

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violation of Article 13, Title 3 of the Environmental Conservation Law (ECL) of the State of New York, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 40,

**ORDER**

DEC Case No.  
CO1-20180502-97

-by-

**OFFSHORE HARRY SPORTFISHING  
& OUTFITTING LLC,**

Respondent.

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In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent Offshore Harry Sportfishing & Outfitting LLC, which is situated in Northport, Suffolk County, New York, violated 6 NYCRR 40.1(c) by failing, during calendar year 2017, to timely submit five vessel trip reports (VTRs) or reports stating that no trips were made. The complaint seeks an order: (i) holding respondent in violation of 6 NYCRR 40.1(c); and (ii) assessing a civil penalty in the amount of one thousand two hundred fifty dollars (\$1,250).

On September 18, 2018, an adjudicatory hearing was convened before Daniel P. O'Connell, Administrative Law Judge (ALJ) of the Department's Office of Hearings and Mediation Services, to address these violations. ALJ O'Connell prepared the attached hearing report, which I adopt as my decision in this matter, subject to the following comments. As set forth in the ALJ's hearing report, respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing convened on September 18, 2018 (see Hearing Report at 3 [Finding of Fact No. 17]).

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (see Hearing Report at 4-5). At the hearing on September 18, 2018, Department staff presented proof of facts sufficient to enable me to determine that staff has a viable claim (see id.). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15.

On July 31, 2017, Offshore Harry Sportfishing & Outfitting LLC applied for and obtained Party/Charter Boat Permit #2405 (see Hearing Report at 2 [Finding of Fact No. 1]). Respondent, as a holder of a party/charter boat permit, was required to submit monthly vessel trip reports (VTRs) for five months in 2017 (August through December), but failed to do so. By

failing to timely file either the VTRs or reports stating that respondent did not fish, respondent violated 6 NYCRR 40.1(c) (see Hearing Report at 5). Accordingly, Department staff is entitled to judgment based on record evidence.

Department staff made several efforts to obtain respondent's compliance with the filing requirements (see Hearing Report at 3 [Findings of Fact Nos. 9, 10, 11, 12, and 14]; see also Hearing Exhibits 6 and 7). Department staff sent respondent a postcard on January 30, 2018 directing respondent to file the reports immediately. Respondent did not file the missing reports in response to this request. Subsequently, Department staff mailed respondent a notice dated March 20, 2018 indicating that respondent had not been filing the required reports and that, if the missing reports were not submitted, the matter could be referred for legal action. Respondent did not file the reports in response to Department staff's March 20, 2018 notice. Other staff inquiries went unanswered (see Finding of Fact No. 14). As the record demonstrates, respondent has persistently ignored staff's requests to satisfy the reporting requirements and, as noted, respondent failed to answer or appear in this administrative proceeding.

The reporting requirements imposed by the regulations are important to fisheries management strategies. Specifically, the VTRs assist the State in managing fishing quotas, assessing fishing stocks, and analyzing the contribution of commercial fishing to New York's economy (see Hearing Report at 2 [Findings of Fact Nos. 5 and 6]; see also Hearing Exhibit 5 [Vessel Trip Report (VTR) Information Packet] at 1).

Based on the above, the ALJ recommends that I impose a civil penalty of \$1,250 as requested by Department staff. Department staff requests that a penalty of \$250 be assessed for each of the five months that respondent failed to submit its VTRs. In the circumstances of this matter, ECL 71-0925(7) provides for a civil penalty of \$250 per violation of 6 NYCRR 40.1(c). The penalty requested is supported and appropriate.

Department staff's complaint is silent regarding when the penalty should be paid, but staff's proposed order directs payment within thirty (30) days of the order, and I adopt that recommendation here. In addition, I am directing respondent to submit the five VTRs for 2017 to Department staff within thirty (30) days of respondent's receipt of this order.

**NOW, THEREFORE**, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Offshore Harry Sportfishing & Outfitting LLC waived its right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent Offshore Harry Sportfishing & Outfitting LLC violated 6 NYCRR 40.1(c) by failing to file five monthly vessel trip reports from August to December 2017 or a "NYS Not Fishing Form – 2017" for respondent's Party/Charter Boat Permit #2405.

- III. Within thirty (30) days of the service of this order upon respondent Offshore Harry Sportfishing & Outfitting LLC, respondent shall submit to the Department the five monthly vessel trip reports that are due from August to December 2017.
- IV. Respondent Offshore Harry Sportfishing & Outfitting LLC is hereby assessed a civil penalty in the amount of one thousand two hundred fifty dollars (\$1,250). Respondent shall pay the penalty within thirty (30) days of the service of this order upon respondent. Payment is to be made by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- V. The vessel trip reports and the penalty payment shall be sent to the following address:
- Anne Haas, Esq.  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway, 14th Floor  
Albany, New York 12233-1500.
- VI. The provisions, terms and conditions of this order shall bind respondent Offshore Harry Sportfishing & Outfitting LLC and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Basil Seggos  
Commissioner

Dated: Albany, New York  
October 9, 2018

To: Offshore Harry Sportfishing & Outfitting LLC (Via Certified Mail)  
Attn: Harold J. Garrecht  
425 Main Street, Apt. G  
Northport, NY 11768

Anne Haas, Esq. (Via Intra-Agency Mail)  
Office of General Counsel  
New York State Department of  
Environmental Conservation  
625 Broadway, 14th Floor  
Albany, New York 12233-1500

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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**HEARING REPORT**

-by-

DEC Case No.  
CO1-20180502-97

**OFFSHORE HARRY SPORTFISHING  
& OUTFITTING, LLC.**

Respondent.

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Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served Offshore Harry Sportfishing & Outfitting, LLC (respondent) with a notice of hearing and complaint, dated July 5, 2018, alleging a violation of 6 NYCRR 40.1(c), for failing to timely submit five vessel trip reports (VTRs) or reports stating that no trips were made relating to respondent's party/charter boat permit (*see* Exhibit 1). The complaint seeks an order of the Commissioner: (i) finding respondent in violation of 6 NYCRR 40.1(c); (ii) assessing a civil penalty in the amount of one thousand two hundred fifty dollars (\$1,250); and (iii) granting such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing and complaint on respondent was made by certified mail, and was received by respondent on July 16, 2018 (*see* Exhibit 2). Respondent did not answer the complaint.

As provided in the notice of hearing, an adjudicatory hearing was convened before the undersigned on September 18, 2018 at 12:00 p.m. The hearing was held via video conference. Department staff was present at the Department's Division of Marine Resources offices at 205 N. Belle Mead Road, East Setauket, New York. Department staff was represented by Anne Haas, Esq, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of respondent.

Ms. Haas said that Department staff was prepared to proceed with the hearing, and proffered a staff witness. Noting for the record that respondent had not answered the complaint and failed to appear for the adjudicatory hearing, Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15 and also sought judgment on the merits.

Department staff called one witness, Julia Socrates, Marine Biologist II, Division of Marine Resources. In all, seven (7) exhibits were received in evidence.

## Findings of Fact

The following facts are found based upon the proof presented at hearing:

1. On July 31, 2017, Offshore Harry Sportfishing & Outfitting, LLC, applied for and obtained Party/Charter Boat Permit #2405 (*see* Testimony of Julia Socrates [Socrates Testimony]; Exhibit 4).
2. Party/charter boat permit holders are required to file monthly VTRs with the Department by the 15th of the following month even if the permit holder did not fish (*see* Socrates Testimony; Exhibit 5).
3. When a party/charter boat permit holder does not fish, the permit holder must submit a VTR to the Department indicating the permit holder “DID NOT FISH” and the duration that the respective permit was not fished (*see* Exhibit 5, Vessel Trip Report Form at 1 and Instructions at 2).
4. Instead of filing monthly VTRs to report that the permit holder did not fish during the previous month, a party/charter boat permit holder may file a NYS Not Fishing Form with the Department affirming that the permit holder will not be fishing the permit held during any or all months of the calendar year (*see* Socrates Testimony; Exhibit 5, NYS Not Fishing Form - 2017).
5. Party/charter boat permit holders may submit monthly paper VTRs to the Department or fulfill their requirements by submitting the VTRs online through the Standard Atlantic Fisheries Information System (SAFIS) which was developed and is maintained by the Atlantic Coastal Cooperative Statistics Program, a partnership of state and federal agencies including the Department (*see* Socrates Testimony).
6. Department staff enters VTR information received from permit holders into the New York Fisheries Information on Sales and Harvest (NYFISH) database maintained by the Department (*id.*).
7. Department staff searches the paper records, scanned files, and the NYFISH and SAFIS databases, as well as the National Marine Fisheries Service<sup>1</sup> database, several times a year to determine whether permit holders have filed either VTRs or a NYS Not Fishing Form (*id.*).
8. As a result of staff’s searches, Ms. Socrates determined that respondent had not filed VTRs or a NYS Not Fishing Form in 2017 from August through December (*id.*).

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<sup>1</sup> National Marine Fisheries Service is an office of the National Oceanic and Atmospheric Administration (NOAA) within the U.S. Department of Commerce and also known as NOAA Fisheries. Pursuant to 6 NYCRR 40.1(c)(1)(i), any New York license holder who is also the holder of a federal fishing permit issued by NOAA Fisheries Service must instead satisfy the reporting requirements specified by NOAA Fisheries Service.

9. On January 30, 2018, Department staff mailed respondent a postcard notice stating that as of January 26, 2018 respondent had not filed VTRs from August through December 2017, and directing respondent to file the missing VTRs immediately (*see* Socrates Testimony; Exhibit 6).
10. Respondent did not file the missing VTRs or otherwise respond to the postcard notice from Department staff (*see* Socrates Testimony).
11. Subsequently, Department staff mailed respondent a Failure to Submit State Vessel Trip Reports for 2017 notice, dated March 20, 2018, indicating respondent had not submitted VTRs from August through December of 2017, and directing respondent to submit the missing VTRs by April 23, 2018 (*see* Socrates Testimony; Exhibit 7).
12. Respondent did not file the missing VTRs or otherwise respond to the March 20, 2018 notice from Department staff (*see* Socrates Testimony).
13. Department staff searched the paper records, scanned files, and databases in January 2018, and determined respondent had not filed any monthly VTRs during 2017 and had not filed a NYS Not Fishing Form for 2017 (*see* Socrates Testimony).
14. Subsequent to service of the July 5, 2018 notice of hearing and complaint, Department staff telephoned and emailed respondent to discuss settlement of the captioned matter. For these settlement attempts, Department staff relied on the contact information provided on respondent's party/charter boat permit. Respondent did not respond to staff's settlement inquiries. (*See* Socrates Testimony; Exhibit 4.)
15. Julia Socrates is a Marine Biologist II and the manager of the Data Management Unit in the Department's Division of Marine Resources. Ms. Socrates is familiar with the Department's procedures regarding issuance of commercial fishery permits, the reporting requirements for commercial permit holders, and the records maintained by the Department, the Atlantic Coastal Cooperative Statistics Program and the National Marine Fisheries Service. (*See* Socrates Testimony.)
16. The affidavit of service shows that respondent was served by certified mail, on July 5, 2018 with a notice of hearing and complaint dated July 5, 2018, alleging a violation of 6 NYCRR 40.1(c), together with a statement of readiness, for failure to file VTRs from August to December 2017. Respondent received the notice of hearing and complaint on July 16, 2018. (*See* Exhibits 1 and 2.)
17. Respondent did not answer the complaint and failed to appear for the adjudicatory hearing scheduled in this matter for September 18, 2018, as directed in the notice of hearing (*see* Hearing Record).

## Discussion

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (*see* 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, "and failure to attend constitutes a default and a waiver of the opportunity for a hearing" (6 NYCRR 622.8[c]; *see also* 6 NYCRR 622.15[a] ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to either answer a complaint or appear for a pre-hearing conference or hearing, Department staff may move for a default judgment. Such a motion must contain: (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to either appear at the hearing or file a timely answer; and (iii) a proposed order (*see* 6 NYCRR 622.15[b][1] - [3]).

The Commissioner has held that "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them" (*Matter of Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must "provide proof of the facts sufficient to support the claim" (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3). Staff is required to support the motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (*see Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018, at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also State v Williams*, 44 AD3d 1149, 1151-1152 [3d Dept 2007], and CPLR 3215[f]).

The record establishes the following. First, Department staff served the notice of hearing and complaint upon respondent. Second, respondent did not answer the complaint and failed to appear for the adjudicatory hearing convened on September 18, 2018, as directed in the notice of hearing. Third, Department staff provided a proposed order at the September 18, 2018 hearing.

Pursuant to 6 NYCRR 40.1(c), holders of party/charter boat permits shall complete and submit an accurate fishing VTR for each commercial fishing trip, detailing all fishing activities and all species landed within 15 days after the end of each month or at a frequency specified by the department in writing. Permit holders must complete, sign, and submit VTRs to the Department for each month. If permit holders did not make any fishing trips during a month, the permit holders must submit a report stating that they did not make any trips for that month.

Department staff's submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent did not file five monthly VTRs in 2017 in violation of 6 NYCRR 40.1(c) (*see Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018, at 1). Therefore, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof presented at the hearing demonstrates by a preponderance of the evidence that respondent failed to file five monthly VTRs for 2017 and failed to file a NYS Not Fishing Form - 2017 for respondent's party/charter boat permit, in violation of 6 NYCRR 40.1(c). The Department is entitled to judgment upon the facts proven.

Department staff seeks a civil penalty in the amount of one thousand two hundred fifty dollars (\$1,250). ECL 13-0342 authorizes the Department to promulgate regulations requiring the reporting of catch, effort, area fished, gear used and by-catch by holders of all categories of commercial food fish and landing licenses (*see* ECL 13-0342[1][a]). Paragraph 40.1(c) of 6 NYCRR was promulgated pursuant to ECL 13-0342. For violations of ECL 13-0342 or the regulations promulgated pursuant thereto, ECL 71-0925(7) provides for a civil penalty of \$250 for each violation of 6 NYCRR 40.1(c). Because this matter involves reporting violations and not the taking of fish, shellfish, or crustaceans, the civil penalty is a nondiscretionary penalty of \$250 per violation.

Department staff requests that the penalty of \$250 be assessed for each of the five months that respondent did not submit his VTRs. Department staff described the importance of the VTRs to the regulatory scheme as the VTRs assist the State in managing fishing quotas, fishing stock assessments, and analyzing what commercial fishing contributes to New York's economy. The data collected from VTRs is vital to the development of fisheries management strategies. Accordingly, I conclude that staff's penalty request of \$1,250 is supported and appropriate. Department staff's complaint is silent regarding when the penalty must be paid, but staff's proposed order directs payment within thirty (30) days of the order. I recommend that respondent be directed to pay the civil penalty within thirty (30) days of respondent's receipt of the Commissioner's order.

As requested in Department staff's July 5, 2018 complaint, the Commissioner should direct respondent to submit the missing VTRs to the Department. I recommend the Commissioner grant staff's request and direct respondent to submit the five VTRs for 2017 to Department staff within thirty (30) days of respondent's receipt of the Commissioner's order.

#### Conclusion of Law

By failing to file VTRs from August to December 2017, respondent, holder of party/charter boat Permit #2405, violated 6 NYCRR 40.1(c). Respondent's failure to file VTRs over the course of these five months constitutes five separate violations.

#### Recommendations

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. Granting Department staff's motion for default judgment, holding Offshore Harry Sportfishing & Outfitting, LLC, in default pursuant to 6 NYCRR 622.15;

2. Holding that Offshore Harry Sportfishing & Outfitting, LLC, violated 6 NYCRR 40.1(c) by failing to submit VTRs for five months in 2017;
3. Directing respondent to pay a civil penalty in the amount of one thousand two hundred fifty dollars (\$1,250) within thirty (30) days of service of the Commissioner's order;
4. Directing Offshore Harry Sportfishing & Outfitting, LLC, to submit VTRs from August through December 2017 to Department staff within thirty (30) days of service of the Commissioner's order; and
5. Directing such other and further relief as he may deem just and appropriate.

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel P. O'Connell  
Administrative Law Judge

Dated: Albany, New York  
October 4, 2018

**EXHIBIT CHART – HEARING**  
*Matter of Offshore Harry Sportfishing & Outfitting, LLC*  
 September 18, 2018  
 CO1-20180502-97

Exhibit No.	Description	ID'd?	Rec'd?	Offered By	Notes
1	Cover Letter from Anne Haas, Esq. to respondent, with Notice of Hearing, Complaint, and Statement of Readiness, all dated July 5, 2018.	✓	✓	Department Staff	
2	Affidavit of Service of Bonnie Pedone, sworn to September 12, 2018 with USPS delivery confirmation and electronic signed receipt attached	✓	✓	Department Staff	
3	NYS Department of State, Division of Corporations, Entity Information, current through September 12, 2018.	✓	✓	Department Staff	
4	2017 Applications for Marine Permit (1) submitted by Offshore Harry Sportfishing & Outfitting, LLC (Harold J. Garrecht) received on July 31, 2017	✓	✓	Department Staff	
5	Vessel Trip Report Form for New York State Permit Holders, Vessel Trip Report (VTR) Information Packet with instructions, NYS Not Fishing Form - 2017	✓	✓	Department Staff	

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6	Copy of post card notice to OffShore Harry Sportfishing & Outfitting, LLC noting as of January 26, 2018, vessel trip reports for August through December 2017 had not been submitted	✓	✓	Department Staff	
7	Notice of Failure to Submit State Vessel Trip Reports for 2017 addressed to Offshore Harry Sportfishing & Outfitting, LLC dated March 20, 2018	✓	✓	Department Staff	

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7	Notice of Failure to Submit State Vessel Trip Reports for 2017 addressed to Offshore Harry Sportfishing & Outfitting, LLC dated March 20, 2018	✓	✓	Department Staff	