

**PUBLIC REPORT - Ombudsman Investigation**  
**Department of Natural Resources, Division of Mining, Land and Water**  
**A2017-0619**  
**July 17, 2019**

The Alaska State Ombudsman investigated a complaint made on March 30, 2017, that the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) requires new aquatic farm leaseholders to have business liability insurance, but does not require current leaseholders to carry business liability insurance until their lease expires. The complainant alleged that this policy unfairly disadvantages new aquatic farming leaseholders.

On March 22, 2019, Ombudsman J. Kate Burkhart held a consultation meeting with key DMLW staff members to discuss her preliminary investigation findings. DMLW provided additional information during and after the consultation, which informed the confidential preliminary report with proposed recommendations provided to DMLW on May 9, 2019, pursuant to AS 24.55.180. DMLW Director Marty Parsons responded to the preliminary report on June 10, 2019. DMLW's response was incorporated into the final confidential report provided to the agency.

This summary of the Ombudsman's investigation, findings, and recommendations is provided to the public pursuant to AS 24.55.200 and 21 AAC 25.430.

## **Introduction**

DMLW staff reported that DNR did not require aquatic farmers to provide business liability insurance as a condition of the terms of a lease agreement until 2015. The complainant signed a six-month aquatic farm lease with the state in February 2016. The lease required him to obtain insurance coverage before DMLW would issue the lease for the full 10-year term. He obtained insurance coverage in July 2016 for \$1,000,000 and DMLW authorized a lease for the remaining 9 and ½ years of the 10-year term.

While the complainant recognized that insurance is a cost of doing business in Alaska, he alleged that it is unfair to require insurance for some, but not all, aquatic farmers. He also alleged that DNR's inconsistent application of its policy creates a financial disadvantage for some leaseholders relative to others. He reported that his first year's annual liability insurance premium cost

approximately \$600 and that the premium could increase with any increase in his annual revenue. According to the complainant, the insurance premium typically is based on 3-5% of an aquatic farm's gross revenue, which results in an average premium of \$1,000-\$5,000 per year.

## Allegations Investigated

The Ombudsman investigated the following allegations:

**Allegation 1: Unfair:** DNR requires new aquatic farming leaseholders to obtain commercial liability insurance policies as a condition of their lease agreement with the state but does not require existing leaseholders to carry commercial liability insurance until their lease term expires.

**Allegation 2: Contrary to Law:** DNR's reliance on 11 AAC 96.065 as legal authority for requiring aquatic farmers to purchase liability insurance is improper.

Assistant Ombudsman Jennifer Christensen investigated this complaint. Based on a preponderance of the evidence,<sup>1</sup> the Ombudsman found both allegations **JUSTIFIED**.<sup>2</sup> The Ombudsman proposed two recommendations to DMLW to resolve the issues raised by this complaint.

## Relevant Statutory, Regulatory, Policy Authority

### Legislative History of the Aquatic Farming Program

In 1988, the Alaska Legislature enacted the Aquatic Farm Act (Act),<sup>3</sup> requiring that DNR, the Department of Fish and Game (ADFG), and the Department of Environmental Conservation (DEC) oversee and regulate the commercial operation of Alaskan aquatic farms.<sup>4</sup> The legislative

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<sup>1</sup> The standard used to evaluate all ombudsman complaints is "preponderance of the evidence:" if the evidence indicates that, more likely than not, the administrative act took place and the criticism of it is valid, the allegation should be found justified.

<sup>2</sup> A complaint is "justified" if the investigation establishes that the administrative action complained of occurred and the Ombudsman determines that criticism of the administrative action is valid. *See* Ombudsman Policy 4060.03 Findings.

<sup>3</sup> HCS SCSSB 514 (RLS), 15th Leg., 2d Reg. Sess. (Alaska 1988), Ch. 145 SLA 1988 (effective June 9, 1988).

<sup>4</sup> The ADFG permit authorizes the permittee to construct or operate an aquatic farm or hatchery, and to sell the aquatic farm's products that are used or reared at the site. The DEC commercial shellfish permit authorizes the holder to process or harvest shellfish; DEC ensures that the processing, sale, and distribution of an aquatic farm's products are safe for consumers and properly labeled.

intent was that the Act would “encourage the establishment and responsible growth of an aquatic farming industry in the state”<sup>5</sup> and:

- (1) provide a consistent source of quality food,
- (2) provide new jobs,
- (3) increase state exports,
- (4) create new business opportunities, and
- (5) increase the stability and diversity of the state’s economy.<sup>6</sup>

The Act required that people interested in operating an aquatic farm within the state apply for permits with all three agencies: DNR, ADFG and DEC.

Based on the 1988 legislation, specifically AS 38.05.856, DNR issued permits to establish and operate aquatic farms within state-owned lands.<sup>7</sup> The permits were valid for three years and could not be transferred to another person. Before the DNR commissioner issued or renewed a permit, the permittee was required to post a performance bond or to provide other security to cover the costs of restoration if the permittee abandoned a site.<sup>8</sup>

The Alaska Supreme Court ruled in *Kachemak Bay Watch, Inc. v. Noah*<sup>9</sup> that DNR had failed to follow AS 38.05.0855, which provided for identification of districts appropriate for aquatic farming prior to issuance of individual permits under AS 38.05.856.<sup>10</sup> Subsequently, the Legislature repealed AS 38.05.855 (Identification of sites for aquatic farms and hatcheries) and AS 38.05.856 (Tideland and land use permits for aquatic farming).<sup>11</sup> In June 1998, DNR adopted a revised Chapter 63 of the Alaska Administrative Code, Aquatic Farmsite Permits and Leases. After June 1998, 11 AAC 63.010 required a person who wished to acquire a property right to develop a site into an aquatic farm to apply for a lease (not a permit). A lease applicant was eligible for a preference right to the site if DNR had previously issued a permit to the applicant under former AS 38.05.856.

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<sup>5</sup> HCS SCSSB 514 (RLS), 15th Leg., 2d Reg. Sess. (Alaska 1988), Ch. 145 SLA 1988 (effective June 9, 1988) at §1.

<sup>6</sup> For legislative findings and policy in connection with the enactment of ADFG statutes AS 16.40.100-.199, *see id.*

<sup>7</sup> *See* former AS 38.05.856 (Tideland and land use permits for aquatic farming) (*repealed by* SCS HCSHB 109 (RES), 20<sup>th</sup> Leg., 1st Reg. Sess. (Alaska 1997), Ch. 91 SLA 1997).

<sup>8</sup> *See* former AS 38.05.856(d) (*repealed by* §38, Ch. 91 SLA 1997).

<sup>9</sup> 935 P.2d 816 (April 11, 1997).

<sup>10</sup> *See id.* at page 823.

<sup>11</sup> *Supra* n. 5.

## State Law

The legal distinction between a lease and a permit is important. An aquatic farm *lease* provides the lessee with a limited non-exclusive possessory interest or priority right to use state-owned tide and submerged land for operating a commercial shellfish or sea plant farm. It is considered a disposal of the state's interest in the land.<sup>12</sup> In contrast, a *permit* only provides permissive use for the permit holder and is revocable at the will of the DNR Commissioner.<sup>13</sup>

AS 38.05.083 specifically authorizes the commissioner to offer leases for aquatic farming or hatchery operations. The purpose of the aquatic farming program is to provide Alaskans with access to public lands and resources “with the goal of creating an industry which will foster the state's economic growth through the creation of employment opportunities and development” of Alaskan grown shellfish products.<sup>14</sup>

Before DNR can approve an aquatic farm lease agreement, the DMLW director must make a specific finding that entering into the lease is in the State's best interest and provide notice to the public and an opportunity for comment. Under the general DNR lease statute, AS 38.05.070, the DMLW director will determine the limitations, conditions, and terms of a lease agreement that “are in the best interests of the state.” AS 38.05.035(e) describes the requirements of a best interests finding and allows the DMLW director to impose additional conditions or limitations in contracts, leases, or other disposals of state land. DNR is required by AS 38.05.085(e) to provide notice of all actions by the department affecting leaseholder rights to the lessee.

AS 38.05.083(e) provides that before entering into an aquatic farming or hatchery site lease, “the commissioner shall require the lessee to post a performance bond or provide other security to cover

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<sup>12</sup> AS 38.05.035(e) provides, “Upon a written finding that the interests of the state will be best served, the director may . . . approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them.” See also Alaska Constitution, Article VIII, Section 10, “No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.” And see *Northern Alaska Environmental Center v. Dept. of Natural Resources*, 2 P.3d 629, 636 (Alaska 2000) (quoting Black's Law Dictionary (6<sup>th</sup> ed. 1990)), “A ‘lease’ is generally defined as an [a]greement under which the owner gives up possession and use of his property . . . for *definite term* and at the end of term owner has absolute right to retake, control and use property.”

<sup>13</sup> AS 38.05.035(e)(6) provides, “a [best interests] written finding is not required before the approval of (C) a permit or other authorization revocable by the commissioner.” See also AS 38.05.850(a), “The director . . . may issue permits . . . for the commercial use . . . of resources that the director has determined to be of limited value . . . In the granting, suspension, or revocation of a permit . . . the director shall give preference to that use of the land that will be of the greatest economic benefit to the state and the development of its resources.” And see AS 38.05.945(e), public notice is not required for the revocation of a permit by DNR.

<sup>14</sup> DNR Record of Decision on Complainant's Lease Application at 4.

the costs to the department of restoring the leased site in the event the lessee abandons the site.” “Other security” is not further defined by statute. AS 38.05.083(e) does not expressly include insurance as one of the requirements.

### State Regulations

AS 38.05.083(f) requires that the commissioner shall adopt regulations establishing criteria for the approval or denial of aquatic farm site leases. 11 AAC 63.100 provides that the DNR commissioner will issue an aquatic farm site lease if it is in the State’s best interest. The lease will be issued at either “its appraised fair market rental value without competitive bid, or for the amount of the high bid at auction.”<sup>15</sup> For the complainant’s lease, DNR used the appraised fair market rental value.<sup>16</sup> 11 AAC 63.100(c) sets the term of the lease at ten years.

DNR relies on 11 AAC 96.065 (Insurance) as the legal authority for requiring insurance coverage on aquatic farm leases. The language in 11 AAC 96.065 is specific to DNR-issued permits, but not leases:

Unless the department waives the requirement after considering the risks associated with the activity planned, the permittee shall secure, and maintain in force during the term of the permit, insurance in the amount and of a type that the department determines necessary to protect the permittee and the state. A certificate of insurance must be furnished to the department before issuance of the permit and must provide for a 30-day notice in the event of cancellation, nonrenewal, or material change of condition. All insurance policies must comply with AS 21 and be issued by insurers licensed to transact the business of insurance under AS 21. The state shall be listed as an additional named insured on the policy.

Title 11 AAC Chapter 96, Miscellaneous Land Use applies to all land use activities, except “activities authorized under any department-lease. . . contract, or permit that conveys an interest in land. . .”<sup>17</sup> The insurance requirement found in 11 AAC 96.065 therefore does not apply to a DNR lease agreement according to the express terms of 11 AAC 96.007.<sup>18</sup>

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<sup>15</sup> 11 AAC 63.100(a).

<sup>16</sup> See Complainant’s Lease Agreement.

<sup>17</sup> 11 AAC 96.007.

<sup>18</sup> The cited statutory legal authority for 11 AAC 96.065 is AS 38.05.020 (Authority and duties of the commissioner), AS 38.05.035 (Powers and duties of the director), and AS 38.05.850 (Permits).

## DNR Policy

DMLW acknowledged to the ombudsman investigator that 11 AAC 96.065 may be inapplicable to state leases.<sup>19</sup> DMLW reported that the insurance requirement for aquatic farming was primarily based on agency policy, one that had not been reduced to writing.<sup>20</sup> DMLW confirmed that DNR was in the process of drafting several new proposed regulatory changes, one of which would be specific to requiring insurance for aquatic farm leases.<sup>21</sup>

## Analysis

Not all aquatic farmers are currently required to carry commercial liability insurance policies.<sup>22</sup> The estimated cost for these policies varies between \$1,000-\$5,000 annually. New applicants, who arguably have substantial startup costs, are also required to purchase insurance as a condition of their state lease agreement. Aquatic farmers who entered the industry prior to 2015 have a financial advantage over new farmers, since most are not required to pay \$1,000-\$5,000 per year for insurance in addition to their lease fee and other expenses.<sup>23</sup> This disparate treatment advantages long-term leaseholders over those entering the aquatic farming business.

DMLW explained to the ombudsman investigator that the agency began requiring insurance for aquatic farm leases in 2015. As of June 27, 2017, there were six existing aquatic farm leaseholders with active insurance. As of August 1, 2017, DMLW indicated that there were approximately 62 active aquatic farm leases, with an additional 18 new applications in 2017. Only 9.6% of the aquatic farm leaseholders in 2017 were paying for commercial liability insurance, although DNR expected this number to increase as pending 2017 applications were approved. As of March 6, 2019, that number has increased slightly to 14 out of 64 existing leaseholders with active insurance, or approximately 21% of all leaseholders. An additional 14 new applications were received in 2018 and if the new applications are approved, DMLW states that they will be required to carry insurance. DMLW also explained that some leaseholders whose operations lacked infrastructure, such as geoduck farms, may be exempt from the insurance requirement.

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<sup>19</sup> Interview of Operations Manager, DMLW (Sept. 21, 2017).

<sup>20</sup> *Id.*

<sup>21</sup> *See id.*

<sup>22</sup> *See id.*

<sup>23</sup> According to documentation provided by DMLW, the agency has required some, but not all, pre-2015 farmers to obtain liability insurance during the lease renewal, amendment, or assignment process.

In August 2017, DMLW explained to the ombudsman investigator that all new applicants would be required to carry insurance prior to DNR issuing a lease. As existing lease agreements without insurance expire and leaseholders requested renewal, leaseholders would be required to secure insurance prior to being issued a lease for an additional 10-year term. In addition to requiring insurance on new leases or reissued leases, DNR would also require insurance for leaseholders who were assigned a lease or when a leaseholder requests an amendment to an existing lease that requires a written DNR decision. In summary, the DMLW described four situations that would trigger the insurance requirement: (1) a new lease, (2) a lease renewal, (3) assignment of a lease, or (4) amendment of a lease.

In DNR's 2014 Record of Decision for the complainant's lease, it stated, "At this time DNR does not require aquatic farming activities to have general liability insurance" but "insurance may be required in the future depending on the aquatic farming operations and the procedures of the department at the time changes are made to the lease or a subsequent lease is issued." DMLW confirmed that leases issued prior to 2015 contained a boilerplate section touching on the insurance requirement, similar to what appeared in the complainant's lease:

24. Insurance. If required by the lessor, the lessee shall obtain insurance in an amount determined by the lessor to be sufficient. The lessor shall be named as an additional insured party of any such insurance. The types and amount of insurance shall be specified in the attached stipulations made a part of this lease agreement and may be adjusted periodically. The lessee shall maintain that insurance as long as required by the lessor. Any insurance acquired by the lessee for the purpose of providing insurance coverage under this lease must be issued by an insurer authorized to do business in the State of Alaska under the provisions of AS 21.09.010 and AS 21.27.010 for the type of policy being written.

However, Attachment A to the complainant's 2016 lease agreement mandated commercial liability insurance:

10. **Insurance:** Per section 24 of the Lease agreement: The lessee is required to carry commercial liability insurance with the State of Alaska as an "additional insured party" . . .

Insurance is required and is subject to annual review and adjustment by the AO [Authorized Officer]. The AO may require a reasonable increase based on a change in the lessee's Development Plan or with increased risk. . .

DNR required the complainant to carry liability insurance by specifically including this requirement in the terms of his 2016 lease agreement. He complied by obtaining a general liability

insurance policy. Other aquatic farmers' leases contain similar discretionary language for insurance according to DNR, but DNR has not consistently required them to obtain insurance as a condition of their lease.

On August 16, 2017, DMLW provided the ombudsman investigator a spreadsheet that listed active aquatic farm leases and the applications that had been received by DNR as of that date. The ombudsman investigator noted that several farmers who had requested a lease amendment or assignment did not appear to have been required to obtain insurance by DNR at the time of the lease amendment or assignment. Examples of lessees not required to carry commercial liability insurance, according to DNR's 2017 spreadsheet, include:

- Farmer A – the lease was amended in September 2015 to increase acreage size of the farm, but DNR did not require insurance;
- Farmer B – the lease was amended in September 2017 to combine parcels and increase acreage size of the farm, but DNR did not require insurance;<sup>24</sup>
- Farmer C – DNR approved a lease assignment in April 2017, but DNR did not request insurance as a condition of the lease assignment approval process;
- Farmer D – following a failed site inspection in August 2016, DNR increased Farmer D's performance bond amount from \$2,500 to \$8,500, but DNR did not require insurance; DNR extended the lease an additional two (2) years but did not amend the lease requiring insurance following the failed site inspection.

The four situations described by DMLW as triggering the requirement to have commercial liability insurance specifically included assignment or amendment of a lease, but DNR appears not to have required insurance from these businesses during the lease amendment or assignment process.

Following the Ombudsman's consultation with DMLW staff on March 22, 2019, the agency clarified the reasons why insurance was not required for some of these businesses at the time of assignment or amendment of the lease. DMLW confirmed that starting in mid-2015, DNR initially required insurance for new farms or existing farms whose leases had expired and who sought renewal of the lease. In late 2017 to early 2018, DNR then expanded the insurance requirement to include any farms requesting a lease amendment or assignment of the existing lease. According to DMLW, some of these businesses either assigned or amended their lease prior to DNR's

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<sup>24</sup> The preliminary decision document notes that insurance was not required in 2011 when Farmer B was granted a ten-year lease and indicates that a possible lease renewal in 2021 would require proof of liability insurance "in accordance with 11 AAC 96.065." However, DNR did not impose the insurance requirement as part of the 2017 lease amendment. *See* DNR Preliminary Decision, at 8.



subsequent policy expansion in 2017 and 2018. However, once their leases expire, DNR will require that the businesses obtain insurance as a condition of a renewed lease agreement.

11 AAC 63.110 General lease provisions provides that an aquatic farm site lease must contain a provision that a “lessee shall operate so as to cause no significant damage to land, public trust resources, and public uses of public trust resources.”<sup>25</sup> Before a lease is issued by DNR, “security must be posted as required by 11 AAC 63.080.”<sup>26</sup> 11 AAC 63.080 references the required security, which includes a bond, cash deposit, certificate of deposit, or “other form of security acceptable to the commissioner . . .”<sup>27</sup> The types of security must “be sufficient to cover the cost of site cleanup and restoration and any associated cleanup costs after termination of the lease. . .”<sup>28</sup> The minimum security for a lease is \$2,500.00.<sup>29</sup>

The complainant has been required to provide the minimum performance guarantee bond of \$2,500.00. The purpose of the bond is to ensure the complainant’s compliance with the terms and conditions of the lease authorization for this aquatic farm.<sup>30</sup> However, DMLW acknowledged that most leases with the state may require bond amounts that would not necessarily cover all expenses required to ensure the costs of cleanup or restoration.<sup>31</sup> The bond amounts set forth in DNR records of decision are generally subject to review on a five-year basis, concurrently with the annual fee review.<sup>32</sup> Following Farmer D’s failed site inspection, DNR increased the farmer’s bond amounts to cover the cost of restoration and clean-up of the site because the minimum bond amount of \$2,500.00 was insufficient. DNR missed an opportunity to amend the lease agreement at that time and did not require the farmer to obtain insurance to protect the State’s natural resources.

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<sup>25</sup> 11 AAC 63.110(1).

<sup>26</sup> 11 AAC 63.100(d).

<sup>27</sup> 11 AAC 63.080(a).

<sup>28</sup> *Id.*

<sup>29</sup> 11 AAC 63.080(b).

<sup>30</sup> DNR Record of Decision on Complainant’s Lease Application at 6.

<sup>31</sup> Interview of Operations Manager, DMLW (Sept. 21, 2017).

<sup>32</sup> *See* DNR Record of Decision on Complainant’s Lease Application at 6 (“The bond amount will be subject to review on a five year basis (concurrently with the annual fee review) and may be adjusted upon approval of any amendments, assignments, re-appraisals, changes in the development plan, changes in the activities conducted, or changes in the performance of operations conducted on the authorized premises.”).

## Ombudsman's Findings

Based on the preponderance of the evidence, the Ombudsman finds Allegation 1 is **JUSTIFIED**, based on the fact that DNR's administrative actions create a financial disadvantage for new aquatic farm lessees as compared to long-term leaseholders, without showing that it is in the best interests of the State of Alaska.

Based on the preponderance of the evidence, the Ombudsman finds Allegation 2 is **JUSTIFIED**, based on the fact that DNR expressly based its policy of requiring commercial insurance on regulatory authority that is not applicable to aquatic farm leases.

## Ombudsman's Recommendations

**Recommendation 1:** Update state regulations to allow DNR to require all aquatic farm leaseholders to carry commercial liability insurance.

The Ombudsman recognizes that DNR has a compelling state interest in ensuring that aquatic farm leases are granted in such a way as to achieve the purpose of the aquatic farming program while also ensuring that any damages caused by the operations or negligence of the lessee are mitigated. Pursuant to AS 38.05.035(e), DMLW has authority to impose additional conditions or limitations in the contracts for the sale, lease, or other disposal of state lands to serve the best interests of the state, in addition to the conditions and limitations imposed by law. Language such as that below could achieve the outcome that DNR has been seeking:

Unless the department waives the requirement after considering the risks associated with the activity planned, the lessee shall secure, and maintain in force during the term of the lease, insurance in the amount and of a type that the department determines necessary to protect the lessee and the state. A certificate of insurance must be furnished to the department before issuance of the lease and must provide for a 30-day notice in the event of cancellation, nonrenewal, or material change of condition. All insurance policies must comply with AS 21 and be issued by insurers licensed to transact the business of insurance under AS 21. The state shall be listed as an additional named insured on the policy.

The proposed language is similar to the insurance requirements for permits in 11 AAC 96.065, but applies exclusively to leases.

The evidence shows that DNR treats leaseholders differently. DNR reports that the security bonds required of leaseholders are insufficient to protect state property, and that aquatic farm leases were routinely granted without commercial liability insurance to protect the state's natural assets. Thus, DNR should immediately begin the regulatory process to provide for clear authority and guidelines for aquatic farm leaseholders' insurance requirements – and then follow those regulations consistently.

**Recommendation 2:** Revise decisional documents and lease forms to remove reference to 11 AAC 96.065.

DNR should ensure that any decisional documents that reference the insurance requirement cite to the correct applicable legal authority, once promulgated or otherwise identified. Decision documents issued by DNR and reviewed in this investigation show that DNR referenced an inapplicable regulatory provision as the legal authority to require insurance for new aquatic farmers (11 AAC 96.065). Similarly, DNR should remove references to 11 AAC 96.065 contained within any DNR aquatic farming lease forms.

## Agency Response to Findings and Recommendations

DMLW did not dispute the Ombudsman's preliminary findings or proposed recommendations, but provided the following comments to the analysis section of the Ombudsman's report:

The report states that there is an advantage to long-term leaseholders over those entering the aquatic farm business. I would like to clarify, that this is the situation for all lease types since many of the other leases issued by DMLW may be authorized for up to 55 years, per statute. There are existing leases that were authorized over 30 years ago with an annual fee of less than \$1,000, while neighboring (newer) leases are paying the fee set at fair market value of approximately \$200,000 annually. DMLW is subject to contract law which may restrict or prohibit retroactive term revisions in many cases, and may increase fees, charge higher bonds, or require insurance if the pertinent authorization has the language allowing to implement the change. DMLW is adapting over time to changing statutes, more modern resource protection, and revenue return considerations when issuing new authorizations.

In response to Recommendation 1, DMLW indicated that it is in the process of drafting updated leasing regulations which will require commercial liability insurance for all leaseholders, including aquatic farmers. The draft regulations have not yet been finalized or noticed for public comment. DMLW noted that when the leasing regulations are updated and implemented by the agency, they

may not automatically apply retroactively to existing leases and could be implemented by the agency on a case by case basis. DMLW implicitly accepted Recommendation 1.

DMLW fully accepted Recommendation 2:

DMLW has made efforts to begin review of documents for inappropriate citations, with the intent to remove all references to 11 AAC 96.065 from decisional documents this point forward on all authorization types where 11 AAC 96.065 does not apply. The broad authority of AS 38.05.035 will be cited in all future decision documents.

## Conclusion

The complainant came to the Ombudsman because he believed he was being treated unfairly and unlawfully. Our investigation determined that this was the case. However, the Ombudsman recognizes that DNR's actions, which disadvantaged the complainant, were taken specifically to protect the interests of the State and the health of Alaska's waters. The recommendations made by the Ombudsman seek to balance DNR's obligations and the overall need for state government to act fairly, equitable, and consistently toward all Alaskans.