



roughly one trip short of qualifying his Permit for a GTLE.<sup>8</sup> Appellant further stated Vessel's former owner had told him there were previous golden tilefish landings associated with the Permit, but the former owner was unable to locate the logbooks and state trip tickets.<sup>9</sup>

On October 24, 2013, NAO sent Appellant a letter notifying him the office had received his appeal, and requesting he submit any additional documentation or information in support of his appeal by November 14, 2013.<sup>10</sup> NAO did not receive additional material supporting Appellant's claim.

On November 8, 2013, and November 20, 2013, NAO sent Appellant a Notice Scheduling Hearing.<sup>11</sup> On December 19, 2013, Appellant testified during his scheduled hearing that he was very close to qualifying his Permit for a GTLE, but Vessel's mechanical breakdown during the 2011 fishing season resulted in a shortcoming of roughly 1,500 pounds.<sup>12</sup> Appellant also stated he was attempting to obtain the logbooks from Vessel's previous owner in order to compare them to NMFS' landing records for his Permit.<sup>13</sup> NAO allowed Appellant until January 18, 2014, to locate these logbooks.<sup>14</sup> On January 7, 2014, Appellant sent NAO an email indicating he was unable to obtain the logbooks from Vessel's previous owner.<sup>15</sup>

## ISSUE

The broad issue in this case is whether Appellant qualifies for a GTLE under the Regulation. To resolve that issue, I must answer the following:

Did Appellant have an average of at least 5,000 pounds of golden tilefish (gutted weight) landings using longline gear over the best 3 years within the period of 2006 through 2011?

If the answer to this question is "no," Appellant is not eligible for a GTLE, and I must uphold the DL.

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<sup>8</sup> Pleadings Tab, Appellant's Appeal Letter, dated August 11, 2013 and received August 18, 2013.

<sup>9</sup> Pleadings Tab, Appellant's Appeal Letter, dated August 11, 2013 and received August 18, 2013.

<sup>10</sup> Appeals Correspondence Tab, Letter from NAO to Appellant, dated October 24, 2013.

<sup>11</sup> Hearing Tab, Notice Scheduling Hearing, dated November 8, 2013; Hearing Tab, Notice of Rescheduled Hearing, dated November 20, 2013.

<sup>12</sup> Audio Recording of December 19, 2013, scheduled hearing.

<sup>13</sup> Audio Recording of December 19, 2013, scheduled hearing.

<sup>14</sup> Audio Recording of December 19, 2013, scheduled hearing.

<sup>15</sup> Pleadings Tab, Email from Appellant, dated and received January 7, 2014.

## FINDINGS OF FACT

1. Appellant holds a valid Permit.<sup>16</sup>
2. Appellant landed an average of 3,480 pounds of golden tilefish using longline gear over the best 3 years from 2006 to 2011.<sup>17</sup>
3. Appellant's Vessel suffered a mechanical breakdown during the 2011 golden tilefish fishing season.<sup>18</sup>

## PRINCIPLES OF LAW

Under the Regulation, to be initially eligible for an GTLE a person must possess a valid or renewable commercial vessel Permit that has golden tilefish landings using longline gear averaging at least 5,000 pounds (2,268 kg), gutted weight, over the best 3 years within the period from 2006 to 2011.<sup>19</sup> NMFS bases its initial eligibility determination on all the applicable golden tilefish landings associated with a person's Permit, including those reported by a prior Permit holder.<sup>20</sup>

Under the Regulation, NMFS' logbook records will determine appeals regarding landings data.<sup>21</sup> If NMFS' logbooks are unavailable, the reviewing official may use state landings records or data that comply with applicable Federal and state regulations.<sup>22</sup>

The Regulation limits an appeal to: 1) ownership of a qualifying permit, 2) the accuracy of the amount of landings, and 3) the correct assignment of landings to the permittee.<sup>23</sup> Hardship is not a basis for appeal.<sup>24</sup>

## ANALYSIS

### **Did Appellant have an average of at least 5,000 pounds of golden tilefish (gutted weight) landings using longline gear over the best 3 years within the period of 2006 through 2011?**

Under the Regulation, to qualify for a GTLE, Appellant must establish his Permit had golden tilefish landings associated with it that averaged at least 5,000 pounds (gutted

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<sup>16</sup> Denial Letter Tab, DL dated May 1, 2013.

<sup>17</sup> Denial Letter Tab, NMFS' summary of landings history for Permit [REDACTED].

<sup>18</sup> Audio Recording of December 19, 2013, scheduled hearing.

<sup>19</sup> 50 C.F.R. § 622.170(f)(1); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>20</sup> 50 C.F.R. § 622.170(f)(1); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>21</sup> 50 C.F.R. § 622.170(f)(3)(ii); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>22</sup> 50 C.F.R. § 622.170(f)(3)(ii); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>23</sup> 50 C.F.R. § 622.170(f)(3); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>24</sup> 50 C.F.R. § 622.170(f)(3); 78 Fed. Reg. 23858-01, 23862 (2013).

weight) over the best 3 years within the period of 2006 through 2011.<sup>25</sup> The Regulation indicates that NMFS' logbook records submitted on or before October 31, 2012, will determine appeals regarding landings data.<sup>26</sup> If NMFS' logbooks are unavailable, the RA may use state landings records or data submitted on or before October 31, 2012, that comply with applicable Federal and state regulations.<sup>27</sup>

The record reflects Appellant holds a valid Permit. However, it also establishes that the average golden tilefish landings associated with Appellant's Permit for the best 3 years from 2006 to 2011 was 3,480 pounds. Based on the evidence in the record, I conclude Appellant's Permit does not have golden tilefish landings associated with it that average at least 5,000 pounds (gutted weight) over the best 3 years of the period of 2006 through 2011. Therefore, Appellant's Permit does not qualify for a GTLE.

In reaching my decision, I have carefully reviewed the entire record, including Appellant's arguments. Appellant contends that his Vessel's mechanical breakdown during the 2011 golden tilefish season resulted in him falling short of the 5,000-pound average necessary to qualify his Permit for a GTLE.<sup>28</sup> Appellant also avers his 2012 landings of close to 20,000 pounds demonstrate what his potential was to land golden tilefish in 2011.<sup>29</sup>

In addition, Appellant argues NMFS should consider his longstanding involvement in the snapper grouper fishery. According to Appellant, he has participated in the snapper grouper fishery for the past 16 years, working his way up from crewing on a commercial fishing boat to owning his own boats and permits.<sup>30</sup> Appellant further states he has "worked with the South Atlantic Fishery Management Council (SAFMC) for many years on new regulations."<sup>31</sup>

I empathize with Appellant's difficult situation and his frustration with the timing of Vessel's breakdown, especially in light of his longstanding involvement in the snapper grouper fishery. However, the Regulation bars me from considering hardship as a basis for appeal. The Regulation also does not permit me to consider Appellant's involvement in the golden tilefish fishery, other than his golden tilefish landings from 2006 to 2011; and it does not permit me to consider Appellant's work with the SAFMC, or his 2012 golden tilefish landings. Instead, the sole issue I am authorized to resolve in this appeal is whether NMFS correctly determined the amount of golden tilefish landings associated with Appellant's Permit within the period from 2006 to 2011.

<sup>25</sup> 50 C.F.R. § 622.170(f)(1); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>26</sup> 50 C.F.R. § 622.170(f)(3)(ii); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>27</sup> 50 C.F.R. § 622.170(f)(3)(ii); 78 Fed. Reg. 23858-01, 23862 (2013).

<sup>28</sup> Pleadings Tab, Appellant's Appeal Letter, dated August 11, 2013 and received August 18, 2013; Audio Recording of December 19, 2013, scheduled hearing.

<sup>29</sup> Pleadings Tab, Appellant's Appeal Letter, dated August 11, 2013 and received August 18, 2013.

<sup>30</sup> Pleadings Tab, Appellant's Appeal Letter, dated August 11, 2013 and received August 18, 2013.

<sup>31</sup> Pleadings Tab, Appellant's Appeal Letter, dated August 11, 2013 and received August 18, 2013.

