

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

**RE: RHEAULT, ROBERT B. and SPATCO, INC.
d/b/a MOONSTONE OYSTERS**

**AAD NO.00-005/ENE
AAD NO. 00-004/ENE
(Consolidated Matters)**

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to the requests for hearing by the Respondent in the following matters: (1) Notice of Suspension and Order ("NOS") issued to Robert B. Rheault, Pres., Spatco, Inc. d/b/a Moonstone Oysters by the Division of Enforcement, Department of Environmental Management ("Department" or "DEM") dated March 16, 2000 (AAD No. 00-005/ENE); and (2) NOS issued to Robert B. Rheault by the Division of Fish and Wildlife, DEM dated March 17, 2001(AAD No. 00-004/ENE. By Order dated May 16, 2000, the aforesaid matters were consolidated for hearing. (The Divisions that issued the NOSs are hereinafter collectively referred to as "Division"; and Robert B. Rheault and Spatco, Inc. are hereinafter collectively referred to as "Respondent".)

The within proceeding was conducted in accordance with the statutes governing the AAD (R.I.G.L. §§ 42-17.7-1 et seq.); the Administrative Procedures Act (R.I.G.L. §§ 42-35-1 et seq.); R.I.G.L. § 20-2-13; and the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules"). John J. Kupa, Jr., Esquire represented the Respondent and Gary Powers, Esquire represented Division.

The March 16, 2000 NOS informed Respondent that pursuant to R.I.G.L. §20-2-13 his Multi-Purpose Dealer's license (license to barter or trade in all marine products)

would be suspended for a thirty (30) day period. The March 16, 2000 NOS stated that the suspension was the result of an inspection on February 1, 2000, when Respondent was found in possession of 69 undersize oysters in violation of R.I.G.L. 20-6-11.

The March 17, 2000 NOS informed Respondent that pursuant to .Section 19.3.9 of the Aquaculture of Molluscan Shellfish in Rhode Island Tidal Water Regulations (the "Aquaculture Regulations") his DEM Special Permit for Aquaculture would be suspended for a thirty (30) day period. The March 17, 2000 NOS stated that the suspension was the result of an inspection on February 1, 2000, when Respondent's facility in Wakefield, Rhode Island was found in violation of Sections 19.3.3 and 19.3.4 of the Aquaculture Regulations in that the Respondent's facility was found in possession of oysters which were not tagged in accordance with the standards of the National Shellfish Sanitation Programs (the "NSSP") and the Rhode Island Department of Health ("RIDOT"), and that sixty nine (69) undersized oysters were in the possession of the Respondent's facility on a day when the facility was in possession of oysters other than cultured oysters.

The Prehearing Conference was held on June 16, 2000, and the Prehearing Conference Record was prepared by the Hearing Officer.

The adjudicatory hearing was held on March 12, 14, 19 and 20, 2000. All post-hearing memoranda were required to be filed on or before May 5, 2001; and any responses to post-hearing memoranda were required to be filed on or before May 25, 2001. Both parties filed their Post-hearing Memorandum on May 15, 2001. Division filed a Reply to Respondent's Post-hearing Memorandum on May 24, 2001. Pursuant to the Order extending the time for filing of Memoranda, the hearing was deemed concluded on May 25, 2001.

The exhibits proffered by the parties, marked as they were admitted at the hearing, are attached to this Decision as Appendix A.

It is Division's contention that it has presented ample evidence to demonstrate that Respondent possessed undersized shellfish on February 1, 2000, in contravention to R.I.G.L. § 20-6-11 and being handled in a manner unprotected by Part 19.3.4 of the Aquaculture Regulations. Division also contends that it has established that Respondent failed to properly tag shellfish found at the facility during the inspection on February 1, 2000 in contravention of the NSSP adopted by reference pursuant to Part 19.3.3 of the Aquaculture Regulations.

Division maintains that it has proven that the Respondent possessed undersized oysters on a day that he also possessed wild oysters during the February 1, 2000 inspection in violation of Section 19.3.4 of the Aquaculture Regulations. It is also maintained by Division that the Department was within its discretion regarding the conferring of jurisdiction upon the Environmental Police Officers to inspect and enforce the regulations. The Division asserts that the finding and penalty sought by Division are well within the discretion of the Division and that the suspensions as requested should be imposed.

It is Respondent's contention that the Division has not met its burden of proving any of the allegations made against the Respondent. Respondent argues that the case against Respondent should be dismissed because the Environmental Police lack jurisdiction to investigate or prosecute violations of the laws of this State enumerated in R.I.G.L. § 20-1-8, and also that the tagging violation should be dismissed for failure to legally adopt any such tagging regulations. Respondent asserts that, as an

Aquaculturist and under his Aquaculture license, he is entitled to possess undersized shellfish and specifically oysters on a year-round basis.

Respondent maintains that he was not in "possession" of undersized shellfish on February 1, 2000 (as that term is defined by statute); and that he could not have been in violation of Section 9.3.3 of the Aquaculture Regulations based on the lack of evidence presented and the Division's failure to adopt or identify pertinent regulations, nor in violation of § 9.3.4 (because Respondent was not in possession of undersized oysters on a day in which the facility was in possession of oysters other than cultured oysters). The Respondent urges that both Notices of Suspension be dismissed with prejudice, and that Respondent be awarded attorney's fees and costs of defense.

The events and occurrences leading up to the issuance of the citations in this matter are essentially not in dispute. As a result of an inspection of the Respondent's facility at 557 Pond Street, Wakefield, R.I. on February 1, 2000, the two Notices of Suspension were issued to the Respondent. The additional pertinent events and circumstances are contained in the discussions and determinations that follows herein of the issues, contentions and arguments. A review of the major statutes and regulations involved in this matter may assist in an understanding of this matter and of the issues under consideration.

R.I.G.L. § 20-6-11 provides that "No person shall take and/or possess...any oysters measuring less than three inches ("3") measured parallel to the long axis of the oyster".

R.I.G.L. § 20-1-2 vests in the Director of DEM the "authority and responsibility over the fish and wildlife of the state, and together with the marine fisheries council as

provided in Chapter 3 of this title, over the fish, lobsters, shellfish, and other biological resources of marine waters of the state".

R.I.G.L. § 20-1-5 provides:

"The director and the director's authorized agents, employees, and designees shall protect the wild birds, wild animals, fisheries, and shell fisheries throughout the state and shall administer and enforce the provisions of this title and the rules and regulations adopted pursuant to this title and shall prosecute violations of these laws and rules and regulations."

Chapter 10 of Title 20 of the General Laws of Rhode Island governs Aquaculture in the State. § 20-10-3 grants the authority to issue permits for the conduct of aquaculture to the Coastal Resources Management Council ("CRMC"); provided however, that no application therefore shall be approved by CRMC or a permit granted prior to the consideration of recommendations by both the Director of DEM and the Marine Fisheries Council (§ 20-10-5). § 20-10-12 authorizes and empowers the Director of OEM to grant permits for and establish rules and regulations governing the taking, possession, sale, importation, and transportation of animal or plant species utilized in aquaculture; provided, however, that in the case of bivalves, no approval shall be given for the sale, possession, use, storage, or transportation of those species for human consumption without the written approval and permission of the director of health.

The following are the Aquaculture Regulations involved in this matter:

19.3.3 Sale for Direct Human Consumption -- In accordance with all DEM and Department of Health regulations for the buying, trading, and selling of shellfish, all shellfish cultured in any open water or land-based system meeting the water quality criteria for harvesting during the culture period may be sold for direct human consumption. All requirements for tagging and use of shellfish containers must meet the standards of the National Shellfish Sanitation Program (NSSP), the R.I. Department of Health (DOH), and the DEM. Additionally, the aquaculturist must hold the appropriate DEM and DOH licenses (commercial shellfish, multi-purpose, dealer, etc.) to sell, trade, or barter seafood.

19.3.4 Possession of Undersized Shellfish -- Aquaculturists are allowed to possess and transport, within the state, undersized shellfish on a year-round basis. In no case is an aquaculturist allowed to possess or transport undersized shellfish on any given day (midnight to midnight) in which the aquaculturist has harvested or is in possession of other than cultured shellfish. Harvesting of undersized shellfish from the free and common shellfishing ground is not authorized.

A review of the documentary and testimonial evidence clearly demonstrates that Division has satisfied its burden of proving the violations as alleged in both the March 16, 2000 NOS and the March 17, 2000 NOS by a preponderance of the evidence. The evidence introduced by Division establishes (1) that Respondent violated R.I.G.L. 20-6-11 in that Respondent, on February 1, 2000, was in possession of sixty-nine (69) undersized oysters (as alleged in the March 16, 2000 NOS); and (2) that on February 1, 2000, the Respondent was in violation of Sections 19.3.3 and 19.3.4 of the Aquaculture Regulations in that the Respondent's facility located at Wakefield, Rhode Island was in possession of oysters that were not tagged in accordance with the standards of the NSSP, RIDOT, and DEM; and that sixty-nine (69) undersized oysters were in the possession of said facility on a day when the facility was in possession of oysters other than cultured oysters (as alleged in the March 17, 2000 NOS).

A clear reading of the pertinent statutes concerning the authority and powers of the Director of DEM, conservation officers and the Environmental Police demonstrates

that the Environmental Police possess the authority to act, investigate or recommend charges against anyone, pertaining to shellfish violations. Although R.I.G.L. § 20-1-8 enumerates certain powers granted to the Director and to conservation officers, these powers are certainly not in derogation of the authority and general enforcement powers of the Director, but are in addition to the power and authority granted to the Director by Title 20 of the General Laws. §20-1-2 vests in the Director authority over fish and wildlife and together with the marine fisheries council over the fish, lobsters, shellfish and other biological resources of marine waters of this state, and § 20-1-5 vests authority in the Director to delegate others, not necessarily limited to Conservation Officers, to assist in the inspection and enforcement of the provisions of Title 20 and the rules and regulations promulgated pursuant thereto. The Environmental Police certainly acted within the scope of their authority; and the Respondent's request that their testimony, investigation materials and evidence be stricken from the Record and that the cases against Respondent be dismissed because of lack of jurisdiction must both be denied.

The Respondent's request that the tagging violation should be dismissed because of the failure to legally adopt any such tagging requirements must also be denied. It is elemental that the DEM is a rule making agency subject to the provisions of the Rhode Island Administrative Procedures Act ("APA"), Title 42, Chapter 35; and as such must comply with procedures for the adoption of Rules and Regulations. Undoubtedly, as pointed out by Respondent, any rule that was not promulgated in accordance with the provisions of the APA does not have a legal effect. Landry v. Farmer, 564 F. Supp. 598 (D.R.I. 1983). However, unlike the Landry case, the Aquaculture Regulations were legally adopted in accordance with the provisions of the

APA. Section 19.3.3 of the Aquaculture Regulations provides that all of the requirements for the tagging of shellfish must meet the standards of the National Shellfish Sanitation Program, the R.I. Department of Health and the DEM. Although the tagging requirement sections of the NSSP were not reproduced in the Aquaculture Regulations, they were duly incorporated by reference thereto in Section 19.3.3 of the Aquaculture Regulations. Consequently the Aquaculture Regulations adopting the NSSP Rules were legally adopted as required by the APA, and it is proper and appropriate for the Director to enforce these regulations regardless of the enforcement policies of other agencies.

The Respondent's argument that he was not in "possession" of the undersized shellfish on February 1, 2000 (as that term is defined by R.I.G.L. § 23-1-3) lacks merit. § 23-1-3(a)(6) defines "possession" as follows:

"(6) "Possession" means the exercise of dominion or control over the resource commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. The decision must be made at the first practical opportunity."

The interpretation and application of § 20-1-3(a)(6) involves a two-pronged question: (1) Did Respondent exercise dominion and control over the shellfish and (2) Did Respondent make a decision not to return the shellfish to the immediate vicinity from which they were taken. In interpreting this statute, R.I.G.L. § 2-1-22 requires that the provisions of Title 20 "shall be interpreted and construed liberally in aid of its declared purpose." (See In Re: Best in the Bay, Inc., AAD No. 98-002/ENE).

As to the first prong of this definition, Respondent concedes that the Respondent exercised dominion and control of the undersized oysters. As to the second prong of the definition, the Respondent ignores the mandate contained in the last sentence of the definition of possession, i.e. that the decision must be made at the first practical

opportunity. The culling of shellfish (that Respondent utilizes to determine if shellfish are undersized) must be accomplished at the first practical opportunity; and certainly the evidence in the instant cases demonstrates that the Respondent had a practical opportunity to inspect the subject oysters for compliance with State laws and regulations either upon their delivery to Respondent or shortly thereafter, and this the Respondent failed to do. R.I.G.L. § 20-6-11 specifically prohibits the possession of undersized shellfish and the Respondent should not be allowed to use his Special Permit for Aquaculture as a shield to protect him from being cited for violations of the statute or regulations. The Aquaculture Regulations defines "Cultured" as: "shellfish product that has been grown under the direction, possession and, control of an aquaculturist" and "Wild Stock" as "natural shellfish resources which set and grow within the waters of the State, not cultured in any way". Despite Respondent's protestations, the evidence demonstrates that the Respondent did on February 1,2000 unlawfully have in his possession undersized "wild stock" oysters.

Contrary to the Respondent's arguments, the Division does not have the burden of proving that Respondent had an intent to possess undersized oysters in order to be found in violation of R.I.G.L. § 2-6-11. It is sufficient for Division to show that under the facts and circumstances of the instant matter, the Respondent had a practical opportunity to inspect the oysters for compliance with State laws and regulations and that he either failed or elected not to do so. (In Re: Best in the Bay, Inc.) As previously stated, the Respondent by its own admission had the equipment on hand to cull oysters and clearly more than sufficient time had elapsed for the Respondent or his agents and servants to inspect the oysters in question. The fact that Respondent's Aquaculture Permit allows him to possess smaller cultured oysters makes it more imperative that any

wild stock oysters that are delivered to Respondent be checked either upon their arrival at Respondent's facility or shortly thereafter; which was not done in this case.

The evidence clearly establishes that on February 1, 2000 there were at least three bags of oysters at the Respondent's facility in Wakefield, Rhode Island that were not properly tagged as required by 19.3.3 of the Aquaculture Regulations. The testimony of Division's witnesses that there were no tags affixed to any of the containers in question was uncontroverted; and the failure to properly tag the oysters in question is a violation of 19.3.3. The Respondent's failure to properly tag on the date in question is not excused by virtue of the fact that Respondent is a dealer and also a harvester.

Section VII.03(E)(3) of the NSSP provides "When the dealer is also the harvester and he elects not to use a harvest tag, the dealer shall affix his dealer tag to each container of shellstock prior to shipment". This section would only afford an exception to the Respondent if he was dealing in the shellfish that he had harvested; and does not apply to the instant matter since Respondent purchased shellfish from other harvesters and dealers who received their stock from areas other than that of the Respondent.

Section VIII.03(E)(2) of the NSSP provides that "if the shellstock was harvested at more than one location, each container shall be tagged at its growing area". § x.05(A)(1) provides that "the dealer shall keep the harvesters tag affixed to each container of shellstock until the container is (a) Shipped; or (b) Emptied to wash, grade or pack the shellstock". It is undisputed that there were no tags affixed to any of the containers in question, and a clear reading of the pertinent provisions of NSSP demonstrates that they do not supply an exception to the mandates of Section 19.3.3 as claimed by Respondent.

There was sufficient evidence introduced to establish that the Respondent possessed and transported undersized shellfish on the same day (midnight to midnight) in which the Respondent, as an aquaculturist, was in possession of other than cultured shellfish. Section 19.3.4 not only prohibits such possession or transportation, but also specifically prohibits the harvesting of undersized shellfish from the free and common shellfishing ground.

The Respondents arguments that the 69 suspect oysters were not .measured properly and that handling of these oysters may somehow have caused them to become undersized both lack merit. The method employed by Division to measure the oysters (a PVC pipe ring) is certainly as accurate as using a ruler, and also is less susceptible to the errors that could be encountered while lining up the ends of the shell with a ruler. The subject oysters that fell through the PVC pipe ring were remeasured to insure accuracy, and the fact that the subject oysters fell through the PVC pipe ring on both tries is satisfactory proof that they were undersized. Also, the fact that oysters may chip slightly by clacking or rough handling, does not suffice to refute the positive evidence of the Division's testing results. There was no evidence from which it could be inferred that the subject oysters were chipped sufficiently to render them undersized. The testimony of Division's witnesses was indeed credible, and suffices to show that at the time of measurement, the 69 oysters were undersized.

The Respondent testified at length concerning his aquaculture permits, leases and licenses. He described in detail the processes and procedures of his Aquaculture operations, and demonstrated his familiarity with the various regulations pertaining to Aquaculture. However, Respondent's testimony and evidence fails to establish that the

Respondent's activities (for which Respondent was cited) were permitted by the Aquaculture Regulations or the Assent Modification received by him from the CRMC.

Section 19.3.4 of the Aquaculture Regulations specifically provides that in no case is an aquaculturist allowed to possess or transport undersized shellfish on any given day (midnight to midnight) in which the aquaculturist is in possession of other than cultured shellfish. The Division's evidence demonstrates that Respondent violated Section 19.3.4 on February 1, 2000; and the Respondent's testimony confirmed this violation. Respondent testified that on the morning of February 1, 2000 he transported wild oysters (that were received the previous day from a Mr. Hogan) from his facility to the wet storage area. The Respondent transported his cultured product, which contained undersized shellfish, from the wet storage area to his facility and also possessed the uncultured shellfish purchased from Mr. Hogan at his facility prior to transport to wet storage the morning of February 1, 2000. Each of these events occurred between midnight and midnight on February 1, 2000, which is specifically prohibited by Section 19.3.4.

The Respondent is afforded no protection from the citations by virtue of the Assent Modification received by Respondent from the CRMC. The Assent Modification only governs the 2.3 acre parcel used for wet storage, and does not extend to the subject facility located at 557 Pond street, Wakefield, Rhode Island. The actions at issue in the instant matters are beyond the scope of the Assent Modification, and consequently are not affected by the terms of said document.

FINDINGS OF FACT

After considering the testimonial and documentary evidence of record, I find as a fact the following:

1. On February 1, 2000, the Respondent possessed (a) a Multi-purpose Dealer's License (license to barter or trade in all marine products), which was granted under the provisions of R.I.G.L. Chapter 20-2, and (b) a Special Permit for Aquaculture, which was granted under the provisions of R.I.G.L. Chapter 20-10.
2. On February 1, 2000, Environmental Police Officers of the Division of Law Enforcement of DEM conducted a shellfish house inspection of the Respondent's facility located at 557 Pond Street, Wakefield, Rhode Island.
3. At the time of the inspection, the Vice President of Respondent's Company stated that the facility was in possession of wild harvested stock purchased from a Mr. Robert Hogan; wet storage oysters; and cultured stock.
4. The facility's personnel were uncertain of the origin of the shellfish on the date in question, and due to their failure to log the shellfish, their classification as wild or cultured was not readily determinable.
5. The Environmental Police Officers exercised proper care in measuring the subject oysters, and the measuring equipment utilized by them is a proper measuring device and is not required to be calibrated.
6. During the aforesaid February 1, 2000 inspection, the facility was found in possession of (a) sixty-nine (69) undersized oysters, (b) oysters which were not tagged in accordance with the standards of the National Shellfish Sanitation Program and the Rhode Island Department of Health, and (c) sixty-nine (69) undersized oysters were in the possession of the facility on a day when the facility was in possession of oysters other than cultured oysters.
7. The sixty-nine (69) oysters in question were properly measured by the Environmental Police Officers, and as a result of said measurement were found to be in violation of R.I.G.L. § 20-6-11 in that they all measured less than three inches (3") measured parallel to the long axis of the oysters.
8. On February 1, 2000, the Respondent was in possession of oysters in violation of Sections 19.3.3 and 19.3.4 of the Aquaculture Regulations, in that the oysters in Respondent's possession on said date were not tagged in accordance with the standards of the National Shellfish Program and the Rhode Island Department of Health, and sixty-nine (69) undersized oysters were in the possession of the Respondent's facility on a day when the facility was in possession of oysters other than cultured oysters.
9. At the time of the February 1, 2000 inspection, there were shellfish in the cooler at the facility which were not tagged, and this same cooler stored the sixty-nine

(69) uncultured oysters that measured less than three inches (3") measured parallel to the long axis of the oysters.

10. The Respondent accepted delivery of undersized oysters at his facility from persons other than those employed by Respondent at least one day prior to the date of the inspection and said oysters had not been measured or culled prior to the inspection.
11. The Respondent had at least one day to measure or cull the subject oysters that had been delivered to his facility prior to the inspection date and did not do so; thus the Respondent did not make the decision to return the undersized oysters to the immediate vicinity from which they were taken at the first practical opportunity.
12. Section 19 of the Aquaculture Regulations was duly enacted in accordance with the provisions of the Administrative Procedures Act, Title 42, Chapter 35.
13. The standards of the National Shellfish Sanitation Program and the R.I. Department of Health for the tagging of shellfish have been appropriately adopted by the Department of Environmental Management pursuant to their incorporation by reference thereto pursuant to Section 19.3.3 of the duly adopted Aquaculture Regulations.
14. The failure of the Department of Health to issue a citation to the Respondent for any tagging violations (based on the facts in the instant matter) does not preclude or prevent the Division from issuing citations for tagging violations.
15. On February 1, 2000, the Respondent had at least three (3) bags of oysters at his facility that had not been cultivated by Respondent, and which had not been tagged as required by Chapter X.05 of the NSSP and which did not fall within the exception of Chapter X.05(A)(2) of the NSSP, despite the fact that they may not have been prepared for shipment.
15. The provisions of Chapter X.05 of the NSSP (which provides that when a dealer is also a harvester, and he elects not to use a harvest tag, the dealer shall affix his dealer tag to each container of shell stock prior to shipment) do not excuse Respondent's failure to tag on the date in question since the dealer/harvester exception does not apply to shellstock that were not harvested by Respondent.
16. The evidence introduced at the hearing was sufficient to establish that on February 1, 2000, the Respondent was in possession of sixty- nine (69) undersized wild oysters and also three bags of oysters that were not part of Respondent's cultured stock.
17. By letter dated March 16, 2000, the Respondent was notified that his Multi-Purpose Dealer's License would be suspended for thirty (30) days.

19. By letter dated March 17, 2000, the Respondent was notified that his Special Permit for Aquaculture would be suspended for thirty (30) days.
20. The Respondent filed a request for hearing at the AAD.
21. The Environmental Police Officers are duly authorized agents, employees and designees of the Director of DEM pursuant to R.I.G.L. § 20-1-5, and as such are fully authorized and empowered to protect the fisheries and shell fisheries throughout the State of Rhode Island, and to administer and enforce the provisions of Title 20 and the rules and regulations adopted pursuant thereto, and to prosecute violations of these laws and rules and regulations.
22. The enforcement powers granted to Environmental Police Officers pursuant to R.I.G.L. § 20-1-5 are not limited or diminished by virtue of the authority and powers granted to the Director and Conservation Officers pursuant to R.I.G.L. §§ 20-1-6 and 2-1-8.
23. The Division acted properly in suspending Respondent's Multi- Purpose Dealer's License, and also his Special Permit for Aquaculture.
24. The 30-day suspension of the Respondent's Multi-purpose Dealer's License and the concurrent 30-day Suspension of Respondent's Special Permit for Aquaculture is appropriate, considering the importance of compliance with the statutes and regulations involved, and In order to protect the health of consumers and maintain public confidence in the industry.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based on the findings of fact as set forth herein, I conclude the following as a matter of law:

1. The Division has proved by a preponderance of the evidence that Respondent violated R.I.G.L. § 20-6-11 relating to the minimum size of oysters.
2. The Respondent's possession of sixty-nine (69) undersized oysters on the date as alleged constitutes a violation of R.I.G.L. § 20-6-11.
3. The Division has proved by a preponderance of the evidence that Respondent violated Sections 19.3.3 and 19.3.4 of the Aquaculture Regulations regarding the tagging of oysters and the possession of undersized oysters on a day when his facility was In possession of oysters other than cultured oysters.

4. The Respondent's failure to tag oysters in his possession and his possession of sixty-nine (69) undersized oysters on a day when his facility was in possession of oysters other than cultured oysters constitutes a violation of Sections 19.3.3 and 19.3.4 of the Aquaculture Regulations.
5. The imposition of a 30 day suspension of Respondent's Multi-Purpose Dealer's License for a violation of R.I.G.L. § 20-6-11 is appropriate and warranted in this matter.
6. The imposition of a concurrent 30-day suspension of Respondent's Special Permit for Aquaculture for a violation of Sections 19.3.3 and 19.3.4 of the Aquaculture Regulations is appropriate and warranted in this matter.

Wherefore, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. The Respondent's Motion that the testimony, investigation materials and evidence be stricken from the Record and that this matter be dismissed is DENIED.
2. The Notice of suspension issued to the Respondent dated March 16, 2000 is hereby SUSTAINED, except as modified herein as to the dates of the suspension.
3. The Notice of Suspension issued to the Respondent dated March 17, 2000 is hereby SUSTAINED, except as modified herein as to the dates of the suspension.
4. The Multi-Purpose Dealer's License of the Respondent, Spatco, Inc., d/b/a Moonstone Oysters, is hereby suspended for thirty (30) days for the period commencing at 12:01 a.m. on September 1, 2001 and terminating at 11:59 p.m. on September 30, 2001.
5. The Special Permit for Aquaculture of the Respondent, Robert B. Rheault, is hereby suspended for thirty (30) days for the period commencing at 12:01 a.m. on September 1, 2001 and terminating at 11:59 p.m. on September 30, 2001.

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this _____ day of August, 2001.

Joseph F. Baffoni Hearing Officer

Department of Environmental Management Administration
Adjudication Division 235 Promenade street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Decision and Order this day of _____ day of
_____, 2001.

Jan H. Reitsma Director
Department of Environmental Management
235 Promenade street, 4th Floor
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to John J. Kupa, Jr., 1130 Ten Rod Road, Suite E-305, North Kingstown, RI 02852; via interoffice mail to Gary Powers, Esquire, Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI 02879 on this _____ day of August, 2001.

APPENDIX A
LIST OF EXHIBITS

DIVISION'S EXHIBITS

DEM 1 Full Copy of the March 16, 2000 notice from the Division of Law Enforcement that the Respondent's Multi Purpose Dealer's License would be suspended for a period of thirty (30) days as a result of Respondent's February 1, 2000 violation. (1 Page)

- DEM 2 Full Copy of the March 17, 2000 notice from the Division of Fish and Wildlife that the Respondent's Special Permit for Aquaculture would be suspended for a period of thirty (30) days as a result of Respondent's February 1, 2000 violation. (2 Pages)
- DEM 3 Full Copy of the request dated March 24, 2000 on behalf of the Respondent for a formal hearing before the AAD concerning the DFW's letter of March 17, 2000. (1 page)
- DEM 4 Full Copy of the R.I. Department of Environmental Management Case Report of the Respondent for the February 1, 2000 violation. (13 Pages)
- DEM 5 Full Copy of the request by the investigating officers for the suspension or revocation of the Respondent's Multi Purpose Dealer's License arising out of the February 1, 2000 violation. (2 Pages)
- DEM 6 Full Thirteen photographs of the subject facility on the
(a thru m) February 1,2000 inspection.
- DEM 7 For ID Copy of letter dated March 24, 2000 from Robert B. Rheault, President of Ocean State Aquaculture Association, to Malcolm Grant, RIMFC Chairman. (1 Page)
- DEM 8 For ID Envelope containing receipts for shellfish purchases.
- DEM 8A For ID Transaction Slip No. 0683 dated 1/28 at 3:30.
- DEM8B For ID Transaction Slip No. 0684 dated 1/31 at 3:20.
- DEM 9 For ID Witness statement of Robert Krause dated 2/01/00
- RESPONDENT'S EXHIBITS
- Resp. 1 Full The National Shellfish Sanitation Program Model Ordinance.
- Resp. 2 Full Assent Modification from Coastal Resources Management Council.
- Resp. 3 Full Embargo Release from the Rhode Island Department of Health, Division of Protection and Sanitation, dated 2/2/2000.
- Resp. 4 Full Resume of Robert B. Rheault Jr.

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If you are aggrieved by this final agency order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws §42-35-15.