



Beth A. Wood, CPA
State Auditor

STATE OF NORTH CAROLINA
Office of the State Auditor

2 S. Salisbury Street
20601 Mail Service Center
Raleigh, NC 27699-0600
Telephone: (919) 807-7500
Fax: (919) 807-7647
Internet
<http://www.ncauditor.net>

February 16, 2016

The Honorable Pat McCrory, Governor
The Honorable Senator Bill Cook
The Honorable Senator Brent Jackson
Mr. Donald R. van der Vaart, Secretary, Department of Environmental Quality
Dr. Louis Daniel III, Director, Division of Marine Fisheries

This letter presents the results of our financial related audit of the Department of Environmental Quality, Division of Marine Fisheries (Division).

Secretary van der Vaart reviewed a draft copy of this report. His written comments are included starting on page nine.

The objective of this audit was to answer the questions, as listed in this report, asked by legislators about Division operations and activities. The audit scope was limited to the areas and time periods of legislative interest.

To accomplish our audit objective, auditors performed procedures such as interviewing personnel, observing operations, reviewing policies, analyzing accounting records, and examining documentation supporting recorded transactions and operations.

As a basis for evaluating internal control, auditors applied the internal control guidance contained in professional auditing standards. However, our audit does not provide a basis for rendering an opinion on internal control, and consequently, we have not issued such an opinion.

We conducted this audit in accordance with generally accepted government auditing standards applicable to performance audits. 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.

We wish to express our appreciation to the staff of the Division of Marine Fisheries for the courtesy, cooperation, and assistance provided us during the audit.

If you have any questions, please do not hesitate to contact my office.

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor

BACKGROUND

The North Carolina Division of Marine Fisheries (Division) is responsible for the stewardship of the state's marine and estuarine resources. The Division's jurisdiction encompasses all coastal waters and extends to three miles offshore. Agency policies are established by the nine-member Marine Fisheries Commission and the Secretary of the Department of Environmental Quality. North Carolina is a member of the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council and the South Atlantic Fishery Management Council.

The Division is comprised of nine sections that collectively carry out this mandate. They are:

- Fisheries Management
- Marine Patrol
- Habitat and Enhancement
- Administration
- Administrative Services
- Maintenance Services
- License & Statistics
- Information Technology
- Protected Resources

FINDINGS

1. Why does the North Carolina Division of Marine Fisheries not submit yearly internal audits?

A yearly internal audit of the Division of Marine Fisheries (DMF) is not required.

The Division of Environmental Quality's (DEQ) Internal Audit Department selects audit topics based on its risk analysis. Between state fiscal years 2012 and 2014, DMF was subject to seven internal audits.

Audit reports are submitted to management of the unit under audit, DEQ executive management, and DEQ's audit committee. There is no requirement to submit the reports to any other government unit, but the reports are public records and can be requested by oversight bodies or the general public.

Additionally, internal controls over financial reporting at DMF are reviewed annually as part of the Office of the State Controller's Enhancing Accountability in Government through Leadership and Education (E.A.G.L.E.) initiative.

2. Besides the money appropriated to the DMF by the Legislature, are any gifts - including money or services, etc. - added to and reported on the yearly budget totals?

Per DMF, gifts or donations are not included in the initial budget because they cannot be predicted. When gifts or services are actually received they are included in budget reports. DMF reported receiving no donations or gifts during state fiscal year (SFY) 2015.

a. How much of the appropriated money or gifts is spent on administration?

During SFY 2015, no gifts/donations were spent on general administration.¹

Approximately \$3.8 million (13% of DMF's total budget) was spent on general administration. The majority of the funding came from state appropriations and transfers from special revenue funds.

b. How much is spent on fishery resource management?

The Fisheries Management Section of DMF reported actual expenditures of approximately \$5.2 million for SFY 2015.

3. Where is the money for fishing licenses deposited? Is it put in the state's General Fund and then disbursed to the DMF?

Money from fishing license sales is deposited in various funds. The deposit location is based on the type of license and the date of purchase (detailed below).

As noted below, only money from current season commercial fishing licenses not attributable to the recent fee increase² is deposited in the NC General Revenue Fund.

¹ DMF general administration consists of expenditures from the "Administration Section" and "Information Technology Section" cost centers.

² Authorized by Session Law 2014-100.

FINDINGS

Standard Commercial Fishing License (SCFL) Fees

Advanced Sales of commercial fishing licenses are deposited in a DMF managed, non-reverting special revenue fund until the beginning of the license year, with the exception of the portion that is related to the recent fee increase. The excess (fee increase amount) is deposited in the Commercial Fishing Resource Fund, a Funding Committee managed non-reverting special revenue fund. At the beginning of the license year, the portion not related to the fee increase is transferred into the NC General Revenue Fund.

Current Season Sales of commercial fishing licenses are deposited in the NC General Revenue Fund, with the exception of the portion that is related to the recent fee increase. The excess (fee increase amount) is deposited in the Commercial Fishing Resource Fund (See Advanced sales above).

Coastal Recreational Fishing License (CRFL) Fees

Life-Time License sales are deposited in the Marine Resources Endowment Fund. This is a non-reverting fund, so money remaining at year-end does not revert to the NC General Revenue Fund.

All Other Recreational Fishing Licenses sales are deposited in the Marine Resources Fund. This is a non-reverting fund, so money remaining at year-end does not revert to the NC General Revenue Fund.

4. Since \$2.5 million was appropriated by the Legislature for observers, and only \$1.3 million has been used, what happened to the remaining \$1.2 million?

Unused At Sea Observer Program (Program) balances at the end of fiscal years 2014 (\$1,024,821) and 2015 (\$486,343) reverted back to the NC General Revenue Fund.

Per DMF, several factors contributed to the large 2014 reversion. These included:

- several position vacancies
- several management unit (fishing area) closures

The Program received a total of \$2,420,000 in funding through the Appropriations Act of 2013 (SB 402) and 2014 (SB 744). Amounts appropriated were \$1,381,000 in SFY 14 and \$1,039,000 in SFY 15.

DMF estimates that if all managed fishing areas remain open year round, \$1.3 million of funding is needed to achieve their 10% observer coverage goal for anchored large mesh gill nets and 2% observer goal for anchored small mesh gill nets.

5. In 2014, after an agreement between commercial fisherman and the Division regarding observers to raise funds by an increase in license fees, why did the Director report that he did not have 7% observations?

In 2014, DMF reported observation shortfalls (less than 7% observations) in at least one managed fishing area during each open fishing season (spring, summer, and fall). DMF attributed these shortfalls to:

FINDINGS

- Management unit (fishing area) closures
- Lack of cooperation from area fisherman³
- Low observer staffing levels were a persistent problem during 2014

6. Why was the money appropriated by DENR in 2013 to pay back-wages owed to the law enforcement officers from 2007 – 2013 not paid out to them? Was the money paid to trained observers, who are not legal enforcement officers?

Back-wages owed to law enforcement officers (LEOs)⁴ were paid.

There was no money paid to trained observers from any money “set aside” for LEO back wages.

Between 2007 – 2013, there were two grievances filed by LEOs related to back-wages.

One case, involving five officers, was substantiated by the Department of Environmental Quality (DEQ) Dispute Resolution Board. In August 2012, DMF management and the Office of State Personnel approved the Resolution Board’s decision and back-wages were awarded retroactively to January 1, 2012.

The second case was unsubstantiated by DMF management and no back-wages were owed or awarded. These employees did receive salary increases when the State salary freeze was lifted.

No follow-up grievances or additional grievances have been filed since.

7. When the coastal recreational license fee went into effect in 2007, an agreement was made to put the money into two funds – the Marine Resources Endowment Fund and the Marine Resources Fund; only 10% or less would be used for administration.

a. How much money and what percentage is being used for administrative purposes?

For SFY 2015, \$365,191 (<1% of the fund balance) was spent on general administration from the Marine Resources Fund and Marine Resources Endowment Fund.

North Carolina General Statute 113-175 provides for the creation and use of the Marine Resources Fund and Marine Resources Endowment Fund. Coastal Recreational license fees support the Funds, but the statute does not specify a percentage limit on the amount that can be used for administration.

³ DMF reports that over 50 percent of calls to set up observed trips were either wrong numbers, calls not answered, calls not returned, or fishermen refusing trips.

⁴ Members of the North Carolina Marine Patrol are sworn law enforcement officers. It is the responsibility of the Marine Patrol to make sure fishermen comply with general statutes and rules that are developed to protect and regulate the harvest of the state’s fisheries.

FINDINGS

b. How many positions are funded by this money and what are the duties of the positions?

The funding supports 25 full-time positions for SFYs 2013 to 2017, 21 of which are currently filled.⁵ Three of the total positions complete administrative work for the division; others are funded to complete DMF core operational work within the License and Statistics and Fisheries Management sections. The following are a sample listing of the 25 positions and a general description of their duties:

- Business and Technology Applications Analyst - Design, develop, enhance, and maintain database systems for the Division.
- Processing Assistant IV - Issues and renews recreational and commercial fishing licenses through the Wildlife Resources Commission ALVIN system the Division's Fisheries Information Network as mandated by 2005 Coastal Recreational Fishing License statutes and the 1997 Fisheries Reform Act.
- Coastal Recreational Fishing License (CRFL) Project Coordinator - Assists in managing all aspects of the Division of Marine Fisheries' CRFL projects, including receiving project proposals, coordinating and participating in project reviews, planning/ documenting of projects, contract management, review of work (technical, program, financial), creating/aligning budgets, and reporting.

c. How much and what percentage goes back to the DMF for projects proposed by the Division?

The Marine Resources Endowment Fund and the Marine Resources Fund are non-reverting funds and therefore do not revert to the NC General Revenue Fund. The DMF director may, and typically does, recommend projects to the Marine Fisheries Commission (MFC), but all projects must be approved by the MFC through written authorization to the State Treasurer for disbursements of Marine Resources Funds.

The DMF received project funding from the Marine Resources Fund in the amounts of \$2.7 million and \$2.9 million for SFY15 and SFY14, respectively. These figures represented 36% and 38% of the total approved for all projects from the Marine Resources Fund during these fiscal years.

Total approved projects from the Marine Resources Fund totaled \$7.4 million and \$7.7 million for SFY15 and SFY14, respectively. In addition to the DMF projects, the Marine Resource Fund approved funding for projects at state agencies, universities, local governments, and non-profits.

Any unspent funds revert back to the Marine Resources Fund for future project funding.

⁵ The funding also supports six temporary positions, which are all currently filled or the position terms have expired.

FINDINGS

8. How much does it cost for a stock assessment?

DMF does not track the cost of individual stock assessments.

DMF estimates that the recent southern flounder stock assessment cost \$134,830 and the Southern Flounder Supplement has cost \$115,475 to date. This estimate only accounts for staff time (excluding Director Daniel) and does not include other costs that may be associated with the assessment and supplement such as travel.

For comparative purposes, the Atlantic States Marine Fisheries Commission estimates the average cost of a benchmark stock assessment to be between \$35,000 and \$40,000. However, this estimate only accounts for travel and workshop costs and does not include staff time.

9. Why would money be spent on a faulty-model stock assessment? E.g., the 2007 – 2008 southern flounder stock assessment was based on the mistaken belief that southern flounder do not migrate, but a tagging program afterwards showed that North Carolina-tagged southern flounder were in South Carolina, Florida, Georgia, and Texas. Even with these kinds of definitive findings, the 2011 – 2012 southern flounder stock assessment was carried out using the 2007 – 2008 model and was consequently rejected by peer review.

DMF used the “stock synthesis” model which is an industry acceptable method to model resource stock numbers. The model was not faulty, but the assumption of a single North Carolina unit stock was faulty. The weakness in the stock assessment was that it did not account for the stock up and down the east coast (i.e. outside North Carolina waters). At the time of the stock assessment those data were unavailable.

The 2011 – 2012 southern flounder stock assessment was not carried out using the 2007 – 2008 model. A different model was used, but the same assumption was made.

Even though the stock assessment failed one of the three peer reviews, it was found that certain aspects, including the amount of juvenile fish being caught, could still be used for fishery management purposes.

DMF is currently working with other states on the east coast to obtain the necessary data to complete a coast-wide stock assessment. Once this is complete a new stock assessment will be completed.

10. Is there a published schedule of salaries for personnel in the DMF headquarters and five district offices?

Yes. A copy can be obtained from the DEQ Human Resources Division.

11. Do all positions have job descriptions?

According to DMF management, all positions have current and accurate job descriptions. Auditors performed a detailed review of three job descriptions and found each to be current and accurate. Copies can be obtained from the DEQ Human Resources Division.

FINDINGS

12. Is there a yearly review and evaluation process for all employees? If not, what is the process for giving raises?

Yes, there is a yearly review and evaluation process for all employees. This process includes interim and annual performance evaluations.

Other than increases awarded by the General Assembly, employees are generally eligible for a salary increase upon assuming additional or higher level duties or change jobs.

13. Why did the Director receive two pay raises after Governor Perdue announced that there would be no increases in salaries?

The Director received only one pay increase during Governor Perdue's salary freeze.⁶ This pay increase, effective April 1, 2012, was classified as an in-range adjustment and was due to the Director taking on higher level duties with an increased level of responsibility.⁷

According to a North Carolina Office of State Personnel memo related to the salary freeze, in-range adjustments for "higher level duties" and "increased variety/scope of duties" were allowable and not subject to the salary freeze.

14. Is there a written policy about allocation of supplies and equipment for the positions that require them? E.g., the biologists and scientists need equipment – vehicles, (trucks, boats, trailers), uniforms and gear. The Marine Patrol needs uniforms, guns, vehicles and gear.

No. DMF does not operate with an official written policy for allocating supplies and equipment for the positions that require them.

Instead the purchase and allocation of supplies and equipment is made based on a variety factors such as employee input, managerial discussion, and industry standards. Once an item is seen as necessary, the purchase of that item then goes through DMF/DEQs standard process for procuring supplies and equipment.

15. Why was \$35,000 spent on Phazzers (stun guns) for the Marine Patrol when many of them didn't want them?

Phazzer stun guns were purchased by DMF Marine Patrol in May 2015 based on a recommendation from the Marine Patrol Sergeant's Safety Committee.⁸ The reasoning behind the recommendation was that they wanted to ensure the safety of officers and the general public by providing officers with additional non-lethal means to enforce DMF fishing laws that, as of late, have become highly contentious and controversial.

The committee compared Marine Patrol officers' equipment to other state law enforcement officers (SHP and Wildlife Resources) and noted that other state law enforcement officers already had stun guns.

⁶ The salary freeze was effective July 1, 2011 – June 30, 2013.

⁷ The Shellfish Sanitation and Recreational Water Quality section was transferred from the Division of Environmental Health to the Division of Marine Fisheries.

⁸ At the time of recommendation, the Marine Patrol Sergeant's Safety Committee is comprised of six Sergeants of the North Carolina Marine Patrol and chaired by a Marine Patrol Captain.

FINDINGS

16. Are per diem expenses part of the administrative budget? If not, how are these expenses paid?

Yes. Per Diem expenses for Marine Fisheries Commission members and Committee members are part of DMF's administrative budget.

17. Is there a cap on the number of persons who are entitled to travel with per diem money for Marine Fisheries Commission (MFC) Meetings?

No. There is not a cap on the number of persons who are entitled to travel with per diem money for MFC meetings. However, only the nine members of the MFC are entitled to per diem for MFC Meetings. In addition, Dr. Daniel stated that he limits the number of division staff attending commission meetings to only those essential to cover the agenda items and to help with the meeting thus reducing travel costs to the state.

18. Is there a cap on the number of persons who are entitled to travel with per diem money for the MFC committee meetings?

No. There is not a cap on the number of persons who are entitled to travel with per diem money for MFC committee meetings. Committee members are entitled to per diem when attending a committee meeting for which they are a member and Marine Fisheries Commission members are entitled to per diem for any MFC committee meeting they attend.

19. Is there is a cap on how much can be spent with per diem money per person per trip?

Yes. MFC members (who are not state employees) are allowed \$100 a day when operating in an official capacity. Committee members are entitled to receive \$15 a day when attending their committee meetings.

20. When the Marine Patrol travels to quarterly MFC meetings, do they have per diem money?

No. Marine Patrol officers are not allowed to receive per diem when traveling to MFC meetings because they are state employees. However, in accordance with state travel policy, Marine Patrol officers attending are reimbursed for any hotel and meal costs if they travel away from their official duty station. DMF stated that other than the Colonel and Major, they try to use local officers to attend meetings to reduce expenses.

21. There have been open meeting laws violated by several members of the commission. The director of DMF will only send emails to certain members, and not the whole commission.

We did not review the director's emails to determine that Director Daniel sent emails to only certain members of the Commission. However, there does appear to be emails between commission members that violate open meeting laws.

Four separate email chains dated January 14, 2015, September 8, 2015, July 20, 2015, and February 10, 2015, occurred between Commission Members. In each instance, the Commission's legal counsel, Phillip Reynolds, stopped the email communication and reminded the commission members about open meeting laws.

Although Director Daniel was copied on some of these emails, we did not observe any emails which were sent by the Director.

RESPONSE FROM DEPARTMENT OF ENVIRONMENTAL QUALITY



PAT MCCRORY
Governor
DONALD R. VAN DER VAART
Secretary

Feb. 11, 2016

The Honorable Beth A. Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

Dear Ms. Wood:

Thank you for the opportunity to review the financial related audit of the Department of Environmental Quality's Division of Marine Fisheries. We agree with the findings and do not request an exit interview.

Sincerely,
A handwritten signature in black ink, appearing to read "Donald R. van der Vaart". The signature is written in a cursive style with a large, looping initial "D".

Donald R. van der Vaart, Secretary
N.C. Department of Environmental Quality

The logo for "Nothing Compares" features a stylized mountain range with three peaks. To the right of the mountains is the text "Nothing Compares" in a serif font, with a trademark symbol (™) at the end.

State of North Carolina | Environmental Quality
1601 Mail Service Center | Raleigh, North Carolina 27699-1601
919 - 707 - 8600

ORDERING INFORMATION

COPIES OF THIS REPORT MAY BE OBTAINED BY CONTACTING:

Office of the State Auditor
State of North Carolina
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0600

Telephone: 919-807-7500
Facsimile: 919-807-7647
Internet: <http://www.ncauditor.net/>

To report alleged incidents of fraud, waste or abuse in state government contact the Office of the State Auditor Fraud Hotline: **1-800-730-8477** or download our free app.



<https://play.google.com/store/apps/details?id=net.ncauditor.ncauditor>



<https://itunes.apple.com/us/app/nc-state-auditor-hotline/id567315745>

For additional information contact:
Bill Holmes
Director of External Affairs

919-807-7513



This audit required 909 hours at an approximate cost of \$89,942.