

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF THE DIRECTOR**

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

**AAD NO. 00-005/ENE  
AAD NO. 00-004/ENE**

**DECISION AND ORDER OF REMAND**

I adopt the recommended decision in part and remand it for modification in part, specifically to suspend half of the recommended penalty for the duration of one year, and to incorporate a schedule for implementation of a 15 day suspension within three months following the date of the final decision.

The record supports the findings and recommended penalty. There is adequate evidence that Respondent violated applicable tagging requirements as well as the prohibition against possessing both wild and cultured stock within the same 24 hour, midnight to midnight, period. These provisions are clearly stated in the applicable regulations. Respondent appears to have certain objections to these provisions and regulations. His concerns are not necessarily unreasonable, and are in fact relevant to current efforts by regulators and the regulated industry to improve the existing regulations. That does not, of course, provide any excuse whatsoever to violate the regulations as they are in effect. These regulations were properly promulgated, with due opportunity for, and consideration of, public comments at the time. If they have proven to be less effective or more burdensome in some respect than was intended, the proper course of action is to seek a rule change through procedures provided for by law.

While Respondent may have disagreements with the regulations, and while this is no excuse for violations, the record does not show that Respondent violated the regulations intentionally. Further, there is no evidence that respondent harvested both wild and cultured stock on the same day or commingled wild and cultured product. It is in fact not entirely clear whether Respondent was in possession of both wild and cultured stock at the same location. While failure to properly tag product so as to prevent commingling and allow for proper inspection and enforcement is a serious violation even if unintentional, and while respondent should know that "possession" is broadly defined, I am reluctant to impose an actual suspension of Respondent's license, and thus a disruption of his business, for a full thirty days, under the circumstances of this particular case. These circumstances include a rather lengthy proceeding and associated expenses. I therefore adopt the recommendation to suspend Respondent's license for 30 days with the following qualifications:

- (1) one half of the penalty is suspended for the duration of one year, after which it shall expire; if within that year Respondent is found to have violated the regulations again, the remainder of the penalty, i.e. an additional 15 day suspension, shall take effect immediately;

(2) the 15 day suspension may be spread out over three months, according to a schedule to be proposed by Respondent and to be approved by the hearing officer, provided that the schedule shall consist of business days.

October 3, 2001

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Jan H. Reitsma  
Director, RI DEM