

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),

**ORDER**

-by-

DEC Case No.  
CO1-20180220-30

**TRITON'S TREASURE INC.**

Respondent.

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In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent Triton's Treasure Inc., which is situated in Islandia, Suffolk County, New York, violated 6 NYCRR 40.1(c) by failing, during calendar year 2017, to timely submit twelve 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 three thousand dollars (\$3,000).

On June 20, 2018, an adjudicatory hearing was convened before Michael S. Caruso, Administrative Law Judge (ALJ) of the Department's Office of Hearings and Mediation Services, to address these violations. ALJ Caruso 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 June 20, 2018 (see Hearing Report at 4 [Finding of Fact No. 18]).

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 5-6). At the hearing on June 20, 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.

The record demonstrates that respondent, as a holder of a marine bait permit, was required to submit monthly vessel trip reports (VTRs) for calendar year 2017, 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 4-5). 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 9-15]; see also Hearing Exhibits 6, 7 and 8). Department staff mailed respondent a notice dated November 10, 2017 indicating that respondents 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 November 10, 2017 notice. Subsequently, Department staff sent a notice dated January 12, 2018 directing that respondent file the reports and noting, if the reports were not filed, respondent would be subject to civil penalties. Again, respondent did not file the reports. Department staff again reached out to respondent by postcard on January 30, 2018 directing that respondent file the reports immediately. Respondent did not file the missing reports in response to this further request. 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 5; see also Hearing Exhibit 5 [Vessel Trip Report (VTR) Information Packet]).

Based on the above, the ALJ recommends that I impose a civil penalty of \$3,000 as requested by Department staff. Department staff requests that a penalty of \$250 be assessed for each of the twelve months that respondent failed to submit his VTRs. In the circumstances of this matter, ECL 71-0925(7) imposes a civil penalty of \$250 per violation for the violation of 6 NYCRR 40.1(c). The penalty requested 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 twenty (20) days of the order. Upon consideration, I am directing respondent to pay the civil penalty within thirty (30) days of respondent's receipt of this order. In addition, I am directing respondent to submit the twelve 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 Triton's Treasure Inc. waived its right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent Triton's Treasure Inc. violated 6 NYCRR 40.1(c) by failing to file twelve monthly vessel trip reports for the 2017 calendar year or a "NYS Not Fishing Form – 2017" for respondent's marine bait permit.

- III. Within thirty (30) days of the service of this order upon respondent Triton's Treasure Inc., respondent shall submit to the Department the twelve monthly vessel trip reports that are due for 2017.
- IV. Respondent Triton's Treasure Inc. is hereby assessed a civil penalty in the amount of three thousand dollars (\$3,000). Respondent shall pay the penalty within thirty (30) days of the service of this order upon respondent. Payment is to be 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 Triton's Treasure Inc. 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  
September 7, 2018

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),

**HEARING REPORT**

-by-

DEC Case No.  
CO1-20180220-30

**TRITON'S TREASURE INC.**

41 Dean Street  
Islandia, NY 11749

Respondent.

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Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Triton's Treasure Inc. (respondent) with a notice of hearing and complaint, dated April 19, 2018, alleging a violation of ECL 13-0342 and its implementing regulation, 6 NYCRR 40.1(c), for failing to timely submit twelve vessel trip reports (VTRs) or reports stating that no trips were made relating to respondent's marine bait permit. 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 three thousand dollars (\$3,000); 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 April 23, 2018 (see Affidavit of Service of Bonnie Pedone, sworn to April 25, 2018). Respondent did not answer the complaint.

As provided in the notice of hearing, an adjudicatory hearing was convened before the undersigned on June 20, 2018 at 11:00 a.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.

Department staff indicated that it was prepared to proceed with the hearing, proffering a staff witness. Noting for the record that respondent had failed to answer 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, eight (8) exhibits were received in evidence.

### Findings of Fact

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

1. Respondent Triton's Treasure Inc. applied for and received Food Fish/Crustacea Dealer Shipper Permit #10939 and Marine Bait Permit #1232 for the year 2017 (see Testimony of Julia Socrates [Socrates Testimony]; Staff Exhibit 4).
2. Marine bait 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; Staff Exhibit 5).
3. When a marine bait 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 permits were not fished (see Staff Exhibit 5, Vessel Trip Report Form at 1 and Instructions at 2).
4. Instead of filing monthly VTRs reporting that the permit holder did not fish during the previous month, a marine bait permit holder may file a NYS Not Fishing Form with the Department affirming that the permit holder will not be fishing the permits held during any or all months of the calendar year (see Socrates Testimony; Staff Exhibit 5, NYS Not Fishing Form - 2017).
5. Marine bait 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

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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),

year to determine what permit holders have not filed VTRs or a NYS Not Fishing Form (id.)

8. As a result of staff's searches, staff determined respondent had not filed VTRs or a NYS Not Fishing Form in 2017 and notified respondent during 2017 of the missing VTRs (id.).
9. Department staff mailed respondent a notice, dated November 10, 2017, entitled "Failure To Submit State Vessel Trip Reports For 2017," indicating respondent had not submitted VTRs for January through August of 2017. The notice also directed respondent to submit the missing VTRs by December 15, 2017 (see Socrates Testimony; Staff Exhibit 6).
10. Respondent did not file the missing VTRs or otherwise respond to the November 10, 2017 notice from Department staff (see Socrates Testimony).
11. Department staff mailed respondent a Failure To Submit State Vessel Trip Reports For 2017 notice, dated January 12, 2018, indicating respondent had not submitted VTRs for January through August of 2017 and directing respondent to submit the missing VTRs by February 12, 2018 (see Socrates Testimony; Staff Exhibit 7).
12. Respondent did not file the missing VTRs or otherwise respond to the January 12, 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. On January 30, 2018, Department staff mailed respondent a post card notice indicating as of January 26, 2018 respondent had not filed VTRs for January through December 2017 and directing respondent to file the missing VTRs immediately (see Socrates Testimony; Staff Exhibit 8).
15. Respondent did not file the missing VTRs or otherwise respond to the postcard notice from Department staff (see Socrates Testimony).
16. Julia Socrates is a Marine Biologist II and the Data Management Unit leader in the Department's Division of Marine Resources, and 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).
17. As shown by the affidavit of service, respondent was served by certified mail, on April 19, 2018 with a notice of hearing and complaint dated April 19, 2018, alleging a violation

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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.

of 6 NYCRR 40.1(c), together with a statement of readiness, for failure to file VTRs for the 2017 calendar year (see Staff Exhibit 2). Respondent received the notice of hearing and complaint on April 23, 2018 (id.).

18. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in this matter for June 20, 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 answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain: (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to appear or to file a timely answer; and (iii) a proposed order (see 6 NYCRR 622.15[b][1] - [3]).

As the Commissioner has held, "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 their 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 that: (i) Department staff served the notice of hearing and complaint upon respondent; and (ii) respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing convened on June 20, 2018, as directed in the notice of hearing. Department staff provided its proposed order at the June 20, 2018 hearing.

Pursuant to 6 NYCRR 40.1(c), holders of marine bait 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. VTRs shall be completed, signed, and submitted to the department for each month. If no fishing trips were made during a month, a report must be submitted stating no trips were made 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 twelve monthly VTRs in 2017 in violation of 6 NYCRR 40.1(c) (see Matter of Samber Holding Corp., Order of the Commissioner at 1). Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof adduced at the hearing demonstrates by a preponderance of the evidence that respondent failed to file twelve monthly VTRs for 2017 and failed to file a NYS Not Fishing Form - 2017 for respondent's marine bait 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 three thousand dollars (\$3,000). 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 that the civil penalty "shall be" the greater of \$250 or a dollar figure involving the number of fish, shellfish or crustaceans taken in violation of the law and regulations. 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 twelve months that respondent failed to 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 find staff's penalty request of \$3,000 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 twenty (20) days of the order. I recommend that respondent be directed to pay the civil penalty within twenty (20) days of respondent's receipt of the Commissioner's order.

Although Department staff's complaint does not request respondent be directed to submit the missing VTRs to the Department, staff requested such relief at the hearing. I conclude there would be no prejudice to respondent in granting such relief and recommend the Commissioner grant staff's request and direct respondent to submit the twelve VTRs for 2017 to Department staff within twenty (20) days of respondent's receipt of the Commissioner's order.

Conclusion of Law

By failing to file VTRs for 2017, respondent, holder of Marine Bait Permit #1232, violated 6 NYCRR 40.1(c).

Recommendation

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

1. Granting Department staff's motion for default judgment, holding respondent Triton's Treasure Inc. in default pursuant to the provisions of 6 NYCRR 622.15;
2. Holding that respondent Triton's Treasure Inc. violated 6 NYCRR 40.1(c) by failing to submit VTRs for twelve months in 2017;
3. Directing respondent Triton's Treasure Inc. to pay a civil penalty in the amount of three thousand dollars (\$3,000) within twenty (20) days of service of the Commissioner's order;
4. Directing respondent Triton's Treasure Inc. to submit VTRs for January through December 2017 to Department staff within twenty (20) days of service of the Commissioner's order; and
5. Directing such other and further relief as he may deem just and appropriate.

\_\_\_\_\_/s/\_\_\_\_\_  
Michael S. Caruso  
Administrative Law Judge

Dated: Albany, New York  
June 25, 2018

**EXHIBIT CHART – HEARING**

*Matter of Triton's Treasure Inc.*

June 20, 2018

CO1-20180220-30

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 April 19, 2018.	✓	✓	Department Staff	
2	Affidavit of Service of Bonnie Pedone, sworn to April 25, 2018 with USPS delivery confirmation and electronic signed receipt attached	✓	✓	Department Staff	
3	NYS Department of State, Division of Corporations, Entity Information, current through June 14, 2018.	✓	✓	Department Staff	
4	2017 Applications for Marine Permits (2) submitted by Triton's Treasure Inc. on December 30, 2016	✓	✓	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	
6	Notice of Failure To Submit State Vessel Trip Reports For 2017 addressed to Tritons Treasure Inc, dated November 10, 2017	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
7	Notice of Failure To Submit State Vessel Trip Reports For 2017 addressed to Tritons Treasure Inc, dated January 12, 2018	✓	✓	Department Staff	
8	Copy of post card notice to Tritons Treasure Inc, noting as of January 26, 2018, vessel trip reports for January through December 2017 had not been submitted	✓	✓	Department Staff	