

Proposed amendments

Note: Proposed new language is identified as red underline; proposed language to be deleted is identified as ~~red-stricken~~.

250-RICR-90-00-14

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

| PART 14 – Summer Flounder Exemption Certificate Program

14.1 Purpose

The purpose of these Regulations is to authorize a program which will assist with the management of the commercial Summer Flounder fishery.

14.2 Authority

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act.

14.3 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of State law, goals, and policies.

14.4 Definitions

See Part [1](#) of this Subchapter.

14.5 Severability

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

14.6 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of these Regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

14.7 Applicability

- A. A Summer Flounder Exemption Certificate ([Exemption Certificate](#)) will be issued only to a vessel.
- B. A Summer Flounder Exemption Certificate authorizes a vessel to possess and land greater than two hundred (200) pounds of Summer Flounder provided that:
 - 1. The current Rhode Island possession limit for Summer Flounder is greater than two hundred (200) pounds per vessel per day;
 - 2. The vessel's operator holds a valid Rhode Island commercial fishing license or landing permit to harvest or land Summer Flounder.

14.8 Original Application Requirements

- A. A copy of the operator's valid current Rhode Island commercial fishing license or non-resident landing license, and Federal Summer Flounder Permit if the Summer Flounder is to be taken in the Exclusive Economic Zone (EEZ);
- B. A completed notarized application;
- C. Proof that the vessel meets the requirements set out in this section;
- D. Provide a completed notarized waiver authorizing the Department to access records verifying that this vessel and operator meet the criteria set forth in this section; and
- E. A copy of the vessel's U.S. Coast Guard documentation papers or State-issued boat registration certificate proving ownership of the vessel.

14.9 Eligibility

- A. ~~DEM will issue an Exemption Certificate for a vessel if the owner of the vessel or his/her representative~~ [Applicants must have](#) applied to DEM prior to January 1,

1997, ~~for the issuance of such a certificate~~ and demonstrated ~~to the satisfaction of the Director that~~ following:

1. The operator of the vessel possesses a valid Rhode Island commercial fishing license to land Summer Flounder up to the amount permitted by these Regulations; and
2. The subject vessel meets any of the following criteria:
 - a. The vessel was operated by a person who possessed a valid Rhode Island commercial fishing license and landed and sold in excess of one (1) pound of Summer Flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992;
 - b. The vessel fished exclusively in the EEZ and landed and sold in excess of one (1) pound of Summer Flounder to a licensed Rhode Island dealer sometime during the period January 1, 1987, through December 31, 1992. The Department may require additional supporting documents including but not limited to the ship's logs, ice and fuel slips;
 - c. The vessel replaces a vessel which was operated by a person who possessed a valid Rhode Island commercial fishing license, and the vessel being replaced landed and sold in excess of one (1) pound of Summer Flounder to a Rhode Island licensed dealer during the period from January 1, 1987 through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss;
 - d. The vessel replaces a vessel which fished exclusively in the EEZ and landed and sold in excess of one (1) pound of Summer Flounder to a Rhode Island licensed dealer, during the period January 1, 1987 through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss.
 - e. If the vessel is replacing a vessel that was lost by sinking or was otherwise destroyed, documentation must be presented from a licensed insurance company, U.S. Coast Guard report, or some other valid evidence of ownership to the satisfaction of the Director.

14.10 Other Conditions

- A. Exemption Certificates may not be:
 - 1. Pledged, mortgaged, leased, or encumbered in any way;
 - 2. Transferred with any retained right of repossession or foreclosure, or any condition requiring a subsequent transfer; or
 - 3. Attached, distrained, or sold on execution of judgment.
- B. Expiration: All ~~Summer Flounder~~ Exemption Certificates ~~issued under this chapter~~ shall expire on December 31 annually.

14.11 Exemption Certificate Renewal

- A. Completed notarized applications will only be accepted for ~~Summer Flounder~~ Exemption Certificate renewals.
- B. Application required: Renewal applications for ~~Summer Flounder~~ Exemption Certificates issued under these Regulations shall contain the following information:
 - 1. Vessel name;
 - 2. Vessel owner;
 - 3. USCG documentation/State registration number;
 - 4. Federal permit number or Rhode Island commercial fishing license number, that authorizes the harvest or landing of Summer Flounder;
 - 5. Vessel Length Overall (LOA);
 - 6. Vessel Gross Registered Tonnage (GRT);
 - 7. Vessel Horsepower.
- C. Renewal application deadline:
 - 1. The Department will publicly notice by July 1, 2020, that all ~~Summer Flounder~~ Exemption Certificates will expire on December 31 of that year.
 - 2. All applications for renewal must be received by the Department or postmarked by September 1, 2020.

3. For any vessel sale/transfer that takes place during the renewal application period, ninety (90) days from the date of sale/transfer will be allowed to renew the ~~summer flounder~~ Exemption Certificate.
- D. Application Renewal Denial: The applicant may appeal the denial of a Summer Flounder Exemption Certificate to the Administrative Adjudication Division for Environmental Matters pursuant to R.I. Gen. Laws § 42-17.7-1 *et seq.* and the procedures set forth in Part [10-00-1](#) of this Title, Rules and Regulations for the Administrative Adjudication Division.

14.12 Transfer of an Exemption Certificate

- A. ~~An exemption certificate issued by the DEM is only valid for the vessel to which it is issued. A vessel may be sold with all certificates, permits (state and federal) and history transferred together or without the certificates, permits (state and federal) and history for purposes of replacing the vessel. In instances when a vessel owner retains all certificates, permits, and history they must be applied to a replacement vessel owned by said individual within ninety (90) days. An Exemption Certificate may be transferred upon change in vessel ownership or upon vessel replacement. Application to the Department on forms as prescribed by the Director is required upon transfer.~~
1. ~~Change in ownership: An exemption certificate is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. Certificate transfer upon change in vessel ownership:~~ Individuals who purchase a vessel ~~issued with an valid Summer Flounder~~ Exemption Certificate must supply credible written evidence verifying that they are the full owner of said vessel. Vessel ownership will be determined solely by an issued and valid (unexpired) U.S. Coast Guard documentation or State registration.
 2. Certificate retained for vessel replacement:
 - a. A written agreement, or other credible written evidence, must be signed by the transferor/seller and transferee/buyer, verifying that the transferor/seller is retaining the vessel's Exemption Certificate for the purpose of replacing the vessel.
 - b. A vessel owner must prove that the applicant vessel is replacing a vessel and that the Exemption Certificate is only applicable to the vessel for which the Exemption Certificate has been transferred.

- c. If a vessel owner elects to sever the Exemption Certificate from a vessel, the Exemption Certificate shall only be transferred to another vessel fully owned by said vessel owner. Proof of full ownership of both vessels is required. Vessel ownership will be determined solely by issued and valid U.S. Coast Guard documentation or a State registration.
- d. The Exemption Certificate must be applied to a replacement vessel owned by the seller/transferor within five (5) years of approval of application.

2. Replacement Vessels: ~~A vessel owner wishing to transfer an exemption certificate must provide proof to the satisfaction of the DEM that the applicant vessel is replacing a vessel and that said certificate is only applicable to the vessel for which the exemption certificate has been transferred.~~

- a. ~~The vessel owner must supply credible written evidence verifying that the transferor/seller is retaining the vessel's Exemption Certificate for purposes of replacing the vessel. If a vessel owner elects to sever the exemption certificate from a vessel, the exemption certificate may be transferred only to another vessel fully owned by said vessel owner. Proof of full ownership of both vessels is required. Vessel ownership will be determined solely by issued and valid (unexpired) US Coast Guard documentation or a state registration.~~
- b. ~~Vessel permits (state and federal), exemption certificates, and fishing history cannot be split.~~
- ea. An Exemption Certificate may not be combined to create larger replacements vessels.
- eb. The replacement vessel may not exceed a ten percent (10%) increase in LOA, a ten percent (10%) increase in GRT or NT, or a twenty percent (20%) increase in horsepower of the vessel's baseline specifications, as applicable.
- ec. Vessel baseline specifications: The vessel baseline specifications in this section are the respective specifications (length, gross registered tonnage, net tonnage, horsepower) of the vessel that was initially issued an Exemption Certificate.

d. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain an Exemption Certificate, only if the upgrade complies with the following:

- (1) The vessel's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed twenty percent (20%) of the horsepower of the vessel's baseline specifications, as applicable.
- (2) The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three (3) specifications of vessel size may not exceed ten percent (10%) of the vessel's baseline specifications, as applicable. If any of these three (3) specifications is increased, any increase in the other two (2) must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.