

Department of Environmental Management

Administrative Adjudication Division

State of Rhode Island

RE: F/V RYAN'S DAUGHTER

AAD No. 98-003/F&WA

August 31, 1999

DECISION AND ORDER

This matter came before the Administrative Adjudication Division ("AAD") of the Department of Environmental Management ("Department" or "DEM") pursuant to a request for a hearing filed at the AAD by T. Michael Larkin on behalf of F/V Ryan's Daughter ("Appellant" or "Applicant") on the denial by the Division of Fish and Wildlife ("Division") of Applicant's application for a Rhode Island Summer Flounder Certificate of Exemption (which authorizes the landing of summer flounder by commercial fishing vessels in excess of the daily limit authorized by applicable regulations).

The within proceeding was conducted in accordance with the statutes governing the AAD (R.I.G.L. Section 42-17.7-1 et seq), the Administrative Procedures Act (Chapter 42-35 of the General Laws of Rhode Island as amended) and the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules"). Leonard L. Bergersen, Esq. represented the Applicant and Gary Powers, Esq. represented Division.

The following facts are undisputed. On December 11, 1996, pursuant to duly promulgated Regulations, Division established a deadline for the issuance of "Rhode Island Summer Flounder Exemption Certificates" which authorize the landing of summer flounder by commercial fishing vessels in excess of the daily limit authorized by applicable regulations (as modified periodically by filing with the Secretary of State). The regulations provide that an application for an exemption certificate shall be mailed or submitted prior to January 1, 1997 to the Office of Fish and Wildlife in Wakefield Rhode Island. Applicant submitted an application for a Certificate of Exemption on or about February 26, 1997. Division, by letter dated November 24, 1998, informed Applicant that the application was unacceptable because of its untimely submission and therefore the application could not be considered for issuance or denial. Applicant filed a request for a formal hearing at the AAD on December 1, 1998.

The Prehearing Conference was held on January 22, 1999, and the Prehearing Conference Record was prepared by the Hearing Officer. The following stipulations were entered by agreement of the parties:

1. That the Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Appellant.
2. That the Appellant submitted its application for the issuance of a certificate of summer flounder landing exemption certificate subsequent to December 31, 1996.

3. On or about February 26, 1997, Applicant executed and submitted to RI-DEM application for certificate of exemption.
4. RI-DEM personnel refused to accept application package dated February 26, 1997 for processing.
5. Lack of timely submission is the sole basis for refusal by RI-DEM to process application package for issuance of requested Certificate of Exemption.

The parties submitted the following as the issues to be considered at the hearing (pursuant to the Prehearing Conference Record):

APPLICANT:

1. Whether the Department is estopped from denying the requested Certificate of Exemption on the basis of regulation with effective date of January 1, 1997 requiring submission of application on or before December 31, 1996, said deadline imposed being prior to effective date of regulation, neither of which Applicant had any actual notice.
2. Whether the Department is estopped from denying the requested Certificate of Exemption having accepted on multiple occasions during 1996 landing reports of significant quantities of summer flounder in excess of 200 lbs per trip, without Applicant being advised of necessity of present application for Certificate of Exemption.
3. That Applicant is substantively qualified for the requested Certificate of Exemption, and is being denied same based solely on Applicant's failure to timely apply for the Certificate of Exemption, under **ex post-facto** regulation.
4. That Applicant's failure to timely apply for the Certificate of Exemption was the result of mistake, inadvertence, misinformation, surprise or excusable neglect.
5. That denial of the requested Certificate of Exemption by RI-DEM discriminates against Applicant as a resident and previously licensed commercial fisherman of the State of Rhode Island, under the Rhode Island and/or Federal Constitutions.
6. That denial of the requested Certificate of Exemption by RI-DEM precludes Applicant from full and equal participation with other federal and state licensees, in the Exclusive Economic Zone (EEZ) and State Summer Flounder Fishery under state and federal licenses held.

DIVISION:

1. Whether the review of the February 26, 1997 application should be accomplished by the Division despite its untimely submission.
2. The only proper remedy which may be afforded to the Applicant by the AAD, if the application were deemed timely on this appeal, is the remand of this application to the Division for a complete review of it by the Division.

The adjudicatory hearing was held on March 2, 1999. Applicant filed a Post-hearing Memorandum on April 7, 1999. Division filed its Post-hearing Memorandum on April 20, 1999. Applicant filed a

Reply Memorandum on May 3, 1999. At the hearing, applicant presented two witnesses, viz. Edward O. Todd and T. Michael Larson. Division presented two witnesses, viz. Richard T. Sisson and April K. Valliere.

The exhibits proffered by the parties, marked as they were admitted into evidence, are indicated on Appendix A.

Edward O. Todd testified that in December, 1996 he was the master of the F/V Alliance ("vessel"), which had been undergoing repairs in a shipyard in Providence, Rhode Island since August, 1996. The F.V. Ryan's Daughter was also undergoing repairs at said shipyard during this same period of time. Mr. Todd and Mr. Larkin had discussions while at the shipyard regarding the planned employment of their respective commercial fishing vessels on leaving the shipyard due to the expected January, 1997 increase in permitted fluke landings. At that time, they felt that they were properly licensed to take advantage of the quota increase, and they were unaware of any limitations on their abilities to land fluke in Rhode Island under their presently held licenses.

Thomas Michael Larkin testified that during 1995 he was the owner/operator of a previous fishing vessel, the Point Judith, which burned and sank at sea on February 13, 1995. He acquired a replacement vessel (the F/V Ryan's Daughter) in April of 1996; and after outfitting and repairing same (which took approximately one month) he resumed fishing. During 1996 he fished for fluke and other fish. In mid-November of 1996, the F/V Ryan's Daughter developed a leak, and it remained in a marina in Providence undergoing repairs for about one month. Between 1995 and 1997, he routinely renewed all federal and state permits. He possessed two licenses to fish for fluke in December, 1996, viz. a federal fishing permit and a Rhode Island all purpose fishing license.

Mr. Larkin testified that in February, 1997, he first gained knowledge of the inability of the vessel to land in excess of 200 pounds of summer flounder without a Certificate of Exemption from the Division. He submitted an application for said Certificate on February 26, 1997. The Division would not process said application at that time because it was filed subsequent to December 31, 1996. Division held the Application in obedience (at Applicant's request) in an effort to resolve the timeliness issue. Subsequently, by letter dated October 13, 1998, Division detailed its efforts (pursuant to a resolution passed by the Rhode Island General Assembly) to facilitate the transfer of certificates from vessels no longer wishing to participate in the summer flounder to Applicant's vessel and the three other vessels for whom untimely applications had been submitted. Division's inquiry identified two certificate holders who indicated a willingness to transfer their certificates; however, applicant's attempts to obtain a transfer certificate proved unsuccessful. On November 24, 1998, Division sent a denial letter to Applicant stating that the Application was unacceptable because of its untimely submission to the Division and therefore could not be considered for issuance or denial.

It was elicited in cross-examination that Mr. Larkin has been a commercial fisherman for twenty-six years; and that after the Point Judith was lost, Applicant utilized savings to support himself, as well as serving as a crew member on three transit trips around November, 1996.

Richard T. Sisson, Deputy Chief of Marine Fisheries of DEM, testified that he has been employed by the Department since 1968. He reviewed the establishment of summer flounder quotas and the development of the current Regulations, including the Summer Flounder Certificate of Exemption (which authorizes the landing of summer flounder by commercial fishing vessels in excess of the

daily limit authorized by regulations). He explained the background leading to the adoption of the "sunset date" for the filing of applications for a Certificate of Exemption, and described the procedures followed to advise the commercial fishermen of the December 31, 1997 moratorium on the filing of applications.

April K. Valliere, a Principal Marine Biologist with the Division testified as to her participation in the formulation of the Summer Flounder regulations and the processing of applications for Certificates of Exemption. This witness also described the measures taken to notify fisherman and other concerned parties of the regulations regarding the Summer Flounder Emergency Regulations and the filing of Applications for Certificates of Exemption.

It is Applicant's contention that he has presented sufficient evidence to satisfy his burden of proving by a fair preponderance of evidence that his failure to timely apply for a certificate of exemption was caused by mistake, inadvertance, misinformation, surprise or excusable neglect, or other reasons justifying relief from the denial of his application. Applicant asserts that his failure to timely file was not due to his own carelessness or inattention; and that his reasons for his untimely filing are more fairly analagous to those in which excusable neglect was found to exist and relief granted on the grounds of excusable neglect in numerous court decisions. It is argued by Applicant that in addition to having met the specified R.C.P. 60(b) standard for relief, failure to grant the requested relief would be violative of the due process, ex post facto, discrimination and equal protection provisions of the United States and Rhode Island constitutions. Applicant therefore requests that the application for a Summer Flounder Moratorium Certificate of Exemption be deemed timely, and that the application be remanded to the Division for processing with instructions to issue Applicant a Certificate of Exemption as a historical participant in the fishery.

It is Division's contention that the applicant failed to present an adequate factual basis for a finding of excusable neglect or inadequate notice as warrants Applicant being granted an exception for untimely filing an application for issuance of a Rhode Island Summer Flounder Landing Exemption Certificate. Division asserts that the Applicant has offered argument on only one of the six (6) purported issues advanced by Applicant, viz. that Applicant's failure to timely apply for the Certificate of Exemption was the result of mistake, inadvertance, misinformation, surprise or excusable neglect; and therefore the other issues, not having been presented, must be deemed waived. Division disputes the Applicant's claim that he "had no knowledge as to the requirement for any special certificate of exemption to land fluke in the State of Rhode Island" until February 1997. It is argued by Division that the evidence presented does not demonstrate the existence of such facts as would furnish a basis for excusable neglect in failing "to take the proper steps" for a summer flounder exemption certificate prior to the sunset date. Division therefore requests that the Applicant's claim be dismissed pursuant to rule 52(c) of the Superior Court Rules of Civil Procedure due to Applicant's failure to present a factual basis upon which excusable neglect or inadequate notice may be found.

Pursuant to statutory and regulatory authority, the Rhode Island Marine Fisheries Council ("RIMFC") adopted rules and regulations governing the possession or harvesting of fluke (summer flounder) by commercially licensed fisherman. These regulations established a total annual statewide quota for fluke (the same as the most recent federal allocation for the state). "Subperiod" quotas were established, which would be adjusted to meet the annual quota. These regulations also provided for Trip Limits (possession limit), and the catch rate to be set by the filing of a notice of same at the Secretary of State's office by Fish and Wildlife. On December 11,

1996, the Department filed the “Moratorium on the Landing of Summer Flounder” Regulations at the Secretary of State’s office, which specified the requisite qualifications, criteria and procedures as well as the so-called “sunset date” for the filing of applications for a Rhode Island summer flounder exemption permit.

The following are the pertinent regulations which were adopted by RIMFC:

7.7.6 Moratorium on the Landing of Summer Flounder -- No person shall possess, land, sell, or offer for sale in excess of two hundred (200) pounds of summer flounder *Paralichthys dentatus*, in any calendar day, in the State of Rhode Island or the jurisdictional waters of the state without a summer flounder exemption certificate issued by Fish and Wildlife and a valid Rhode Island commercial fishing license. Application for a summer flounder exemption permit must be received by Fish and Wildlife prior to January 1, 1997.

7.7.9 Submission of Application--Application for an exemption certificate shall be mailed or submitted prior to January 1, 1997 to the office of Fish and Wildlife at: Oliver Stedman Government Center, 4808 Tower Hill Rd., Wakefield, RI 02879, Attention: Fluke Exemption.

Evidence was presented and arguments advanced by both sides as to the seminal issue in this matter, viz. whether the Applicant’s failure to timely file an Application for a Certificate of Exemption was caused by such excusable neglect as entitle Applicant to relief from the denial of his application. Essentially, the Applicant seeks to have his application deemed timely on the grounds of excusable neglect pursuant to Rule 60(b) of the R.I. Superior Court Civil Rules of Practice. As additional grounds, Applicant maintains that the granting of the requested relief is called for on fundamental grounds under the United States and Rhode Island Constitutions.

The precise excusable-neglect issue has been previously addressed by DEM. It has been determined by final agency decision that an untimely filing shall not automatically result in a disqualification. The time for filing such applications (unlike appeal periods or requests for an adjudicatory hearing) is considered directory in light of the apparent harm that results from a strict mandatory deadline. F/V Alliance, AAD No. 97-003/F&WA, Final Decision and Order dated February 20, 1998.

The Applicant has the burden of proving by a preponderance of the evidence that the factual basis presented by him is sufficient to warrant the finding of excusable neglect sufficient to justify the granting of the requested relief. The authority to grant such relief is contained in Section 8.00(a)1 of the AAD Rules which provides that a party may request any order or action not inconsistent with law or these regulations which is permissible under the AAD Rules and the R.I. Superior Court Civil Rules of Practice. Super. R. Civ. P. Rule 60(b) provides that a party may be granted relief from a final judgement, order, or proceeding for the following reasons: mistake, inadvertance, surprise, excusable neglect, or any other reason justifying relief. What constitutes mistake, inadvertance, or excusable neglect sufficient to justify relief under Rule 60(b) depends on all the circumstances. (Kent, Commentaries, Section 60.3).

Rhode Island court cases dealing with the standard of excusable neglect generally deal with motions to vacate default judgments under Super. R. Civ. P. 60(b). However; the same standards that have been applied by courts to their own or subordinate court rules and orders have been applied to regulations or orders of various agencies or authorities.

The Rhode Island Supreme Court has incorporated the formulation of Black’s Law Dictionary, 566

(6th ed. 1990) [defining excusable neglect] as “a failure to take the proper steps at the proper time, not in consequence of the party’s own carelessness, inattention or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel, or on the promises made by the adverse party”. The Astors’ Beechwood v. People Coal Co., 659 A. 2d 1109 (R.I. 1995).

The existence of excusable neglect is a question of fact that must be established by evidence. Graham Architectural Products Corp. v. M & J Constr. Co., 492 A. 2d 150 (R.I. 1985). The party seeking relief must show “extenuating circumstances of sufficient significance to render” his neglect excusable. Ludwig v. Kowal, 419 A. 2d 297 (R.I. 1980).

Unexplained neglect standing alone and without more will not automatically excuse noncompliance with orderly procedures. The party seeking relief must present evidence sufficient to establish that the neglect present in this case was occasioned by some extenuating circumstances of sufficient significance to render it excusable. Fields v. S & M Foods, Inc., 105 R.I. 161, 249 A. 2d 892 (1969).

The liberal application which the inadvertence and excusable neglect standard has received in the federal courts suggests that a trial justice may now have a wider latitude for the exercise of his discretion. The new standard is not available, however, to circumvent other procedural requirements nor is it so latitudinous as to permit relief where neglect is without excuse, King v. Brown, 103 R.I. 154, 235 A.2d 874 (1967).

Excusable neglect required under the Rules of Procedure for Domestic Relations to set aside a Family Court judgment may be a less stringent standard than that which is needed to set aside other types of default judgment. However, in both the Family Court and the Superior Court, unexplained neglect alone will not justify granting of a motion to vacate.¹ The excusable neglect that would qualify for relief from judgment is generally that course of conduct which a reasonably prudent person would take under similar circumstances. Pari v. Pari, 558 A.2d 632 (R.I. 1989).

The Rhode Island Supreme Court has held that the rules of arbitration establishing a deadline for filing written rejection of an arbitration award do not restrict a trial justice’s discretionary power under rules of Civil Procedure to enlarge time for notice of rejection when the moving party demonstrates the existence of conditions such as excusable neglect. Relief will not be granted, however, unless it is first factually established that the neglect was occasioned by neglect occasioned by extenuating circumstances of sufficient significance to render it excusable. Astors Beechwood v. People Coal Co., 659 A.2d 1109 (R.I. 1995).

Excusable neglect was found to exist when there was overwhelming medical evidence demonstrating that counsel was suffering from chronic depression and stress for which counsel was under medical treatment, and that medical condition was of such a serious nature that it later caused counsel to be transferred to inactive status by the court. Iddings v. McBurney, 657 A.2d 550 (R.I. 1995).

The issue of excusable neglect was considered in several recent matters involving the late filing of an application for a certificate of exemption. In the matter of F/V Alliance, AAD No. 97-003/F&WA, Final Agency Order dated February 20, 1998, the Hearing Officer found that the Applicant had presented a sufficient detailed and substantial factual basis to justify a finding of such excusable neglect as warranted relief from meeting the subject filing deadline. In the matter of F/V Sister

Alice, AAD No. 98-002/F&WA, Final Agency Order dated April 8, 1999, the Hearing Officer found that the Applicant failed to meet his burden of proving that his conduct constituted excusable neglect.

In F/V Alliance, (as in the instant matter) the application was filed within a short time after Applicant learned of and had the opportunity to address the untimeliness; the elapsed time was of very short duration; and the applicant diligently pursued his rights. Whereas, in F/V Sister Alice the Applicant allowed ten months to elapse before pursuing the matter; and it was determined that he allowed his rights to languish. Additionally, the Applicant in F/V Alliance provided a detailed explanation of the unique and extraordinary problems encountered during the period that the pertinent regulations were promulgated; whereas, the Applicant in F/V Sister Alice had no reason for being unaware of the deadline other than his contention that he did not receive actual notice of it. Clearly, there is no requirement that mandates actual notice of the adoption of regulations; and the sole issue requiring determination in the instant matter is whether Applicant has sustained his burden of proving that he is entitled to the relief requested on the grounds of excusable neglect.

The evidence introduced demonstrates that the Applicant is entitled to the relief requested. The application was filed within a short time after Applicant learned of and had an opportunity to address the untimeliness; the elapsed time is of very short duration; and the Division is not prejudiced by the delay. See Safronski v. Commission, 695 A.2d 291 (Pa. Comweth. 1997).

Applicant was a historical participant in the Rhode Island fisheries, his application was submitted only fifty-seven (57) days late, and he filed as soon as he became aware of the need for an exemption. He provided a detailed explanation of why he had been unaware of the deadline for filing, each of his reasons alone being of a catastrophic nature. The unfortunate sinking of Applicant's previous fishing vessel at sea, together with all the papers and licenses onboard pertaining to the fishery operations, was certainly a most dreadful and extraordinary calamity. Applicant was then confronted with the problems of obtaining a replacement vessel, the requisite licenses, and other associated tasks, in an effort to restore him to his previous commercial fishing status. Shortly after the resumption of fishing, the Applicant's replacement vessel developed an engine room leak which removed the vessel from active service during November and December of 1996. As a result of the aforesaid catastrophies, Applicant was removed from the commercial fisheries for some eighteen (18) months. After filing his application, Applicant (and the Division) expended considerable time and effort in unsuccessful attempts to obtain relief for Applicant via "re-opening the application period" and the search for a one time transfer of a certificate from vessels no longer participating in the flounder program.

The granting of the requested relief under the unique circumstances in the instant matter should not "open the floodgates" for others to file since it was most unusual that other historical applicants could have encountered such a unique problem as the sinking of their boat during the time the regulations were being promulgated. Also, even in the unlikely event that there are other fishing vessels who might not have timely filed because of similar catastrophies, such filings would hardly meet the test of having filed within a short period of time in order to be granted relief for an untimely filing on excusable neglect grounds.

After a careful review of the evidence, I am satisfied that a satisfactory factual basis has been presented by the Applicant to justify granting of the relief requested by Applicant. The Applicant's testimony that he was unaware of the need for a certificate, and that he acted diligently upon

learning of same, was credible and essentially uncontradicted. He acted as a reasonably prudent person would have acted under similar circumstances, and it would be unduly harsh to permanently bar the Applicant from obtaining a certificate of exemption. The Applicant introduced sufficient evidence to explain the reasons for his neglect and to demonstrate that such neglect was occasioned by such extenuating circumstances of sufficient significance to warrant a finding of excusable neglect.

In addition to seeking relief on the grounds of excusable neglect, Applicant also argues that the Department should be estopped from denying the requested Certificate of Exemption for the following reasons: (1) the deadline imposed for the submission of an application (December 31, 1996) was prior to the effective date of the regulation (January 1, 1997); and (2) the Division failed to advise Applicant of the necessity for a Certificate of Exemption despite the Division's acceptance of Respondent's landing reports of significant quantities of summer flounder in excess of 200 pounds per trip during 1996. Applicant also raised several constitutional issues in the Prehearing Conference Record and his Post-Hearing Memorandum. Division asserts that said constitutional issues "must be deemed waived and shall not be argued in this memorandum" since these constitutional issues were not presented by the Applicant. Because the excusable neglect issue is dispositive in this matter, I refrain from reaching the estoppel or constitutional issues.

FINDINGS OF FACT

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

1. Thomas Michael Larkin ("Applicant") was the owner/operator of a previous commercial fishing vessel (F/V Point Judith) which burned and sank at sea on February 13, 1995.
2. Applicant was removed from commercial fishing for approximately eighteen (18) months following the sinking of the F/V Point Judith.
3. Applicant acquired the F/V Ryan's Daughter as a replacement fishing vessel in April of 1996, and thereafter resumed commercial fishing in the State of Rhode Island, including the landing of flounder.
4. Applicant's replacement vessel, the F/V Ryan's Daughter, developed an engine room leak, which removed the vessel from active service during November and December of 1996.
5. Applicant possessed all valid Federal and State commercial fishing licenses for 1996, except for the Rhode Island Certificate of Exemption for the landing of summer flounder in excess of two hundred pounds.
6. The Applicant submitted an application for the issuance of a summer flounder exemption certificate subsequent to December 31, 1996.
7. Applicant executed and submitted to Division his application for a Certificate of Exemption on or about February 26, 1997
8. Division refused to accept the aforesaid application package dated February 26, 1997 for processing.

9. Lack of timely submission is the sole basis for refusal by Division to process said application package for issuance of requested Certificate of Exemption.
10. Applicant landed and reported to Division the landing of significant quantities of summer flounder in excess of two hundred (200) pounds per trip during 1996.
11. Due to the unique and extraordinary problems encountered by the Applicant from February, 1995 until December, 1996, Thomas Michael Larkin did not file an application for a state certificate of exemption to land summer flounder by the January 1, 1997 deadline.
12. Thomas Michael Larkin applied for a certificate of exemption on February 26, 1997 immediately after he was informed of the necessity to obtain a certificate of exemption.
13. Division refused to accept the application package dated February 26, 1997 for processing, and at Applicant's request Division "held" said application while the state legislature and the Rhode Island Marine Fisheries Council discussed possibly "re-open [ing] the application period."
14. On November 24, 1998, Division (pursuant to Applicant's request for a determination) denied the application for issuance of a Certificate of Exemption to the F/V Ryan's Daughter.
15. Applicant's failure to timely apply for the requisite certificate of exemption was the result of such excusable neglect as warrants the granting of the relief requested by Applicant.

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 Administrative Adjudication Division has valid jurisdiction over this matter pursuant to R.I. Gen. Law §42-17.7-2 and Rule 3.00 of the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters. ("AAD Rules").
2. Rule 8.00(a)(1) of the AAD Rules allows for motion practice under the Rhode Island Superior Court Rules of Civil Procedure. ("R.C.P.")
3. R.C.P.60(b) allows relief from a judgment or order on the grounds of mistake, inadvertence, excusable neglect or other reasons justifying relief from operation of the judgment or order.
4. The Division's denial letter of February 6, 1997 constitutes "an order or proceeding from which an appeal lies" under R.C.P.54(a).
5. The applicant sustained his burden in demonstrating by a preponderance of the evidence that his failure to timely submit the application for an exemption certificate was caused by such excusable neglect as entitle Applicant to relief from the denial of his application for the certificate of exemption.

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

ORDERED

1. That the Application for a Rhode Island Summer Flounder Certificate of Exemption filed by

Thomas Michael Larkin ("Applicant") on behalf of the F/V Ryan's Daughter be and is hereby deemed timely filed.

2. That the Division's request for dismissal of Applicant's claim is hereby DENIED.

3. That the Applicant's appeal is sustained and a decision is hereby rendered that the Applicant has presented an adequate factual basis for a finding of excusable neglect.

4. That this matter is remanded to the Division for further determination of whether the Applicant meets the requisite substantive conditions of eligibility to receive a Rhode Island Summer Flounder Exemption Certificate (other than for a timely filing of his application).

5. That the Division shall file its written determination of whether Applicant meets the requisite substantive conditions of eligibility to receive a Rhode Island Summer Flounder Exemption Certificate at the Administrative Adjudication Division (with copy to Applicant's Attorney) within seven (7) days of the date of the Final Decision.

6. In the event that Division determines that Applicant meets the requisite substantive conditions of eligibility, Division shall issue said Exemption Certificate forthwith.

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this 16th day of August, 1999.

Joseph F. Baffoni
Hearing Officer

Entered as a Final Agency Decision and Order this 31st day of August, 1999.

Jan H. Reitsma
Director

APPENDIX A

LIST OF EXHIBITS

APPLICANTS EXHIBITS

Applic. 1 Full

Initial Application package for Certificate of Exemption of F/V Ryan's Daughter dated 2/26/1997. 18 Pages (copy).

Applic. 2 Full

Division of Fish and Wildlife letter (2 Pages) dated October 13, 1998 and April 10, 1997 (copy).

DIVISION'S EXHIBITS

Div. 1 Full A copy of the November 24, 1998 denial by the Division of an application for the issuance to the F/V Ryan's Daughter (the "Appellant") of a Summer Flounder Landing Exemption Certificate. 1 Page (copy).

Div. 2 Full A copy of a request on behalf of the Appellant for a formal hearing dated November 29, 1998. 1 Page (copy).

Div. 3 Full A copy of the curriculum vitae of April K. Valliere. 3 Pages (copy).

Div. 4 Full A copy of the curriculum vitae of Richard T. Sisson. 3 Pages (copy).

Footnotes

- 1 The Court stated that the wording of Rule 60(b) of the Rules of Procedure for Domestic Relations and the wording of Rule 60(b) of the Superior Court Rules of Civil Procedure are identical. As both Rules have identical wording and purpose, Superior Court precedents regarding its Rule 60(b) may be drawn upon to interpret Rule 60(b) under the Rules of Procedure for Domestic Relations.