

PUBLIC HEARING ITEM 1a.
COMMERCIAL MANAGEMENT OF SUMMER FLOUNDER

Option 1: Status quo

7.7.2 Commercial:

(A) Minimum size: Fourteen (14) inches.

(B) Seasons, allocations, and possession limits: A total annual statewide quota for Summer flounder will be established for the State by the Atlantic States Marine Fisheries Commission (ASMFC) and/or NOAA Fisheries.

(1) Winter sub-period: January 1 - April 30 annually:

(a) Target allocation: 54% of the annual quota.

(b) Possession limit between January 1 and the start of the Winter sub-period of the Aggregate Landing Program, annually:

(i) Vessels that possess a valid RI Summer Flounder Exemption Certificate (Exemption Certificate): Two hundred (200) pounds per vessel per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day.

(c) Possession limit during the Winter sub-period of the Aggregate Landing Program, annually:

(i) Vessels not permitted in the Aggregate Landing Program but which possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the DFW, the possession limit per vessel shall be one hundred (100) pounds per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the DFW, the possession limit per vessel shall be one hundred (100) pounds per calendar day.

(iii) Aggregate Landing Program: 2,000 pounds per vessel per calendar week. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When 90% of the Winter sub-period quota has been harvested as determined

by the DFW, the Aggregate Landing Program will terminate and the possession limit shall be one hundred (100) pounds per vessel per calendar day.

(2) Summer sub-period: May 1 - September 15 annually:

(a) Target allocation: 35% of the annual quota.

(b) Possession limit between May 1 and May 31, annually:

(i) Vessels that possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.

(c) Possession limit during the Summer sub-period of the Aggregate Landing Program, annually:

(i) Vessels not permitted in the Aggregate Landing Program, but which possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: 100 pounds per vessel per calendar day.

(iii) Aggregate Landing Program: Seven hundred (700) pounds per vessel per week. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When 80% of the Summer sub-period quota has been harvested as determined by the DFW the program will terminate and the possession limit per vessel shall be one hundred (100) pounds per calendar day.

(3) Fall Sub-Period: September 16 – December 31 annually:

(a) Target allocation: 11% of the annual quota.

(b) Possession limit:

(i) Vessels that possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day.

7.7.3 Aggregate Landing Program:

(A) Sub-periods:

(1) Winter: Beginning on the Sunday of the first full week in February through April 30 annually, or until 90% of the Winter sub-period quota has been harvested as determined by the DFW.

(2) Summer: Beginning on June 1 through September 15 annually, or until 80% of the Summer sub-period quota has been harvested as determined by the DFW.

(B) Eligibility: An applicant vessel shall be considered eligible for a permit to participate in the Aggregate Landing Program by demonstrating to the satisfaction of the DFW and the Division of Law Enforcement each of the following:

(1) The vessel, if harvesting Summer flounder from federal waters possesses a valid federal Summer Flounder Moratorium Permit and possesses a valid RI Summer Flounder Exemption Certificate (Exemption Certificate);

(2) The vessel's operator, if harvesting exclusively in State waters, holds a valid RI commercial fishing license to harvest or land summer flounder and possesses a valid Exemption Certificate;

(3) The vessel's operator has not been assessed a criminal or administrative penalty in the past three years for a violation of this section or has more than one marine fisheries violation.

(C) Application: Application for an Aggregate Landing Program Permit shall be made on forms as prescribed by the Director.

(D) No vessel shall possess simultaneously more than one Aggregate Landing Program permit;

(E) Non-compliance with the provisions of these regulations or the permit agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for remainder of the sub-period or the subsequent sub-period. If for any reason a sub-period does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current sub-period upon adjudication.

(F) Any applicant who is permitted for the Winter sub-period for the Aggregate Landing Program may not participate in the Summer sub-period within the same year.

7.7.4 Rhode Island Summer Flounder Exemption Certificate:

(A) Application: Applicant's shall provide the following:

- (1) A copy of the operator's valid current Rhode Island commercial fishing license or non-resident landing license, and Federal Fluke Permit if the summer flounder is to be taken in the EEZ; and
- (2) A completed notarized application; and
- (3) Proof that the vessel meets the requirements set out in this section; and
- (4) 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
- (5) A copy of the vessel's U.S. Coast Guard documentation papers or state issued boat registration certificate proving ownership of the vessel.

(B) Eligibility: DFW will issue an Exemption Certificate for a vessel if the owner of the vessel or his/her representative applies to DFW prior to January 1, 1997, for the issuance of such a certificate and demonstrates to the satisfaction of the Director that:

- (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 pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992; or
 - (b) The vessel fished exclusively in the Exclusive Economic Zone (EEZ) and landed and sold in excess of one pound of summer flounder to a licensed Rhode Island licensed 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; or
 - (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 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; or

(d) The vessel replaces a vessel which fished exclusively in the EEZ and landed and sold in excess of one 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.

(C) Transfer of an Exemption Certificate: An Exemption Certificate issued by the DFW 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.

(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. Individuals who purchase a vessel issued an 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) US Coast Guard documentation or state registration.

(2) Replacement Vessels: A vessel owner wishing to transfer an Exemption Certificate must provide proof to the satisfaction of the DFW 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 an issued and valid (unexpired) US Coast Guard

documentation or state registration.

(b) Vessel permits (state and federal), Exemption Certificates, and fishing history cannot be split.

(c) An Exemption Certificate may not be combined to create larger replacement vessels.

(d) The replacement vessel may not exceed a 10 percent increase in length overall (LOA), a 10 percent increase in gross registered tonnage (GRT) or net tonnage (NT), or a 20 percent increase in horsepower of the vessel's baseline specifications, as applicable.

(e) 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.

(f) 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:

(i) The vessel's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

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

(D) 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.

7.7.5 Otter trawl Mesh size: Otter trawlers that land or possess 100 pounds (45.4 kg) or more of Summer flounder per day from May 1 through October 31; or 200 pounds (90.8 kg) or more of summer flounder per trip from November 1 through April

30, must fish with nets or combinations of nets that have a minimum mesh size of 5.5 inch (14.0 cm) diamond, or 6 inch (15.2 cm) square mesh applied throughout the body, extension(s) and codend portion of the net.

7.7.6 Dealer Regulations:

(A) Prohibition on the transfer of Summer flounder: No Summer flounder may be purchased, bartered, or sold within the State of Rhode Island unless marked, processed, shipped, labeled, and handled in accordance with the following rules:

(1) The licensed person in charge of the vessel may only transfer Summer flounder to dealers who possess a valid Rhode Island Dealer's License;

(2) No licensed person in charge of the vessel may land Summer flounder after 8:00 PM or prior to 6:00 AM. The legal hours for landing summer flounder are from 6:00 AM to 8:00 PM only;

(3) All Summer flounder must be weighed prior to the removal of the summer flounder from the dealer's premises or from the point of transfer;

(4) The weight scales must be certified in accordance with Rhode Island law RIGL, Chapter 47-1;

(5) All Summer flounder may only be shipped out of state in standard 60 or 100 pound cartons (containers) unless specific prior written authorization is requested and received from the Division of Law Enforcement;

7.7.7 Control Date: A control date of December 31, 2010, is established for the commercial Summer flounder fishery in Rhode Island.

Option 2: Reduction in starting possession limits to account for 30% decrease in quota in 2016 (Note: The DFW may adjust these numbers moderately based on additional analysis).

7.7.2 Commercial:

(A) Minimum size: Fourteen (14) inches.

(B) Seasons, allocations, and possession limits: A total annual statewide quota for Summer flounder will be established for the State by the Atlantic States Marine Fisheries Commission (ASMFC) and/or NOAA Fisheries.

(1) Winter sub-period: January 1 - April 30 annually:

(a) Target allocation: 54% of the annual quota.

(b) Possession limit between January 1 and the start of the Winter sub-period of the Aggregate Landing Program, annually:

(i) Vessels that possess a valid RI Summer Flounder Exemption Certificate (Exemption Certificate): Two hundred (200) pounds per vessel per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day.

(c) Possession limit during the Winter sub-period of the Aggregate Landing Program, annually:

(i) Vessels not permitted in the Aggregate Landing Program but which possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the DFW, the possession limit per vessel shall be one hundred (100) pounds per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: Two hundred (200) pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the DFW, the possession limit per vessel shall be one hundred (100) pounds per calendar day.

(iii) Aggregate Landing Program: ~~2,000~~ **One thousand four hundred (1,400)** pounds per vessel per calendar week. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When 90% of the Winter sub-period quota has been harvested as determined by the DFW, the Aggregate Landing Program will terminate and the possession limit shall be one hundred (100) pounds per vessel per calendar day.

(2) Summer sub-period: May 1 - September 15 annually:

(a) Target allocation: 35% of the annual quota.

(b) Possession limit between May 1 and May 31, annually:

(i) Vessels that possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.

(ii) Vessels that do not possess a valid Exemption Certificate: ~~One hundred (100)~~ **Fifty (50)** pounds per vessel per calendar day.

(c) Possession limit during the Summer sub-period of the Aggregate Landing Program, annually:

- (i) Vessels not permitted in the Aggregate Landing Program, but which possess a valid Exemption Certificate: ~~One hundred (100)~~ **Fifty (50)** pounds per vessel per calendar day.
 - (ii) Vessels that do not possess a valid Exemption Certificate: ~~One hundred (100)~~ **Fifty (50)** pounds per vessel per calendar day.
 - (iii) Aggregate Landing Program: ~~Seven hundred (700)~~ **Three hundred and fifty (350)** pounds per vessel per week. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When 80% of the Summer sub-period quota has been harvested as determined by the DFW the program will terminate and the possession limit per vessel shall be one hundred (100) pounds per calendar day.
- (3) Fall Sub-Period: September 16 – December 31 annually:
- (a) Target allocation: 11% of the annual quota.
 - (b) Possession limit:
 - (i) Vessels that possess a valid Exemption Certificate: ~~Two hundred (200)~~ **One hundred (100)** pounds per vessel per calendar day.
 - (ii) Vessels that do not possess a valid Exemption Certificate: ~~Two hundred (200)~~ **One hundred (100)** pounds per vessel per calendar day.

7.7.3 Aggregate Landing Program:

(A) Sub-periods:

- (1) Winter: Beginning on the Sunday of the first full week in February through April 30 annually, or until 90% of the Winter sub-period quota has been harvested as determined by the DFW.
- (2) Summer: Beginning on June 1 through September 15 annually, or until 80% of the Summer sub-period quota has been harvested as determined by the DFW.

(B) Eligibility: An applicant vessel shall be considered eligible for a permit to participate in the Aggregate Landing Program by demonstrating to the satisfaction of the DFW and the Division of Law Enforcement each of the following:

(1) The vessel, if harvesting Summer flounder from federal waters possesses a valid federal Summer Flounder Moratorium Permit and possesses a valid RI Summer Flounder Exemption Certificate (Exemption Certificate);

(2) The vessel's operator, if harvesting exclusively in State waters, holds a valid RI commercial fishing license to harvest or land summer flounder and possesses a valid Exemption Certificate;

(3) The vessel's operator has not been assessed a criminal or administrative penalty in the past three years for a violation of this section or has more than one marine fisheries violation.

(C) Application: Application for an Aggregate Landing Program Permit shall be made on forms as prescribed by the Director.

(D) No vessel shall possess simultaneously more than one Aggregate Landing Program permit;

(E) Non-compliance with the provisions of these regulations or the permit agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for remainder of the sub-period or the subsequent sub-period. If for any reason a sub-period does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current sub-period upon adjudication.

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7.7.4 Rhode Island Summer Flounder Exemption Certificate:

(A) Application: Applicant's shall provide the following:

(1) A copy of the operator's valid current Rhode Island commercial fishing license or non-resident landing license, and Federal Fluke Permit if the summer flounder is to be taken in the EEZ; and

(2) A completed notarized application; and

(3) Proof that the vessel meets the requirements set out in this section; and

(4) 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

(5) A copy of the vessel's U.S. Coast Guard documentation papers or state

issued boat registration certificate proving ownership of the vessel.

(B) Eligibility: DFW will issue an Exemption Certificate for a vessel if the owner of the vessel or his/her representative applies to DFW prior to January 1, 1997, for the issuance of such a certificate and demonstrates to the satisfaction of the Director that:

(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 pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992; or

(b) The vessel fished exclusively in the Exclusive Economic Zone (EEZ) and landed and sold in excess of one pound of summer flounder to a licensed Rhode Island licensed 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; or

(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 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; or

(d) The vessel replaces a vessel which fished exclusively in the EEZ and landed and sold in excess of one 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.

(C) Transfer of an Exemption Certificate: An Exemption Certificate issued by the

DFW 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.

(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. Individuals who purchase a vessel issued an 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) US Coast Guard documentation or state registration.

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(b) Vessel permits (state and federal), Exemption Certificates, and fishing history cannot be split.

(c) An Exemption Certificate may not be combined to create larger replacements vessels.

(d) The replacement vessel may not exceed a 10 percent increase in length overall (LOA), a 10 percent increase in gross registered tonnage (GRT) or net tonnage (NT), or a 20 percent increase in horsepower of the vessel's baseline specifications, as applicable.

(e) 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.

(f) 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:

(i) The vessel's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

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(D) Exemption Certificates may not be:

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(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.

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7.7.6 Dealer Regulations:

(A) Prohibition on the transfer of Summer flounder: No Summer flounder may be purchased, bartered, or sold within the State of Rhode Island unless marked, processed, shipped, labeled, and handled in accordance with the following rules:

(1) The licensed person in charge of the vessel may only transfer Summer flounder to dealers who possess a valid Rhode Island Dealer's License;

(2) No licensed person in charge of the vessel may land Summer flounder after 8:00 PM or prior to 6:00 AM. The legal hours for landing summer flounder are from 6:00 AM to 8:00 PM only;

(3) All Summer flounder must be weighed prior to the removal of the summer flounder from the dealer's premises or from the point of transfer;

(4) The weight scales must be certified in accordance with Rhode Island law RIGL, Chapter 47-1;

(5) All Summer flounder may only be shipped out of state in standard 60 or 100 pound cartons (containers) unless specific prior written authorization is requested and received from the Division of Law Enforcement;

7.7.7 Control Date: A control date of December 31, 2010, is established for the commercial Summer flounder fishery in Rhode Island.