on proposals.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	5	62.5%
Agree	2	25.0%
Neither Agree nor Disagree	0	0.0%
Disagree	1	12.5%
Strongly Disagree	0	0.0%
Total	8	100%

APPENDIX D (Continued)

7. The Advisory Committee members have a clear and accurate understanding of their respective roles in the regulatory process.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	0	0.0%
Agree	6	75.0%
Neither Agree nor Disagree	1	12.5%
Disagree	1	12.5%
Strongly Disagree	0	0.0%
Total	8	100%

8. The Advisory Committee recommendations process is open and transparent and provides an equal opportunity for all interested parties to participate.

Responses	Number of Responses	Percentage of Responses
Strongly Agree	0	0.0%
Agree	7	87.5%
Neither Agree nor Disagree	1	12.5%
Disagree	0	0.0%
Strongly Disagree	0	0.0%
Total	8	100%

APPENDIX D (Continued)

9. In your opinion, how effective is the Board of Game’s overall decision making process?

Responses	Number of Responses	Percentage of Responses
Extremely Effective	1	12.5%
Very Effective	6	75.0%
Somewhat Effective	1	12.5%
Not So Effective	0	0.0%
Not at All Effective	0	0.0%
Total	8	100%

10. In your opinion, how effective is the Advisory Committee’s overall recommendation process?

Responses	Number of Responses	Percentage of Responses
Extremely Effective	0	0.0%
Very Effective	6	75.0%
Somewhat Effective	2	25.0%
Not So Effective	0	0.0%
Not at All Effective	0	0.0%
Total	8	100%

APPENDIX D (Continued)

11. In your opinion, how effective are proposal moratoriums at making the Board of Game regulatory process more efficient?

Responses	Number of Responses	Percentage of Responses
Extremely Effective	2	25.0%
Very Effective	5	62.5%
Somewhat Effective	1	12.5%
Not So Effective	0	0.0%
Not at All Effective	0	0.0%
Total	8	100%

12. Overall, how satisfied are you with the support provided by the Department of Fish and Game board staff?

Responses	Number of Responses	Percentage of Responses
Very Satisfied	7	87.5%
Satisfied	1	12.5%
Neither Satisfied nor Dissatisfied	0	0.0%
Dissatisfied	0	0.0%
Very Dissatisfied	0	0.0%
Total	8	100%

APPENDIX D (Continued)

13. Are you aware of any proposals excluded from a proposal book where the submitter did not receive an explanation?

Responses	Number of Responses	Percentage of Responses
Yes	0	0.0%
No	8	100.0%
Total	8	100%

(Intentionally left blank)

Agency Response from the Office of the Governor



OFFICE OF THE GOVERNOR
Governor Michael J. Dunleavy
STATE OF ALASKA

November 20, 2019

Ms. Kris Curtis
Legislative Auditor
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, AK 99877-3300

RECEIVED
NOV 21 2019
LEGISLATIVE AUDIT

Dear Ms. Curtis:

Thank you for the opportunity to respond to the recommendations contained in the September 23, 2019 audit report for the Board of Game Regulatory Process. The audit report contains recommendations that are out of the scope of responsibility for the Governor's Office of Boards and Commissions.

If I can be of further assistance, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gina Ritacco".

Gina Ritacco
Director
Boards and Commissions

550 West 7th Avenue, Suite 1700, Anchorage, AK 99501

(Intentionally left blank)

Agency Response from the Department of Fish and Game



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Fish and Game

OFFICE OF THE COMMISSIONER
Headquarters Office

1255 West 8th Street
P.O. Box 115526
Juneau, Alaska 99811-5526
Main: 907.465.6136
Fax: 907.465.2332

November 20, 2019

RECEIVED

NOV 20 2019

LEGISLATIVE AUDIT

Kris Curtis, Legislative Auditor
Alaska Division of Legislative Audit
PO Box 113300
Juneau Alaska 99811-3300

Subject: Confidential Preliminary Audit Report on Department of Fish and Game, Board of Game Regulatory Process

Dear Ms. Curtis:

The Department of Fish and Game (ADF&G) is in receipt of Legislative Audit's (LA) preliminary audit report on the Department of Fish and Game, Board of Game Regulatory Process. As mentioned in our previous response to the Legislative Audit in early October, we recognize and appreciate the thorough work of your staff to understand this unique and complex process

While the chances of another LA audit on either of the boards may not be great in the foreseeable future, if such an audit were to occur, I would appreciate it if LA incorporates my direct involvement throughout the process. As commissioner of this agency I can provide valuable input on ADF&G's engagement with the board and AC process, and I also serve as an ex officio secretary for the board the under AS 16.05.221.

In general, we agree with LA's findings and two recommendations which we intend to implement this meeting cycle (Fiscal Year 20). We also reiterate the following observations made previously to Legislative Audit. This fluid and dynamic regulatory process presents challenges for ADF&G, the Board of Game, advisory committees (AC), and participating public. We hope the Legislative Budget and Audit Committee finds the observations useful in its evaluation of this report and its further understanding of this important process.

ADF&G Research, Comments, and Data

There was significant emphasis in the report on the timing of data to the ACs, public and Board from ADF&G, including relying on legislative intent language that compels reports, comments and data to be available 60 days before a meeting. ADF&G supports the intent of this language; it is important that ACs, the public, and the boards have adequate time to review and understand research. However, it must be said that for some subjects, given the natural cycles of wildlife and when research and management operations can occur, useful data may not always be available

60 days before a meeting. In addition, LA acknowledged ADF&G staff attendance at 77% to 85% at AC meetings and that data and information was provided at those times for ACs to consider when deliberating proposals. This is an important metric as it demonstrates the strong working relationship between ADF&G, ACs, and the public in general. While the percentage of times ADF&G met the 60 day intent language for department comments is measurable, information flow from ADF&G with the public and ACs begins in a variety of methods making it very difficult to measure the number of times information is disseminated and the impacts of those interactions. Nonetheless we appreciate your recording of ADF&G's success rate on meeting the intent language for the Board and will continue to try and meet it.

Court findings

The audit generally found outcomes from judicial proceedings indicated the Board was following state law and its regulatory process. We concur with this finding and would simply add that legal action, while costly and time consuming, presents important opportunities to improve the regulatory process. Court findings that overturn board actions or change process provide valuable clarity that could not be obtained without the legal action.

Board transparency and objectivity

The report found that AC members demonstrated slightly above average levels of satisfaction (56-58% of survey respondents) when asked if they felt the board's decision-making process is transparent, open, and objective. Not to be contrary, but one might expect satisfaction levels to be lower than what was found. The boards are by their very nature political bodies given they are appointed by the Governor and confirmed by the Legislature. It cannot get more political. Statutes require board members have "knowledge, and ability in the field of action of the board". It seems impossible that any person with this requisite background would not have an opinion or two about wildlife subjects. In our experience the method to deal with public or AC dissatisfaction with board members is already in place through the appointment/nomination process.

The final point to make in this matter is that while not all proposals have winners and losers, quite often this is the case. And as is true in other walks of life, often the successful side leaves the board meeting in quiet celebration, while the unsuccessful side loudly proclaims unfairness and impropriety. These are time-honored truths when it comes to the boards, just as it is that the loser today is the winner tomorrow. Neither of these conditions will likely change.

Reasonable notice

Legislative Audit's recommendation No. 1 is regarding what is a "reasonable" timeframe a public notice should be issued prior to an AC meeting. In its review of the matter, LA found that 7-days was the appropriate number. ADF&G does not dispute this assertion, in fact more time would be preferable. However, just as the Legislature did when writing the Administrative Procedures Act (APA) and the Joint Board did when establishing the AC Uniform Rules of Operation (URO), we agree to stop short of drawing a line in the sand when determining a fixed number of days.

There are two fixed time requirements that we work with. The first is in the APA, AS 44.62.190(a), where it requires at least 30 days for a legal notice before an agency can adopt proposed regulations. The second time requirement is in the AC's URO, 5 AAC 96.060(g)(1), which requires ACs give the public at least 14 days' notice prior to a committee election.

Otherwise, what is “reasonable” is left to the agency to determine subject to the meeting subjects and extenuating circumstances. Emphasis is placed on “reasonable” given it is the guidance provided in the Open Meetings Act (OMA).

There are situations when less than 7-days may be reasonable. There are times when an AC faces a tight timeline on getting recommendations to a board and can only obtain quorum a few short days away. Weather delays might prevent a meeting as planned, and as the committee regroups it may find itself meeting a few days later with a very short notice duration. An AC may be running through hundreds of proposals which takes multiple meetings and determining member availability may find it is less than 7 days.

AC members provide that local voice regarding fish and game matters in Alaska. They are volunteers who agree to meet, sometimes for days and sometimes at their own peril, to help in this area. Our first priority is to give them voice and if situations arise that prevent at least 7 days public notice and those situations are reasonable, we will support the work. Further, we do not find that we have legal authority to set a fixed term. Seven days could be viewed just as subjective as 3 days or 10 days. Any number is subject to challenge unless an appropriate authority chooses to make it a law.

That said, we do not disagree with a 7-day standard and are comfortable stating this in our manual with follow-up training, but it will be accompanied with language that assures AC members that situations may arise when a shorter timeframe is acceptable. Not preferred, but acceptable.

Retention of updated ADF&G information and revisor notes for updated research

The report noted it was common for ADF&G information to be updated, and that original information was overwritten and not consistently maintained on the website. LA’s recommendation No. 2 is for the executive director to ensure information updates are clearly identified on the BOG website. We feel this is the current policy for handling updates and changes to the ADF&G information. Examples exhibiting this can be found on the November 2017 Statewide Regulations meeting and the January 2017 Arctic/Western Region meeting websites for which ADF&G changed positions for a couple proposals. In addition, when ADF&G updates are provided on the website prior to the meetings, the web postings include the words “new” or “updated” next to the title, and often in red font. This informs the ACs and public that additional information was provided. After the meetings, these extra notations are removed. We understand that some of the older meeting websites are not clear and give the appearance that information may have been overridden. In most cases, updates to the Board website were for the purpose of providing comments on individual proposals that were excluded in the original submission; it is not the practice to override information.

Advisory Committee agreement with ADF&G

The report provides information on the level of agreement between ACs and ADF&G, as sought in the audit request. The request was a bit more nuanced and read – “If recommendations (from the advisory committee) do not align with DFG scientific data, identify reasons for the misalignment.” We thought the methodology followed by the report was good and only offer this perspective as it relates to the AC and ADF&G relationship. ACs, similar to the boards, act in some manner as a check on ADF&G management. As legal constructs authorized in statute, ACs

Ms. Kris Curtis

~ 4 ~

November 20, 2019

are public entities that strongly influence fish and game management and provide an important counterweight to the boards and ADF&G. Rather than shun AC criticism or disagreement, ADF&G finds it to be an important consideration in its work and an important factor in Alaska's fish and game management system.

Proposal pre-vetting recordkeeping

Boards Support notes and appreciates LA's findings regarding pre-vetting of proposals and denial notifications. A proposal log and filing system is currently in place to assure denial notifications are be retained on file.

Again, our thanks for your work and the insights the preliminary audit report provides on this important process.

Sincerely,



Doug Vincent-Lang
Commissioner

cc: Kristy Tibbles, Executive Director, ADF&G/Boards Support

Agency Response from the Board of Game



THE STATE
of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Alaska Board of Game

1255 West 8th Street
P.O. Box 115526
Juneau, Alaska 99811-5526
Main: 907.465.6136
Fax: 907.465.2332

November 20, 2019

RECEIVED

NOV 20 2019

LEGISLATIVE AUDIT

Ms. Kris Curtis, Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Curtis,

Re: Response to the preliminary audit report on the Department of Fish and Game, Board of Game Regulatory Process.

I received and read the preliminary audit report dated September 23, 2019. As chair of the Board of Game, I am in general agreement with the findings and recommendations and appreciate the efforts of the audit committee to analyze the performance of the Board. Your staff completed a monumental task in not only a historical review but the number of individuals contacted, a job well done.

Following the reading of the report, I have a few minor comments concerning legislative intent on procedures and board policies. While I expressed these to Legislative Audit in October, I want to mention them again for the consideration of the Legislative Budget and Audit Committee. In July 2015, the legislature passed intent language that required the Department of Fish and Game (DFG) to provide comments, reports, and data regarding Board proposals at least 60 days prior to the Board meeting. And, your records show, Exhibit 9, that prior to the 60-day requirement (2009-2015) meeting announcements averaged 37 days with a range of 14 to 59, excluding the 2010 special meeting. After 2015, announcements followed the 60-day requirement but there were concerns about updating data that was not made clear in the re-evaluation. When changes are made to the original published data, DFG staff have always advised the Board prior to deliberations as to the changes and justification. We intend to discuss with DFG staff and our executive director ways to better inform the public of these types of changes.

I was somewhat disappointed to read that your survey of AC members only found DFG staff were available to provide data to ACs during 77 percent of their meetings. Having attended a large number of AC meetings, there are usually always department staff available to speak to Board of Game proposals, which the ACs rely on.

The results in Exhibit 10 were predictable. As stated by DFG staff, there are vast philosophical differences between some AC members. We occasionally see this disagreement during AC public testimony but, in general, most ACs seem to follow the same line of sentiment towards an issue.

In my opinion, the Board support staff does an excellent job pre-vetting proposals before they are placed in the book for publication. In most cases, this process is an easy call simply because the proposal does not address a topic on the call, submitted for the wrong region or missed deadline. However, there are a few proposals each meeting that are questionable. In these cases, the support staff submits them so the Board, with recommendations from legal counsel, can make the decision whether to address the issue, or not. Another issue raised in this section was the required 30-day reporting of denial to the author of a rejected proposal, and retention of notifications. This is a simple fix that our executive director can take care of in the future.

I was somewhat surprised that one of eight Board members believed that AC members did not have a clear and accurate understanding of the AC's role in the regulatory process but I was astounded that a Board member felt he/she didn't think Board members have an understanding of the process. It would be interesting to learn how long this member served on the board, and when.

With regard to the recommendation for the Board's executive director to update the AC manual and provide training to AC members, our standard practice is to hold an AC training session during each Board meeting to coach AC members present on board process and listen to their concerns. One of the problems with this approach is generally only the chairperson attends these training sessions. However, when regional coordinators attend AC meetings, they can be asked to conduct more training during local meetings. This suggestion should be brought to the AC chairperson for their advice and recommendation.

Again, thank you for the opportunity to comment on this audit and for the suggestions to improve the public process.

Best Regards,



Ted Spraker, Chairman
Alaska Board of Game