



David E. Pierce  
Acting Director

# Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

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Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Ronald Amidon  
Commissioner

Mary-Lee King  
Deputy Commissioner

January 10, 2019

Richard Luce  
464 Scudder Avenue  
Hyannisport, MA 02647

Re: *Matter of Luce*, Docket No. SPP-169813-DM-18  
**FINAL DECISION**

Dear Mr. Luce:

Upon a thorough review of the administrative record, it is my decision to adopt the Magistrate's Recommended Final Decision as my **FINAL DECISION** in this case in part.

In concurrence with the Magistrate's Recommended Final Decision, I have decided to permanently revoke and not renew your shellfish and seaworm's permit and shellfish transaction card DMF ID No. 169774. You may not apply for, hold or otherwise be issued any permit, authorization, or regulated fishery permit endorsement for shellfish. Any such permit, authorization, or regulated fishery permit endorsement for shellfish that may inadvertently or mistakenly be issued to you shall be null and void. Additionally, I have also decided to permanently revoke and not renew your shellfish propagation permit DMF ID No. 169813. You may not apply for, hold or otherwise be issued a special project permit for shellfish propagation. Any such permit for shellfish propagation that may inadvertently or mistakenly be issued to you shall be null and void.

You have the right to seek judicial review of my decision in the Superior Court pursuant to G.L. c. 30A, §14(1). The complaint must be filed in Superior Court within thirty days of receipt of this **FINAL DECISION**.

Regards,

David E. Pierce, PhD  
Director

Recommended Final Decision  
Docket Sheet



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Acting Director

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January 10, 2019

Gregory Luce  
464 Scudder Avenue  
Hyannisport, MA 02647

Re: **Matter of Luce**, Docket No. SE-169776-DM-18  
**FINAL DECISION**

Dear Mr. Luce:

Upon a thorough review of the administrative record, it is my decision to adopt in its entirety the attached Recommended Final Decision of the Magistrate as my **FINAL DECISION** in this case.

Therefore, it is my decision to permanently revoke your shellfish permit endorsement DMF ID No. 169776 and your shellfish transaction card. You may not apply for, hold or otherwise be issued any permit, authorization, or regulated fishery permit endorsement for shellfish. Any such permit, authorization, or regulated fishery permit endorsement for shellfish that may inadvertently or mistakenly be issued to you shall be null and void.

You have the right to seek judicial review of my decision in the Superior Court pursuant to G.L. c. 30A, §14(1). The complaint must be filed in Superior Court within thirty days of receipt of this **FINAL DECISION**.

Regards,

David E. Pierce, PhD  
Director

Recommended Final Decision  
Docket Sheet

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF FISH AND GAME  
DIVISION OF MARINE FISHERIES

SUFFOLK, SS.

ADJUDICATORY PROCEEDING  
DOCKET NO. SPP-169813-DM-18  
DOCKET NO. SE-169776-DM-18

\_\_\_\_\_  
*IN THE MATTER OF:*  
*RICHARD LUCE* and SHELLFISH  
PROPAGATION PERMIT #169813,  
SHELLFISH and SEAWORMS PERMIT  
#169774 and SHELLFISH  
TRANSACTION CARD,

Respondent

AND

\_\_\_\_\_  
*GREGORY LUCE* and SHELLFISH  
ENDORSEMENT #169776 and  
SHELLFISH TRANSACTION CARD,

Respondent

**RECOMMENDED FINAL DECISION**

INTRODUCTION

An expedited hearing was conducted on April 25, 2018.<sup>1</sup> Gregory Luce was not in attendance. Richard Luce ("Mr. Luce") was. All parties and witnesses were administered the oath and the hearing was electronically recorded. Although Mr. Luce was not represented by counsel, he did have two close family members with him who were knowledgeable about his operation of the shellfish grant. They discussed and conferred with Mr. Luce on particular matters that came up throughout the course of the hearing.

At the hearing's conclusion, the parties made a closing statement. The administrative record was compiled and the hearing was concluded.

<sup>1</sup> An expedited hearing is required when an agency exercises its authority to suspend immediately a permit without first affording the permit holder a c.30A adjudicatory hearing. In this case the Director exercised his statutory and regulatory authority to suspend immediately shellfish permits held by respondents for the purpose of protecting the public health, welfare, and safety from unknowingly consuming tainted shellfish. See G.L. c.130, §80, and 322 CMR §§7.01(11) and 16.06.

A Tentative Decision was issued and distributed to the parties for their review, comments, corrections, and arguments. There was no response by either party within the twenty-one-day comment period.

### DISCUSSION

**Background.** Mattakeesett Oysters, LLC is a business owned by Richard Luce that operates a 1.2 acre commercial shellfish site on a private aquaculture grant in Barnstable Harbor.<sup>2</sup> Respondents, Richard and Gregory Luce, are father and son, respectively. Both hold shellfish permits issued by the Director of the Division of Marine ("DMF") to work the aquaculture facility for the purpose of selling oysters grown there. Richard Luce holds a shellfish and seaworm's permit and transaction card required to possess and sell shellfish.<sup>3</sup> In addition he holds a DMF private aquaculture permit required to possess naturally occurring seed shellfish, seed shellfish transplanted under previously issued permits and to transplant seed and/or adult shellfish from DMF approved sources to the Mattakeesett site located on the Cape Cod Bay side of Barnstable. Gregory Luce holds a DMF regulated fishery special permit endorsement as a sanctioned shellfish harvester for Mattakeesett. Both respondent permit holders signed a DMF shellfish harvesting, handling, and transport affidavit.<sup>4</sup> The Director established conditions and restrictions to the above three permits.<sup>5</sup> Condition #9 of the private aquaculture permit issued to Richard Luce authorizes any agent whose name is placed on a list of agents he maintains to work on respondent's aquaculture site. Non-permitted individuals whose name is contained on this list are allowed to transport seed or market size shellfish for culling and/or 'over wintering' provided that the named individual carries a copy of the DMF private aquaculture permit issued to Richard Luce and Mattakeesett. In addition, employees of Mattakeesett may sell shellfish to a wholesale dealer if they hold a DMF shellfish permit and transaction card.

**Evidence.** NRO Amy Croteau testified that on or about February 10, 2018, she was informed that bags of oysters were being stored in the waters Halls Creek on the Nantucket Sound side (south) of Barnstable. Upon investigation, NRO Croteau found eight suitcase-style

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<sup>2</sup> The Town of Barnstable issued a license to Richard Luce and Mattakeesett to operate a commercial shellfish aquaculture facility on a specific grant/leased/ licensed area of coastal waters, tidal flats or land under coastal waters of Barnstable Harbor on the north shore of Cape Cod, pursuant to the provisions of G.L. c.130, §57. DMF issued a shellfish harvester endorsement special permit to Gregory Luce to harvest and sell oysters from the Mattakeesett aquaculture grant.

<sup>3</sup> On January 18, 2018 the Director established conditions and restrictions to all commercial shellfish permits, including shellfish and seaworm's permits prohibiting the possession or sale of shellfish taken from area SC26.

<sup>4</sup> ~~The DMF affidavit attests to the fact that the affiant has read, is knowledgeable of and agrees to adhere to and~~ comply with all of the applicable shellfish statutes and regulations, all shellfish permit requirements, conditions and restrictions, and all requirements governing the operation of a shellfish aquaculture grant for the planting, growing, raising, harvesting and selling of oysters.

<sup>5</sup> The DMF private aquaculture permit No.169813 issued to Richard Luce and Mattakeesett contains the following special condition: "ALL SEED SOURCES LISTED ON THIS PERMIT MUST BE ADDED TO THE 2018 DIVISION OF MARINE FISHERIES APPROVED SOURCE LIST PRIOR TO PLANTING. IF YOU WISH TO PURCHASE SEED FROM SOURCES NOT LISTED ON THIS PERMIT YOU MUST FIRST OBTAIN AUTHORIZATION FROM MARINE FISHERIES. DUE TO DOCUMENTED VIOLATIONS OF DIVISION OF MARINE FISHERIES PERMIT CONDITIONS RELATED TO OVERWINTERING OF SHELLFISH, OVERWINTERED OYSTERS MUST BE TESTED BY A CERTIFIED PATHOLOGY LAB AND DMF APPROVAL MUST BE GRANTED PRIOR TO BEING RETURNED TO THE WATERS OF LICENSE SITE NG-038."

black mesh bags each containing two to three, 100 count onion bags of oysters in the waters of Hall Creek. The waters and flats of Halls Creek have been classified by DMF as Prohibited and closed to any shellfishing due to contamination. The area appears on DMF designated shellfish growing area maps as SC26.0. NRO Croteau removed the eight bags and their contents, photographed, and impounded all bags and their contents for storage at the Barnstable Natural Resource Headquarters. She informed Barnstable NRO Christopher Nappi of her findings and the action taken.

NRO Christopher Nappi testified that on the following day, February 11, 2018, he found an additional two suitcase-style black mesh bags each containing three, 100 count onion bags of oysters, which he removed from Halls Creek for storage with the other bags at the Barnstable NR Headquarters. He stated that Barnstable Shellfish Biologist Tom Marcotti investigated the contents of all ten black mesh bags and counted approximately 2,800 oysters with a total market value of approximately \$1,500.

NRO Nappi stated that he placed a trail-camera in the trees at the entrance to the Halls Creek landing area and with the assistance of NRO Devon Harrington and the Massachusetts Environmental Police ("MEP") Sergeant Michael Camire and Officer Michael Cole began an investigation of NRO Croteau's findings. In the course of the investigation he interviewed a number of people including a wholesale seafood dealer and residents living in the area of Halls Creek landing area. In the course of the interviews the name Gregory Luce was mentioned. In addition, the trail camera photographed Gregory Luce at the landing area of Halls Creek poking a gaff into the bed of his pick-up truck.

According to NRO Nappi, on February 14, 2018 the Barnstable NRO's and Environmental Police visited with both Gregory and Richard Luce at their common residence. During the course of the conversation Gregory Luce stated that after a potential sale of oysters fell through, he decided to place these oysters, which had been removed from the Mattakeesett aquaculture site, in the waters of Halls Creek until he could return them to the Mattakeesett aquaculture site. He also stated that he had wet stored oysters taken from the Mattakeesett aquaculture site in Halls Creek before and these same oysters were then removed from the unauthorized and contaminated site, transported, and sold to wholesale dealers. Richard Luce admitted that a mistake was made and he would cooperate fully with whatever actions the agency decided to take.

Additional testimony from both NRO Croteau and Nappi confirmed that all ten bags of ~~Mattakeesett oysters that were found in the waters of Halls Creek, removed, and impounded~~ were not affixed with the required shellfish tag(s) and those that were had incomplete, incorrect, inaccurate, misleading and deceptive tag information.

In addition to the above testimony, two documents of import were received in evidence. The first is a voluntary written statement that Massachusetts Environmental Police Officer Michael Camire described in his testimony and authenticated as being taken from, and signed by, Gregory Luce. In his written statement, Gregory Luce admits to culling, bagging, and taking oysters from the Mattakeesett aquaculture site in early February and placing them in Hall Creek.

The second document is a letter dated April 24, 2018 from Gregory Luce to DMF Director David Pierce. In it, Gregory Luce states that he is working in California and will not be at the hearing. In addition, he states in the letter that he has no defense for his actions.<sup>6</sup>

#### FINDINGS OF FACT

Based on the testimony of the witnesses, and the evidentiary documents, I hereby find the following facts:

1. Gregory Luce was not present at the hearing and is in default of the Order to Show Cause.
2. Richard Luce is the manager of a 1.2 acre grant by the Town of Barnstable of tidal waters and flats located in Barnstable Harbor to be used for private aquaculture.
3. Richard Luce is the manager aquaculture facility, Mattakeesett Oysters, on this grant pursuant to G.L. c.130, §57.
4. Gregory Luce, the son of Richard Luce, is a permitted harvester for Mattakeesett Oysters and authorized to handle shellfish at the Mattakeesett aquaculture site.
5. Richard Luce is responsible for the handling of all shellfish to, at, and from his aquaculture grant site by his employees, agents, permitted harvesters, and those persons whose name appears on a list of individuals authorized to work on the Mattakeesett aquaculture grant site.<sup>7</sup>
5. DMF issued a shellfish harvester endorsement special permit #169776 to Gregory Luce authorizing him to conduct all activities associated with the transporting and selling oysters from the Mattakeesett aquaculture site.
6. DMF issued a shellfish and seaworm's permit ID #169774, a transaction card, and a private aquaculture permit ID #169813 to Richard Luce and Mattakeesett.
7. Since August 4, 1988, the waters and flats of all tributaries of Squaw Island on the Nantucket Sound side of Barnstable east of a line drawn across the common mouth of Green Dunes Creek and Halls Creek (SC 26) have been closed and prohibited to any shellfishing or ~~shellfish activities due to contamination.~~
8. On June 1, 2004, the DMF Director re-notified shellfish officials in Barnstable that area SC26 remained classified as a prohibited area closed to shellfishing due to continued contamination.

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<sup>6</sup> Respondent's exhibit #2. From the language and tone of his letter, there is no question regarding the significant remorse felt and expressed by Mr. Luce.

<sup>7</sup> Richard Luce is the manager of Mattakeesett Oysters, LLC and all shellfish activities done on his aquaculture grant site. See discussion and note 9, *Infra*. He is also the holder of DMF private aquaculture permit No.169813 that requires he maintain a list of individuals authorized to conduct shellfish activities at his aquaculture grant site.

9. The Director's letter of June 1, 2004 also notified shellfish permit holders that their permits were conditioned with the restriction that the taking, selling, or possession of shellfish from area SC26 is prohibited.

10. The entrance to Hall's Creek landing is at the end of Fifth Avenue in Barnstable.

11. The waters and tidal flats of Halls Creek are located in the area of Hyannisport.

12. There is a sign prominently posted at the end of the Fifth Avenue entrance to Halls Creek landing that reads "CLOSED TO ALL SHELLFISHING".

13. Photographic evidence shows Gregory Luce poking a pole into the back of his pick-up truck near the landing site to Halls Creek.

14. On multiple occasions prior to and during February 2018, Gregory Luce removed oysters from the Mattakeesett aquaculture site in Barnstable Harbor, culled, bagged (100 oysters per bag), transported, and relocated them in the waters and tidal flats of Halls Creek, area SC26.

15. Oyster sales made by Gregory Luce to wholesale dealers were 'filled' with the Mattakeesett oysters that he stored in Halls Creek, designated shellfish growing area SC26.

16. On February 8, 2018, Gregory Luce removed five bags, each bag containing 100 oysters, from Halls Creek and sold all 500 oysters to the Cape Fish and Lobster Company.

#### CONCLUSIONS OF LAW

The above findings of fact constitute violations of the following provisions of Massachusetts law.

1. It is unlawful for any person to take shellfish for any purpose from any area determined under G.L. c.130, §§74 or 74A to be contaminated. G.L. c.130, §75.

2. It is unlawful for any DMF permit holder to violate any conditions or restrictions to the permit established by the Director. 322 CMR §7.01(14)(d).

~~3. It is unlawful for any person to violate any provision of G.L. c.130 or 322 CMR while conducting any activity authorized by a DMF permit. 322 CMR §§7.01(14)(a).~~

4. It is unlawful for any person to possess or transport any shellfish for commercial purposes that is not tagged with the specific information required by 322 CMR §16.03 which clearly identifies the origin of the shellfish. 322 CMR §16.03(1)(c).

5. It is unlawful for any person to sign a written declaration made under the penalties of perjury, if the written statement is willfully false in a material matter. G.L. c.268, §1.

6. The shellfish sanitation program in the Commonwealth is a material matter designed to protect the public health, welfare, and safety from unknowingly consuming tainted shellfish. 322 CMR §16.00. See *Matter of Cormier*, No. CSP-158749-PD (2014); *Matter of Fountain*, SSW-150031-JH (2016).

7. It is unlawful for a permit holder to violate or fail to comply with the statement made and signed that requires he understands the responsibilities, obligations, and the terms and conditions of his shellfish permit. 322 CMR §7.01(5)(g)(2).<sup>8</sup>

#### RECOMMENDATION

The above findings constitute deliberate and intentional acts of Gregory Luce to conceal and mislead agencies of the Commonwealth responsible for enforcing the state, federal, and municipal shellfish sanitation laws. But for the actions of Barnstable NRO Croteau, the temporary storage of oysters culled from the Mattakeesett aquaculture site in the Prohibited and closed area of Halls Creek for the purpose of simplifying the commercial operations of Mattakeesett and ignoring the legal requirements for the safe handling of oysters may have continued unabated. These activities are reprehensible on a large scale because of the significant threat the public health. The above findings also highlight the difficulty that state and municipal law enforcement agencies have in preventing or uncovering their occurrence.

Neither respondent presented any defense to these unlawful practices. Moreover, Gregory Luce, absent from the hearing and in default of the Order to Show Cause, admits as much. While his written remorse is sincere, it does not address in any remedial sense the unlawful commercial operations of the Mattakeesett grant.<sup>9</sup> One must query whether the aquaculture grant as presently being operated by Richard Luce needs to be reviewed if there is going to be any continued operations of the Mattakeesett, LLC grant by Richard or Gregory Luce. Answering this query in a remedial sense is required to ensure the reputation of the Massachusetts shellfish industry; the protection of the public health, welfare, and safety from unknowingly consuming tainted shellfish from Massachusetts; and to address the demands placed on state and municipal law enforcement.<sup>10</sup>

#### CONCLUSION

Based on all of the above, I conclude that the Director's immediate suspension of the commercial shellfish and seaworm's permit ID #169774 and shellfish transaction card issued to

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<sup>8</sup> This statement is made when the respondent signed his permit and is not to be confused with the primary Shellfish Harvesting, Handling and Transport Affidavit signed by Gregory Luce as a condition to the issuance and use of the regulated fishery special permit endorsement issued to him for harvesting and transporting shellfish from the aquaculture grant.

<sup>9</sup> There was no evidence presented at the hearing to implicate Richard Luce or any of his agents or employees in the activities that are solely those of Gregory Luce. Nonetheless, Richard Luce in his capacity as the manager of Mattakeesett Oysters, LLC is responsible for the acts of his agents, employees and those who are authorized by DMF permit to operate his aquaculture grant. *Dias v. Brigham Medical Associates*, 438 Mass. 317 (2002). The grant manager should be aware at all times of the activities and practices of his agents and employees working at the Mattakeesett grant site. Moreover, Richard and Gregory Luce are father and son.

<sup>10</sup> The United States Food and Drug Administration, National Shellfish Sanitation Program requires the Commonwealth to identify the origins of all shellfish that enters the commercial marketplace. 322 CMR §16.00.



Richard Luce, and the regulated fishery special permit harvester endorsement ID #169776 issued to Gregory Luce was lawful and not arbitrary, capricious or an abuse of discretion.

#### RECOMMENDATION

It is my recommendation that that the Director permanently revoke, and not renew, the harvester regulated fishery permit endorsement ID #169776 issued to Gregory Luce, and the shellfish and seaworm's permit DMF ID #169774 and transaction card to Richard Luce. Any shellfish permit, endorsement, or transaction card issued in error shall be automatically void.


I am recommending that the Director make his shellfish management team available to their municipal counterparts in Barnstable to determine what, if any, action may be necessary or appropriate for the further operation, if any, of Mattakeesett Oysters, LLC on its present grant.


Dated: August 30, 2018 By: DC Hoover

David C. Hoover, Esq.  
Administrative Law Magistrate  
Department of Fish and Game

#### NOTICE

This is a Recommended Final Decision of the Administrative Law Magistrate issued pursuant to 801 CMR §1.01(11) and G.L. c.30A, §11. This decision is not a Final Decision of the Director and may not be appealed to the Superior Court pursuant to G.L. c. 30A. The Director's Final Decision will contain a NOTICE on the subject of judicial review. Because a Recommended Final Decision in this matter has now issued, no party shall file a motion to renew or reargue this Decision or any portion of it and no party shall communicate with the Director regarding this Decision, unless the Director, in his sole discretion, directs otherwise.

<b>Adjudicatory Proceeding DOCKET</b>		<b>Docket No:</b> SSP-169813-DM-18 SE-169776-DM-18		<b>Department of Fish and Game Division of Marine Fisheries</b>			
<b>Hearing Caption:</b> In the Matter of Richard Luce and Shellfish Propagation Permit #169813, Shellfish and Seaworms Permit #169774 and Shellfish Transaction Card and In the Matter of Gregory Luce and Shellfish Endorsement #169776 and Shellfish Transaction Card				Division of Marine Fisheries 251 Causeway Street Hearing Room Suite 400 Boston, MA 02114 (617) 626-1520			
<b>Date Filed:</b> 4/9/18		<b>Date Disposed:</b> 1/10/19					
<b>Petitioner:</b> Daniel J. McKiernan, Deputy Director MA Division of Marine Fisheries 251 Causeway Street, Suite 400 Boston, MA 02114				<b>Petitioners Attorney:</b>			
<b>Respondent:</b> Richard Luce and Gregory Luce DBA Mattakesett Oysters, LLC 464 Scudder Avenue Hyannisport, MA 02647				<b>Respondents Attorney:</b>			
<b>NO.</b>	<b>Entry Date</b>	<b>Docket Entries</b>					
1	4/9/18	Request for an Adjudicatory Proceeding					
2	4/11/18	Notice of Immediate Permit Suspension					
3	4/11/18	Order to Show Cause					
4	4/12/18	UPS Notification of Delivery					
5	5/23/18	Tentative Decision					
<b>Page</b> 1 of 2	<b>A TRUE COPY ATTEST</b>	<b>Adjudicatory Proceedings Clerk:</b> X Jared A. Silva (signed electronically)				<b>Date:</b> 01/04/18	

<b>Adjudicatory Proceeding DOCKET</b>		<b>Docket No:</b> SSP-169813-DM-18 SE-169776-DM-18		<b>Department of Fish and Game Division of Marine Fisheries</b> 	
<b>NO.</b>	<b>Entry Date</b>	<b>Docket Entries</b>			
6	5/24/18	UPS Notification of Delivery			
7	1/3/19	Recommended Final Decision			
8	1/10/19	Final Decision			
Page 2 of 2	A TRUE COPY ATTEST	Adjudicatory Proceedings Clerk: <b>X Jared A. Silva (signed electronically)</b>			<b>Date:</b> 1/10/19