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A Review of Regulatory Issues at the Department of Natural Resources



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Report to the General Assembly

**A Review of
Regulatory Issues at the
Department of Natural
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Synopsis

Members of the General Assembly requested that the Legislative Audit Council conduct an audit of the Department of Natural Resources (DNR). Our review focused on whether DNR was promulgating regulations in compliance with the Administrative Procedures Act (APA). In addition, we examined how DNR enforces state laws and regulations and how effectively it communicates changes in the laws to its officers and the public. Our findings are summarized below.

- DNR has generally complied with the Administrative Procedures Act when promulgating regulations. However, DNR has in some cases misstated its statutory authority or did not have authority to include some provisions.
- From 1998 to 2002, DNR issued more emergency regulations than any other state agency with over half of its regulations being emergency regulations. The use of emergency regulations can limit legislative and public oversight.
- DNR administratively establishes no wake zones when it would be more appropriate to establish this process through regulation.
- In 30% (24 of 81) of the tickets that were sampled, DNR fined individuals when it did not have the authority or when the regulations were not in effect. Seven individuals lost their wildlife management area privileges for a year as a result of these tickets.
- DNR has written tickets citing statutes that have been repealed or redesignated. We found 186 tickets that cited incorrect statutes.
- DNR has issued tickets for violations of the state-managed lakes program at a lake which was not a part of the program. In addition, citations were issued for violations at state-managed lakes after officers had been instructed to stop issuing tickets.
- DNR has not always effectively communicated changes in statutes and regulations to the public and to its law enforcement officers.
- We conducted a survey of DNR law enforcement officers and found several areas where officers expressed concerns including the enforcement of regulations and communication.

Synopsis

Introduction

Audit Objectives

Members of the General Assembly requested that the Legislative Audit Council conduct an audit of the South Carolina Department of Natural Resources (DNR). Audit objectives were identified through the audit request, interviews and correspondence with the audit requester and interviews with DNR officials. Our audit objectives are listed below.

- Review DNR’s promulgation of regulations for efficiency and for compliance with the Administrative Procedures Act.
- Review DNR’s law enforcement efforts to determine if state law and regulations are enforced appropriately and how legal requirements are communicated to agency staff and the public.

Scope and Methodology

The period covered during this audit was primarily calendar years 1998 through 2003. Our sources of evidence included:

- DNR records including tickets issued, incident reports, email, and internal legal memos.
- State laws and regulations, including the Administrative Procedures Act.

We also interviewed DNR officials and conducted a survey of current and recently retired DNR law enforcement officers. In cases where we relied on DNR’s computer data, we performed a limited review of management controls over the data. This audit was conducted in accordance with generally accepted government auditing standards.

Agency Background

The South Carolina Department of Natural Resources was established by §48-4-10 *et seq.* of the S.C. Code of Laws to provide for the conservation, management, utilization, and protection of the state’s natural resources. The department is composed of the former Wildlife and Marine Resources Department, Water Resources Commission (non-regulatory programs), Land Resources Commission (non-regulatory programs), State Geological Survey (State Geologist), and the South Carolina Migratory Waterfowl Committee. The agency is governed by a seven-member board with one member representing each of the state’s six Congressional districts and one serving at-large.

The DNR Law Enforcement Division (LED) is charged with protecting the state's natural resources and those who use them through the enforcement of laws and regulations. In addition to enforcement, the LED conducts educational and public awareness programs to promote safety and to improve compliance with the laws and regulations.

South Carolina is divided into 11 game zones; within the game zones, DNR regulates outdoor activities on 3 types of land — DNR-owned land, leased land, and privately-owned land. DNR-owned and leased lands collectively are considered wildlife management areas (WMAs). DNR has broad authority over the approximately 134,000 acres of land it owns throughout the state.

The department sets the hunting seasons, the methods of hunting, and the bag limits as well as other requirements not related to these items. For example, on its own property, DNR can require people to wear orange when hunting. In addition, DNR can regulate non-hunting activities, such as camping, hiking, rock climbing, horseback riding, and all terrain vehicle (ATV) use.

DNR's authority on WMA-leased and private land is more limited and is primarily restricted to setting the hunting seasons, the methods of hunting, and bag limits. For example, on private land, DNR cannot require individuals to wear orange while hunting. In 2002, the Legislature amended S.C. Code §50-11-2210 to specifically define certain acts on WMA land as abuse or misuse. This allowed DNR to regulate certain activities such as camping, ATV use, and target practice. DNR controls approximately 850,000 acres through leases or agreements with other entities or individuals.

During FY 02-03, DNR officers issued 24,354 citations for game, fish, and boating violations and an additional 2,353 citations for other violations such as littering and alcohol violations. See *Appendix B* for a more specific breakdown of citations. In FY 02-03 DNR issued over 750,000 licenses through its game and fish licensing program.

Changes in DNR's Regulatory Authority

In 2001, a state circuit court ruled that DNR's authority on private land did not extend beyond setting seasons, bag limits or methods of hunting wildlife. DNR chose not to appeal this decision. In the past, DNR had issued regulations which went beyond this authority. For example, DNR issued tickets to individuals who were not wearing orange while hunting on private land. The court ruled that this was a safety issue and did not relate to "season, limits, or methods of taking." Due in part to this court decision, DNR decided to review all of its regulations to ensure they were based on the correct authority. DNR determined that it did not have authority to issue citations for a number of activities for which it had written violations prior to the court decision. For example, DNR had regulations addressing such activities as driving on closed roads, target shooting, and camping. Officers were instructed not to write citations for these types of violations.

DNR has attempted to identify those activities for which it does not have regulatory authority and has also attempted to amend legislation to obtain authority over these activities. However, citations written in the past for these activities may not have been valid. These citations can carry fines and can result in points being assessed against a hunting or fishing license which could result in a person losing these privileges.

Chapter 1
Introduction

Audit Results

DNR Regulations

We reviewed DNR’s promulgation of regulations for compliance with the Administrative Procedures Act (APA) and the efficiency of the process. We found that DNR has generally complied with the APA, although some regulations misstated the statutory authority or DNR did not have the authority to include some provisions. We were also asked to determine for each regulation the date it became final and its statutory authority, and for emergency regulations the date it went into effect, the date it expired, and its statutory authority. DNR issues more emergency regulations than any other state agency. We also reviewed how other states regulate natural resources.

Administrative Procedures Act

The APA (S.C. Code §1-23-10 *et seq.*) requires that all state agencies publish regulations if the rules apply to the general public. A regulation is defined in S.C. Code §1-23-10(4) as:

...each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.

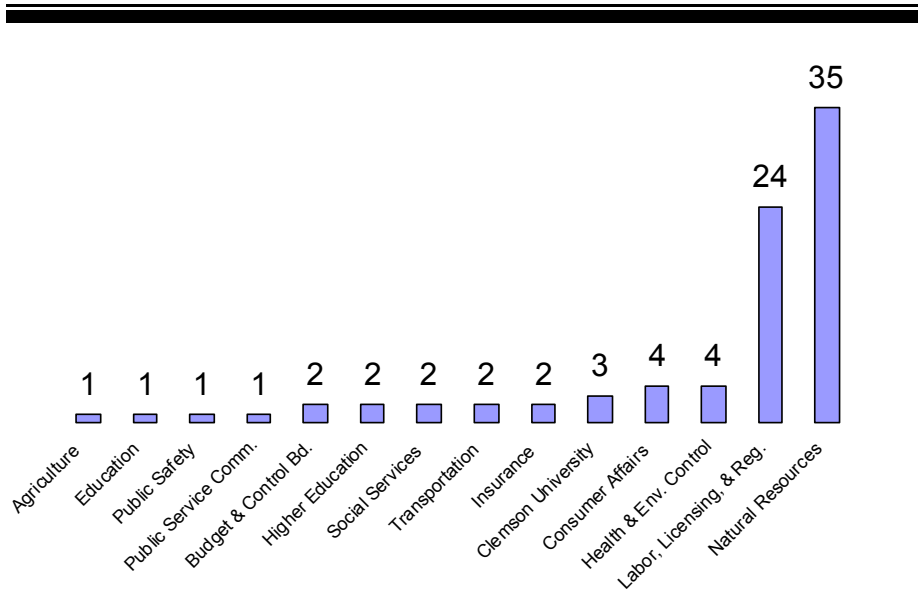
DNR does not have general statewide authority to govern hunting seasons by regulation. However, DNR does use regulations to set the rules governing some of the hunting seasons in South Carolina. Often DNR issues emergency regulations to set these limits. Emergency regulations become effective at the time they are filed and are not subject to review by the General Assembly. These regulations expire after 90 days and can only be refiled for an additional 90 days if the General Assembly is not in session. S.C. Code §1-23-130(A) states that a natural resources agency “may” issue emergency regulations if the agency “finds that abnormal or unusual conditions, immediate need, or the state’s best interest requires immediate promulgation of emergency regulations to protect or manage natural resources....”

We reviewed the regulations promulgated by all state agencies from 1998 through 2002 to determine the number of emergency regulations and permanent regulations issued by these agencies. Twenty-seven agencies promulgated regulations during this period. Fourteen (52%) of these agencies filed emergency regulations. We found that:

- DNR issued more emergency regulations (35) than any other state agency.
- DNR promulgated over half (54%) of its regulations as emergency.

The following chart shows the number of emergency regulations filed or refiled by the 14 agencies that filed emergency regulations from 1998 through 2002.

**Chart 2.1: State Agency
Emergency Regulations
1998–2002**



Source: State Register.

Permanent Regulations

We reviewed the regulations promulgated by DNR from calendar years 1998 through 2002. DNR issued 30 regulations from 1998 through 2002 using the process for promulgation of permanent regulations. Sixteen of these regulations became permanent. The following table shows the date that these 16 regulations became final and the statutory authority cited by DNR for these regulations.

**Table 2.2: DNR Final Regulations
1998–2002**

DESCRIPTION	FINAL DATE	AUTHORITY
Soil Classifiers	3/27/1998	§40-65-70
Red-Cockaded Woodpeckers	4/24/1998	§50-15-50
Hunt Units and WMAs	5/22/1998	§50-9-150
Hunt Units and WMAs	6/26/1998	§50-9-150
Non-Game Wildlife	6/26/1998	§50-15-30
WMA Seasons, Limits, Methods	4/23/1999	§50-11-2200
WMA Seasons, Limits, Methods	5/28/1999	§50-11-2200
WMA Seasons, Limits, Methods	3/24/2000	§50-11-2200
WMA Seasons, Limits, Methods	3/23/2001	§50-11-2200
Seasons, Limits, Methods	2/22/2002	§50-11-2200
Seasons, Limits, Methods	4/26/2002	§50-11-2200
Department-Owned Lands	5/24/2002	§50-11-2200 §50-11-2210
Drought Management	5/24/2002	§49-23-10 <i>et seq.</i>
Seasons, Limits, Methods, Special Use Restrictions	5/24/2002	Sections of Title 50
Trout Harvest	5/24/2002	§50-13-250
Nongame and Endangered Species	6/28/2002	§50-15-30 §50-15-40 §50-15-50 §50-15-70

Source: State Register.

General Assembly Review of Regulations

The Administrative Procedures Act requires that all proposed permanent regulations be submitted to the General Assembly for review. The General Assembly has 120 days to take action on the regulation. If the General Assembly does not take action on the regulation during that 120-day period, the regulation takes effect. The General Assembly may pass a joint resolution approving or disapproving the regulation before the 120-day period expires.

From the 1997-98 session through the 2001-02 session, the General Assembly introduced 15 resolutions approving or disapproving DNR regulations. However, only four of these resolutions were passed by the General Assembly and signed by the Governor.

We found four instances where the Senate and House passed separate resolutions approving the same regulations. Only two of these resolutions were passed by both bodies. Of the 14 regulations that DNR proposed to the General Assembly from 1998 through 2002, only 3 (21%) took effect by action of the General Assembly before the 120-day period expired.

Emergency Regulations

DNR issued 20 regulations as emergency regulations. Fourteen (70%) of these regulations were reissued as emergency regulations for a second time. The use of emergency regulations can limit legislative and public oversight. The following table shows the dates these emergency regulations were filed, when they expired, if they were reissued and their expiration, and the statutory authority cited by DNR for these regulations.

Table 2.3: DNR Emergency Regulations 1998–2002

DESCRIPTION	ISSUED	EXPIRED	REISSUED	EXPIRED	AUTHORITY
Shad Nets-Cooper River	1/30/98	4/30/98	2/15/00	5/15/00	§50-5-20,-110
Seasons, Limits, Methods	2/5/98	5/6/98			§50-11-2200
Shad Nets-Rediversion	3/3/98	6/1/98			§50-17-810(e)
Seasons, Limits, Methods	8/18/98	11/16/98	12/3/98	3/3/99	§50-11-2200
Seasons, Limits, Methods	9/1/98	11/30/98	12/3/98	3/3/99	§50-11-2200
Seasons, Limits, Methods	9/21/98	12/20/98			§50-11-2200
Seasons, Limits, Methods	8/31/99	11/29/99	11/30/99	2/28/00	§50-11-2200
Seasons, Limits, Methods	10/21/99	1/19/00			§50-11-2200
Hunt Units	9/1/00	11/30/00	11/28/00	2/26/01	§50-11-2200
Drought Mgmt.*	7/25/00	10/23/00	10/24/00 9/7/01	1/22/01 12/6/01	§49-23-10 <i>et seq.</i>
Seasons, Limits, Methods	8/20/01	11/18/01	11/16/01	2/14/02	Sections of Title 50
Dove Seasons, Limits	8/31/01	11/29/01	11/29/01	2/27/02	§50-11-10 §50-11-2200
Seasons, Limits, Methods	9/13/01	12/12/01	12/10/01	3/10/02	Sections of Title 50
Dept.-Owned Lands*	9/13/01	12/12/01	12/10/01	3/10/02	§50-11-2200 §50-11-2210
Turkey Hunting	1/7/02	4/7/02			§50-11-500 §50-11-520 §50-11-530 §50-11-2200
Hunting in WMAs	9/27/02	12/26/02	11/12/02	2/10/03	§50-11-2200 §50-11-2210
Dove Seasons, Limits	9/27/02	12/26/02	11/22/02	2/20/03	§50-11-10 §50-11-2200
Hunting in WMAs	9/27/02	12/26/02	11/22/02	2/20/03	§50-11-2200 §50-11-2210
Special Hunt Procedures	9/27/02	12/26/02			§50-11-2200 §50-11-2210
Fish Channidae	9/27/02	12/26/02	12/4/02	3/4/03	§50-13-1630

*Regulations became permanent on 5/24/02.

Source: State Register.

Statutory Authority

Three of the regulations that DNR proposed from 1998 through 2002 cited statutory authority that had been repealed. For example, wildlife management area (WMA) regulations proposed or finalized in 1998 cited S.C. Code §50-9-150 as the statutory authority for the regulation. This statute was repealed in July 1996 as part of amendments to DNR statutes. These amendments moved the authority originally granted DNR in S.C. Code §50-9-150 to S.C. Code §50-11-2200.

DNR has enforced regulations where they did not have statutory authority (see p. 11). Many of these regulations addressed hunting on private lands rather than WMAs where DNR does have the authority to regulate.

- DNR required hunters to wear orange clothing when deer hunting in game zones 1, 2, and 4. A judge determined that this requirement was not a season, limit, or method of hunting as allowed by state law and thus, DNR did not have authority to make this requirement.
- DNR only had the authority to set bear hunting seasons. DNR did not have the authority to set limits or methods of hunting on private lands.

DNR reviewed its enforcement of these regulations and had state law amended in 2002 to address many of these issues. For example, S.C. Code §50-11-430 which governs bear hunting was rewritten to expand DNR's authority.

Other States' Regulatory Processes

We reviewed the process for promulgating regulations in seven southeastern states to determine how their natural resources agencies set hunting and fishing rules and regulations. We found that, in five of the seven states, the natural resources agencies were exempt from the rulemaking process for setting hunting and fishing seasons. The directors or boards of these agencies had the authority to set the seasons which then became effective and were published.

In Georgia, the public participates in the development of regulations. The Georgia Department of Natural Resources issues its hunting regulations on a two-year cycle. As part of this cycle, public meetings are held in January to obtain public input prior to the formulation of proposals. In April, 30 days' notice of proposed regulations is given. In May, three public hearings are held on the proposed regulations prior to final approval by the Board of Natural Resources. In August, the hunting seasons and regulations booklets are available.

Recommendations

1. The Department of Natural Resources should state the proper statutory authority when promulgating regulations.
 2. The Department of Natural Resources should not promulgate regulations for which it does not have statutory authority.
-

No Wake Zones

DNR administratively establishes no wake zones when it would be more appropriate to establish this process through regulation. A no wake zone is an area where a boat must travel without creating an appreciable wake.

In a 1988 legal memo, DNR's legal counsel determined that it was not necessary for DNR to establish no wake zones through regulation. However, the APA defines the term regulation as:

...each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.

One benefit of this requirement is that it allows the General Assembly and the public an opportunity to review restrictions imposed by the agency on the use of state waters.

DNR's law enforcement manual does not contain a directive detailing how no wake zones are to be created. In South Carolina, no wake zones have been created in three ways:

- By statute.
- By regulation.
- By DNR.

As of 2004, there were 211 designated no wake zones in South Carolina. Of those, 58 were created through regulation, 73 by statute, and 80 by DNR. In 2003, DNR created two new no wake zones.

According to an agency official, new no wake zones are created after a routine investigation by the department. Investigations are prompted by a letter to the department describing the area and the problem. During the investigation, the investigating officer reviews the area, talks with local DNR officers, and the property owner. The investigator tries to determine if DNR could solve the problem without the creation of a new zone through better

enforcement. DNR law enforcement makes a final determination, and if a new zone is designated, buoys are set out by the department.

According to a DNR official, the department receives between 40 and 100 requests for new no wake zones each year; of those, only about 10 are created. From January 2002 through October 2003, DNR issued 570 citations for violations of the existing 211 no wake zones, resulting in over \$47,000 in fines.

Establishing individual no wake zones through regulation would be cumbersome and time-consuming. However, if DNR were to promulgate a regulation outlining the specific procedure for requesting and establishing a new no wake zone, zones would be considered and established in a consistent manner. This would also allow for review by the General Assembly and comment by the public. Since violation of a no wake zone can result in a ticket and a fine, the public and the General Assembly should be allowed the opportunity for input into the procedure for establishing no wake zones.

Recommendation

3. The Department of Natural Resources should promulgate a regulation establishing the procedure for creating no wake zones.
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Enforcement of Statutes and Regulations

One of our audit objectives was to determine if DNR had enforced state law and regulations appropriately when issuing tickets. We found instances where DNR had issued tickets for violations of emergency regulations when the regulations had expired or were not in effect. In addition, we found that DNR had issued tickets citing statutes that had been repealed. Also, tickets were issued for violations of the state-managed lakes program at a location that was not part of the program. Officers also continued to issue tickets for violations at state-managed lakes after being instructed to stop issuing tickets.

Enforcement

We reviewed tickets written under several regulations to determine if the regulations were in effect at the time the tickets were written. During our review of DNR's rules and regulations, we found four regulations that either expired during the hunting season or were not in effect when the season began. For each period of time that the four regulations were not in effect, we reviewed all citations or summons issued to determine if DNR was enforcing

the regulations properly. Our sample included 81 tickets written during the period from August 1998 through February 2003. We found that DNR did not have the authority, or the regulation was not in effect, for 24 (30%) of the tickets in our sample. The 24 tickets total more than \$4,000 in fines and seven people lost their wildlife management area privileges for one year. Below are examples from these 24 tickets.

- Two tickets, each for \$425, were written for baiting deer on private land and one ticket for baiting turkeys on private land for \$125, when DNR does not have the authority to regulate baiting on private land.
- DNR cited the wrong statute on three tickets issued for hunting over bait, one ticket issued for possession of a wild turkey and one ticket issued for littering.
- DNR wrote seven tickets for abuse of wildlife management areas — five of the tickets were written before statutes were in effect and two of the tickets were not specific enough to tell if the ticket was actually written on a WMA.
- Three tickets were issued for camping in undesignated areas when DNR did not have the authority to regulate camping on leased WMA lands.

Repealed Statutes

We reviewed DNR’s ticket database and found 186 tickets that cited statutes incorrectly. Table 2.4 shows the statute, year repealed or redesignated, and tickets written between January 2002 and October 2003.

Table 2.4: Tickets Written Citing Repealed or Redesignated Statutes

STATUTE	YEAR	JAN. 2002 – OCT. 2003
§50-21-310	1999	172
§50-1-120	1994	1
§50-9-11	1996	1
§50-9-15	1996	1
§50-9-190	1996	1
§50-17-510	2000	2
§50-17-720	2000	5
§50-21-360	1999	2
§50-21-370	1999	1
TOTAL		186

Source: South Carolina Code of Laws and DNR ticket database.

Section 50-21-310 was redesignated in 1999 as §50-23-310. Both sections address boater registration. Between January 2002 and October 2003, 172 (16%) of the 1,078 tickets DNR issued cited §50-21-310. Under chapter 21 counties retained 25% of the fine amount. However, under chapter 23, DNR retains all the funds. Thus, citing the incorrect statute could result in DNR losing funds. The 172 citations written under §50-21-310 totaled over \$16,000; if the county is keeping 25% of the fines, DNR may have lost over \$4,000 during 2002 and 2003 because officers cited the wrong code. In September 2003, DNR sent a reminder to all its law enforcement officers stating that, "...section 50-21-310 should no longer be cited for boater registration violations." However, we found three instances where DNR officers cited the old statute after the reminder had been sent.

State Managed Lakes

DNR incorrectly issued tickets for violations under the state lakes program at a location that was not part of the program. Tickets were written at Lake Monticello citing the state lakes statute (§50-13-2020) when Lake Monticello is not part of the state lakes program. In addition, DNR officers continued to issue tickets for violations at state lakes after being instructed to stop.

DNR's state lakes program is designed to provide fishing to the public in areas of the state where the opportunity is lacking or where there are few public fishing lakes. There are currently 17 lakes in the state lakes program. DNR has the authority under §50-13-2020 to establish certain terms and conditions for the use of the lakes. For example, DNR can restrict the times and days of the week that fishing is allowed and the type of bait to be used when fishing. In addition, DNR can implement other restrictions, such as no alcohol and no swimming.

Section 50-13-2020 states before any restrictions can take effect:

The conditions and terms must be approved by the (DNR) board and a majority of the county legislative delegation of the county where the lake or pond is located and published in a newspaper of general circulation in the county.

We found that, between 1998 and 2001, DNR issued 116 tickets totaling \$8,450 at Lake Monticello. However, according to agency officials, Lake Monticello was never officially part of the state lakes program.

In 2002, DNR decided to review all restrictions imposed at state managed lakes. Until this review was completed, DNR instructed its officers not to issue tickets at these lakes. However, we found 18 tickets totaling \$1,400

were written during the time period when officers were instructed not to write tickets.

In addition to paying fines, certain violations at state lakes can result in points against a person's fishing license. We found seven cases where individuals had eight points placed against their licenses. A total of 18 points results in a person's license being suspended.

Recommendations

4. The Department of Natural Resources should take steps to ensure that law enforcement officers cite the proper code section when citing individuals for violations of law.
5. The Department of Natural Resources should ensure that tickets for violations of the state lakes program are written only for lakes that are part of the program.
6. The Department of Natural Resources should ensure that officers do not write tickets for violations of the state lakes program until the department has established restrictions in accordance with S.C. Code §50-13-2020.

Communication of Changes in Regulation

We examined how DNR communicates changes in statutes and regulations to the general public and its law enforcement officers. We found that changes have not always been communicated effectively. Publications which DNR uses to inform the public about hunting and fishing have contained errors. In addition, DNR's procedure for informing its field officers of changes in rules and regulations could be improved. We conducted a survey of current and recently retired DNR law enforcement officers to obtain their views on DNR's law enforcement efforts.

Communication With the Public

Each year DNR publishes a brochure containing the rules and regulations for hunting, fishing, and wildlife management areas. This publication is wide ranging and contains information on game seasons, methods for taking game, and limits on the number of game that can be taken. In the past, the brochure was printed prior to the end of the legislative session. As a result, some legislative changes occurred too late in the session to be incorporated into the brochure. For example, in 2002-2003, DNR had to publish an addendum to the brochure setting forth various corrections. Among the corrections DNR

included in the addendum was one stating that turkey hunting was allowed on Sundays on private lands in game zone four. The brochure had incorrectly stated that it was prohibited.

DNR publishes a separate brochure for turkey hunting that also has contained errors. In 2003 DNR issued a news release noting corrections to the brochure. This brochure contained the same error concerning turkey hunting on Sundays on private land in game zone four that was included in the rules and regulations brochure discussed above.

Other errors contained in DNR's turkey brochure included:

- The 2003 turkey brochure cited statutes that had been repealed. These statutes listed penalties for hunting on a WMA outside specified times and reporting a hunting accident.
- The 2003 turkey brochure also said that feeding turkeys was illegal. Feeding is legal. In the 2004 brochure there is no discussion of feeding.

In our survey of DNR law enforcement officers, slightly less than half agreed that DNR communicated changes in rules and regulations effectively to the public (see p. 17).

DNR is now delaying the publication of the brochure until July, after completion of the legislative session, to ensure that all legislative changes are included in the brochure. In addition, according to an agency official, DNR has implemented a committee process for review of the brochure. The errors concerning hunting turkeys on Sundays on private land in game zone four were corrected in the 2004 editions of the DNR's rules and regulations brochure and its turkey hunting brochure.

Communication With Law Enforcement Officers

Each year, for at least the last five years, there have been changes in statutes and regulations which DNR is responsible for enforcing. DNR has filed emergency regulations every year between 1998 and 2002. In addition, DNR management periodically revises or clarifies how statutes and regulations are to be enforced. Given the frequent changes made to statutes, regulations and enforcement procedures, it is important that DNR have means for communicating these changes to its officers in the field as quickly and as clearly as possible.

According to agency officials, DNR's procedure is to inform officers of changes at district meetings. These are regular meetings that all officers are

required to attend. At these meetings, any changes regarding the enforcement of state laws and regulations are to be discussed. According to agency officials, officers are usually provided copies of these meeting minutes to document changes in enforcement procedures. We found several examples where it was unclear if changes in statutes and regulations had been communicated to law enforcement officers.

- DNR revised its interpretation of when officers could write citations for violations of the state's open container law. According to agency officials, this information was communicated to officers in a captain's meeting in June 2001. However, the minutes from this meeting do not contain any reference to the state's open container law.
- In August 2003, DNR filed an emergency regulation preventing the importation of deer parts in order to prevent the spread of chronic wasting disease in deer and elk to South Carolina. However, it was not until January 2004 that DNR officers signed a form acknowledging receipt of the regulation.
- In June 2003, DNR filed a regulation outlawing the commercial harvest of seven species of freshwater turtles. We did not find evidence in the captain meeting minutes that this regulation was discussed with DNR law enforcement officers.

In our survey of DNR law enforcement, 31% of DNR's law enforcement officers disagreed when asked if DNR communicated changes in law and regulation to officers effectively (see p. 17). Officers also continued to write tickets after being instructed to stop (see p. 13).

DNR has revised its procedure for informing officers of changes in regulation. DNR now requires officers to sign a sheet acknowledging receipt of minutes from captains' meetings. In addition, officers must also sign for other documents relating to the enforcement of laws and regulations.

Recommendations

7. The Department of Natural Resources should ensure that its publications contain accurate information regarding the rules and regulations enforced by the department.
8. The Department of Natural Resources should ensure that all law enforcement officers are informed of any changes in the enforcement of state laws and regulations.

DNR Law Enforcement Survey

In order to determine how changes in the law are communicated to DNR law enforcement officers and to identify problems with law enforcement efforts, we conducted a survey of 271 current and recently retired DNR law enforcement officers. We received 163 responses for an overall response rate of 60%. The University of South Carolina's Survey Research Laboratory assisted us in creating the survey questions and in analyzing survey results and assessing their validity.

The results of the survey identified several areas of concern among DNR law enforcement officers including communication, the enforcement of regulations, the legal system and legal support at DNR, and the presence of a ticket quota system. The comments that respondents included in their questionnaires also reinforced the conclusion that DNR officers have a number of concerns related to the department. Please see *Appendix A* for a complete summary of the survey results.

Communication

In the area of communication, when asked if DNR supervisors communicate changes in rules and regulations to law enforcement officers in an effective manner:

- 60% either strongly agreed or agreed with this statement.
- 31% disagreed.
- 9% were undecided.

DNR officers' assessment of the way in which changes in the rules and regulations are communicated to the public is even less positive, with slightly less than half agreeing that such changes are communicated effectively. This concern over communication is reflected, although to a lesser extent, with these officers' relationship with their supervisor. A significant minority of close to 40% of DNR officers would feel somewhat comfortable or less in asking their supervisor for guidance if they had a question about the enforcement of a rule or regulation.

Enforcement of Regulations

DNR law enforcement officers also expressed concerns about the enforcement of regulations. When questioned about how many of DNR's written regulations are difficult to enforce:

- 24% thought "a great many" were.
- 46% felt that "some" were.
- 27% believed "a few" were.
- 3% said that "none" of DNR's written regulations were difficult to enforce.

Moreover, these DNR officers had mixed views about the training they received on the enforcement of rules and regulations when they were hired. About half of those responding thought their training was either very good (18%) or good (33%), while the other half rated it as either fair (30%), poor (12%), or very poor (8%).

According to survey responses, some of the concerns about enforcement of regulations may be related to officers' perceptions of communication about new regulations or their opportunity to provide input into this process. When questioned about how often officers in the field are consulted when new rules and regulations are discussed or proposed:

- 8% said very often.
- 20% said often.
- 45% said occasionally.
- 27% said that officers in the field are never consulted when such rules are regulations are being formulated.

A significant minority (37%) of those who responded felt that in the past five years DNR has ticketed for violations of rules and regulations for which it did not have statutory authority. Yet these DNR officers for the most part do not feel comfortable in raising questions about DNR's regulatory authority.

- 7% would feel extremely comfortable raising such questions.
- 19% would be very comfortable.
- 29% would be somewhat comfortable.
- 26% would be not too comfortable.
- 19% would not be comfortable at all in raising questions about DNR's regulatory authority.

According to comments by law enforcement officers, in terms of enforcement of regulations, the largest confusion or concern appears to be related to enforcement in WMAs. A number of respondents felt that DNR

had attempted to enforce regulations in WMAs for which it did not have regulatory authority and expressed some frustration as to direction, or lack thereof, regarding enforcement powers.

Legal System and Legal Support

The two questions on the legal system that were included in the survey uncovered concerns on the part of a number of DNR officers. First, DNR officers expressed dissatisfaction with legal support that they receive when appearing in court.

- Less than 5% rated the legal support as very good.
- 17% rated it as good.
- 25% rated it fair.
- 24% rated it poor.
- Close to 30% rated the legal support they receive when appearing in court as very poor.

The second item addressed the situation in which a DNR officer is accused of a violation, and asked how often such cases are handled according to agency policies and procedures.

- 24% felt that such cases were handled according to procedure all of the time.
- 26% thought this was done most of the time.
- 33% thought such cases were handled according to procedure only some of the time.
- 17% said hardly ever.
- 1% said such cases were never handled this way.

Ticket Quota System

On the issue of whether DNR has a ticket quota system requiring officers to write a certain number of tickets per month:

- 61% (a solid majority) thought it did not.
- 18% undecided.
- 21% either agreed (12%) or strongly agreed (9%) that a ticket quota system exists.

The comments that respondents included in their questionnaires reinforce the conclusion that some DNR officers feel that there is a quota system in place. The sentiment of many of the comments were that while there was not a strict quota system in place, the number of tickets that were written was very

important to supervisors and was a significant factor in the way officers were evaluated, with the message from the administration being “write more tickets.”

DNR Law Enforcement Survey Results

We conducted a survey of current and recently retired DNR law enforcement officers designed to determine how changes in the law are communicated to officers in the field and to identify any problems with law enforcement efforts. We sent the survey to 271 current and recently retired DNR law enforcement officers. After the data were collected, we requested the University of South Carolina's Survey Research Laboratory (SRL) to assist us in analyzing survey results and assessing their validity.

We received 163 responses for an overall response rate of 60%. On the following pages, we present the results for each closed-ended question on the survey, displaying the percentage of responses in each category. An additional category of "No Answer" has been added to the "No Response" category. Percentages are based on the number of officers that responded to each question and excludes those that chose not to answer or not to respond.

Please answer the following questions based on your experience as a DNR law enforcement officer. For each statement, check the answer that comes closest to your opinion. Your responses to this survey will remain confidential.

1. DNR supervisors communicate changes in the rules and regulations to law enforcement officers in an effective manner.

11.8% (19)	Strongly Agree	24.2% (39)	Disagree
48.4% (78)	Agree	6.8% (11)	Strongly Disagree
8.7% (14)	Undecided	(2)	No Response or No Answer

2. DNR communicates changes in rules and regulations to the public in an effective manner.

5.6% (9)	Strongly Agree	27.3% (44)	Disagree
41.6% (67)	Agree	11.8% (19)	Strongly Disagree
13.7% (22)	Undecided	(2)	No Response or No Answer

3. If you have a question about the enforcement of a rule or regulation (either existing or new), how comfortable do you feel in asking your supervisor for guidance?

28.6% (46)	Extremely Comfortable	9.9% (16)	Not Too Comfortable
32.3% (52)	Very Comfortable	8.7% (14)	Not Comfortable At All
20.5% (33)	Somewhat Comfortable	(2)	No Response or No Answer

4. How would you rate the legal support you receive when appearing in court?

4.9% (7)	Very Good	23.6% (34)	Poor
17.4% (25)	Good	29.2% (42)	Very Poor
25.0% (36)	Fair	(19)	No Response or No Answer

5. How many of DNR's written regulations would you say are difficult to enforce?

23.8% (38)	A Great Many	27.5% (44)	A Few
46.2% (74)	Some	2.5% (4)	None
			(3) No Response or No Answer

6. How would you rate the training you received on the enforcement of rules and regulations when you were hired at DNR?

17.6% (28)	Very Good	11.9% (19)	Poor
32.7% (52)	Good	8.2% (13)	Very Poor
29.6% (47)	Fair	(4)	No Response or No Answer

7. How often are officers in the field consulted when new rules and regulations are being discussed or proposed?

7.6% (12)	Very Often	26.8% (42)	Never
20.4% (32)	Often	(6)	No Response or No Answer
45.2% (71)	Occasionally		

8. How comfortable are you in raising questions about DNR's regulatory authority?

7.2% (11)	Extremely Comfortable	25.7% (39)	Not Too Comfortable
19.1% (29)	Very Comfortable	19.1% (29)	Not Comfortable At All
28.9% (44)	Somewhat Comfortable	(11)	No Response or No Answer

9. DNR discourages officers from "ticket stacking" (i.e. writing multiple tickets all at one time).

18.9% (30)	Strongly Agree	19.5% (31)	Disagree
40.9% (65)	Agree	5.7% (9)	Strongly Disagree
15.1% (24)	Undecided	(4)	No Response or No Answer

10. When a DNR officer is accused of a violation, how often is the case handled according to agency policies and procedures?

23.5% (28)	All of the Time	16.8% (20)	Hardly Ever
26.0% (31)	Most of the Time	1.0% (1)	Never
32.8% (39)	Some of the Time	(44)	No Response or No Answer

11. DNR has a ticket quota system requiring officers to write a certain number of tickets per month.

9.2% (14)	Strongly Agree	32.7% (50)	Disagree
12.4% (19)	Agree	28.1% (43)	Strongly Disagree
17.6% (27)	Undecided	(10)	No Response or No Answer

12. In your opinion, has DNR, in the past five years, ticketed for violations of rules and regulations for which it did not have statutory authority?

37.2% (54)	Yes	62.8% (91)	No	(18)	Not Answered
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Please cite any specific instances of which you are aware:

If you have any additional comments concerning DNR, please list them below. Thank you.

102 respondents had additional comments on questions in the survey or general comments about DNR.

Appendix A
DNR Law Enforcement Survey Results

Summary of Violations Issued by DNR

TYPE OF TICKET	CALENDAR YEAR					
	2001		2002		2003	
	CASES	FINES COLLECTED	CASES	FINES COLLECTED	CASES	FINES COLLECTED
GAME						
Licenses, Permits, Stamps, Tags	3,026	315,379.50	2,702	271,031.25	2,478	263,182.19
Big Game Permit	1	0.00	0	0.00	0	0.00
Furbearer Licenses, Permits	6	1,425.00	2	1,055.00	2	100.00
Hunt Fish Under Suspension	3	800.00	3	750.00	5	2,023.38
License Fraud Borrow Alter	18	3,525.00	9	2,349.00	22	5,443.00
Night Hunting Deer	41	23,946.00	20	14,671.75	30	20,157.89
Night Hunting Other	4	575.00	2	856.00	0	0.00
Illegal Deer	75	10,430.00	54	7,173.00	57	5,933.00
Out-of-Season Deer/Bear	58	15,481.00	32	6,233.50	33	5,148.00
Hunting Public Road	65	15,083.00	62	7,711.00	43	6,143.00
Other Deer/Bear	38	5,232.50	20	2,430.00	25	2,294.50
Out-of-Season Small Game	10	1,850.00	8	800.00	12	1,145.00
Out-of-Season Furbearer	14	1,150.00	3	892.00	4	845.00
Untagged Furs	0	0.00	3	200.00	4	230.00
Other Furbearer	18	1,581.00	18	2,456.00	50	3,433.00
Other Small Game	14	1,000.00	9	995.00	4	785.00
FRESHWATER FISH						
Resident Fishing License	3	150.00	2	100.00	3	121.00
Nongame Fish Licenses, Permits	1	125.00	2	50.00	1	0.00
Other Licenses, Permits, Tags	21	2,731.00	26	2,315.00	12	1,225.00
Over-the-Limit Game Fish	61	7,025.00	42	5,402.00	88	12,510.00
Illegal Devices Game Fish	12	1,400.00	11	888.00	8	960.00
Commercial Game Fish	0	0.00	2	250.00	2	0.00
Illegal Devices Nongame Fish	27	3,750.00	35	4,299.00	28	3,473.75
Other Freshwater Fish	86	8,185.00	77	6,687.00	74	8,923.00
Other Nets, Seines, Devices	37	4,500.00	18	1,930.00	16	2,589.00
SALTWATER FISHERIES						
Saltwater Licenses, Permits	26	1,630.00	6	390.00	2	210.00
Dealers/Land & Sell License	0	0.00	0	0.00	1	0.00
Saltwater Fisheries 50-17-510	3	255.00	2	160.00	0	0.00
Trawling License	1	2,500.00	0	0.00	0	0.00
Undersized Crabs	0	0.00	5	230.00	0	0.00
Commercial Shellfish	11	875.00	10	1,465.00	10	1,615.00
Saltwater Nets, Traps, Devices	1	0.00	0	0.00	0	0.00
Other Saltwater Fisheries	1,215	153,554.00	1,161	145,573.88	993	132,959.50

**Appendix B
Summary of Violations Issued by DNR**

TYPE OF TICKET	CALENDAR YEAR					
	2001		2002		2003	
	CASES	FINES COLLECTED	CASES	FINES COLLECTED	CASES	FINES COLLECTED
TURKEY						
Closed Season Gobblers	6	575.00	14	2,085.00	16	2,867.00
Illegal Possession of Hens	1	125.00	5	775.00	0	0.00
Out-of-Season Turkey	2	350.00	1	125.00	0	0.00
Hunting Turkey From Vehicle	2	250.00	0	0.00	0	0.00
Shooting Turkey Over Bait	7	600.00	0	0.00	4	780.00
Hunting Turkey Over Bait	59	9,973.00	42	7,949.00	32	5,293.00
Other Turkey	25	4,100.00	19	1,525.00	26	2,721.75
Trespassing to Hunt Turkey	43	7,706.00	16	2,248.00	10	1,179.00
MIGRATORY BIRDS						
Out-of-Season Doves	38	3,513.00	40	7,088.75	35	4,108.75
Hunting Doves Over Bait	107	14,578.00	115	12,890.25	123	20,878.25
Over-the-Limit Doves	28	3,111.00	7	933.00	6	400.00
Doves-Unplugged Gun	97	8,289.00	47	4,030.75	55	6,347.50
Hunting Doves After Hours	1	75.00	1	80.00	2	310.00
Waterfowl	1	425.00	0	0.00	0	0.00
Over-the-Limit Waterfowl	22	3,481.00	24	4,240.00	38	5,034.00
Waterfowl-Steel Shot	16	1,775.00	23	2,635.00	32	3,793.00
Waterfowl- Unplugged Gun	45	6,150.00	21	1,968.75	42	4,231.75
Out-of-Season Waterfowl	11	1,725.00	6	1,710.00	11	3,024.00
Waterfowl- Sunset to Sunrise	80	10,586.00	55	7,113.00	79	10,313.00
Waterfowl Stamp	31	2,450.00	22	1,664.00	26	1,910.00
Hunting Waterfowl Over Bait	4	1,275.00	1	430.00	6	1,565.00
Shooting Waterfowl Over Bait	0	0.00	0	0.00	1	250.00
Other Migratory Birds	11	750.00	18	4,917.50	17	2,391.00
Tresspass to Hunt Waterfowl	6	1,475.00	0	0.00	1	415.00
BOATING						
Improper PFD's	1,545	122,627.00	1,364	108,101.69	944	87,426.63
No Running Lights	497	37,307.00	485	38,030.88	261	22,548.00
No Fire Extinguisher	136	9,155.00	76	6,329.00	50	5,372.75
Negligent Operation	329	42,293.00	326	41,859.00	216	29,656.17
Boating Under The Influence	45	14,492.00	36	8,513.00	21	5,341.00
No Wake Zone	589	44,700.00	369	29,483.00	261	23,126.50
Boat Titling and Registration	0	0.00	1	75.00	0	0.00
Registration and Reg. Numbers	687	64,031.00	655	61,162.88	534	51,063.95
Titling, Hull and Serial Numbers	87	12,325.00	98	18,216.75	112	14,716.50
Other Boating	398	37,024.00	350	29,207.76	194	18,168.00

**Appendix B
Summary of Violations Issued by DNR**

TYPE OF TICKET	CALENDAR YEAR					
	2001		2002		2003	
	CASES	FINES COLLECTED	CASES	FINES COLLECTED	CASES	FINES COLLECTED
WMA VIOLATIONS						
WMA Permits	0	0.00	1	0.00	0	0.00
No WMA Permit	83	11,350.00	74	10,175.00	101	15,195.00
Failure to Check Game	2	250.00	0	0.00	0	0.00
Uncased Gun	33	2,275.00	5	592.00	6	940.00
Illegal Weapon/Ammunition	4	275.00	7	518.00	8	508.00
Sunday Hunting	7	850.00	5	410.00	1	80.00
Man Drives Prohibited Days/Hrs	0	0.00	9	1,014.50	0	0.00
Closed Roads	65	6,477.00	27	2,249.00	26	1,959.00
Abuse of WMA Land	36	7,225.00	73	13,814.00	53	15,370.50
Other WMA Violations	180	25,005.99	233	27,296.25	129	17,863.25
No Orange Clothing	19	1,725.00	16	1,031.76	20	2,165.50
OTHER VIOLATIONS						
Littering	724	168,809.25	756	169,305.84	910	225,802.08
Other Hunting/Fishing Licenses	2	175.00	3	335.00	3	260.00
Other Title 50	29	5,280.00	32	3,863.00	27	3,730.00
Hunting/Fishing Sanctuaries	189	17,973.00	73	7,460.00	158	15,439.00
Import/Export Animals	10	2,028.00	24	5,850.00	2	700.00
Nongame and Endangered Species	8	1,100.00	7	1,430.00	7	1,190.00
Trespassing	513	52,232.00	493	60,111.99	527	69,527.50
Shining	62	5,712.00	63	7,403.50	54	6,320.50
Other Nontitle 50	1,295	124,549.00	2,173	117,065.24	1,059	131,328.80
Open Warrant	127	0.00	188	0.00	90	0.00
Closed Warrant	320	41,370.00	141	22,810.75	34	908.75
TOTAL	13,560	\$1,526,090.24	12,986	\$1,347,466.17	10,377	\$1,325,968.59

Appendix B
Summary of Violations Issued by DNR

Agency Comments

South Carolina Department of
Natural Resources



John E. Frampton
Director

July 19, 2004

Mr. George Schroeder, Director
Legislative Audit Council
1331 Elmwood Ave., Suite 315
Columbia, SC 29201

Dear Mr. Schroeder:

Enclosed is the final response by DNR to the final draft of the Legislative Audit Council's report entitled, "A Review of Regulatory Issues at the Department of Natural Resources", which was submitted to me on July 8, 2004. Some of the errors in the first draft, e.g. "South Carolina is divided into four game zones", were corrected as a result of DNR's initial response. However, there are still errors in this report. Additionally, in several critical parts you have refused to accept DNR's explanation of the circumstances. For example, citing the wrong numerical section on a summons ticket does not invalidate the violation or DNR's authority. Yet your report continues to imply that DNR was wrong. The findings of this audit in those situations are incorrect, which should be evident to the LAC in the simple fact that all of the tickets were found guilty by a judge or jury.

Most disturbing, all of the matters investigated by LAC had already been investigated by DNR and corrected BEFORE the audit was undertaken. Neither DNR nor the General Assembly benefited in any way from this review.

DNR disagrees with the conclusions and accuracy of this audit. For the time and effort expended by both the LAC and DNR on this audit, the taxpayers were ill served.

During your review of the attached comments, if you have any questions, please don't hesitate to contact me or our Internal Auditor, Angie Williams.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Frampton", written in a cursive style.

John E. Frampton

/arw

cc: Mr. Michael G. McShane, Chairman

SUMMARY

ENFORCEMENT OF STATUES AND REGULATIONS

- LAC states:** *In 24 (30%) of 81 tickets that were sampled, DNR fined individuals when it did not have the authority or when the regulations were not in effect.*
- DNR's response:** A **handpicked** sample of only 81 tickets, focusing on specific dates and offense codes, is not a representative sample (less than 1/4th of 1%) of the approximately 50,000 tickets that were written during the 5 year time period selected (August 1998 – February 2003). DNR **disagrees** that it did not have authority and has provided the LAC a case-by-case analysis with an explanation as to the validity of each charge. DNR is an enforcement agency not a judicial agency. All of these cases were tried by a judge or jury and were found guilty. The judge imposed all fines, not DNR.
- LAC states:** *Seven individuals lost their hunting privileges for a year as a result of these tickets.*
- DNR's response:** This statement is not totally accurate. Individuals lost WMA privileges not hunting privileges.
- LAC states:** *We reviewed DNR's ticket database and found 186 tickets that cited statutes incorrectly.*
- DNR's response:** There are two sections of a ticket that put the violator on notice: a box for the numerical designation of the code section, and a separate line for the nature of the offense to be written out. Much like the way a check is treated, the nature of the offense is the legal description. In all of these tickets, the nature of the offense was correct and the defendants were found guilty by a judge or jury.
- LAC states:** *Between January 2002 and October 2003, 172 (16%) of the 1,078 tickets DNR issued cited the incorrect statute.*
- DNR's response:** For clarity, this should read “of the 1,078 tickets DNR issued for boater registration violations”. In reality, DNR issued approximately 21,000 tickets during that 22 month period, of which 172 errors in the numerical code section cited would equate to less than 1%. Again, all of the tickets were correct in the nature of the offense and were found guilty by a judge or jury.
- LAC states:** *DNR incorrectly issued tickets for violations under the state lakes program at a location that was not part of the program.*
- DNR's response:** During an internal review of regulatory authority DNR discovered officers were incorrectly charging for offenses at Lake Monticello under the state lakes program. This was corrected before the onset of the LAC audit.

DNR REGULATIONS

- LAC states:** *DNR has issued regulations under statutory authority that had been repealed.*
- DNR's response:** The statutory authority was not repealed. The authority originally granted DNR was moved from one code section to another. DNR simply cited the old code section in its proposed regulation.

LAC states: *DNR also enforced regulations where it did not have statutory authority.*
DNR's response: The only case that has challenged DNR's interpretation of its regulatory authority is the case concerning "international orange". This decision provided DNR a judicial interpretation of these issues. However, the impact of the circuit court decision did not invalidate enforcement actions previously taken.

LAC states: *Many of these regulations addressed hunting on private lands rather than WMAs where DNR does have the authority to regulate.*

DNR's response: This statement illustrates the difficulty the LAC audit team had in understanding the authority of DNR. DNR has the authority to regulate hunting on private lands for (1) Migratory Birds (50-11-10); (2) Deer (50-11-310 (D); 50-11-335; 50-11-390) and (3) Turkey (50-11-520; 50-11-530).

LAC states:

- *DNR required hunters to wear orange clothing when deer hunting on game zones 1, 2, and 4. A circuit court judge determined that DNR did not have the authority to make this requirement.*

- *DNR only had the authority to set bear hunting seasons. DNR did not have the authority to set limits or methods of hunting on private land.*

DNR reviewed its enforcement of regulations and had state law and regulations amended in 2002 to address many of these issues.

DNR's response: DNR's self-imposed review and the needed changes were completed in 2002 prior to the request for this audit.

NO WAKE ZONES

LAC states: *DNR administratively establishes no wake zones when it would be more appropriate to establish this process through regulation.*

DNR's response: DNR establishes some no wake zones administratively because of exigent circumstances. Other no wake zones follow the APA and still others are created legislatively. No wake zones are for control of speed and should be as flexible as the need to control traffic.

COMMUNICATION WITH OFFICERS AND THE PUBLIC

LAC states: *DNR has not always effectively communicated changes in statutes and regulations to the public.*

DNR's response: DNR gratuitously undertakes to inform the public of the many changes each year in the game, fish and boating laws. Errors do occur in the information brochure just as on page 15 of this report where the actual error in the brochure was misstated. The actual error was that the brochure incorrectly stated that turkey hunting was not allowed on private lands in Game Zone Four ON SUNDAY not that it was not allowed at all. DNR corrected its error shortly after the release of the brochure and prior to the LAC review.

LAC states: *DNR has not always effectively communicated changes in statutes and regulations to its law enforcement officers.*

DNR's response: DNR recognized the importance of clear and timely communication and, thus revised its procedure for informing officers of changes in regulation prior to the LAC audit. DNR is currently working on funding for computers to further increase the efficiency and effectiveness of communication with the officers.

SYNOPSIS

- LAC states:** *DNR has in some cases misstated its statutory authority or did not have authority to include some provisions.*
- DNR's response:** The statutory authority was **not** misstated just the numerical reference to the code section.
- LAC states:** *From 1998 to 2002, DNR issued more emergency regulations than any other state agency with over half of its regulations being emergency regulations.*
- DNR's response:** This is the very reason the General Assembly granted DNR special use of emergency powers under the APA. The General Assembly realized that the balance of natural resources does not always run in legislative cycles.
- LAC states:** *DNR administratively establishes no wake zones when it would be more appropriate to establish this process through regulation.*
- DNR's response:** DNR establishes some no wake zones administratively because of exigent circumstances. Other no wake zones follow the APA and still others are created legislatively. No wake zones are for control of speed and should be as flexible as the need to control traffic.
- LAC states:** *In 30% (24 of 81) of the tickets that were sampled, DNR fined individuals when it did not have the authority or when the regulations were not in effect. Seven individuals lost their hunting privileges for a year as a result of these tickets.*
- DNR's response:** A **handpicked** sample of only 81 tickets, focusing on specific dates and offense codes, is not a fair, representative sample (less than 1/4th of 1%) of the approximately 50,000 tickets that were written during the referenced time period. DNR disagrees with the LAC's opinion and has provided the LAC a case-by-case analysis with explanation as to the validity of each charge. DNR is an enforcement agency not a judicial agency. All of these tickets were tried by a judge or jury and were found guilty. The judge imposed all fines, not DNR. Individuals lost their WMA privileges not their hunting privileges.
- LAC states:** *DNR has written tickets citing statutes that have been repealed or recodified. We found 186 tickets that cited incorrect statutes.*
- DNR's response:** The authority was not repealed in any of these cases. The authority originally granted DNR was moved from one code section to another and DNR simply cited the incorrect code section. There are two sections of a ticket that put the violator on notice: a box for the numerical designation of the code section, and a separate line for the nature of the offense to be written out. Much like the way a check is treated, the nature of the offense is the legal description. All of these tickets were correct in the nature of the offense and were found guilty by a judge or jury.
- LAC states:** *DNR has issued tickets for violations of the state-managed lakes program at a lake which was not a part of the program. In addition, citations were issued for violations at state-managed lakes after officers had been instructed to stop issuing tickets.*

DNR's response: During an internal review of regulatory authority DNR discovered officers were incorrectly charging for offenses at Lake Monticello under the state lakes program. This was corrected before the onset of the LAC audit.

LAC states: *DNR has not always effectively communicated changes in statutes and regulations to the public and to its law enforcement officers.*

DNR's response: DNR gratuitously undertakes to inform the public of the many changes each year in the game, fish and boating laws. Errors do occur in the information brochure. DNR corrected its error shortly after the release of the brochure and prior to the LAC review. In addition, DNR revised its procedure for informing officers of changes in regulation prior to the LAC audit.

LAC states: *We conducted a survey of DNR law enforcement officers and found several areas where officers expressed concerns including the enforcement of regulations and communication.*

DNR's response: As a result of poor wording, the questions in this survey are misleading, vague and elicit erroneous perceptions. Therefore, the responses do not reflect accurate information.

Chapter 1 Introduction

Agency Background

LAC states: *During FY 2002-2003, DNR officers issued 24,354 citations for game, fish, and boating violations and an additional 2,353 citations for other violations such as littering and alcohol violations. See appendix B for a more specific breakdown of citations.*

DNR's response: For accuracy these comments need to be expanded to include an explanation of the amounts of fines collected as shown in the appendix. The amounts shown in the appendix are the total amounts of fines imposed. DNR does not receive 100% of this money.

Changes in DNR's Regulatory Authority

LAC states: *DNR has attempted to identify those activities for which it does not have regulatory authority and has also attempted to amend legislation to obtain authority over these activities. However, citations written in the past for these activities may not have been valid. These citations can carry fines and can result in points being assessed against a hunting or fishing license which could result in a person losing these privileges.*

DNR's response: After the 2001 ruling, DNR undertook to revise its regulatory authority. The legislature provided that authority in 2002, prior to the LAC review. However, the impact of the decision **does not invalidate** enforcement actions previously taken.

Chapter 2 Audit Results

DNR Regulations

DNR's comments: The General Assembly realized that the balance of natural resources does not always run in legislative cycles. This is the very reason the General Assembly granted DNR special use of emergency powers under the APA. Section 1-23-130 (A) of the APA specifically recognizes that natural resource agencies may use emergency regulations to manage natural resources in the best interest of the state.

Because DNR is charged with conservation and protection of living resources, it has experienced difficulty with the requirements of the Administrative Procedures Act as to the time required to establish regulations. The nature of DNR's business and, therefore its regulations requires annual changes. The need to make changes in hunting seasons is apparent only after analysis of biological data. Since the deer season ends on January 1 each year, DNR biologists make recommendations in February. If the recommended change requires a regulation change, under the APA procedure the final regulation cannot be filed until May. If the regulation is not immediately acted upon by the General Assembly and the full 120-day review period is allowed to run, it does not become law until the next legislative session, which is a full year later and after the next ensuing deer season for which the recommended change was intended.

A similar problem exists if DNR acquires new property. In most cases the APA process does not allow implementation of public use in the year in which DNR acquires the property. This is not in the best interest of the public.

In order to work within the APA framework, DNR now only files proposed regulations once a year so that permanent regulations may be filed early in the session allowing the full 120-day review. The regulations will take effect within one legislative session. However, this prevents DNR from implementing biological recommendations from staff in a timely manner.

Fortunately, for the last two years the General Assembly has acted early on the regulations and they became law during April or May, therefore reducing the number of emergency regulations that had to be filed in the fall. DNR still has the need for emergency regulations to open new areas and to implement annual changes that could not be covered with a permanent regulation but the number of areas addressed in emergency regulation should continue to be fewer than in the past.

The LAC's review of seven southeastern states which regulate hunting revealed that six were exempt from an APA-like rulemaking process. In those states, the governing Board of the Natural Resource Agency was the approval authority. If this were the case in South Carolina, the regulatory process for natural resources would be significantly less cumbersome, resulting in cost savings for staff time, and considerably more responsive to the needs of the resources. The current regulatory process is not the most efficient and effective way to manage and

protect natural resources because it simply is not designed to react in a timely manner.

Recommendation #1: *The Department of Natural Resources should state the proper statutory authority when promulgating regulations.*

DNR's response: This statement is self-evident. However, as cited in the report, there were only three instances in five years. A human error factor does exist as illustrated by the many errors made in the LAC's original draft report that were corrected by DNR's original response.

Recommendation #2: *The Department of Natural Resources should not promulgate regulations for which it does not have statutory authority.*

DNR's response: The DNR does not promulgate regulations where it does not have regulatory authority. The only substantive example in your report was the DNR regulation requiring deer hunters in Game Zones 1, 2 & 4 to wear international orange, which was overturned in Circuit Court. This decision provided DNR with a judicial interpretation of these issues. DNR then conducted an in-house comprehensive review and completed the needed changes in 2002 prior to the request of this audit.

No Wake Zones

DNR's comments: No Wake Zones (NWZ) regulate speed of watercraft just as the posted speed limit regulates the speed of automobiles. There are occasions when it is necessary to establish temporary NWZ's such as a boating regatta or temporary conditions require boat traffic to slow to no wake speed. DNR's staff is constantly monitoring the water conditions and has the expertise to identify those situations which require immediate action. This authority is no different from that granted to traffic engineers by sections 56-5-1530 and 56-5-1540.

Recommendation #3: *The Department of Natural Resources should promulgate regulations establishing the procedure for creating no wake zones.*

DNR's response: For the past four years, DNR has recommended legislation to the General Assembly to standardize the method for creating No Wake Zones. It would be impractical to promulgate a regulation establishing a procedure for creating no-wake zones if the General Assembly also continues to establish no wake zones by statute. The hybrid process is not satisfactory and should be corrected by legislation and not regulation. DNR will continue to recommend legislation to standardize and improve this process.

Enforcement of Statutes & Regulations

DNR's comments: The purpose of the court system is for persons charged to contest the "appropriateness" of a citation. Officers always have the discretion not to issue a summons ticket. They can administer an oral warning or issue a warning ticket. This is a judgment call, which the law leaves to the discretion of the individual officer.

A **handpicked** sample of only 81 tickets, focusing on specific dates and offense codes, is not a fair, representative sample (less than 1/4th of 1%) of the approximately 50,000 tickets that were written during that 5 year time period. In addition, DNR disagrees with the LAC's opinion and has provided the LAC a case-by-case analysis with explanation as to the validity of each charge. Moreover, DNR is an enforcement agency not a judicial agency. Therefore, all of these tickets went before a judge or jury for disposition and were found guilty. The judge imposed all fines, not DNR.

No doubt an audit of any enforcement agency's summons tickets would reveal that mistakes were made in citing Code sections or Regulations. It is conceded that officers should be thoroughly trained on the correct Code section or Regulation to cite for a particular violation. However, the purpose of a summons is to give notice. There are two sections of a ticket that put the violator on notice: a box for the numerical designation of the code section, and a separate line for the nature of the offense to be written out. Much like the way a check is treated, the nature of the offense is the legal description. All of these tickets were correct in the nature of the offense and were found guilty by a judge or jury. These were just scrivener's errors.

During an internal review of regulatory authority DNR discovered officers were incorrectly charging for offenses at Lake Monticello under the state lakes program. This was corrected before the onset of the LAC audit.

Recommendation #4: *The Department of Natural Resources should take steps to ensure that law enforcement officers cite the proper code section when citing individuals for violations of law.*

DNR's response: This is self-evident.

Recommendation #5: *The Department of Natural Resources should ensure that tickets for violations of the state lakes program are written only for lakes that are part of the program.*

DNR's response: This is self-evident.

Recommendation #6: *The Department of Natural Resources should ensure that officers do not write tickets for violations of the state lakes program until the department has established restrictions in accordance with SC Code §50-13-2020.*

DNR's response: This is in part a correct statement except that § 50-13-2020 is constitutionally suspect and needs to be rewritten so that regulations are promulgated in accordance with the Administrative Procedures Act.

Communication of Changes in Regulation

DNR's comments: In the report the LAC states, *Publications which DNR uses to inform the public about hunting and fishing have contained errors. ...in 2002-2003, DNR had to publish an addendum to the brochure setting forth various corrections. ... included in the addendum was one stating that turkey hunting was allowed on private lands in games zone four. The brochure had incorrectly stated that it was prohibited.* The underlined part of this quote is an incorrect statement of the error in the brochure. This statement says the brochure prohibited turkey hunting on private lands in game zone four. The error was actually a failure to include

the change in the law that occurred in 2002, which permitted hunting turkeys on Sunday on private lands in game zone four.

DNR gratuitously publishes the brochure in an attempt to provide the public with updated information on the many changes in the game, fish and boating laws that occur each year. However, the brochure is for information only and does not relieve anyone from the responsibility of knowing the law. (See *State v. Kunkle*, 287 SC 177, 336 SE2d 468 (1985).

Recommendation #7: *The Department of Natural Resources should ensure that its publications contain accurate information regarding the rules and regulations enforced by the department.*

DNR's response: DNR implemented a committee type review process to minimize errors prior to the LAC audit.

Recommendation #8: *The Department of Natural Resources should ensure that all law enforcement officers are informed of any changes in the enforcement of state laws and regulations.*

DNR's response: DNR recognized the importance of clear and timely communication and, thus revised its procedure for informing officers of changes in regulation prior to the LAC audit. DNR is currently working on funding for computers to further increase the efficiency and effectiveness of communication with the officers.

DNR Law Enforcement Survey

DNR's comments: According to the report, USC's Survey Research Laboratory assisted the LAC with creating the questions and analyzing the results. However, USC did not contact DNR to obtain background information about the programs being questioned. In addition, apparently there was not effective communication between LAC and USC because the questions are misleading, vague and elicit erroneous perceptions. For example, the question about treatment of officers who are accused of violations is worded so that the respondents could not have any first hand knowledge of the requested information unless they were personally involved. There have been only four instances in the last twenty years where a DNR officer was charged with a game and fish violation. In addition, the question about training received when hired does not categorize responses by time frames. Some of these officers were hired as much as 35 years ago and training has improved dramatically during this time span. The question further ignores that every DNR Officer and Deputy Law Enforcement Officer receives in-service training for re-certification annually. The conclusions, which were based on opinions elicited from questions that are not well defined, do not reflect accurate information. DNR staff would have assisted USC in formulating meaningful and valuable questions for this survey given the opportunity.