

Appellant argues NMFS should allow him to use these landing histories to qualify his current vessel for a GTLE.⁹

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, 2013.¹⁰ On November 8, 2013, NAO sent Appellant a Notice Scheduling Hearing.¹¹ On December 9, 2013, Appellant sent NAO documentation in support of his appeal.¹²

On December 18, 2013, Appellant testified during his scheduled hearing that NMFS should issue him a GTLE because he fished for other people every year from 2006 to 2011, and caught an average of more than 5,000 pounds of golden tilefish each of these years.¹³ Appellant also stated he deserves a GTLE because he taught most of the individuals currently fishing for tilefish how to fish.¹⁴

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:

Was Appellant issued and did he possess a valid or renewable Permit?

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

If the answer to either of these questions is “no,” Appellant is not eligible for a GTLE, and I must uphold the DL.

FINDINGS OF FACT

1. NMFS records do not show Appellant owned a valid or renewable Permit.¹⁵
2. Appellant testified he landed 19,629 pounds of golden tilefish in 2006; 37,206 pounds of golden tilefish in 2007; 25,726 pounds of golden tilefish in 2008; and 9,740 pounds of golden tilefish in 2009.¹⁶

⁹ Pleadings Tab, Appellant's appeal, transmitted and received September 30, 2013.

¹⁰ Appeals Correspondence Tab, Letter from NAO to Appellant, dated October 24, 2013.

¹¹ Pleadings Tab, Notice Scheduling Hearing, dated November 8, 2013.

¹² Pleadings Tab, Supporting Documentation, transmitted and received December 9, 2013.

¹³ Audio Recording of December 18, 2013, scheduled hearing.

¹⁴ Audio Recording of December 18, 2013, scheduled hearing.

¹⁵ Denial Letter Tab, DL, dated September 11, 2013.

¹⁶ Audio Recording of December 18, 2013, scheduled hearing.

3. Appellant's golden tilefish landings from 2006 to 2011 were not associated with a Permit belonging to Appellant.¹⁷

PRINCIPLES OF LAW

Under the Regulation, to be initially eligible for an GTLE a person must possess a valid or renewable 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 of 2006 to 2011.¹⁸ 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.¹⁹

Under the Regulation, NMFS' permit records will determine appeals concerning whether an appellant owns a qualifying Permit.²⁰ An appellant who believes he or she meets this requirement must submit documentation establishing his or her ownership of a qualifying Permit.²¹

Where landings are at issue, NMFS' logbook records will determine landings data for appeals.²² If NMFS' logbooks are unavailable, the reviewing official may use state landings records or data that comply with applicable Federal and state regulations.²³ NMFS will attribute all applicable golden tilefish landings associated with a current Permit to the current Permit owner.²⁴

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.²⁵ Hardship is not a basis for appeal.²⁶

ANALYSIS

Was Appellant issued and did he possess a valid or renewable Permit?

Under the Regulation, to qualify for a GTLE, Appellant must establish that he was issued and possessed a valid or renewable Permit.²⁷ The Regulation specifies that

¹⁷ Audio Recording of December 18, 2013, scheduled hearing.

¹⁸ 50 C.F.R. § 622.170(f)(1); 78 Fed. Reg. 23858-01, 23862 (2013).

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

²⁰ 50 CFR § 622.170(f)(3)(i); 78 Fed. Reg. 23858-01, 23862 (2013).

²¹ 50 CFR § 622.170(f)(3)(i); 78 Fed. Reg. 23858-01, 23862 (2013).

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

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

²⁴ 50 C.F.R. § 622.170(f)(1); 78 Fed. Reg. 23858-01, 23862 (2013).

²⁵ 50 C.F.R. § 622.170(f)(3); 78 Fed. Reg. 23858-01, 23862 (2013).

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

²⁷ 50 CFR § 622.170(f)(1); 78 Fed. Reg. 23858-01, 23862 (2013).

NMFS' Permit records will be the sole basis for determinations of appeals regarding Permit ownership.²⁸

The record reflects Appellant was not issued and did not possess a valid or renewable Permit.²⁹ Appellant confirmed at his scheduled hearing that he did not hold a Permit with qualifying golden tilefish landings.³⁰ Because the Regulation requires an applicant hold a valid Permit, he does not qualify for a GTLE.

In reaching my decision, I have carefully reviewed the entire record, including Appellant's arguments. Appellant argues NMFS should issue him a GTLE because he has been catching golden tilefish since 1969.³¹ Appellant also states he deserves a GTLE based on his many years of working on commercial fishing boats, and his extensive involvement in the golden tilefish industry.³² According to Appellant, the fishermen do all the work, but it is the Permit holders who receive all the credit.³³ Appellant also argues he attended Council meetings and presented his comments about giving captains or vessel operators credit for landings along with the Permit holders.³⁴

I empathize with Appellant's situation; however, the sole issue I am authorized to resolve in this appeal is whether NMFS correctly determined the amount of golden tilefish landings associated with a Permit issued to Appellant. Appellant's above arguments do not address whether he was issued and possessed a valid or renewable Permit, and therefore, do not provide a basis for me to reverse SERO's DL. Further, the Regulation bars me from considering hardship as a basis for appeal.

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

Pursuant to the Regulation, to qualify for a GTLE, Appellant must establish a Permit issued to him had golden tilefish landings associated with it that averaged at least 5,000 pounds (gutted weight) over the best 3 years within the period of 2006 through 2011.³⁵ The Regulation indicates that NMFS' logbook records submitted on or before October 31, 2012, will determine appeals regarding landings data.³⁶ 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.³⁷

²⁸ 50 CFR § 622.170(f)(3)(i); 78 Fed. Reg. 23858-01, 23862 (2013).

²⁹ Denial Letter Tab, DL, dated September 11, 2013.

³⁰ Audio Recording of December 18, 2013, scheduled hearing.

³¹ Audio Recording of December 18, 2013, scheduled hearing.

³² Audio Recording of December 18, 2013, scheduled hearing.

³³ Audio Recording of December 18, 2013, scheduled hearing.

³⁴ Audio Recording of December 18, 2013, scheduled hearing.

³⁵ 50 C.F.R. § 622.170(f)(1); 78 Fed. Reg. 23858-01, 23862 (2013).

³⁶ 50 C.F.R. § 622.170(f)(3)(ii); 78 Fed. Reg. 23858-01, 23862 (2013).

³⁷ 50 C.F.R. § 622.170(f)(3)(ii); 78 Fed. Reg. 23858-01, 23862 (2013).

As indicated above, NMFS' records show Appellant was not issued and did not possess a valid and renewable Permit during the period of 2006 through 2011.³⁸ Consequently, Appellant does not have the golden tilefish landings associated with a Permit issued to him necessary to qualify for a GTLE.

Appellant states he fished for other people from 2006 to 2011, and caught more than 5,000 pounds of golden tilefish each of those years.³⁹ According to Appellant, he landed 19,629 pounds of golden tilefish in 2006; 37,206 pounds of golden tilefish in 2007; 25,726 pounds of golden tilefish in 2008; and 9,740 pounds of golden tilefish in 2009.⁴⁰ Appellant contends NMFS should allow him to use these landings to qualify for a GTLE.⁴¹

I have carefully considered Appellant's argument concerning the golden tilefish landings in 2006, 2007, 2008, and 2009. I understand Appellant's landed a significant amount of golden tilefish during those years; however, the Regulation specifies that I may only consider those golden tilefish landings associated with the current Permit owner. The record indicates that Appellant was not issued and does not possess a valid or renewable Permit.

In summary, Appellant has not established the DL issued to him was inconsistent with the Regulation. I have reviewed Appellant's concerns and understand his situation. However, I must uphold the DL because NMFS records do not indicate, and Appellant has not established, that he was issued and possessed a valid or renewable Permit with golden tilefish landings using longline gear that averaged at least 5,000 pounds over the best 3 years within the period of 2006 to 2011.

CONCLUSIONS OF LAW

Appellant is not eligible for a GTLE because he did not prove by a preponderance of the evidence that he was issued and possessed a valid or renewable Permit with 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 of 2006 to 2011.

The DL is consistent with the Regulation.

³⁸ Denial Letter Tab, DL, dated September 11, 2013.

³⁹ Audio Recording of December 18, 2013, scheduled hearing.

⁴⁰ Audio Recording of December 18, 2013, scheduled hearing.

⁴¹ Pleadings Tab, Appellant's appeal, transmitted and received September 30, 2013.

ORDER

The DL dated September 11, 2013, is upheld. The SERO Regional Administrator will review this appeal and advise Appellant of NMFS' final decision.

[REDACTED]

Steven Goodman
Administrative Judge

Date Issued: June 16, 2014