A GUIDE TO MARINE SHELLFISH AQUACULTURE PERMITTING IN NEW YORK

A product of the Nutrient Bioextraction Initiative, originally developed by Nelle D'Aversa
This document was funded by the Long Island Sound Study under grant #EPA LI96187401

Published by the NEIWPCC
650 Suffolk Street, Suite 410
Lowell, MA 01854

This project has been funded wholly or in part by the United States Environmental Protection Agency (EPA) under assistance agreement LI00A00384 to NEIWPCC in partnership with the Long Island Sound Study (LISS). Although the information in this document has been funded by the EPA, it has not undergone the EPA's publications review process, and therefore, may not reflect the views of EPA and no official endorsement is inferred. The viewpoints and policies expressed do not necessarily reflect the views and policies of NEIWPCC, LISS, NYSDEC, or EPA. Nor does NEIWPCC, LISS, NYSDEC, or the EPA endorse trade names or recommend use of commercial products, or causes mentioned in this document.

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This publication is part of the Nutrient Bioextraction Initiative, which is a collaboration between NEIWPCC, DEC, and the Long Island Regional Planning Council (LIRPC). The Nutrient Bioextraction Initiative is part of DEC's multifaceted Long Island Nitrogen Action Plan (LINAP) and is funded by the EPA's Long Island Sound Study (LISS).

Legal Disclaimer:
This guide is intended to serve as an introduction to the marine shellfish aquaculture permitting process but should not replace regular communication with regulatory agencies. While reasonable efforts have been made to ensure the accuracy of the information in this document, statutes and agency policies may periodically change. The regulatory agencies mentioned in this document reserve the right to act at variance from its contents and are not bound by the contents set forth herein. This document will be updated periodically; however, up-to-date information related to aquaculture permitting and regulations should be verified with the NYS DEC Shellfish Ombudsperson and other appropriate regulatory agencies.

1 Contents

I. ACRONYMS AND ABBREVIATIONS

ANT	Aids to Navigation Team
DEC	New York State Department of Environmental Conservation
DEP	Division of Environmental Permits
ECL	Environmental Conservation Law
EPA	United States Environmental Protection Agency
FCAF	Federal Consistency Assessment Form
FDA	United States Food and Drug Administration
FWS	United States Fish and Wildlife Service
HACCP	Hazard Analysis and Critical Control Points Program
ISSC	Interstate Shellfish Sanitation Conference
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NSSP	National Shellfish Sanitation Program
NSSP-MO	National Shellfish Sanitation Program - Model Ordinance
NWP	Nationwide Permit
NYSDOS	New York State Department of State
NYSOGS	New York State Office of General Services
PATON	Private Aid to Navigation
PCN	Pre-Construction Notification
SAV	Submerged Aquatic Vegetation
TMAUA	Temporary Marine Area Use Assignments
TW	Tidal Wetlands Permit
UPA	Uniform Procedures Act
USACE	United States Army Corps of Engineers
USCG	United States Coast Guard
Vp	*Vibrio parahaemolyticus*
WQ	Water Quality Certification

2 INTRODUCTION

2.1 Overview of Shellfisheries and Marine Aquaculture in New York

Shellfish aquaculture currently represents one of the largest segments of the aquatic farming industry in New York. According to the Long Island Oyster Growers Association, there are over 50 small oyster farmers located across Long Island and Fishers Island. DEC's Division of Marine Resources has issued 220 On-/Off-Bottom Culture Permits, in total since the start of the permitting program. Over time, however, the size and type, and number of active permits for these aquaculture operations vary greatly. Few aquaculture farmers still utilize traditional bottom cultivation of shellfish. Instead, submerged structures, such as cages, bags, long lines, and floating structures such as bags, upwellers, and nets, are the dominant form of aquaculture in New York's coastal waters.

Shellfish aquaculture represents one of the many uses of New York's coastal waters. The increasing presence of aquaculture has increased the need to ensure boater safety, avoid navigational hazards, manage liability and user conflicts, and minimize effects on the environment, habitat, natural resources, and coastal aesthetics.

2.2 Purpose

The purpose of this guide is to help existing, new, and prospective aquaculture farmers better understand the laws, policies, and permitting processes applicable to marine shellfish aquaculture in New York. This guide serves as an introduction to the regulatory permitting process required for shellfish aquaculture in New York. Better comprehension of the regulatory requirements and process can improve communication between applicants and agencies, reduce the time required to acquire all necessary permits, and improve the chances for successful culture operations.

2.3 Audience

This guide is intended for individuals or organizations seeking authorization for:

- A new shellfish aquaculture operation or facility;
- An amendment to an existing aquaculture operation or facility; and/or
- A research and education project that utilizes shellfish aquaculture species, facilities, gear, and/or cultivation methods.

2.4 How to Use this Guide

This document serves as a preliminary guide to outline the regulatory framework for the processing of marine shellfish aquaculture permit applications. The user will become familiar with the application steps, and the regulatory agencies involved in the permitting process, their roles and responsibilities, and the expectations that these agencies have for individuals or organizations interested in growing shellfish for private, commercial, research, or educational purposes. Users should also consult with the Shellfish Ombudsperson as they move through the permitting process to ensure that they have the most up-to-date information.

The following describes the sections of this Guide and how they should be used:

Section 2 of this Guide describes the roles of the relevant regulatory agencies and where they have jurisdiction. Although the DEC is the lead state agency for shellfish aquaculture permitting in New York, there are other local, state, and federal entities involved in the process. This section gives users an idea not only of what entities need to approve any shellfish aquaculture operations, but also how these entities will coordinate to ensure that all regulations and policies are met. Those interested in working in shellfish aquaculture should review this section before starting the application process in order to familiarize themselves with the breadth of the permitting process.

Section 3 of this Guide reviews some of the factors that should be considered before beginning a shellfish aquaculture operation, to increase the chances of success. These include environmental and social factors that may fall outside of the scope of the permitting process, and include species, site and gear selection, and the importance of fostering positive relationships with those who may be affected by the proposed operation. The questions introduced in this section should be addressed before beginning the permitting process or making any investments because they will have impacts on overall feasibility of the proposed project.

Section 4 of this Guide touches on regulations and standards related to public health and safety for the commercial sale of shellfish for human consumption after harvest. This section is not directly related to the permitting of shellfish aquaculture cultivation sites, but is absolutely essential for the sale of products once harvested. Anyone looking to start an aquaculture business should be aware of these requirements to ensure that they can be met before starting the process to permit a grow site.

Section 5 of this Guide provides information on the available options for access to underwater lands in New York State, and discusses the type of approval (e.g., *lease*, *licenses*, *permits*, *etc*.) required by the municipalities or entities that own and/or manage them. Users of this guide who are interested in starting an aquaculture operation and obtaining access to underwater lands should determine the type of operation they want to pursue and where. Once they identify which entity owns and/or manages the specific underwater lands they can focus on the requirements and procedures of the respective entities' program.

Section 6 gives details on the required permit applications and steps in the application processes for commercial shellfish aquaculture, including all materials to be submitted and what the review process will look like. This includes a visual aid, or "road map" to take users through the steps in the process. Permits needed will vary based on the type of cultivation you are planning, and whether hatchery facilities will be included. This section goes into more detail about the requirements of the agencies introduced in Section 2.

Section 7 is for those who are not looking to start a commercial operation, but rather do shellfish aquaculture for research, educational, or restoration purposes. Associated rules and programs will differ somewhat depending on whether or not the shellfish are intended for human consumption.

3 RESPONSIBILITIES OF REGULATORY AGENCIES

3.1 New York State Department of Environmental Conservation (DEC)

The New York State Department of Environmental Conservation (DEC) is the lead state agency for administration and regulatory oversight of shellfish aquaculture permitting and operations in New York. The responsibilities of the Department include licensing of all commercial shellfish and marine plant operations and research or educational activities, monitoring of water quality for certification of shellfish

harvest areas, classifying shellfish harvest areas as open or closed to harvest, and sanitary and records inspections of all shellfish wholesalers.

Pursuant to § 13-0316 of the ECL, DEC is the exclusive state authority to issue permits for and regulate shellfish and marine plant aquaculture operations within waters of the marine and coastal district. For commercial shellfish farming operations, DEC's Division of Marine Resources and DEC's Region 1 Division of Environmental Permits (DEP), work in coordination to determine the necessary permits for each applicant. Pursuant to 6 NYCRR Part 621, DEC's Region 1 DEP is required to follow explicit procedures and timeframes for the review of each application. Pursuant to 6 NYCRR Part 175, DEC's Division of Marine Resources reviews applications for special licenses and permits authorized by the Articles 11 and 13 of the ECL except hunting, fishing and trapping licenses issued pursuant to Title 7 of Article 11 or § 11-0913 of the ECL.

DEC's Division of Marine Resources is responsible for coordinating with DEC's Region 1 DEP to ensure the proposed aquaculture activities are in conformance with the State Uniform Procedures Act (UPA) (ECL Article 70). DEC's Region 1 DEP is responsible for issuing all necessary state UPA permits, including Tidal Wetlands (TW), Water Quality (WQ), and Protection of Waters. DEC's Division of Marine Resources will issue an On-/Off-Bottom Culture Permit once all appropriate permits or exemption letters from DEC Region 1, DEP and other federal, state, and local regulatory agencies have been granted. DEC has the authority to lease state-owned lands underwater within the marine and coastal district for the cultivation of shellfish except under certain circumstances pursuant to ECL § 13-0301. However, to date, DEC has not adopted regulations for the administration and implementation of a formal program to lease state-owned underwater lands for this purpose. Shellfisheries and aquaculture in New York's marine and coastal district waters are governed by the ECL § 13-0301 to § 13-0325.

3.2 Local Municipalities

Municipalities that either own or have jurisdiction to underwater lands may grant access to parcels of underwater land for shellfish aquaculture activities. Local municipalities, which include but are not limited to County of Suffolk, Town of Brookhaven and Town of Islip, may manage these resources and provide access through the issuance of a lease or license. Each municipality may develop requirements, regulations and policies that lessees and/or license holders must agree and adhere to as a part of their agreement with the County or Town.

3.3 U.S. Army Corps of Engineers (USACE)

Under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344, as amended), the USACE has the authority to regulate discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish mariculture operations in authorized project areas. Federal regulation prohibits the unauthorized obstruction or alteration of any U.S. "navigable waters." Therefore, USACE approval is required for any aquaculture operations that may affect the course, condition, location, or capacity of navigable waters.

Non-federal permit applicants shall provide to the District Engineer a certification that their proposed activity or activities in or affecting the coastal zone complies with and will be conducted in a manner that is consistent with the NYS Coastal Zone Management Program. The NYSDOS will then review the certification statement (the Federal Consistency Assessment Form, or FCAF).

3.3.1 U.S. Army Corps of Engineers Permits

USACE commonly issues several types of permits: Individual Permits and Nationwide Permits (NWP). Individual permits include authorization for: Section 10 permits and Section 404 permits. Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), USACE requires permits for any structure in or affecting any navigable water of the United States. The excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless it has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344, as amended), USACE requires permits for the discharge of dredged or fill material into waters of the United States, including: the territorial seas within three nautical miles of the shore, tidal waters up to the Spring High Water Line where there are no adjacent non-tidal waters or wetlands; and where there are adjacent tidal waters or wetlands, jurisdiction is extended and non-tidal waters up to the Ordinary High Water mark if there are no adjacent wetlands. If there are adjacent wetlands, jurisdiction extends to the limits of those wetlands; if the water itself consists solely of wetlands, jurisdiction extends to the limit of the wetlands.

A Letter of Permission is a type of Individual Permit that may be issued if the proposed work is minor or routine, with minimum impacts, and objections are unlikely. USACE has pre-authorized certain activities under NWPs. These activities are considered to have minimal adverse individual or cumulative net impacts on the environment and to not be contrary to the public interest. There are currently 58 NWPs, which authorize a range of activities, including the discharge of dredged or fill material into waters of the United States, or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish mariculture operations in authorized project areas. A verification for an NWP can be issued for a period of five years or less, and cannot be extended.

3.3.1.1 Nationwide Permit #48 – Commercial Shellfish Mariculture Activities

Discharges of dredged or fill material into waters of the United States, or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish mariculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

1. The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
2. The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or
3. Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste.

Notification: The permittee must submit a Pre-Construction Notification (PCN) to the District Engineer if the activity directly affects more than 1/2-acre of submerged aquatic vegetation. If the operator will be conducting commercial shellfish mariculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.)

3.3.1.2 Individual Permit – Commercial Shellfish Mariculture Activities

Individual Permits are issued following a case-by-case evaluation of a specific activity. An individual permit may be issued as a standard permit, or as a Letter of Permission. A standard permit is a type of individual permit which is processed through the public interest review procedure of an individual permit application, including the issuance of a public notice and receipt of comments, as described in 33 CFR Part 325. A Letter of Permission is a type of individual permit which may be issued if the proposed work is minor or routine, with minimum impacts, and objections are unlikely. It involves an abbreviated process procedure, which includes coordination with state and federal fish and wildlife agencies, and a public interest evaluation, but no publication of an individual public notice.

3.4 New York State Office of General Services (NYSOGS)

Under § 75 of the NYS Public Lands Law and 9 NYCRR Part 270, NYSOGS has the authority to regulate structures, including fill, placed in, on, or over state-owned lands underwater. Aquaculture activities located on or over state-owned lands underwater, excluding shellfish cultivation, require authorization from NYSOGS in the form of a permit or lease (Water Column Lease).

As stated above in *Section 2.1*, DEC's Division of Marine Resources has been delegated the authority to lease state-owned lands underwater within the marine and coastal district for the cultivation of shellfish, except under certain circumstances pursuant to ECL § 13-0301. Although DEC has regulatory authority for leasing of state-owned underwater lands, no regulations have been adopted to lease lands for shellfish cultivation. DEC's Division of Marine Resources, Shellfish Management Unit is responsible for coordinating with NYSOGS to issue Temporary Marine Area Use Assignments for off-bottom culture on up to 5-acre circular parcels of state-owned underwater lands.

3.5 New York State Department of State (NYSDOS)

The New York State Department of State's Office of Planning, Development and Community Infrastructure is responsible for determining whether proposed Federal Direct, permitting, and funding actions are consistent with the state's Coastal Zone Management Program. For federal permitting actions, this is accomplished through a 'Consistency Review' of an applicant's completed Federal Consistency Assessment Form (FCAF) and supporting material. The FCAF seeks information from the applicant on if and how the proposed action complies with New York's State Coastal Policies, the policies of a federally approved Local Waterfront Revitalization Program, or the Long Island Sound Regional Coastal Management Program (see 15 CFR Part 930).

3.6 **United States Coast Guard (USCG)**

Pursuant to 33 CFR § 66.01-3, the U.S. Coast Guard (USCG), District Commander has the authority to grant, establish, and maintain, discontinue, change, or transfer ownership of a Private Aid to Navigation (PATON). USCG requires that all aquaculture gear that are lighted (fixed or floating) must have a PATON

permit (CG Form 2554), which is completed through the U.S. Harbormaster website (www.usharbormaster.com).

DEC requires aquaculture farmers to mark the boundaries of their cultivation site, and the marker used is required to have their On-/Off-Bottom Culture Permit number; depending on the type of markers used, a PATON could be required. DEC also requires lighted markers to be installed on or around the perimeter of any floating gear, which requires a PATON permit.

First District has no mandate that requires that aquaculture lease sites be marked with PATON, unless required by local programs, such as the Suffolk County Aquaculture Lease Program, which requires the use of a specific type of buoy and respective PATON. However, if the individual or organization decides to voluntarily mark their site with PATON, it must be an "Aid to Navigation," will require a PATON permit, and must be installed in accordance with 33 CFR § 66.01-5. An Aid to Navigation is any aid that is radar reflective, has an above surface display, and is used by mariners to navigate. Examples of "non-aids to navigation" that will not be permitted by the USCG include: mooring balls, floats, markers, pot floats, or pot markers.

3.7 Other Agencies That May Be Involved in the Permitting Process

- U.S. Environmental Protection Agency (EPA)
- National Marine Fisheries Service (NMFS)
- U.S. Fish and Wildlife Service (FWS)
- National Oceanic and Atmospheric Administration (NOAA)

3.8 Joint Applications

Pursuant to ECL § 13-0316 and 6 NYCRR Part 48, DEC authorizes the cultivation of marine plants and animals in hatcheries or through on-bottom and off-bottom culture. DEC's Division of Marine Resources is responsible for the review of aquaculture applications to determine if a proposed aquaculture operation meets the requirements of the ECL and state regulations.

DEC's Region 1 Division of Environmental Permits regulates activities in tidal wetlands, including the placement of structures in the coastal zone and marine discharges for aquaculture from shore-based hatcheries. These activities also require a "consistency review" through New York State's Coastal Management Program, which is administered by NYSDOS when there is an associated federal permit.

A Joint Application for Permit Form was developed to streamline the regulatory process for many activities, including aquaculture, that require the approval of multiple state and federal agencies, and to ensure the incorporation of New York's Coastal Management Plan consistency review among state and federal regulatory agencies. Application materials should be submitted concurrently to all agencies.

Completing the Joint Application for Permit Form is the first step in applying for one or more of the following types of permits, depending on the nature and location of the proposed aquaculture activity:

1. Individual Permit or NWP (USACE)
2. Tidal Wetlands Permit (TW) (DEC)
3. 401 Water Quality Certification (WQ) (DEC)
4. Protection of Waters (DEC)

5. Consistency Review, when accompanied by a FCAF (NYSDOS)

Once the appropriate permit(s) are granted, DEC's Division of Marine Resources completes the review of an application for issuance of an On-/Off-Bottom Culture Permit to the applicant. The review process for the Joint Application for Permit Form is explained in detail in *Section 5.2.* Contact information for the regulatory agencies involved in the permitting process can be found in *Appendix B* .

4 GETTING STARTED IN AQUACULTURE

4.1 Factors to Consider When Starting an Aquaculture Operation

There are many factors to consider when designing a shellfish aquaculture operation. Coastal waterbodies are used by commercial and recreational fishermen, recreational boaters/bay users, and coastal homeowners; and provide critical habitat to marine life. In addition to the farming operation itself, careful consideration should be given to natural resources and existing uses in the project area to minimize adverse potential effects on the marine environment and to avoid conflicts with other users. The following are some examples of the environmental and social factors that should be considered, prior to obtaining access to a location and investing in a shellfish aquaculture operation. You can also visit www.nyseagrant.org/shellfishfarming and enroll in New York Sea Grant's "Is Shellfish Farming Right for You?" eCourse to learn more about establishing a shellfish farming business venture in New York State.

Environmental Considerations:

- Will the activity alter water quality?
- Will the activity alter species abundance and/or diversity?
- Will the activity disturb or displace essential fish habitat?
- Will the activity disturb or displace submerged aquatic vegetation?
- Will the gear withstand forces of nature (e.g., wind, ice, waves, tide)?

Social Considerations:

- Will the shellfish farming operation, vessels, or gear cause visual, physical, or audio disturbance?
- Will the facility operate during early morning or late evening hours?
- Is the site close to navigation channels?
- Will the activity limit safe traverse for boaters?
- Will the activity limit public access to the waters surrounding the site?
- Will the activity limit public use of surrounding waters?
- Will the activity limit commercial use (e.g., fishing) in surrounding waters?

4.2 Submerged Aquatic Vegetation and Aquaculture Activity

Aquaculture activity is not permitted in areas that have documented submerged aquatic vegetation (SAV). The South Shore Estuary Reserve, Long Island Sound Study, and Peconic Estuary Program conducted seagrass habitat surveys in 2002, 2012, and 2014, respectively. Special consideration is given to habitats containing SAV, as they are essential fish habitats and aquaculture operations, dredging, filling, and gear may pose a threat to the existence of SAV from direct physical impact, including vessel traffic, or from shading and reduced light.

4.3 **Aquaculture Best Management Practices**

It is important to understand best management practices (BMPs) for shellfish aquaculture that will lead to a socially, environmentally, and economically successful aquaculture business, including those found in Flimlin et al. (2010).

4.3.1 Site Selection and Site Marking

Site selection is crucial to the success of the shellfish farm over the long term. Farmers should site, plan, develop, and manage aquaculture operations in a manner that minimizes negative environmental impacts (Flimlin et al. 2010).

Additionally, it is critical to adequately mark the farm site using buoys or stakes to ensure safe passage for boaters and to reduce poaching. Buoys and private aids to navigation should be marked in accordance with state and federal regulations (see *Section 2.6* for more information) (Flimlin et al. 2010).

4.3.2 Biosecurity

DEC only authorizes the cultivation of shellfish species that are native or indigenous to New York waters. Aquaculture farmers should try to purchase local seed as much as possible, as the product is already acclimated to the conditions of New York's coastal waters, which is good for seed growth. Additionally, the use of locally sourced seed reduces the potential for introduction of diseases, parasites, pests, and predators that may negatively affect the viability of the state's marine resources and the ecology of our ecosystems. If purchasing seed from a hatchery outside New York, importation is restricted to areas north of New York (New England states) with no known disease presence, requires disease testing (Health Certification), and also a Shellfish Importation permit from DEC prior to importing shellfish.

4.3.3 Gear Selection

The type of gear used for grow-out as well as the method of harvest may have an impact on the location of the farm. The farmer must be aware of the biological, physical, and social implications of the gear being considered for use for a specific area. Additionally, aquaculture farmers should utilize robust anchoring systems to ensure gear stays in place during extreme weather and does not become a hazard or nuisance to others (Flimlin et al. 2010).

Additionally, floating shellfish cages may create a potential pollution source by attracting seabirds as a place to congregate, which increases the potential for sanitation issues impacting public health from bird waste. DEC requires Bird Mitigation Plans to be submitted by all Off-Bottom Culture Permit holders or new applicants using floating culture gear, and the plan must include a description of the bird deterrents to be used with floating cages to address the issue of sanitation. The Bird Mitigation Plan is subject to approval by DEC prior to the issuance of an Off-Bottom Culture Permit for using floating culture gear.

4.3.4 Awareness and Education

Aquaculture farmers share the coastal zone with many other commercial and recreational users; therefore, it is in the best interest of the industry to develop standing relationships with water-based and land-based neighbors, and to make a best effort to communicate early and openly about any aspect of aquaculture that might affect them (Flimlin et al. 2010).

5 SHELLFISH SANITATION

5.1 Interstate Shellfish Sanitation Conference & National Shellfish Sanitation Programs

DEC must conform to U.S. FDA and the Interstate Shellfish Sanitation Conference (ISSC) standards, and guidelines of the National Shellfish Sanitation Program Model Ordinance (NSSP-MO) to ensure that shellfishing areas are safe for commercial harvest and sale of shellfish for food consumption, and are protective of public health. All ISSC members must follow these guidelines for handling all raw shellfish products entering interstate commerce on the wholesale level.

The NSSP-MO establishes minimum and uniform requirements for classification of shellfishing areas, water quality sampling, proper harvesting, handling, labeling, storing, transporting of shellfish, and record-keeping methods. These guidelines are vital to ensure proper sanitary conditions are maintained and shellfish are free of potential pathogens. The NSSP was originally formed in response to major shellfish-related food-borne pathogen outbreaks and was comprised of states, the U.S. Public Health Services (now the FDA), and the shellfish industry. The purpose of the NSSP is to promote and improve sanitation when shellfish are moved through interstate commerce. The NSSP is a federal/state cooperative program to develop uniform state shellfish sanitation programs.

In 1983, the ISSC was formed to update the NSSP-MO and address shellfish sanitation issues. New York is a founding member of the ISSC, which is composed of state regulators, with representation from the FDA, EPA, NMFS, and the shellfish industry.

The FDA conducts annual evaluations of state shellfish program elements for compliance with the NSSP-MO. Commercial market shellfish operations found to be in conformance with the NSSP-MO are licensed in good standing by DEC, and a listing of those operations is forwarded to the FDA for inclusion in the Interstate Certified Shellfish Shippers List. States found to be not in compliance are subject to having their commercial shellfish dealers removed from the Interstate Certified Shellfish Shippers List, resulting in a halt to all sales and shipment of shellfish from those state licenses in interstate commerce.

Pursuant to § 13-0307, DEC's Division of Marine Resources is responsible for conducting surveys along New York's coastline to monitor shellfish growing areas, and take water quality samples in order to protect human health. DEC's Division of Marine Resources administers a program of water and shellfish tissue sampling to quantify the concentration of bacteria and viruses, which are designated by regulation as indicators of contamination. The Division also conducts marine biotoxin monitoring to identify toxic harmful algal blooms (HABs). Harvest area classification under the NSSP-MO is a water sampling-based program. Shellfish samples are also collected and processed, with results dictating which shellfish lands are in safe condition for human consumption. Shellfish lands safe for human consumption are designated as certified shellfish lands; all other shellfish lands as uncertified, or seasonally certified if data supports a certified classification for only part of the year.

In response to several shellfish-related illness~~es~~ outbreaks in 2012, 2013, and 2014 in several New England states, the FDA required states to develop a *Vibrio parahaemolyticus (Vp)* Control Plan. DEC's Division of Marine Resources developed New York's *Vibrio parahaemolyticus (Vp)* Control Plan and is the regulatory agency responsible for implementing and enforcing the regulations associated with the Vp Control Plan. The plan establishes conditions and requirements for how shellfish must be handled after harvesting to reduce the potential for post-harvest growth of Vibrio bacteria in shellfish and the potential for foodborne illness to occur. For example, the Vp Control Plan requires shellfish harvesters to:, shade harvested

shellfish from direct sunlight during the period from May 1 through October 31,and immediately cull and place harvested oysters under temperature control through icing, mechanical refrigeration maintained at 33°F–45°F, or an DEC-approved cooling method, upon commencement of harvest from May 1 through September 30. The Vp Control Plan also requires all hard clams and oysters harvested for food consumption from certain north shore certified harvest areas that are located in or adjacent to areas where Vp illnesses have occurred to be immediately culled and placed under temperature control, as described above, from May 1 through September 30.

5.2 Hazard Analysis and Critical Control Point (HACCP) Training

As part of the Shellfish Sanitation Program, DEC is responsible for the inspection and licensing of shellfish dealers involved in harvesting, shucking, repacking, and reshipping of fresh or frozen shellfish and shellstock.

All shellfish dealers, including commercial growers and harvesters, must complete HACCP training and develop an HACCP plan that conforms with FDA regulations and is specific to their aquaculture operations. For goods that will be consumed, producers must identify all potential hazards associated with their goods and manufacturing processes and put measures in place to control/prevent those hazards. All shellfish processing and handling operations are inspected twice a year, as required by the FDA. Operational licenses are reviewed, and corrective actions are ordered, if needed. Harvesting boats, vehicles, facilities, equipment, product handling procedures, and recordkeeping are checked for compliance. See New York Sea Grant's "Is Shellfish Farming Right for You?" eCourse at www.nyseagrant.org/shellfishfarming for additional information on HACCP and other seafood safety, harvest, and distribution considerations.

5.3 Other State Agencies That May be Involved in Shellfish Sanitation

The New York State Department of Health oversees food sanitation in restaurants, and the New York State Department of Agriculture and Markets is responsible for food sanitation in grocery stores and fish markets.

6 ACCESS TO UNDERWATER LANDS FOR SHELLFISH AQUACULTURE

6.1 Background

Underwater lands in New York's marine and coastal district may be owned and/or under the jurisdiction of: (1) New York State (2) County of Suffolk; (3) local townships; or (4) individuals or corporations. The procedures for acquiring access to underwater lands from the respective governmental entities are summarized in the sections below.

6.2 Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay

Pursuant to Chapter 425, Laws of New York 2004 (2004 Leasing Law), as codified in New York State Environmental Conservation Law §13-0302, the State ceded title to approximately 110,000 acres of underwater lands in Peconic Bay and Gardiners Bay to the County of Suffolk for the purpose of shellfish cultivation, and authorized the County to prepare, adopt and implement a shellfish aquaculture lease program for this region. In 2009, the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay (Lease Program) was established by Suffolk County Local Law No. 25-2009 (Chapter 475, Article II of the Suffolk County Code).

This program was developed to enable shellfish farmers to obtain secure access to underwater lands in Peconic and Gardiners Bays, where they could establish private shellfish farms, through the issuance of a lease for a period of ten (10) years. Under the Lease Program, the County has the primary authority to: (1) issue leases to underwater lands for the purpose of private, commercial, educational, or non-profit shellfish aquaculture; (2) approve or disapprove the location of shellfish farms within the formally adopted Shellfish Cultivation Zone and Aquaculture Lease Sites map; and (3) determine the intensity of aquaculture through limitations on the amount of acreage that is leased each year.

The County's jurisdiction to the underwater lands extends from the westerly shore of Great Peconic Bay to an easterly line, which runs from the most easterly point of Plum Island to Goff Point at the entrance of Napeague Harbor; but does not include underwater lands within 1000 ft. of the mean high water mark. Pursuant to the ECL §13-0302, the County established and adopted the Map 1: Shellfish Cultivation Zone (Figure 1), which identifies the area(s) where the County may issue leases. In an effort to aid prospective lease applicants and members of the public, the County also developed and adopted Map2: Aquaculture Lease Sites (Figure 2), which delineated and identified 10-acre lease sites that could be applied for by prospective applicants. The Aquaculture Lease Sites map also identified underwater lands with private ownership interest (oyster grants).

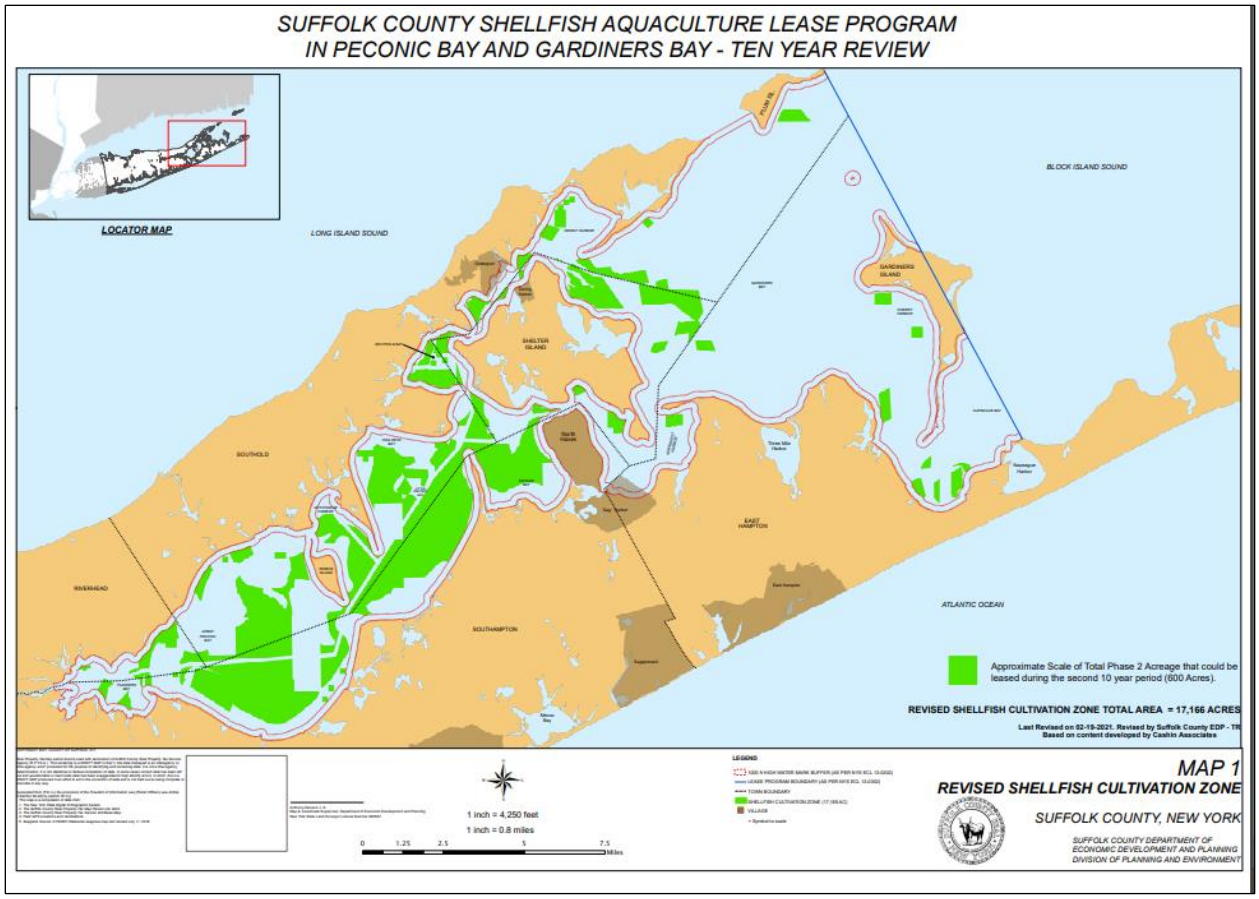


Figure 1. Map 1: Shellfish Cultivation Zone

Figure 2. Map 1: Shellfish Cultivation Zone

Shellfish Cultivation Zone Map: https://suffolkcountyny.gov/Portals/0/formsdocs/planning/EnvPlanning/Aquaculture/Map_1.pdf

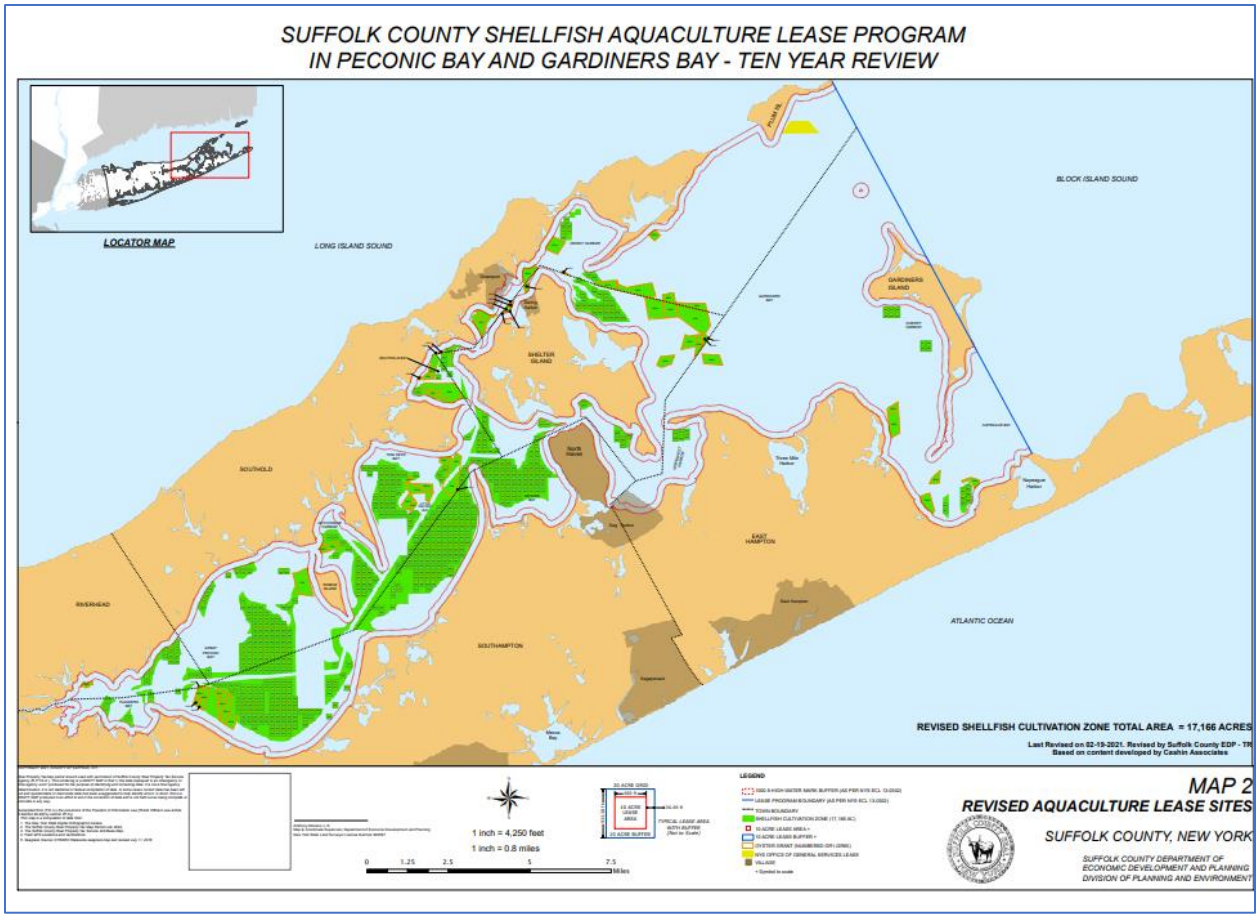


Figure 2. Map 2: Aquaculture Lease Sites

Aquaculture Lease Sites Map: https://suffolkcountyny.gov/Portals/0/formsdocs/planning/EnvPlanning/Aquaculture/Map_2.pdf

Upon completion of the mandated administrative review of the Lease Program, the County adopted Local Law No. 09-2021, which amended the County Code, the Shellfish Cultivation Zone as shown in Figure 1 and the Aquaculture Lease Sites map as shown in Figure 2. The amended County Code included revisions to Lease Program's requirements, standards and procedures. It is strongly suggested that all prospective lease applicants and/or existing leaseholders review and become familiarized with the amended requirements and standards.

Applicants must meet the following eligibility requirements apply for a lease with the County:

- Applicant shall be at least 18 years of age and must provide valid photo identification.
- Applicant must also provide a Social Security Number and/or Federal Tax ID Number (EIN).

Additionally, all lease applicants must satisfy at least *one* of the following criteria:

- Applicant must have completed a recognized course of study in shellfish aquaculture, marine science or related disciplines; and/or technical training program in shellfish aquaculture.
- Prior shellfish aquaculture experience (two or more years) as an employee or apprentice.
- Prior experience (three or more years) as a commercial baymen and/or shellfisherman.

The County expects to conduct one lease application cycle per year for new shellfish aquaculture leases subject to the Annual Acreage Cap Limit. Due to the Annual Acreage Cap Limits that were established for

Phase I (2010-2020) and Phase II (2021-2030) of the Lease Program, the County may lease 60 acres of new lease acreage per year, which limits the amount of new lease acreage the County can lease to 1200 acres by the end of 2030. Any unallocated acreage from a given year or is reclaimed by the County may be added back to the cap and made available for lease during a subsequent year or years (*Phase I and Phase II acreage cap limits do not apply to private oyster grant owners that wish to obtain a lease on their oyster grant to cultivate species other than oysters*.).

The Annual Lease Application Cycle (Cycle) shall start in January of each New Year. During a Cycle's established application period, shellfish farmers that wish to conduct shellfish cultivation activities in Peconic and Gardiners Bays may apply for a 10-acre lease site, as identified on the adopted Aquaculture Lease Sites map (Figure 2). Below is an outline of the County's lease application process; it is estimated that it will take approximately 12 months to complete that entire process and obtain a Shellfish Aquaculture Lease. **A lease and all required regulatory permits must be in effect before any shellfish cultivation activities can take place on a lease site.**

6.2.1 Pre-Application Meeting

Once an application period is established by the Department of Economic Development and Planning (Department), applicants are required to attend a pre-application meeting with Department staff, prior to submitting a Shellfish Aquaculture Lease Application. Applications will not be accepted without having first attended a pre-application meeting. Information pertaining to the implementation of a Lease Application Cycle and the respective application period will be posted on the Lease Program website.

6.2.2 Submission and Review of Lease Application

New lease applicants may only submit one application during a given lease application cycle. Each applicant shall identify in the application three lease sites (one preferred 10- acre lease site and two alternative 10-acre lease sites), which they would be willing to lease if approved. Applications must be submitted via mail to the Department, along with a non-refundable application fee during the application period. The Department will review all applications received, and make a determination on applicant eligibility. The applicant shall be notified by receipt when the application was received and if it has been accepted by the Department. Incomplete applications will be returned to the applicant. Any applications received which are postmarked, after the final day of the established application period will not be accepted.

*6.2.3 **Establish Applicant Priority** (if necessary)*

Depending on how many eligible applicants apply during a given Lease Application Cycle, not all applicants may obtain a lease. At the conclusion of the lease application period, if the aggregate acreage in new lease applications exceeds the acreage available under the Annual Acreage Cap Limit, the Department shall use the Random Selection Process (RSP) to establish applicant priority and determine which applicants will proceed in the lease application process. All applicants will be notified of the results of the Random Selection Process.

6.2.4 Public Comment Period

Public Notice shall be provided for at least 60 days by posting such notice in the Office of the Department; the Office of the Suffolk County Clerk; the Office of the NYSDEC Division of Marine Resources; the Clerk's Office of the five East End towns; and the Office of the East Hampton, Southampton and Southold Town Trustees. Such notice shall also be published in the official newspaper(s) of the County; a local newspaper

where the lease sites are located; posted on the Lease Program website; and emailed to all who have signed up for notifications regarding the Lease Program. The public will be able to submit written comments to the Department on the proposed lease sites during this two-month period. Once the Public Comment Period has concluded, the Department will send the applicant any comments and/or objections received during the public comment period.

6.2.5 Lease Site Approval by Aquaculture Lease Board

The Department will issue a Meeting Notice, which announces the date, time and location of the Aquaculture Lease Board (ALB) Meeting, and will be posted on the Lease Program's website. The ALB meeting is open to the public and lease applicants. During the ALB meeting, staff will present to the ALB members the lease sites that were applied for during the application period, and any comments and/or objections to a specific lease site submitted during the Public Comment Period. Lease applicants and/or members of the public will also be given the opportunity to make any additional oral comments on the proposed lease sites at that time. Once all comments are presented and/or heard, Department staff will present their recommendations to the ALB. The ALB, by majority vote, will make determinations based on a regional and environmental perspective on which potential lease sites will be approved; conditionally approved; or disapproved for leasing. Subsequent to the ALB meeting, the Department will notify each applicant of ALB's approval or disapproval of their proposed lease sites. Lease applicants shall be required to verify their desire to proceed with the lease execution and confirm their approved lease site selection.

6.2.6 Lease Site Boundary Survey

As required by law, all lease sites must be surveyed by a licensed land surveyor. Upon confirmation of the selected and approved lease site, the Department will provide lease applicants with the lease site boundary survey specifications and coordinates. All surveys must meet the requirements outlined in the Revised Administrative Guidance Appendix A. Lease applicants are responsible for the procurement and cost of the lease site boundary survey and boundary survey maps; the applicant shall have a period of six (6) months from the date of this notification to submit the required lease site boundary survey maps to the Department. As the lease site boundary survey map is a required attachment to the Shellfish Aquaculture Lease Agreement, a lease cannot be executed until the survey maps are received. Failure to submit the boundary survey maps within the specified six (6) month period may result in the termination of the lease application and the discontinuance of the lease execution process. During this six (6) month period, lease applicants may also start the process to submit permit applications to the applicable Federal and State regulatory agencies; and submit a copy to the Department.

6.2.7 Preparation and Execution of Shellfish Aquaculture Lease Agreement

Upon receipt of the lease site boundary survey maps, a draft Shellfish Aquaculture Lease Agreement (Lease) will be prepared by the Department and sent to the lease applicant for their review. Upon receipt of the draft Lease, the lease applicant will have forty-five (45) days to sign their Lease and associated documents. Lease applicants must contact the Department to schedule a date to come to the Division of Planning and Environment Office to sign the documents. The lease applicant shall be required to submit the first annual lease rental fee payment to the Department upon signature of the Lease. Once the Lease is fully executed by the Department, an original shall be recorded in the Office of the Suffolk County Clerk. Leaseholders will receive an original Lease and copies of all recorded documents.

6.2.8 Regulatory Permits and Lease Site Boundary Markers

Leaseholders must obtain all permits and licenses required by the NYSDEC, US Army Corps of Engineers, US Coast Guard and any other applicable regulatory agency prior to the conduct of any shellfish cultivation activities on their lease site. Leaseholders shall have six (6) months from the date of Departmental notification regarding the ALB's decision to apply for all applicable Federal and State regulatory permits. Hard copies or pdfs of all permit applications must be submitted to the Department to document the completion of this requirement. Lease site boundaries must be identified and marked according to requirements specified in Appendix B of the Revised Administrative Guidance. Once permits are issued, leaseholders must submit copies of the issued permits and/or approvals to the Department; and may deploy lease site boundary markers and shellfish aquaculture gear. Leaseholders must also contact the National Oceanic and Atmospheric Administration (NOAA) to initiate chart/coastal pilot corrections prior to deployment of shellfish aquaculture gear on the site. It is strongly recommended that upon notification and selection of the approved lease site, lease applicants pursue their permits and the conduct of the lease site boundary survey concurrently. If the required regulatory permit applications have not been submitted within the established timeframe this shall be cause for termination of the lease by the Department.

6.2.9 Substantial Shellfish Aquaculture Activity

As required by the Lease Program and respective Shellfish Aquaculture Lease Agreement, leaseholders are required to conduct Substantial Shellfish Aquaculture Activity in order to retain their lease with Suffolk County. A leaseholder shall be considered to be conducting substantial shellfish aquaculture activities provided he/she can document to the Department the planting or deployment of shellfish, cultivation or maintenance of shellfish, harvest of cultivated product. Substantial Shellfish Aquaculture Activity may also include, but are not limited to, the following: actions or steps taken by the lessee to prepare the aquaculture lease site; the purchase of necessary shellfish and/or gear/equipment; application to obtain required regulatory permits; or acquisition of financing. A lessee will be considered by the Department not to have conducted Substantial Shellfish Aquaculture Activity if the leaseholder is unable to document Substantial Shellfish Aquaculture Activity for two consecutive years.

5.2.10 *Leaseholder Annual Reporting Requirements*

All leaseholders must complete a Leaseholder Annual Report form each year they retain their lease with the County. Leaseholders shall document their Substantial Shellfish Aquaculture Activity in the Leaseholder Annual Report form and submit any addition information requested/required in the Annual Report. The Leaseholder Annual Report form must be returned to the Department 30 days before the lease anniversary date (start of term), along with the annual lease rental fee payment, and their notarized SC Form 22. Failure to submit the Leaseholder Annual Report form, annual lease rental fee and/or other required information will be cause for the County to terminate and evict the default leaseholder.

For additional information or to view Suffolk County Aquaculture Lease Program (SCALP) documents, announcements, applications, maps, Interactive SCALP Lease Status Mapper, etc., please visit the County's website at the address listed below:

https://www.suffolkcountyny.gov/Departments/Economic-Development-and-Planning/Planning-and-Environment/Environmental-Planning-and-Aquaculture/Shellfish-Aquaculture-Lease-Program

5.3 Town of Brookhaven Aquaculture Lease Program

The Town of Brookhaven established an aquaculture licensing program in 2017 that authorizes the cultivation of shellfish or other approved species, including other noninvasive marine plants (Town Code Chapter 57, Article VII). Brookhaven's licensing program consists of a total of approximately 30 acres in certified (open) waters, with lease parcels up to 4 acres in size (Figure 3).

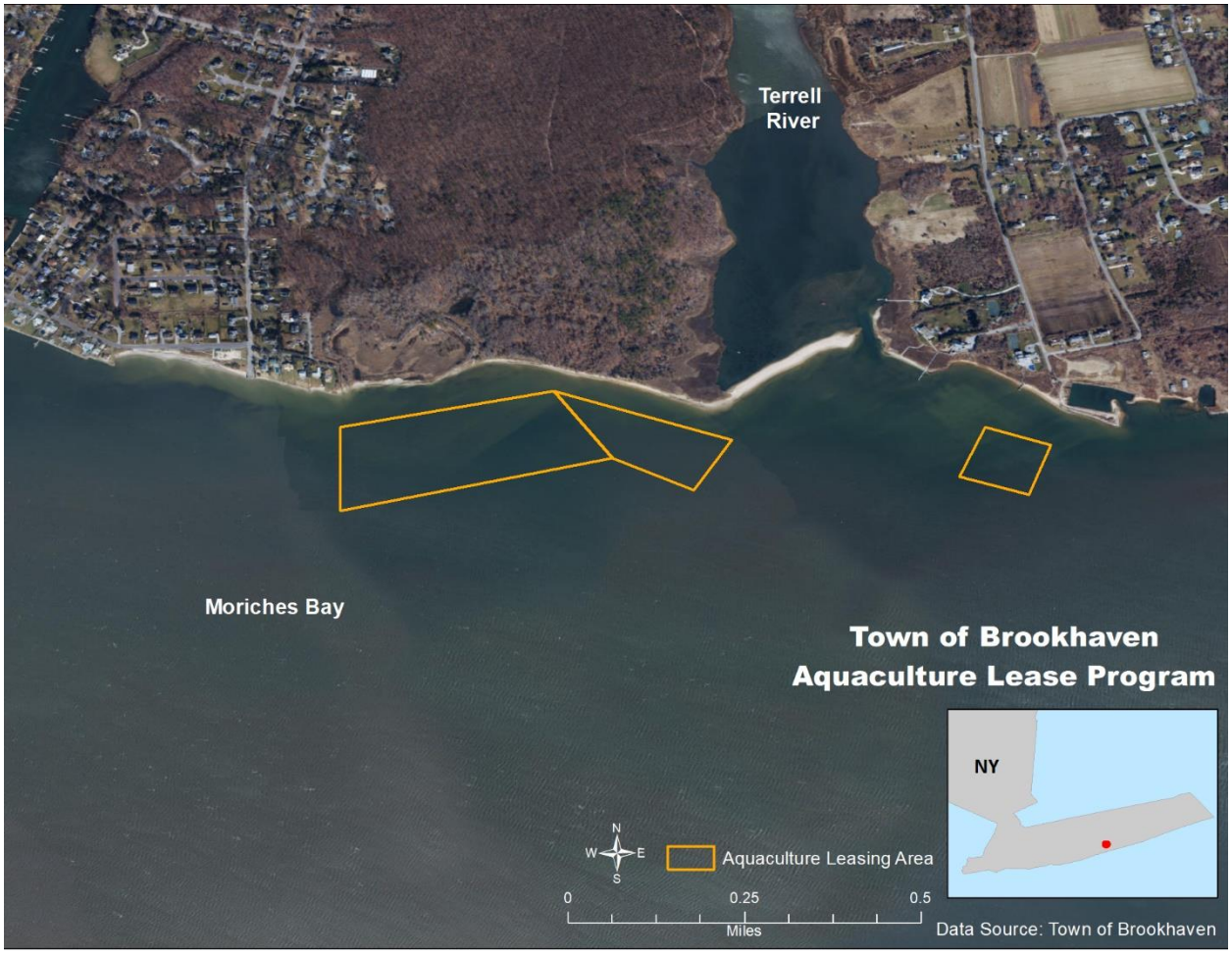


Figure 3. Map of Brookhaven's Aquaculture Lease Program leasing areas

To be eligible for the Town's leasing program, applicants must be a resident of the Town of Brookhaven and the proposed aquaculture operation must be located within the town. Potential lessees may select their lease area from available plots. Potential lessees are encouraged to contact the Town of Brookhaven's Department of Environmental Protection to discuss their cultivation project before applying for a lease from the Town.

To apply for a lease area, potential lessees should contact the Town of Brookhaven to request a Town Board Resolution through the Council Person or Town Attorney. The request must include the following information:

- Location of proposed lease
- Size of proposed lease
- Species to be farmed
- The type of equipment that will be used
- A map of the area
- Executed lease agreement, if privately owned

Once permission for a lease application is granted, potential lessees must hire a surveyor to conduct a survey of the proposed lease area. The survey must show: metes and bounds description, distance to any adjacent aquaculture farms, distance to any navigation channels, and proof that the site complies with the requirements listed in Chapter 57-39 of the Brookhaven Town Code. A benthic survey is also required for each Brookhaven lease.

Applicants must complete a lease application for an aquaculture farm and should submit completed applications, along with a copy of the survey, to the Town of Brookhaven's Department of Environmental Protection. Complete application packages should include the survey, as described above, along with the following:

- Written metes and bounds description of the property that matches the survey of the lease area, and a statement indicating the total square footage of the plot
- Site photos
- A management plan
- Full Environmental Assessment Form
- Wetlands/Aquaculture Permit Application
    - Transactional Disclosure Form
- Written approval for Fire Island National Seashore, if applicable
- Wetlands application filing fee
- All prerequisite permits from the Town of Brookhaven
- If privately owned, the application must include copies of:
    - Owner's Consent Form
    - Certificate of Indemnity signed by the current property owner and properly notarized
    - If the applicant is a contract vendee, in addition to the affidavit submitted by the owner, the applicant must also submit his/her Affidavit of Indemnity
    - A signed license/lease agreement
    - A copy of the deed

5.4 Town of Islip Bay Bottom Licensing Program

The Town of Islip established a Bay Bottom Licensing Program in 2011 that authorized the cultivation of shellfish and marine plant species using on-/off-bottom cultivation methods on 125 acres of town-owned underwater lands. Prior to implementing the Bay Bottom Leasing Program, DEC approved the location of lease parcels. The town leases 26 bay bottom parcels, with leases ranging in size from 1 to 5 acres (Figure 3).

Figure 4. Map of Islip's Bay Bottom Leasing Program parcels

Figure 5. Roadmap of the On-/Off Bottom Culture Permit Application Process Figure 6. Map of Islip's Bay Bottom Leasing Program parcels

All lease areas were surveyed by the Town of Islip prior to implementation of the Bay Bottom Leasing Program. Since implementation, demand for leased parcels has exceeded current availability, so the Town implemented a waiting list for future available parcels.

5.4.1 Application Meeting

To apply for a Shellfish Aquaculture License (License), a prospective applicant is required to meet with the Town of Islip Department of Environmental Control to review the Town's Shellfish Aquaculture License Program and to discuss the prospective applicant's three-year business plan. Prior to the meeting, the prospective applicant will be mailed an application and a copy of the license agreement to review. Following the meeting, if the applicant wishes to proceed in the program, the applicant must sign a license agreement and submit a check for the security deposit ($375 per acre) and the first-year lease payment ($750 per acre).

5.4.2 Town Board Approval

The Town of Islip Department of Environmental Control will submit a resolution to the Town Board for its consideration to award a parcel to the applicant. The Town Board will vote on the License agreement at a public meeting. Following the Town Board Meeting, the applicant will be notified in writing that the Town Board intends to approve the applicant's request for a license agreement. The applicant will then be provided the license site coordinates and will have 12 months to acquire all necessary permits. The applicant will also be required to acquire general liability insurance and New York State Disability and Workers Compensation Insurance, or obtain an NYS Affidavit CE 200 waiving this requirement. The applicant is responsible for notifying the Town of Islip's Department of Environmental Control once the permitting is complete and to submit all required documentation.

5.4.3 Preparation of License

The Town of Islip Department of Environmental Control will prepare the license documents for execution by the Town Supervisor. At that time, the applicant will need to produce copies of the insurance, and permits. Once the license has been executed, an original copy will be sent to the applicant.

5.5 Access to Underwater Lands in State Waters

Aquaculturists who wish to access state-owned lands underwater within waters of the marine and coastal district, that are three miles or less from shore, for the purposes of shellfish cultivation, except for waters of Peconic and Gardiners Bays that were ceded to Suffolk County, can apply for a TMAUA with DEC's Division of Marine Resources, Shellfish Management Unit. A TMAUA is a five-acre circular parcel that can be used for off-bottom shellfish cultivation purposes.

5.6 Aquaculture Sites on Privately Owned Lands Underwater

Applicants proposing aquaculture operations on privately owned underwater lands must provide appropriate documentation of title to or legal control of the underwater lands (e.g., deed of ownership). If the applicant is not the owner and will be leasing the privately owned underwater lands from the owner, then written authorization from the owner is required with the application, in addition to the ownership documentation.

6. PERMITTING FOR COMMERCIAL SHELLFISH AQUACULTURE

6.4 Background

Aquaculture is broadly divided into three categories: (1) traditional on-bottom culture (no gear); (2) off-bottom gear cultivation (use of floating, submerged, or bottom structures); and (3) hatchery and/or nursery culture.

6.5 On-Bottom Shellfish Aquaculture

Proposed on-bottom shellfish aquaculture operations will need to have the necessary permits from DEC, NYSDOS, USACE, and USCG (if applicable) before any aquaculture activities can commence.

6.6 Off-Bottom Shellfish Aquaculture

Proposed off-bottom shellfish aquaculture operations will need to have the necessary permits from DEC, NYSDOS, USACE, and USCG (if applicable) before any aquaculture activities can commence or gear can be placed in the water. If the applicant is seeking to cultivate shellfish on state-owned lands underwater, DEC's Division of Marine Resources will work with NYSOGS on behalf of the applicant to seek the necessary approvals for issuance of a TMAUA in association with an Off-Bottom Culture Permit.

6.7 Marine Hatchery and/or Nursery Culture for Shellfish Aquaculture

Proposed marine hatchery and/or nursery culture facilities will need to have the necessary permits from DEC before any activities can commence. Aquaculture activity that qualifies for a Marine Hatchery Permit includes:

1. Land-based marine shellfish hatchery; and
2. Nearshore nursery operation

Land-based marine shellfish hatcheries may require state UPA permits. However, this type of facility is less common than nearshore nursery operations, such as Floating Upweller Systems (FLUPSYs) or a land-based upweller. Prior to applying for any state or federal permits, applicants must have legal documentation of access to lands underwater, either in the form of a lease, letter of permission, or deed, depending on the location of the proposed shellfish aquaculture operation (not applicable for land-based hatcheries). Refer to *Section 5* for more information on leasing underwater lands for the purposes of marine shellfish cultivation.

Before completing the applications, applicants should call the Shellfish Hotline at (631) 380-3311 to speak to the state Shellfish Ombudsperson to determine the permit application package requirements based on the proposed aquaculture project plan and lease location.

Permit applications may be obtained from DEC's Division of Marine Resources office by calling DEC's Division of Marine Resources at (631)-444-0489 or the State Shellfish Ombudsperson at (631) 380-3311, or seeing Appendices C–I of this document. Potential applicants are encouraged to contact the DEC's Division of Marine Resources, Shellfish Management Unit to discuss the application process and the aquaculture proposal before submitting completed applications to DEC.

The following sections describe what is required to obtain permits from the applicable regulatory agencies. All permitting questions should be directed to the Shellfish Ombudsperson in DEC's Region 1, Division of Environmental Permits. Mailing address is provided in *Appendix B* .

6.8 New York State Department of Environmental Conservation (DEC)

All applicants must complete a Joint Application for Permit Form. In addition to the Joint Application for Permit Form, individuals and/or businesses seeking to use cultivation gear (e.g., bags, cages, long lines, etc.) must complete the On-/Off-Bottom Culture Permit application; and persons seeking to operate a hatchery and/or nursery must complete a Marine Hatchery Permit application.

6.8.1 On-/Off-Bottom Culture Permit Requirements

Completed permit application packages for an On-/Off-Bottom Culture Permit must include the following:

- A copy of the written authorization (e.g., lease agreement, license, letter of permission) to access the underwater land parcel on and above site of proposed culture operation
- Joint Application for Permit Form (*Appendix C*)
- On-/Off-Bottom Culture Permit Application (*Appendix D*)
- State Environmental Quality Review Act (SEQR), Short Environmental Assessment Form, Part 1 (*Appendix I*)
- Federal Consistency Assessment Form (*Appendix J*)
- DEC Permission to Inspect Property Application (*Appendix H)*
- Latitude and longitude coordinates of proposed project location
- Aerial-view site map/survey
- Project plans[1]
- Site Photos (4)
- Full Cultivation/Operational plan
- Vessel Information
- Navigational Aid Specs

Individuals should submit their permit application package directly to the Shellfish Management Unit at DEC's Division of Marine Resources. There is a $100 fee associated with the On-/Off-Bottom Culture Permit application. The application fee can be paid in person or be mailed to the NYSDEC's Division of Marine Resources, Shellfish Management Unit, 123 Kings Park Blvd (Nissequogue River State Park), Kings Park, NY 11754. Acceptable forms of payment include cash, check, or money order (only money order or check will be accepted for payments by mail). Bed and Digger Permits also have associated fees; NYS DEC will send the applicant an application from the Marine Permit System that lists the permits and fees, and payments should be included with that application at the end of the review process.

6.8.2 Marine Hatchery Permit Requirements

Completed permit application packages for a Marine Hatchery Permit must include the following:

- Legal documentation of access (e.g., lease, deed of ownership, or letter of permission from landowner)

[1] If the proposed aquaculture operation includes the use of floating shellfish cages, the project plan must include a Bird Mitigation Plan and identify the type of bird deterrent that will be used.

- Marine Hatchery Permit application (*Appendix E*)
- Water Discharge Form (*Appendix F*)
- State Environmental Quality Review Act (SEQR), Short Environmental Assessment Form, Part 1 (*Appendix I*)
- Aquaculture Activity Review Sheet (***Error! Reference source not found.***)
- Latitude and longitude coordinates of proposed project location and street address, if applicable
- Site location map
- Project plans
- Photographs

Individuals should submit their permit application package directly to the Shellfish Management Unit at DEC's Division of Marine Resources. There is a $100 fee associated with the Marine Hatchery Permit application, which can be paid in person or be mailed to the NYSDEC's Division of Marine Resources, Shellfish Management Unit, 123 Kings Park Blvd (Nissequogue River State Park), Kings Park, NY 11754. Acceptable forms of payment include cash, check, or money order (only money order or check will be accepted for payments by mail).

6.8.3 Permit Application Review Process

When DEC's Division of Marine Resources, Shellfish Management Unit receives the permit application package, the application is reviewed for completeness and a confirmation of receipt will be sent to the applicant. If the application is found to be incomplete, DEC's Division of Marine Resources will send a letter – by mail and email to the applicant stating the application is incomplete, and provide instructions on what is needed to complete the application. If found to be complete, DEC's Division of Marine Resources will send a Regulatory Coordination Memorandum – Aquaculture to NYSDEC's Region 1, Division of Environmental Permits with the completed Joint Application for Permit Form package and supporting materials attached for any required state UPA permits, or, if the need for a state UPA permit is unclear, a request for determination on the need for a state UPA permit.

Four permits are administered by DEC's Region 1 DEP under the state UPA:

1. Tidal Wetland (TW) permit (6 NYCRR Part 661);
2. Section 401 Water Quality (WQ) Certification (6 NYCRR Part 608);
3. Protection of Waters Permit (ECL § 15-0505); and
4. Long Island Well Program (6 NYCRR Part 602).

If a state UPA permit (TW, WQ, Protection of Waters Permit, and/or Long Island Well Permit) is required, DEC's Region 1 DEP reviews the Joint Application and Permit Form package, and resolves any issues with the applicant and issues with the state UPA permit. If proposed aquaculture activity is exempt from state UPA permit requirement, this is indicated on a Regulatory Coordination Memorandum – Aquaculture and returned to DEC's Division of Marine Resources, Shellfish Management Unit. DEC's Division of Marine Resources, Shellfish Management Unit can complete the review and issuance, if appropriate, of an On-/Off-Bottom Culture Permit. If the Off-Bottom Culture Permit Application also includes an Application for a TMAUA, the TMAUA may be issued to the applicant once all appropriate permits have been issued from DEC's Region 1 DEP; USACE; USCG; and NYSDOS and OGS

State and Federal agencies will communicate the outcome of their review of the proposed aquaculture activity with DEC's Division of Marine Resources, Bureau of Shellfisheries. The Bureau of Shellfishes will issue appropriate authorization in the form of an On-/Off-Bottom Culture Permit or Marine Hatchery

Permit, which provides legal documentation to begin aquaculture activity. Written authorization from DEC is required before any aquaculture activities can commence or gear can be placed in the water.

6.9 New York State Department of State (NYSDOS)

A proposed commercial aquaculture operation requires a federal consistency review if the proposed action involves federal authorization or direct assistance, or utilizes federal money. Applicants for federal permits for actions within or affecting the New York State coastal area are required to submit a FCAF, a copy of their federal application, and all necessary data and information to NYSDOS for review at the same time they submit their material to the appropriate federal agency. Final federal agency authorization is prohibited until NYSDOS concurs with the consistency certification statement that the activity complies with and will be conducted in a manner that is consistent with NYSDOS's Coastal Zone Management program, or NYSDOS's concurrence is presumed.

6.10 United States Army Corps of Engineers (USACE)

All proposed aquaculture operations using off-bottom culture gear, certain mechanical harvesting activities, and shell for oyster restoration involving federal permits must be reviewed by USACE. It is required that applicants apply for appropriate USACE permits at the same time as when applying for permits at DEC and NYSDOS, according to FCAF submittal requirements. The USACE will decide whether the project requires an individual permit authorization or may be verified under a NWP.

For most projects that qualify for an NWP, applicants can begin working with USACE by submitting a complete PCN. Application forms (ENG Form 4345) can be found on the New York District Regulatory Branch website.

A completed Pre-Construction Notification must include the following:

- A copy of the completed Joint Application for Permit Form (*Appendix C*)
- Environmental Questionnaire (*Appendix K*)
- Essential Fish Habitat Assessment Worksheet (*Appendix L*)
- A copy of the FCAF submitted to NYSDOS (*Appendix J*)
- Justification for why work needs to occur in the designated area and ways to avoid, minimize, or mitigate the environmental impact
- One set of site plans/drawings on 8½" x 11" paper consistent with the requirements of the Applicant Information Guide, with a minimum vicinity map, plan-view, and cross-section view of the proposed work
- At least three color photographs of the site, dated

Individuals should submit their completed PCN and required supporting materials directly to the USACE, New York District Regulatory Branch by emailing the documents to CENAN-R-Permit-App@usace.armymil.. For individual permit applications, the reviewing project manager will inform the applicant around the time of permit decision as to whether there will be a $10 fee for non-commercial projects or a $100 fee for commercial projects payable to the Treasurer of the United States. **DO NOT SUBMIT ANY FORM OF PAYMENT ALONG WITH AN APPLICATION.** No fees are charged for NWP verifications.

Once the application is submitted, a Regulatory Project Manager assigns the application a file identification number and in an acknowledgement memorandum notifies the applicant that the

application was received, who the point of contact is, and the application file number. The assigned project manager reviews the application for completeness and notifies the applicant if any additional information is required.

For proposed aquaculture activities that the USACE identifies as having only minimal adverse environmental impacts, either individually or cumulatively, to aquatic resources or navigable waters, the proposed work may be verified under NWP #48.[2] Some aspects of shellfish aquaculture that might warrant an Individual Permit review include:

1. A new species that has not been cultivated before in the waterbody;
2. If the proposed work is located in an area that has never been utilized for aquaculture before;
3. If the location of the proposed work is within the vicinity of a Federal navigation channel or a USACE Civil Works project; or
4. The size of the aquaculture area, the type of structures used, and the harvesting methods.

The USACE may add special conditions to the NWP verifications. These permit verifications are only valid if the conditions applicable to the permit are met, including regional conditions. Applicants are also required to ensure their proposed activities comply with all Special Conditions and General Conditions listed in Section H of the Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2017 NWPs for NYSSection H of the Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2021 NWPs for NYS,Section H of the Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2017 NWPs for NYS, Expiration March 14, 2026, or apply for an individual Section 401 Water Quality Certification.

If USACE determines the project requires an Individual Permit, a Public Notice will be issued. During the 30-day comment period, proposed work is reviewed by the public, special interest groups, local agencies, state agencies, and federal agencies.

The USACE will inform the applicant of the final permit decision.

6.11 New York State Office of General Services (NYSOGS)

If a proposed project for shellfish cultivation exists within state-owned lands underwater, DEC's Division of Marine Resources will work with NYSOGS on behalf of the applicant to seek the necessary approvals for issuance of a TMAUA in association with an Off-Bottom Culture Permit.

6.12 United States Coast Guard (USCG)

The USCG reviews PATON permit applications (CG Form 2554) and issues no-fee approvals through the U.S. Harbormaster website (www.usharbormaster.com). Once registered and approved, users can submit applications online (one application per aid). The First District PATON Program Manager determines aid name, verifies position via nautical chart, determines aid Class (I, II, or III), and verifies application accuracy and light configuration (if any). When received by First District, applications are screened and reviewed to determine which local Aids to Navigation Team (ANT) has jurisdiction for that aid. First District forwards the application for review to the local ANT with issues/concerns, if any. When applicable, the local ANT reaches out to local Harbormasters for feedback and verifies no Federal or established Private Navigational Channels are impacted. The local ANT reviews application and approves or disapproves the

[2] The USACE reserves the right (i.e., discretion) to modify, suspend, or revoke NWP authorizations.

application, providing reasons for disapproval. The application is then given a *final* review and processed (NOAA nautical chart additions and USCG Light List entries, when appropriate per Aid Class 1&2). If the application is denied, reasons and options are discussed with the applicant.

Application processing time is usually less than two weeks providing there are no errors in aid position or position format,[3] and lighting characteristics are within International Association of Marine Aids to Navigation and Lighthouse Authorities B Navigational standards.[4]

[3] Aid positions must be in the DD-MM-SS.SSS format per NOAA charting standards.

[4] Lighted floating aids must have a light color that matches buoy hull color (aquaculture is yellow). Quick Flash should be avoided as to not be confused with any distress characteristic.

7. PERMITTING FOR RESEARCH, EDUCATION, AND RESTORATION

Various permits are required for research and educational aquaculture projects, depending on the nature and location of the project, the source of aquatic organisms, and type of gear, if any, to be used.

7.4 Scientific License to Collect or Possess

A Scientific License to Collect or Possess allows for the possession of captive-bred or permanently disabled native non-endangered or threatened species of fish and wildlife for scientific purposes. There is no fee associated with this license. The State requires an Annual Report of Activities, which must be filed prior to renewal of this license.

7.5 Permitting Research and Education Facilities

Any facility designed to contain or utilize aquatic organisms for research or educational purposes or to divert and/or discharge effluent from tanks containing aquatic organisms must be permitted by DEC. Contact the Shellfish Ombudsperson of DEC at (631) 380-3311 for more information.

7.6 License to Collect or Possess: Shellfish Gardening

A License to Collect or Possess: Shellfish Gardening allows a waterfront property owner to grow shellfish at his/her dock, bulkhead, or privately owned underwater lands (verification required) for education and/or restoration purposes through an established shellfish growing program. Shellfish gardening is only permitted in a certified or seasonally certified shellfish harvesting area. Currently, there are two shellfish gardening programs: (1) Cornell Cooperative Extension's Suffolk Project In Aquaculture Training (SPAT); and (2) East Hampton Shellfish Education and Enhancement Directive (EHSEED), which is only open to Town residents.

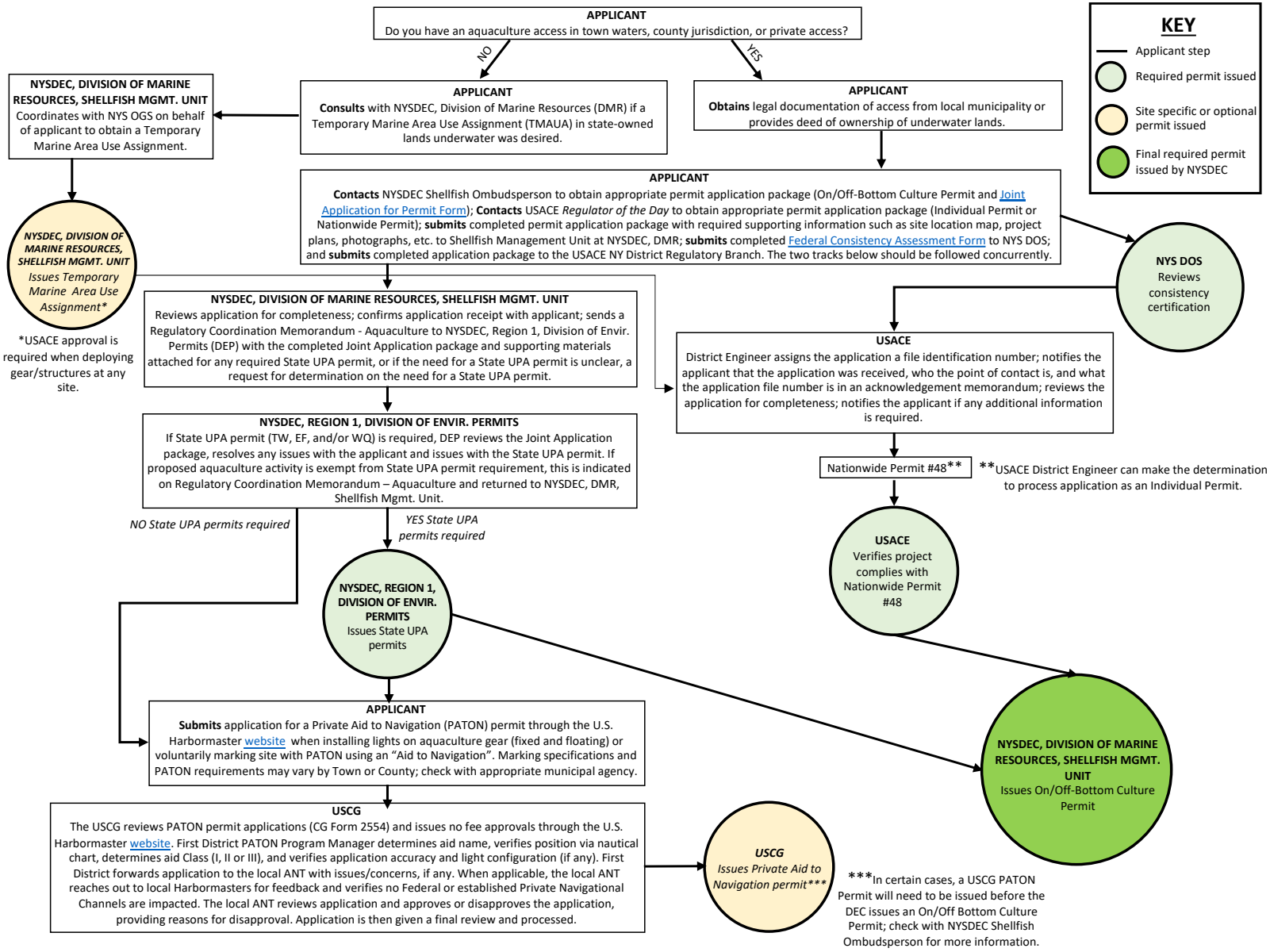


Figure 7. Roadmap of the On-/Off Bottom Culture Permit Application Process

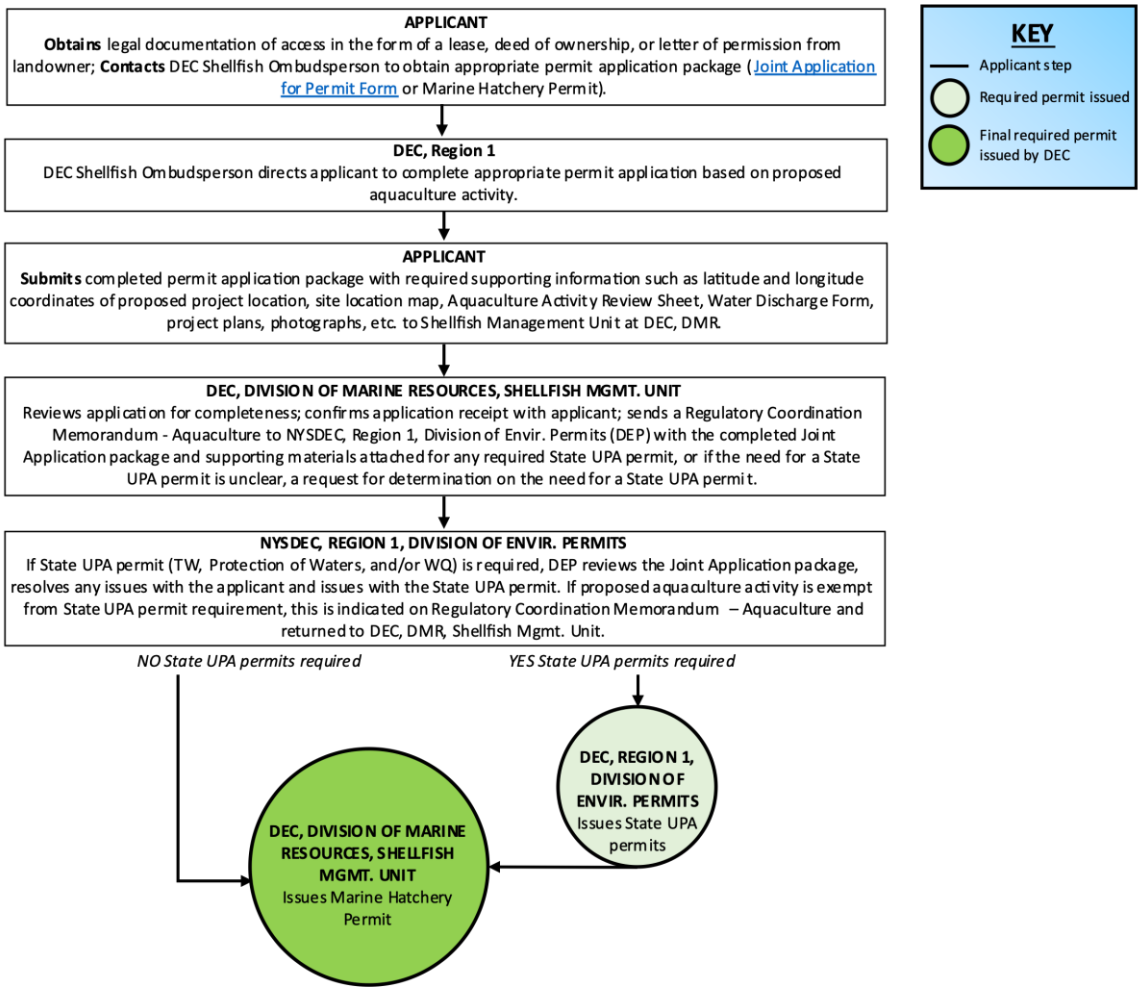


Figure 8. Roadmap of the Marine Hatchery Permit Application Process

8. REFERENCES

Flimlin, Gef et al. “Best Management Practices for the East Coast Shellfish Aquaculture Industry.” East Coast Shellfish Growers Association. 2010, pp. 1–76. https://ecsga.org/wp-content/uploads/2018/01/BMPmanual.pdf

Gobler, Christopher. *Long Island South Shore Estuary Reserve Eastern Bays Project: Nitrogen Loading, Sources, and Management Options*. New York State Department of State Office of Planning and Development, 2016, pp. 1–62. https://www.dos.ny.gov/opd/sser/pdf/FinalReportEasternBaysNitrogenLoadingSourcesandMgmtOptions.pdf

Rose, Julie M. et al. **“**Comparative Analysis of Modeled Nitrogen Removal by Shellfish Farms.” *Marine Pollution Bulletin,* vol. 91, 2015, pp. 185–190.

“Nitrogen Loading.” Long Island Sound Study, 22 May 2018, http://longislandsoundstudy.net/ecosystem-target-indicators/nitrogen-loading/

9. GLOSSARY

Aquaculture is the controlled rearing, cultivation, and harvest of aquatic animals and plants.

Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural as defined in the 2017 Nationwide Permits, General Conditions, District Engineer's Decision, Further Information, and Definitions.

Certified Shellfish Lands means shellfish lands from which the harvesting of shellfish for use as food is permitted by Commissioner's order or by any applicable statute, regulation, or ordinance passed by any other state or nation; provided further, however, that standards, methods, and techniques used by any such state or nation to determine certification shall be found in the judgment of the Commissioner to be substantially equal to those of the State of New York with regard to the protection of the public health and safety as defined in 6 NYCRR Section 45.1. The term "certified" is synonymous with "approved," which is the classification term used in the *National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish* to identify an area where harvest of shellfish for direct marketing is allowed. Certified shellfish lands are commonly referred to as "open areas."

Class I Private Aid to Navigation (PATON) means aids to navigation on marine structures or other works which the owners are legally obligated to establish, maintain, and operate as prescribed by the Coast Guard as defined in § 66.01–15. (Class I PATONs are verified by Coast Guard personnel).

Class II Private Aid to Navigation (PATON) means aids to navigation exclusive of Class I located in waters used by general navigation as defined in § 66.01–15. (Class II aids are generally lateral aids and lighted aids and are generally verified by USCG Auxiliary Aid Verifiers).

Class III Private Aid to Navigation (PATON) means aids to navigation exclusive of Class I located in waters not ordinarily used by general navigation as defined in § 66.01–15. (Class III aids are Regulatory Aids and are verified by the USCG Auxiliary Aid Verifiers.

Cleansing Area means a relay area within certified shellfish lands which has been temporarily declared uncertified pursuant to 6 NYCRR Part 45 and within which shellfish may be deposited for the purpose of reducing the numbers of fecal coliform bacteria which may be present in such shellfish in order to make them safe for human consumption as defined in 6 NYCRR Section 45.1.

Cultivation Site means the specific location in which cultivation activities may be undertaken as identified on a marine hatchery, on-bottom or off-bottom culture permit issued pursuant to 6 NYCRR Part 48.

Culture or **Cultivation** means the controlled or partially controlled raising, breeding, growing, planting, and containment of marine plant or animal life in any marine hatchery or through on-bottom or off-bottom culture as defined in 6 NYCRR Section 48.1.

Culturist means any person authorized to conduct culture or cultivation activities under a permit issued by DEC as defined in 6 NYCRR Section 48.1.

Harvest means to take shellfish from shellfish lands as defined in 6 NYCRR Section 42.2.

Harvester or **Digger** means a person who takes shellfish from shellfish lands as defined in 6 NYCRR Section 42.2.

Mariculture means is the cultivation of organisms in marine and estuarine open water environments.

Marine Hatchery means any building, pond, tank, raceway, or other structure, excluding hobby aquariums and natural bodies of water, in which marine plant or animal life is bred or otherwise cultivated, whether located on land or water, anywhere in the state as defined in 6 NYCRR Section 48.1.

Marine Plant and Animal Life means all organisms that spend or are capable of spending all or part of their life cycle in any waters of the marine and coastaldistrict, except those fish for which the DEC's Division of Marine Resources, may issue a hatchery permit pursuant to the provisions of § 13-0316 of the Environmental Conservation Law (ECL) as defined in 6 NYCRR Section 48.1.

Mean High Water is a tidal datum measured by the average of all the high tide heights observed over the National Tidal Datum Epoch.

Mean Low Water is a tidal datum measured by the average of all the low tide heights observed over the National Tidal Datum Epoch.

National Shellfish Sanitation Program (NSSP) is a cooperative program of the U.S. Food and Drug Administration, shellfish producing and receiving states, and the shellfish industry, designed to control the safe harvest and distribution of molluscan shellfish for human consumption in interstate commerce.

Navigable Waters of the United States[1] are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use in the future to transport interstate or foreign commerce as defined in 33 CFR 329.

New York's Marine and Coastal District includes waters of the Atlantic Ocean within three nautical miles from the coastline and all other tidal waters within the state, including the Hudson River up to the Governor Mario M. Cuomo Bridge as defined in § 13-0103 of the ECL.

Off-bottom Culture means the raising, breeding, or growing of marine plant or animal life, including containment on, or in, any raft, rack, float, cage, box, or other similar device or structure in any natural waters of the state as defined in 6 NYCRR Section 48.1. Thus, off-bottom culture of shellfish means holding shellfish in any kind of container deployed in any natural waters of the state, whether the container is resting on the bottom, suspended in the water column or floating at the surface.

On-bottom Culture means the raising, breeding, growing or planting of marine plant or animal life on, or in, any natural underwater lands of the state as defined in 6 NYCRR Section 48.1. Thus, on-bottom culture of shellfish means broadcasting, distributing, or planting shellfish on, or in, any natural underwater lands of the State so that the shellfish are in direct contact with the sediments of these underwater lands with no containment.

Ordinary High-Water Mark is that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or

[1] This term should not be confused with the term "Waters of the United States."

other appropriate means that consider the characteristics of the surrounding area as defined in 33 CFR 328.3(e).

Relay means that part of a shellfish transplant operation in which shellfish harvested from one shellfish land area are deposited on another shellfish land area as defined in 6 NYCRR Section 45.1.

Shellfish means oysters, scallops and all kinds of clams and mussels, as defined in 6 NYCRR Section 45.1.

Shellstock means any shellfish that have not been processed or released from one or both shells, and remains as a whole animal in the shell as defined in 6 NYCRR Section 48.1.

Shellfish Lands means all tidal or saline waters within New York's marine and coastal district and the lands lying thereunder, including such lands which are exposed at low tide as defined in 6 NYCRR Section 47.1.

Spring High Water Line is the average height of the high waters of the spring tides.

State-Owned Lands Underwater means those lands now or formerly underwater or periodically subject to the ebb and flow of the tides, any right, title or interest to which is in the State of New York. In New York's marine and coastal district, State-ownership begins at the last known natural location of Mean High Water prior to the placement of any fill.

Submerged Aquatic Vegetation means any of the diverse assemblage of underwater flowering plants located in fresh, marine, or brackish waters.

Tidal Datum means the base elevation from which to estimate heights and depths in terms of the phase of tide in a specific locality (e.g., Mean Sea Level) and is referenced to fixed points on land known as tidal benchmarks.

Transplant means any transfer of shellfish from shellfish lands within or outside the state to shellfish lands within the state, which requires the issuance of a permit pursuant to Article 13 of the ECL as defined in 6 NYCRR Section 45.1.

Uncertified Shellfish Lands means shellfish lands from which the harvesting of shellfish for use as food has been prohibited by Commissioner's order as defined in 6 NYCRR Section 47.1. The term "uncertified" is synonymous with "prohibited," which is the classification term used in the *National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish* to identify an area where harvest of shellfish for any purpose, except depletion, gathering of seed or nursery culture for aquaculture, is not permitted. Uncertified shellfish lands are commonly referred to as "closed areas."

Waters of the United States are all waters defined in 33 CFR 328.3(a)(1)-(8).33 CFR 328.3(a)(1)-(8).

10.PERMIT GLOSSARY

Permits Issued by the New York State Department of Environmental Conservation (DEC):

Class A Shellfish Shipper Permit allows the permit holder and employees of the permit holder to reship, pack, or repack shellfish which have been purchased from holders of valid shellfish shipper permits or shellfish digger permits in interstate or intrastate commerce (ECL § 13-0315(3)(a); 6 NYCRR Part 42, 42.4).

Class D Shellfish Digger/Shipper Permit allows the permit holder to ship shellstock which the permit holder has legally harvested from the shellfish lands of the state (ECL § 13-0315(3)(d); 6 NYCRR Part 42, 42.4).

License to Collect or Possess: *Scientific Purposes* allows for the possession of captive bred or permanently disabled native non-endangered or non-threatened species of fish and wildlife and native wild non-endangered or non-threatened species of fish and wildlife or birds listed as migratory by the U.S. Fish and Wildlife for scientific purposes (ECL § 11-0515(1); 6 NYCRR Part 175).

License to Collect or Possess: *Shellfish Gardening* allows a waterfront property owner to grow shellfish at his/her dock, bulkhead, or privately owned underwater lands for education and/or restoration purposes through an established shellfish growing program (ECL § 11-0515(1); 6 NYCRR Part 175).

Long Island Well Program requires that any person or public corporation who installs or operates any well in the County of Kings, Queens, Nassau or Suffolk to withdraw water for any purpose, other than for a public water supply, must have a permit pursuant to 6 NYCRR Section 602.1 when the total capacity of such well or wells on any one property is in excess of 45 gallons per minute (or 64,800 gallons per day). This includes temporary or permanent dewatering wells.

Marine Hatchery Permit is required for raising and breeding marine plant and animal life, including but not limited to, mollusks, lobster, crab, shrimp, and fish. Also allows for the sale of hatchery products of legal or less than legal size to other permitted marine hatcheries and hatchery/culture permit holders (ECL § 13-0316(1); 6 NYCRR Part 48, 48.3(a)).

On-/Off-Bottom Culture Permit is issued for raising and culturing marine plant or animal life, including containment on or in any rack, raft, float, cage, or similar structure and/or in any natural waters of New York State (ECL § 13-0316(2); 6 NYCRR Part 48, 48.3(a)).

Protection of Waters Permit is issued for shellfish aquaculture activities requiring an On-/Off Bottom Culture Permit in areas with water depths of less than five feet at low tide (ECL § 15-0505; 6 NYCRR Section 608.5).

Shellfish Bed Permit is issued in coordination with all On-/Off-Bottom Culture Permits involving cultivation sites located on underwater lands that are owned or leased by the permit holder. The Shellfish Bed Permit certifies that the cultivation site lies within a certified area and authorizes the permit holder to conduct shellfish cultivation, harvesting, and marketing activities at the site which are consistent with the On-/Off-Bottom Culture Permit. A Shellfish Bed Permit is not required for a Temporary Marine Area Use Assignment issued for state-owned underwater lands (ECL § 13-0313).

Shellfish Digger Permit allows the permit holder to harvest, cull, sort, or tag clams, oysters, mussels, and scallops taken from certified or open waters for commercial purposes. It is required for both wild and farm cultivated and allows the holder to distribute to licensed wholesalers in Nassau and Suffolk County only (ECL § 13-0311; 6 NYCRR Part 42, 42.4).

Shellfish Digger Vessel Endorsement allows a Shellfish Digger Permit Holder to endorse his/her permit to a single vessel, which covers all people on board the vessel while harvesting, culling, sorting, or tagging hard clams and oysters (ECL § 13-0311).

Shellfish Importation Permit allows a shellfish culturist to import shellfish of legal or less than legal size into New York State for cultivation/aquaculture purposes. It is only issued to holders of a marine hatchery permit or an on/off bottom culture permit. The shellfish are subject to disease testing (Health Certification) and may only be obtained from out-of-state areas approved by DEC for importation into New York (ECL §§ 13-0309, 13-0319, and 13-0321; 6 NYCRR Part 48, 48.3(b)).

Shellfish Population Survey Permit authorizes the harvesting and surveying of shellfish in "uncertified" or "certified" waters of New York State for the purpose of determining the quantity of shellfish in a specific location. Population surveys are undertaken as part of shellfish management programs (ECL §§ 13-0309, 13-0319, and 13-0321).

Shellfish Transplant Permit authorizes the harvest and relay of shellfish (oysters, scallops, and all kinds of clams and mussels) from one area to another within the state, or from an out-of-state area to an in-state area (subject to a Shellfish Importation Permit). Transplanting may include harvest of legal-size shellfish from in-state or out-of-state uncertified areas and relay to in-state certified areas for cleansing and eventual marketing as a food product. Transplants involving harvest from uncertified areas are not permitted between the dates of October 11 and March 31 (ECL §§ 13-0319 and 13-0321; 6 NYCRR Part 45, 45.3, 45.4).

Shellfish Seed Relay Permit is a transplant permit that is issued to shellfish culturists to authorize harvest and relay of sub-legal size shellfish (seed) originally acquired from a hatchery. This type of transplant may also include harvest from uncertified areas and relay to certified areas. Seed relays involving harvest from uncertified areas are not permitted between the dates of October 31 and March 1 (ECL §13-0319; 6 NYCRR Part 45, 45.3, 45.4; 45.4(a)(3)).

Temporary Marine Area Use Assignment is issued for an approximately five-acre circular parcel of state-owned lands underwater; it can be issued in coordination with an off-bottom culture permit and used for shellfish cultivation purposes. Shellfish must be held in off-bottom culture gear only (ECL §13-0301).

Permits Issued by the U.S. Army Corps of Engineers (USACE):

An **Individual Permit** is required by USACE if your project does not fall under the criteria for a general permit or letter of permission. If your project requires an individual permit, upon a finding that the application is complete, the Corps issues a Public Notice advising all interested parties of the proposed activity. This Public Notice process helps the Corps obtain information necessary to evaluate the probable impact of the project on the public interest. Section 10 permits: Required for any structure or work in or

affecting any navigable water of the United States. Section 404 permits: Required for the discharge of dredged or fill material into waters of the United States.

A **Standard Permit** is a type of individual permit which is processed through the public interest review procedure of an individual permit application, including the issuance of a public notice and receipt of comments, as described in 33 CFR Part 325..

A **Letter of Permission** is a type of individual permit which may be issued if the proposed work is minor or routine, with minimum impacts, and objections are unlikely. It involves an abbreviated process procedure which includes coordination through a Letter of Coordination with state and federal fish and wildlife agencies, and a public interest evaluation, but no publication of an individual public notice.

A **Nationwide Permit** (NWP) is issued approximately every five years, and certain proposed activities are authorized under an NWP only if the activity or activities and the permittee satisfy all of the terms and conditions. Unless a nationwide general permit requires a Pre-Construction Notification requiring the applicant to notify the Corps, as early as possible, prior to undertaking the proposed activity, a written notification to the District Engineer is not necessary. The District Engineer also has the discretionary authority—if he/she finds that the proposed activity would have more than minimal individual or cumulative net adverse effects on the environment or otherwise may be contrary to the public interest—to include special conditions in the NWP verification to reduce or eliminate those adverse effects. Activities that do not qualify for authorization under a nationwide general permit may still be authorized by an individual or regional general permit.

Permits Issued by the U.S. Coast Guard (USCG):

Private Aid to Navigation Permit (PATON) may be issued based on several navigational factors, including but not limited to: location, water depth, proposed aid type/size, any lighted aid, or proximity to a federal channel or waterway within 12 nautical miles.

APPENDICES

Appendix A – Various Licenses and Permits Associated with Aquaculture

AGENCY	Permit/License[2]	FEE
Aquaculture and Hatcheries		
Inter-agency	Joint Application for Permit Form	
DEC	Marine Hatchery	Residents: $100; Non-residents: $100
DEC	On-/Off-Bottom Culture	Residents: $100; Non-residents: $100
DEC	Shellfish Importation	No fee
DEC	Shellfish Bed	$0.25 per acre; $5 minimum
DEC	Tidal Wetlands (TW)	$200
DEC	Protection of Waters[3]	No fee
DEC	Water Quality Certification (WQ)	No fee
DEC	Scientific License to Collect or Possess	No fee
DEC	License to Collect or Possess: Shellfish Gardening	No fee
DEC/NYSOGS	Temporary Marine Area Use Assignment (TMAUA)	No fee
NYSDOS	Federal Consistency Assessment Form (FCAF)	$0
USCG	Private Aid to Navigation (PATON)	$0
USACE	Individual Permit	Non-commercial $10; Commercial $100
USACE	Nationwide Permit (NWP)	$0
USACE	Letter of Permission	$0

[2] To obtain license and/or permit applications, contact DEC's Division of Marine Resources at (631) 444-0470.

[3] A Protection of Waters permit may be required if structure is being placed on benthos.

Shellfish Shippers and Processors Permits		
DEC	Shellfish Shipper (A)	$300
DEC	Shellfish Processor (B)	$600
DEC	Shellfish Re-shipper (C)	$200
DEC	Shellfish Digger/Shipper (D)	$75
DEC	Bay Scallop Shucker/Packer (E)	$50
Shellfish Digger Permit and Shellfish Digger Endorsement		
DEC	Shellfish Digger Permit	Residents: $50; Non-residents: $150
DEC	Shellfish Digger Vessel Endorsement	40 feet or less: $50; Greater than 40 feet: $150
Shellfish Transplant and Salvage		
DEC	Seed Relay	No fee
DEC	*Shellfish Transplant	*Supervision fees may be required for private industry transplant projects
DEC	Shellfish Population Survey	No fee

Appendix B – Contact Information for Regulatory Agencies

Shellfish Ombudsperson
NYS Dept. of Environmental Conservation,
Region 1
50 Circle Road
Stony Brook, NY 11790
T: (631) 380-3311
Email: dep.r1@dec.ny.gov

Regulator of the Day
U.S. Army Corps of Engineers, New York District
ATTN: Regulatory Branch, Room 16-406
26 Federal Plaza
New York, NY 10278-0090
T: (917) 790-8511 (Eastern Section)
Email: CENAN-R-Permit-App@usace.army.mil

Consistency Review Unit
NYS Dept. of State
99 Washington Ave.
One Commerce Plaza, Suite 1010
Albany, NY 12231
T: 518-474-6000
Email: cr@dos.ny.gov

Steven Pothier
Commander
First Coast Guard District
Waterways Management
Private Aids to Navigation (PATON)
408 Atlantic Avenue
Boston, MA 02110
T: (617) 223-8347
Email: Steven.R.Pothier@uscg.mil

Bethany Wieczorek
Real Estate Officer 1, Land Management
NYS Office of General Services, Real Estate Center
Empire State Plaza, Corning Tower – 39th Floor,
Albany NY 12242
T: (518) 474-2195
Email: Bethany.wieczorek@ogs.ny.gov

Matthew Maraglio
Coastal Resources Specialist
New York State Department of State
Office of Planning, Development & Community Infrastructure
99 Washington Avenue, Suite 1010
Albany, NY 12231
T: (518) 473-3371
Email: matthew.maraglio@dos.ny.gov

Danielle Stango-Torre
Environmental Analyst
NYS Dept. of Environmental Conservation,
Region 1, Division of Environmental Permits
50 Circle Road
Stony Brook, NY 11790
T: (631) 444-0352
Email: danielle.stango@dec.ny.gov

Wade Carden
Biologist II Marine
NYS Dept. of Environmental Conservation,
Division of Marine Resources
123 Kings Park Blvd. (Nissequogue River State Park)
Kings Park, NY 11754

T: (631) 444-0481
Email: wade.carden@dec.ny.gov

Susan Filipowich
Senior Environmental Analyst
Suffolk County Dept. of Economic Development and Planning, Division of Planning and Environment
H Lee Dennison Building, 2nd Fl.
100 Veterans Memorial Highway, P.O. Box 6100
Hauppauge, NY 11788-0099
T: (631) 853-4775
Email: susan.filipowich@suffolkcountyny.gov

Stephanie Hampson
Neighborhood Aide
Town of Islip
Department of Environmental Control
401 Main Street
Islip, New York 11751
T: (631) 224-5645
Email: SHampson@islipny.gov

Martin Byrnes
Town of Islip
333 Bayview Ave
East Islip, NY 11730
T: (631) 595-3680
Email: shellfishhatchery@islipny.gov

Craig Strong
Bay Management Specialist
Town of Brookhaven
Division of Environmental Protection
One Independence Hill
Farmingville, NY 11738
T: (631) 451-6455
Email: cstrong@brookhavenny.gov

Appendix C – Joint Application for Permit Form

NEW YORK STATE | Department of Environmental Conservation | Office of General Services | Department of State

US Army Corps of Engineers®

JOINT APPLICATION FORM – INSTRUCTIONS

Use this application to apply for Permits from all of the listed state and federal agencies. This form is for all projects that affect streams, waterways, waterbodies, wetlands, coastal areas, sources of water, and endangered and threatened species.

This Joint Application Form has four pages. Incomplete, illegible or inaccurate information may delay your permit decision. Agencies may request additional information to complete your application. If you have any questions, refer to the Agency Contact Information on pages four and five of these instructions.

PERMITS REQUESTED

You are responsible for obtaining all federal, state or local approvals. Check all Permits you are applying for from the listed Agencies.

You must obtain an authorization from each involved Agency before you start work.

APPLICANT, PROPERTY OWNER, CONTACT/AGENT INFORMATION AND SIGNATURES

Information about and signatures of the Applicant and Owner are required. Eligible applicants are Owners, Operators at the site or facility, and Lessees.

Information about and signature of the Contact/Agent, where applicable, are required. Construction or work contractors or others may be named as a Contact/Agent on behalf of the applicant, but cannot be the Applicant.

Applications by . . .	Must be signed by . . .
• **Corporations**	a member of the board of directors or a "high managerial agent" of the corporation, as defined in the § 20.20 of the NYS Penal Law.
• **Partnership**	a general partner.
• **Sole Proprietorship**	the proprietor.
• **Limited Liability Company**	by member or manager in accordance with the LLC's articles of organization as filed with the NYS Secretary of State.
• **State Agency**	by a person duly designated by the commissioner or other agency head.
• **Municipalities (counties, cities, towns and villages) and Public Corporations**	by the chief executive officer, the head of a subordinate agency or department, or a person duly designated by the chief executive officer.

Append additional pages of the form's Applicant, Owner or Contact information, and provide additional pages of the form's Signature section if there are additional Applicants, Owners or Contacts.

PROJECT / FACILITY INFORMATION

Provide the project address, if applicable. If there is no street address, describe the location using identifiable nearby features.

Include the tax parcel identification number(s). Tax Parcel ID numbers are found on the tax map of the community or the annual tax bill, or can be viewed at the local tax assessor's office. These ID numbers are generally in the form of section, block, and lot (SBL) numbers.

If you are able, provide project location coordinates as Latitude and Longitude in degrees, minutes, seconds.

PROJECT DESCRIPTION AND PURPOSE

Provide a complete description of the proposed work and its purpose. Attach additional pages if necessary. Attach plans on separate pages. The following information must be provided:

- purpose of the proposed project;
- description of current site conditions;
- proposed site changes;
- type of structures and fill materials to be installed, and quantity of materials to be used (e.g., square feet of coverage, cubic yards of fill material and/or structures below ordinary/mean high water, etc.);
- area of excavation or dredging, volumes of material to be removed, and location of dredged material disposal or use;
- timing and amount of tree cutting or clearing;
- work methods and type of equipment to be used;
- planned sequence of activities;
- pollution control methods and other actions proposed to mitigate for environmental impacts;
- erosion and silt control methods that will be used to prevent water quality impacts;
- alternatives considered to avoid regulated areas; if no feasible alternatives exist, explain how the project will minimize impacts

Additional details may be required by the Agencies.

REQUIRED APPLICATION ATTACHMENTS

Attach and submit the following to all involved Agencies:

1. **Location Map -** The map must show the project site boundaries at a scale large enough to display relevant information about the site. A scale of 1 inch equals 2,000 feet is generally adequate (scale ratio 1:24,000). The map can be a US Geological Survey (USGS) or NYS Department of Transportation (DOT) Quadrangle Map, or an equivalent map (e.g., tax map, an image from Google maps, or Bing maps) identifying the project location. An acceptable location map may be obtained from DEC's online Environmental Resource Mapper (http://www.dec.ny.gov/animals/38801.html), using the Printer tool.

2. **Project Plans -** Sketch plan and cross-section views drawn to scale with dimensions, or engineering drawings showing the location and extent of work. Show the direction of the photographs required in Item 3, below. Drawings must include on-site wetlands, streams and ditches. See sample plans at: http://www.dec.ny.gov/permits/70934.html, http://www.dec.ny.gov/permits/70807.html, http://www.dec.ny.gov/permits/6342.html.

3. **Photographs -** At least three color photographs, taken from multiple directions, clearly showing the project site without snow cover. Include all existing structures on the site and the area surrounding the site. Indicate the photo's direction and the time and date when taken.

If applying to New York State Agencies:

State Environmental Quality Review Act (SEQR) regulation (6 NYCRR Part 617, http://www.dec.ny.gov/regs/2488.html) is applicable -

a) If the project is an Unlisted Action, submit a completed Part 1 of a Short Environmental Assessment Form. [1]

b) If the project is a Type I Action, submit a completed Part 1 of a Full Environmental Assessment Form. [1]

On-line fillable Short and Full EAFs are available on DEC's website (see http://www.dec.ny.gov/permits/6191.html). This webpage also provides DEC's **EAF Mapper Application** which can help you complete the EAF. The project site boundaries can be drawn or a specific tax parcel can be selected. The EAF Mapper can provide you with some of the information required for the Location Map, and the Tax Parcel ID questions on the Joint Application Form.

If applying to NYS DEC:

All DEC permits applications required for the project (see http://www.dec.ny.gov/permits/6081.html) must be submitted at the same time.

[1] DEC Forms are available at NYS DEC offices and at www.dec.ny.gov/permits/6222.html.

If applying to USACE/NYS DOS:

If the project requires a federal permit and lies within or affects the Coastal Area (see the DOS Coastal Area Maps at www.dos.ny.gov/opd/atlas/index.html) submit a completed Federal Consistency Assessment Form (FCAF, available at www.dos.ny.gov/opd/programs/pdfs/Consistency/FCAF_fillable.pdf) to NYS DOS with a copy to USACE.

Applicants in New York City may submit a NYC CAF in lieu of the FCAF (NYC CAF available at www.1.nyc.gov/assets/planning/download/pdf/applicants/wrp/wrpform.pdf).

For projects within the Adirondack Park - To determine permitting applicability, contact -
New York State Adirondack Park Agency, PO Box 99, 1133 NYS Route 86, Ray Brook, NY 12977
(518) 891-4050; www.apa.ny.gov/

SPECIAL SUPPLEMENTS AND REQUIREMENTS FOR SPECIFIC PERMIT APPLICATIONS

Applications for . . .	Must be accompanied by . . .
• **Dams and Impoundment Structures**	Supplement D-1 [2]
• **Docks, Moorings or Platforms**	Supplement D-2 [2]
• **Water Withdrawal**	Supplement WW-1 [2] Water Conservation Program Form [2] Legal Certification of Proper Water District or Water Works Corporation Formation [2]
• **Long Island Well**	Regional specific supplement [2]
• **Wild, Scenic and Recreational River Systems**	Supplement WSR-1 [2]
• **DEC Freshwater Wetlands and DEC Tidal Wetlands**	Applications fees are required, except for activities under an established General Permit. Refer to: www.dec.ny.gov/permits/65153.html.
• **USACE Section 404 Clean Water Act, and DEC Freshwater Wetlands, and DEC Tidal Wetlands**	Applications to disturb a wetland or waterway by placing fill or performing mechanized land clearing, ditching, channelization, dredging, or excavation activities must discuss practicable alternatives that avoid, minimize or mitigate the proposed project impacts. Justification must be given for alternatives found suitable.

SUBMISSION OF APPLICATION FORMS AND ATTACHMENTS

Mail a completed application to each involved Agency based on project location and permit(s) required. See the following pages for Agency Contact Information.

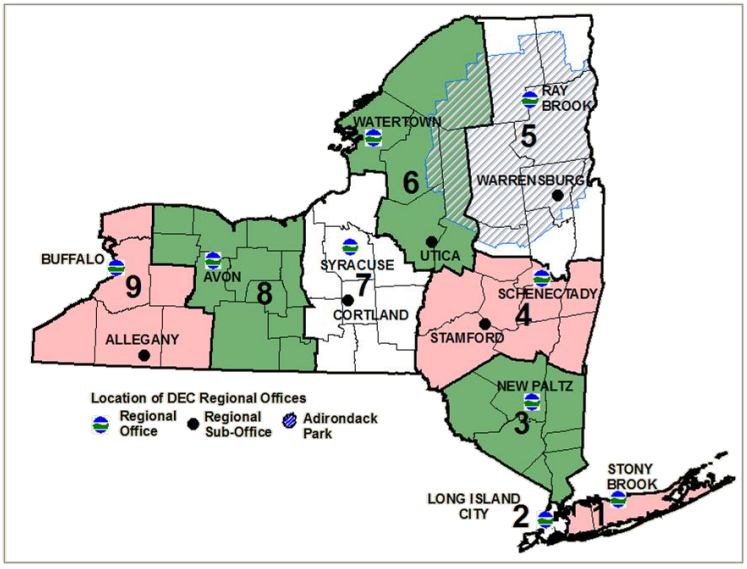
For DEC - Mail **two copies** of the Joint Application Form, supplemental forms, and all required attachments. Documents may be email.

For Other Agencies - Mail **one copy** of the Joint Application Form, any supplemental forms, and all required attachments.

Refer to each Agency's website for specifications on submitting documents on electronic media or via email.

[2] DEC Forms are available at NYS DEC offices and at www.dec.ny.gov/permits/6222.html.

New York State Department of Environmental Conservation
www.dec.ny.gov



NYS DEC REGION 1
Regional Permit Administrator
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409
phone: 631-444-0365
fax: 631-444-0360
email: dep.r1@dec.ny.gov
- For Nassau and Suffolk Counties

NYS DEC REGION 2
Regional Permit Administrator
1 Hunter's Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407
phone: 718-482-4997
fax: 718-482-4975
email: dep.r2@dec.ny.gov
- For Brooklyn, Bronx, Manhattan, Queens and Staten Island

NYS DEC REGION 3
Regional Permit Administrator
21 South Putt Corners Road
New Paltz, NY 12561-1620
phone: 845-256-3054
fax: 845-255-4659
email: dep.r3@dec.ny.gov
- For Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester Counties

NYS DEC REGION 4
Regional Permit Administrator
1130 North Westcott Road
Schenectady, NY 12306-2014
phone 518-357-2069
fax: 518-357-2460
email: dep.r4@dec.ny.gov
- For Albany, Columbia, Greene, Montgomery, Rensselaer, Schenectady and Schoharie Counties

NYS DEC REGION 4 Sub-Office
Regional Permit Administrator
65561 State Highway 10
Stamford, NY 12167-9503
phone: 607-652-7741
fax: 607-652-2342
email: dep.r4@dec.ny.gov
- For Delaware and Otsego Counties

NYS DEC REGION 5
Regional Permit Administrator
PO Box 296
1115 NYS Route 86
Ray Brook, NY 12977-0296
phone: 518-897-1234;
fax: 518-897-1394
email: dep.r5@dec.ny.gov
- For Clinton, Essex, Franklin, and Hamilton Counties

NYS DEC REGION 5 Sub-Office
Regional Permit Administrator
232 Golf Course Rd
Warrensburg, NY 12885-1172
phone: 518-623-1282;
fax: 518-623-3603
email: dep.r5@dec.ny.gov
- For Fulton, Saratoga, Warren and Washington Counties

NYS DEC REGION 6
Regional Permit Administrator
Dulles State Office Building
317 Washington Street
Watertown, NY 13601-3787
phone: 315-785-2245
fax: 315-785-2242
email: dep.r6@dec.ny.gov
- For, Jefferson, Lewis and St. Lawrence Counties

NYS DEC REGION 6 Sub-Office
Regional Permit Administrator
Utica State Office Building,
207 Genesee Street, Room 1404
Utica, NY 13501-2885
phone: 315-793-2555
fax: 315-793-2748
email: dep.r6@dec.ny.gov
- For Herkimer and Oneida Counties

NYS DEC REGION 7
Regional Permit Administrator
615 Erie Blvd West, Room 206
Syracuse, NY 13204-2400
phone: 315-426-7438
fax: 315-426-7425
email: dep.r7@dec.ny.gov
- For Cayuga, Onondaga and Oswego Counties

NYS DEC REGION 7 Sub-Office
Regional Permit Administrator
1285 Fisher Avenue
Cortland, NY 13045-1090
phone: 607-753-3095 ext. 233
fax: 607-753-8532
email: dep.r7@dec.ny.gov
- For Broome, Chenango, Cortland, Madison, Tioga and Tompkins Counties

NYS DEC REGION 8
Regional Permit Administrator
6274 East Avon - Lima Road
Avon, NY 14414-9519
phone: 585- 226-5400
fax: 585-226-2830
email: dep.r8@dec.ny.gov
- For Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne and Yates Counties

NYS DEC REGION 9
Regional Permit Administrator
270 Michigan Avenue
Buffalo, NY 14203-2915
phone: 716-851-7165
fax: 716-851-7168
email: dep.r9@dec.ny.gov
- For Erie, Niagara and Wyoming Counties

NYS DEC REGION 9 Sub-Office
Regional Permit Administrator
182 East Union, Suite 3
Allegany, NY 14706-1328
phone 716-372-0645
fax: 716-372-2113
email: dep.r9@dec.ny.gov
- For Allegany, Cattaraugus and Chautauqua Counties

US Army Corps of Engineers

For DEC Regions 1, 2 and 3
US Army Corps of Engineers
New York District
ATTN: Regulatory Branch, Room 1937
26 Federal Plaza
New York, NY 10278-0090
email: CENAN.PublicNotice@usace.army.mil
For DEC Regions 1, 2 - (917) 790-8511
For DEC Region 3 - (917) 790-8411
www.nan.usace.army.mil/Missions/Regulatory.aspx

For DEC Regions 4, 5
US Army Corps of Engineers
New York District
Upstate Regulatory Field Office
ATTN: CENAN-OP-RU, Bldg. 10, 3rd Floor North
1 Buffington Street
Watervliet, NY 12189-4000
email: cenan.rfo@usace.army.mil
(518) 266-6350 - Permits Processing Team
(518) 266-6360 - Permit Compliance & Enforcement
www.nan.usace.army.mil/Missions/Regulatory.aspx

For DEC Regions 6, 7, 8, 9
US Army Corps of Engineers
Buffalo District
ATTN: Regulatory Branch
1776 Niagara Street
Buffalo, NY 14207-3199
email: LRB.Regulatory@usace.army.mil
(716) 879-4330
www.lrb.usace.army.mil/Missions/Regulatory.aspx

New York State Department of State

www.dos.ny.gov/opd/programs/consistency/index.html

NYS Department of State
Office of Planning and Development
Suite 1010
One Commerce Plaza, 99 Washington Ave
Albany, NY 12231-0001
(518) 474-6000
email: cr@dos.ny.gov

New York State Office of General Services

www.ogs.state.ny.us/BU/RE/LM/EGLP.asp

NYS Office of General Services
Bureau of Land Management
26th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242-0001
(518) 474-2195
email: LandUnderWater@ogs.ny.gov

NEW YORK STATE | Department of Environmental Conservation | Office of General Services | Department of State

US Army Corps of Engineers

JOINT APPLICATION FORM

For Permits for activities activities affecting streams, waterways, waterbodies, wetlands, coastal areas, sources of water, and endangered and threatened species.

You must separately apply for and obtain Permits from each involved agency before starting work. Please read all instructions.

1. **Applications To:**

>NYS Department of Environmental Conservation ☐ Check here to confirm you sent this form to NYSDEC.

Check all permits that apply:

- ☐ Stream Disturbance
- ☐ Excavation and Fill in Navigable Waters
- ☐ Docks, Moorings or Platforms
- ☐ Dams and Impoundment Structures
- ☐ 401 Water Quality Certification
- ☐ Freshwater Wetlands
- ☐ Tidal Wetlands
- ☐ Wild, Scenic and Recreational Rivers
- ☐ Coastal Erosion Management
- ☐ Water Withdrawal
- ☐ Long Island Well
- ☐ Incidental Take of Endangered / Threatened Species

>US Army Corps of Engineers ☐ Check here to confirm you sent this form to USACE.

Check all permits that apply: ☐ Section 404 Clean Water Act ☐ Section 10 Rivers and Harbors Act

Is the project Federally funded? ☐ Yes ☐ No

If yes, name of Federal Agency:

General Permit Type(s), if known:

Preconstruction Notification: ☐ Yes ☐ No

>NYS Office of General Services ☐ Check here to confirm you sent this form to NYSOGS.

Check all permits that apply:

☐ State Owned Lands Under Water

☐ Utility Easement (pipelines, conduits, cables, etc.) ☐ Docks, Moorings or Platforms

>NYS Department of State ☐ Check here to confirm you sent this form to NYSDOS.

Check if this applies: ☐ Coastal Consistency Concurrence

2. **Name of Applicant**

Taxpayer ID (if applicant is NOT an individual)

Mailing Address

Post Office / City

State

Zip

Telephone

Email

Applicant Must be (check all that apply): ☐ Owner ☐ Operator ☐ Lessee

3. **Name of Property Owner (if different than Applicant)**

Mailing Address

Post Office / City

State

Zip

Telephone

Email

For Agency Use Only	Agency Application Number:

4. **Name of Contact / Agent**

Mailing Address | Post Office / City | State | Zip

Telephone | Email

5. **Project / Facility Name** | Property Tax Map Section / Block / Lot Number:

Project Street Address, if applicable | Post Office / City | State NY | Zip

Provide directions and distances to roads, intersections, bridges and bodies of water

☐ Town ☐ Village ☐ City | County | Stream/Waterbody Name

Project Location Coordinates: Enter Latitude and Longitude in degrees, minutes, seconds:

Latitude: ° ' " Longitude: ° ' "

6. **Project Description:** Provide the following information about your project. Continue each response and provide any additional information on other pages. **Attach plans on separate pages.**

a. Purpose of the proposed project:

b. Description of current site conditions:

c. Proposed site changes:

d. Type of structures and fill materials to be installed, and quantity of materials to be used (e.g., square feet of coverage, cubic yards of fill material, structures below ordinary/mean high water, etc.):

e. Area of excavation or dredging, volume of material to be removed, location of dredged material placement:

f. Is tree cutting or clearing proposed? ☐ Yes If Yes, explain below. ☐ No

Timing of the proposed cutting or clearing (month/year):

Number of trees to be cut: Acreage of trees to be cleared:

g. Work methods and type of equipment to be used:

h. Describe the planned sequence of activities:

i. Pollution control methods and other actions proposed to mitigate environmental impacts:

j. Erosion and silt control methods that will be used to prevent water quality impacts:

k. Alternatives considered to avoid regulated areas. If no feasible alternatives exist, explain how the project will minimize impacts:

l. Proposed use: ☐ Private ☐ Public ☐ Commercial

m. Proposed Start Date: Estimated Completion Date:

n. Has work begun on project? ☐ Yes If Yes, explain below. ☐ No

o. Will project occupy Federal, State, or Municipal Land? ☐ Yes If Yes, explain below. ☐ No

p. List any previous DEC, USACE, OGS or DOS Permit / Application numbers for activities at this location:

q. Will this project require additional Federal, State, or Local authorizations, including zoning changes?

☐ Yes If Yes, list below. ☐ No

7. **Signatures.**

Applicant and Owner (If different) must sign the application.
Append additional pages of this Signature section if there are multiple Applicants, Owners or Contact/Agents.

I hereby affirm that information provided on this form and all attachments submitted herewith is true to the best of my knowledge and belief.

Permission to Inspect - I hereby consent to Agency inspection of the project site and adjacent property areas. Agency staff may enter the property without notice between 7:00 am and 7:00 pm, Monday - Friday. Inspection may occur without the owner, applicant or agent present. If the property is posted with "keep out" signs or fenced with an unlocked gate, Agency staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site. I understand that failure to give this consent may result in denial of the permit(s) sought by this application.

False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the NYS Penal Law. Further, the applicant accepts full responsibility for all damage, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and agrees to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from said project. In addition, Federal Law, 18 U.S.C., Section 1001 provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both where an applicant knowingly and willingly falsifies, conceals, or covers up a material fact; or knowingly makes or uses a false, fictitious or fraudulent statement.

Signature of Applicant Date

Applicant Must be (check all that apply): ☐ Owner ☐ Operator ☐ Lessee

Printed Name Title

Signature of Owner (if different than Applicant) Date

Printed Name Title

Signature of Contact / Agent Date

Printed Name Title

For Agency Use Only **DETERMINATION OF NO PERMIT REQUIRED**

Agency Application Number

(Agency Name) has determined that No Permit is required from this Agency for the project described in this application.

Agency Representative:

Printed Name Title

Signature Date

Department of The Army Permit
State of New York
APPLICATION FOR AQUACULTURE

Complete and attach the requested information

Applicant Name:
Mailing Address:
Telephone No.:

Geographic Location of Aquaculture Project:		Lat/Long (&see below)
Shellfish Classification of the water body:	Open/direct harvest ____ Closed ____	Conditional ____ Restricted Relay ____
Type of Aquaculture: Check all that Apply	On- Bottom _____ Off-Bottom _____ Raft _____ Upweller _____	Suspended _____ Net Pen _____ Longline _____

The following information should be submitted with your application:

1. Detailed design plan, including engineering specifications (as necessary) for all permanent and temporary structures

2. Plan and cross sectional views for each of each type of structure (net pen, longline unit, raft, or cage) specifying its height, width, depth and typical location in the water column.

3. Specify the total area of impact (acreage) and depict the approximate configuration for all structures

4. Identify the number of cages, net, rack, raft etc. which will make up each individual rearing unit and the linear length of the string and type of material being employed for the lines

5. Depiction of the proposed retention system (anchor, taut line etc.) including a discussion of the preferred method's ability to stand fast during anticipated seasonal adverse weather conditions

6. Description of the proposed site, including measurements of depth, tidal current velocities and bottom habitat, noting the presence or absence of vegetation and the type of sediment (sand, mud, rock)
7. Coastal navigation chart marked to delineate the aquaculture projects proximity to the nearest shoreline, adjacent structures, navigation channels and fishing fairways. In the event that the project area is within 200 feet of a Federal Navigation Project, the plan should depict the offset distance from the nearest project feature to the boundary of the Federal Navigation Project.

8. Geographic coordinates (NAD 1983, Latitude and Longitude) of the principle corners of the project area, reported to the nearest 00.01 seconds (e.g. "N 41°50'20.01" "W70°30'59.59")

Floating Structures Only:

9. Depict the distance or depth from the lowest point of the floating structures within the water column to the natural bottom at mean low water

10. Depict the distance or depth from the highest point of the submerged structures within the water column to their elevation at mean low water, mean high water and mean sea level (operating depth)

Appendix D – On-/Off-Bottom Culture Permit

On/Off-Bottom Culture Permit

Shellfish Application Instructions

The culture of marine plant and animal life in New York to be sold commercially for consumption or resale requires an **On/Off-Bottom Culture (OBC)** permit from New York State Department of Environmental Conservation (DEC), pursuant to state law and regulation. New York's mariculture industry consists primarily of oyster farming operations using ***off-bottom*** culture gear (cages, bags, trays or racks that may be floating at the surface, suspended in the water column, or resting on the bay bottom). ***On-bottom*** culture operations (no containment; shellfish are on or in the bay bottom) are less common.

This permit application is required if interested in establishing a shellfish farm to grow shellfish commercially. Before applying, please note that you must have obtained, or be in the process of obtaining, the appropriate written authorization (e.g., lease agreement, license, letter or permission) to **access the underwater land parcel** on and above which your proposed culture operation will be sited from the local government (County, Town), state agency or other person or entity having title or legal control of the parcel, or be able to demonstrate personal title or legal control.

For questions about these instructions and permit application, contact us:

Phone: (631) 444-0489
Email: fw.marine@dec.ny.gov
Mail: NYSDEC Division of Marine Resources, Shellfish Management Unit
205 N. Belle Mead Rd. Suite 1, East Setauket, NY 11733

Access programs for commercial shellfish culture that currently exist on Long Island:

- Suffolk County Aquaculture Lease Program (SCALP) in Peconic & Gardiners Bays
- Town of Islip Bay Bottom Licensing Program in Great South Bay
- Town of Brookhaven Mariculture Leasing Program (Limited to Brookhaven Town residents only)
- Peconic Baykeeper Commercial Oyster Aquaculture Program in Great Peconic Bay
- NYSDEC Temporary Marine Area Use Assignment (TMAUA):Limited to state-owned underwater lands (e.g., Long Island Sound, Block Island Sound); contact Shellfish Management Unit for more information.

Permitting Organizations

In addition to DEC's OBC permit, commercial shellfish culture requires additional permits or approvals from the following federal and state agencies (*links to agency web pages and applications/instructions provided*):

✓ US Department of the Army Corps of Engineers, New York District

- Joint Application for Permit – Joint Application Form August 2016 with Instructions
- Environmental Questionnaire
- Project Drawings (Sample, *see page 3*)
- FCAF – Federal Consistency Assessment Form, to be used for projects that will occur within and/or directly affect the New York State Coastal Area
- USACE's NY District typically approves shellfish farms through their Nationwide General Permit Program, under Nationwide Permit #48 "Commercial Shellfish Mariculture Activities".

✓ United States Coast Guard Private Aids to Navigation (PATON) Permits

- USCG PATON permit application with Instructions
- PATON permit applications for nautical aids used to mark the boundaries of a shellfish farm, and/or the location of *floating* culture gear on the farm (cages, bags, racks, trays or other containers floating at the surface), are completed and submitted electronically *(registration required)*.

Additional resources: USCG Auxiliary First District Northern Navigation Systems
Federal regulations concerning private aids to navigation: 33 CFR 66.01 – Aids to Navigation Other Than Federal or State

✓ New York State Department of State, Office of Planning & Development

- FCAF – Federal Consistency Assessment Form, to be used for projects that will occur within and/or directly affect the New York State Coastal Area

- ***Please Note*** The Federal Consistency Assessment Form (FCAF) is accessible from both the USACE NY District and NYSDOS websites. The NYSDOS website also has a list of Consistency Review Resources that may be helpful in completing the FCAF.

✓ **New York State Environmental Quality Review Act (SEQR) Forms**

- SEAF Part 1
- Projects or activities requiring review and approval through permit issuance by a state or local agency are subject to review under the SEQR Act. This includes commercial shellfish culture operations, which are typically classified as 'Unlisted' actions. To comply with SEQR, the applicant must complete **Part 1 of the Short Environmental Assessment Form (SEAF)** and submit it along with all other required applications.

Supplementary Information & Cultivation/Operational Plan Requirements

In addition to completing the On/Off-Bottom Culture permit application form (3 pages), the applicant is required to submit the following **supplementary information** (as applicable) and a **Cultivation/Operational Plan** for the application to be considered complete.

ALL APPLICANTS

A. **A copy of the written authorization (*e.g.*, lease agreement, license, letter of permission) to access the underwater land parcel on and above which your proposed culture operation will be sited** from the local government (County, Town), state agency or other person or entity having title or legal control of the parcel. If title or legal control is other than local government or state agency, (*e.g.*, an oyster grant) then a copy of the deed or other legal documentation verifying this private ownership is required, whether you as applicant are the owner or are obtaining access from the owner (*e.g.*, lessee). If final authorization is contingent on you first securing permits from involved agencies, then a letter or notice of intent to lease, license or grant access to the parcel from the entity having title or legal control is required.

At a minimum, the written authorization to access the underwater land parcel, or letter/notice of intent to lease/license/grant access should identify:

1. local government (County, Town), state agency or other person or entity having title or legal control of parcel
2. you as applicant (or as representative of business entity that is the applicant)
3. location of parcel (waterbody and lat/long coordinates of boundaries)
4. authorized activity (*e.g.*, establish a commercial shellfish farm)
5. term of the authorization (duration of lease, license, *etc.*)
6. dated signatures of all parties

B. **Aerial-view site map** (*e.g.*, navigational chart, GIS imagery) **or survey** showing the specific location of the culture operation relative to the shoreline, with boundaries of the underwater land parcel involved clearly delineated, and corner/center points labeled in latitude/longitude coordinates formatted to decimal degrees given to the nearest 00.000000 degree (*e.g.*, 41.070956° N, -71.856822° W), distances between boundaries labeled in feet, and shortest distance from shoreline labeled in feet or miles.

C. **Four (4) site photos** taken from the approximate center of the underwater land parcel facing north, south, east, west and labeled accordingly to give a visual representation of the parcel's location relative to shoreline features/ landmarks.

D. **Nautical aids to navigation specifications** for the buoys or other markers that will be established and maintained to delineate the boundaries of the underwater land parcel used for the culture operation. *(Establishing and maintaining buoys or other markers to delineate parcel boundaries is a standard condition of On/Off-Bottom Culture permits. USCG Private Aid to Navigation (PATON) permitting requirements may apply depending on buoy/marker specifications and/or access program requirements. Nautical aids to navigation used for shellfish farms are considered "special purpose" by USCG and must be colored Yellow. Refer to the USCG section on page 1 of these instructions for more information)*.

E. **Vessel information** for any vessel(s) that will be involved with the culture operation, including make, length, registration number, and docking location.

F. **Cultivation/Operational Plan** that includes all species listed in the application. The written plan should include the following sections for each species:

1. Source of species to be cultured (*e.g.*, identify shellfish hatchery or nursery facility)

   Please note Importation of shellfish for introduction into New York waters is limited to sources in states north of New York (Connecticut to Maine) and requires a separate importation permit from this office once an on/off-bottom culture permit has been issued.

2. Description of a typical production cycle for each species, from stocking through harvest.
3. Description of onsite (and offsite if applicable) husbandry practices for each species, including time of year, methods, frequency and gear/equipment used (*e.g.*, describe cleaning/fouling removal, tumbling, grading, sorting, pre-harvest preparation activities, *etc.*). If husbandry practices will involve the services of a person or business other than applicant, identify. *For applicants proposing oyster culture, see also VpCP requirements related to husbandry practices in 5. below.*
4. Description of harvesting activities for each species, including methods and gear/equipment used.
5. Description of how NYSDEC *Vibrio parahaemolyticus* Control Plan (VpCP) requirements will be met for the applicant's culture operation, including:
   - from May 1 through October 31, keeping shellfish harvested for food consumption shaded at all times, from time of harvest (shellfish taken from the water and no longer submerged) while onboard the vessel and during transport in any boat, vehicle or other means of conveyance, from the culture operation to the original dealer;
   - from May 1 through September 30, keeping oysters under temperature control through icing, mechanical refrigeration maintained at 33°F (0.6°C) to 45°F (7.2°C) or other NYSDEC-approved method upon commencement of time of harvest.
   - for applicants proposing oyster culture, describing the system or process that will be used annually from May 1 through September 30 to track all oysters two inches in size or larger that will be subject to husbandry practices involving their being unsubmerged, so that the time period between the last date of husbandry/re-submergence and the harvest date can be easily determined (*e.g.*, applying a numeric identification system to all cages, bags, *etc.*, associated with the operation and maintaining a dated logbook of all husbandry activities).

OFF-BOTTOM CULTURE APPLICANTS

A. Off-Bottom Culture Gear

Detailed descriptions and specifications for:

1. **each off-bottom culture gear type** (cage, bag, rack, tray or other container) to be used for cultivation, including manufacturer (if applicable), dimensions (length x width x height in feet or inches), fabrication materials, and a representative photo or drawing of each gear type with dimensions labeled if possible
2. **gear and equipment used for deploying, anchoring, and marking** each off-bottom culture gear type to be used for cultivation (*e.g.*, rope lines, fasteners, anchoring systems, and marker buoys)

   (drawings should be neat and legible; descriptions/specifications, and images/drawings sourced from gear/equipment manufacturer's website or literature are acceptable)

B. Deployment System & Gear Quantities

Description of the deployment system used for each off-bottom culture gear type including anchoring, buoying and marking of the gear (as applicable) on the underwater land parcel, including **the total quantity (units) of that gear type to be deployed**. For culture gear deployed on rope lines, include: (1) length of lines in feet; (2) number of units of gear per line and spacing between units in feet; (3) total number of lines and spacing between lines in feet. If gear deployment will occur in phases over time, describe these phases (*e.g.*, describe the total quantities of off-bottom culture gear and associated, lines, anchors, buoys/markers anticipated in the first year of operations and an estimate of what these quantities scale up to at full capacity usage of the underwater land parcel). Also describe any seasonal variation in gear deployment, such as removal of gear (or submerging floating gear) during the winter months.

C. Representative Drawings of Off-Bottom Culture Gear & Deployment Systems as Deployed On-Site

Include drawings depicting each off-bottom culture gear type and associated deployment system (anchoring, buoying and marking systems, as applicable) as they would appear deployed on-site in both a **plan (aerial) view**

and a **cross-sectional view**, using a separate 8.5" x 11" sheet to illustrate each view. Drawings should be neat, legible and provide enough detail that your gear deployment strategy is clearly understood.

1. **Plan view drawing** should indicate direction with a north arrow label and depict how the gear and associated systems will be arrayed spatially across the site. A representative measurement of the distance between gear, or lines of gear, should be labeled in feet. If the applicant proposes to divide the underwater land parcel into various sub-parcels to accommodate different shellfish species and/or cultivation methods, these should be identified on the drawing with their approximate area in acres or square feet, and boundary coordinates in decimal degrees format labeled. Any proposed sub-parcels and their use should be adequately described in the applicant's Cultivation/Site Management Plan.
2. **Cross-sectional view drawing** should indicate mean low (MLW) and mean high water (MHW) depth in feet throughout the site and (1) above any off-bottom culture gear that will be resting directly on the bay-bottom; (2) above and below any gear suspended in the water column; (3) below gear floating at the surface, as well as height of floating gear above the surface.

D. Bird Mitigation for Floating Off-Bottom Culture Gear

NYSDEC has determined that shellfish farms with floating off-bottom culture gear (*e.g.*, bags and cages with associated floats or pontoons) can attract seabirds such as gulls, terns and cormorants that perch or roost on the gear and defecate. The birds can potentially become a new pollution source to an area classified as certified (approved) for shellfish harvest, with their excrement contaminating surface waters and the shellfish held within the gear.

- For applicants proposing floating gear, your cultivation/operational plan must also include a bird mitigation component with both a detailed written description of what specific bird deterrence measure(s) will be undertaken at the site and sketches or photos that clearly depict those measures put into practice. The measure(s) undertaken must be consistently effective in keeping birds off floating gear while withstanding the weather and sea conditions that may be experienced at the site year-round. NYSDEC's Shellfish Management Unit can provide examples upon request.

ON-BOTTOM CULTURE APPLICANTS

A. On-Bottom Planting Design and Activities: Specify the total quantity and size(s) of shellfish to be planted per unit area of the underwater land parcel, and the corresponding target planting density. Identify the area (in acres or square feet) of sub-parcels representing single or multiple planting efforts and provide latitude/longitude coordinates formatted to decimal degrees given to the nearest 00.000000 degree (*e.g.*, 41.070956° N, 71.856822° W) for sub-parcel boundaries (*e.g.*, corner points for polygons, center point and outer radius point for circular areas). Describe in detail the planting design and activities planned for the first year of operations and what is anticipated in subsequent years through to full capacity usage of the entire underwater land parcel.

B. Representative Drawing(s) of On-Bottom Planting Design: Include **plan (aerial) view drawing(s)** of the underwater land parcel on an 8.5" x 11" sheet to illustrate your planting design, with: 1) a north arrow label to indicate direction; 2) sub-parcels identified and labeled with their area (in acres or square feet) and the boundary coordinates provided in A.; 3) representative distances between boundaries of the entire parcel, sub-parcel(s), and between separate sub-parcels labeled in feet. Drawings should be neat, legible and provide enough detail that your planting design is clearly understood.

C. Mechanical Harvesting Gear/Equipment & Activities

1. Detailed description and specifications for any mechanical harvesting gear and associated equipment that will be used to prepare the bottom of the underwater land parcel for on-bottom cultivation of shellfish, and/or harvest shellfish from the parcel, including manufacturer (if applicable), dimensions (length x width x height in feet or inches), fabrication materials, and a representative photo or drawing of the gear/equipment with dimensions labeled, if possible.
2. Description of the methods undertaken using this mechanical harvesting gear/equipment, including estimates on the timing and duration of these activities, and the specific areas, or sub-parcels, where they will occur as identified in A. & B. above.

Submission Instructions

Once you have completed, signed and dated all agencies' application forms and produced all required supplementary information and your Cultivation/Operational Plan, you are ready to assemble your final, multi-agency application and submit it to each agency according to their instructions.

You should prepare four copies (hard or electronic as applicable) of the final application:

1) NYSDEC Shellfish Management Unit
2) USACE NY District
3) NYSDOS Office of Planning & Development
4) **One to retain for your own reference and records**

You do NOT need to submit a copy of your final application to USCG as part of the PATON permit application process, if applicable. Refer to the USCG section of these instructions on page 1 for PATON permit application information.

Before Submitting, Please Note:

- **The identity of the applicant, whether an individual or business entity, must be consistent on all agencies' applications**, associated supplementary information, the Cultivation/Operational Plan AND the lease agreement, license, letter or permission, title, etc., establishing the rights to access a given parcel of underwater land for establishing an on/off-bottom culture operation (e.g., if you applied for and are awarded a site as an individual in Suffolk County's Aquaculture Lease Program, you should not apply to permitting agencies as a business entity).
- Any applicant that is a business entity (e.g., limited liability company, corporation, d/b/a) will be required to demonstrate "active" status in good standing prior to issuance of an on/off-bottom culture permit.
- Once submitted, your application, associated supplementary information and Cultivation/Operational Plan are subject to requests for public access to records under New York State Freedom of Information Law (FOIL). If you believe that your application contains proprietary information, then those portions of the application should be clearly marked to be easily identified as such.

Submit Copies of the Final Application To:

(Excerpted from each agency's instructions with updates where necessary)

1. NYSDEC Shellfish Management

Send one hard copy to:
NYSDEC Division of Marine Resources
Shellfish Management Unit
205 N. Belle Mead Road, Ste. 1
East Setauket, New York 11733

Email an electronic copy (pdf) to:
fw.marine@dec.ny.gov

If your underwater land parcel sited in Nassau or Suffolk County has **water depths less than six (6) feet mean low water**, your proposed on/off-bottom culture operation may be subject to additional NYSDEC permitting requirements and should also be submitted to Region 1's Division of Environmental Permits for review.
For questions, call **(631) 380-3311**.

Send one hard copy to:
NYSDEC Division of Environmental Permits, Reg 1
50 Circle Road
SUNY @ Stony Brook
Stony Brook, NY 11790-3409

Email an electronic copy (pdf) to:
dep.r1@dec.ny.gov

2. USACE NY District

Phone: **(917) 790-8511**

Send one hard copy to:
US Army Corps of Engineers
New York District
ATTN: Regulatory Branch, Room 1937
26 Federal Plaza
New York, NY 10278-0090

Email an electronic copy to:
CENAN-R-Permit-App@usace.army.mil

REGULATORY AND PERMITS COVID-19 CHANGES:
Effective immediately the New York district regulatory branch will only be accepting permit applications electronically through the following email address: CENAN-R-Permit-App@usace.army.mil. For specific details on this new process please read the Special Public Notice titled " REGULATORY OPERATIONS IN RESPONSE TO COVID-19 AND REQUEST FOR ELECTRONIC APPLICATION SUBMITTAL" within the Announcements page of our Regulatory page at: https://www.nan.usace.army.mil/Missions/Regulatory/Non-Project-Specific-Special-Public-Notices/

3. NYSDOS Office of Planning & Development *Phone:* **(518) 474-6000**

Send one hard copy to:
New York State Department of State Office of Planning and Development
Attn: Consistency Review Unit
One Commerce Plaza – Suite 1010
99 Washington Avenue
Albany, New York 12231

Application Checklist

<table>
<tr><th colspan="3">Preparation</th></tr>
<tr><td>Application Forms</td><td colspan="2">• NYSDEC On/Off-Bottom Culture permit application
• USACE/NY State Agency Joint permit application & Environmental Questionnaire
• USCG PATON permit application (online)
• NYSDOS FCAF
• SEQR SEAF Part 1</td></tr>
<tr><td rowspan="2">Supplementary Information
&
Cultivation/Operational Plan</td><td colspan="2"><u>All Applicants</u>
• Access authorization
• Aerial-view site map/survey
• Site photos (4)
• Navigational aid specs
• Vessel information
• Cultivation/Operational Plan
– Species source(s)
– Descriptions of (for each species):
▪ Production cycles
▪ Husbandry practices
▪ Harvest activities
▪ Vp Control Plan</td></tr>
<tr><td><u>OFF-Bottom</u>
• Descriptions, specs, photos, drawings of:
– Off-bottom culture gear (cages, etc.)
– Gear/equipment for deploying, anchoring, marking
– Deployment systems & gear quantities
– Drawings of gear/deployment systems on-site
▪ Plan view
▪ Cross-sectional view
– Bird Mitigation (floating gear)</td><td><u>ON-Bottom</u>
• Description of planting design & activities
• Plan-view drawing of planting design
• Description of mechanical harvesting gear/equipment & activities</td></tr>
<tr><th colspan="3">Submission</th></tr>
<tr><td colspan="3">1. New York State Department of Environmental Conservation (NYSDEC)
• DEC Shellfish Management Unit
• If parcel depth is <6’ MLW, also submit to Division of Environmental Permits, Region 1</td></tr>
<tr><td colspan="3">2. US Army Corps of Engineers New York District (USACE)</td></tr>
<tr><td colspan="3">3. New York State Department of State Office of Planning and Development (NYSDOS)</td></tr>
</table>

NEW YORK STATE | Department of Environmental Conservation

OFFICE USE ONLY	
Date Issued	_____
Permit Year	_____
Approval By	_____

On/Off-Bottom Culture Permit Application

FOR QUESTIONS ABOUT THIS APPLICATION, CONTACT US:

Phone: (631) 444-0489
Email: fw.marine@dec.ny.gov

Mail: NYSDEC Division of Marine Resources, Shellfish Management Unit
205 N Belle Mead Rd. St. 1, East Setauket, New York 11733

APPLICANT INFORMATION (Individual or representative if applicant is a business)

First Name:	MI:	Last Name:
Business Name (if applicable):		

Address (home or physical address):		Business Address (if different or mailing address):
Home Phone Number:	Cell Phone Number:	Email Address:

CULTURE ACTIVITY

Indicate All Species to be Cultured:

○ Eastern oyster *(Crassostrea virginica)*	○ Hard clam *(Mercenaria mercenaria)*	○ Bay scallop *(Argopecten irradians)*
○ Other (identify common name & species name): _____		

Type of Culture:

○ **On-Bottom:** Cultured marine organisms are not held in containment and are in direct contact with sediment.

○ **Off-Bottom:** Cultured marine organisms are contained within structures such as cages, bags, trays, or racks that may be floating at the surface, suspended in the water column, or resting on the bottom.

Location of Culture Activities: Identify waterbody, latitude/longitude coordinates defining boundaries of underwater lands to be used for proposed culture activities in decimal degrees (e.g., 41.071414° N, 71.856297° W), total area and water depth range.

Waterbody:		**Coordinates:**	
Total Area of Culture Operation (Acres or Sq Feet)		**Water Depth Range** (average high– and low-tide, feet/inches):	

Define Marine Area in which Structure(s) will be located:

○ **Subtidal Zone** (open water, always submerged)	○ **Intertidal Zone** (exposed during part of tidal cycle)

Applicant's authorization to access and use underwater lands and overlying water column for proposed culture activities is based upon: (check one)

◯ Applicant's ownership or other direct ownership	◯ NYSDEC Temporary Marine Area Use Assignment (TMAUA)
◯ Suffolk County Aquaculture Lease Program Site #_____	◯ Oyster Grant Lot # _____
◯ Town Lease/License **Name of Town: _____ Lease/License/Parcel ID# #:_____**	

If applicant's ownership or other direct ownership, documentation of ownership is required: (check one)

◯ Copy of Title or Deed Enclosed	◯ Copy is on file with NYSDEC

If other than applicant's direct ownership, identify the type of agreement that exists between applicant and the owner of the underwater lands:

◯ Lease Agreement	◯ Letter of Permission	◯ Other _____
Name of Party Agreement is With:		

The applicant understands and agrees to the following:

1. The Department of Environmental Conservation reserves the right to require a valid copy of any involved title documents, leases, grants, or other agreements involved with underwater land control, as herein specified or claimed, prior to the issuance of an On/Off-Bottom Culture Permit. The issuance of such Permit shall be contingent upon and subject to the existence and continuation of land-owner approval, including that of the New York State Office of General Services, where applicable.
2. Approval of the United States Department of the Army Corps of Engineers (USACE) and the United States Coast Guard (USCG) is required for all Off-Bottom Culture structures and applicable navigational aids placed in the navigable waters of the Marine and Coastal District. The validity of any On/Off-Bottom Culture Permit issued in connection with this application shall be contingent upon the applicant's continued possession of valid USACE and USCG permits issued in connection with the activities herein described. The revocation, suspension or absence of these Federal permits, or of any other State or Federal permits required in connection with the On/Off-Bottom Culture activities herein described, shall render any On/Off-Bottom Culture Permit issued in connection with this application null and void.
3. Except for the transplanting of hard clams as allowed pursuant to subdivision 2 of Section 13-0325 of the Environmental Conservation Law, shellfish found upon lands approved for On-Bottom cultivation may not be removed from said lands at less than legal size.

NO PERMIT FEE REQUIRED AT THIS TIME.

Allow up to 30 days for review of your application. If your application is complete, you will receive a notice of complete application by mail and/or email with further guidance on the remaining steps for issuance, including fee payment and additional NYSDEC permits that may be required for your culture operation. If your application is incomplete, you will receive a notice of incomplete application by mail and/or email with further instructions on how to complete your application.

Please sign below and mail this application, supplement documents, and the permit fee to:

NYSDEC Division of Marine Resources
Shellfish Management Unit
205 North Belle Mead Road, Suite 1
East Setauket, New York 11733

Applicant's Signature	Title	Date

Appendix E – Marine Hatchery Permit

MCR-5
06/21

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

MARINE HATCHERY PERMIT APPLICATION

_____ _____

Name (individual or business entity) **Representative** (if business entity)

_____ _____

Street Address **Town** **State** **Zip**

Hatchery Location _____

_____

Species to be cultured (identify common name and species name)

_____

_____

Permit for Year _____ (Permits expire December 31 of each year)

Fee Enclosed $100.00 _____ **Exempt Political Subdivision** _____

Applicant's Signature _____

Title _____ **Date** _____

_____***(Department Use Only)***_____

_____ **Approved** _____ **Not Approved**

_____

Department Representative **Title** **Date**

Submit completed application with a check or money order payable to "NYSDEC" for the permit fee to:
New York State Department of Environmental Conservation
Division of Marine Resources – Shellfish Management Unit
205 North Belle Mead Road, Suite 1
East Setauket, New York 11733
Attn: Jennifer O'Dwyer

MCR-1
06/21

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

MARINE HATCHERY PERMIT APPLICATION

Answer the following questions and submit supplementary information about your proposed marine hatchery or nursery operation as requested.

1. Does activity involve the construction or placement of buildings or other permanent structures in the water or within 300 feet of either the landward edge of a tidal wetland boundary or a tidal body of water?

□ Yes □ No □ Not Known

If yes, explain briefly: _____

_____

_____

_____

2. Does activity involve the placement of any rafts, racks, floats or other structures in the navigable waters of the state?

□ Yes □ No □ Not Known

If yes, explain briefly: _____

_____

_____

_____

3. Does activity involve filling, dredging, or other similar activities which will result in the alteration of a tidal wetland or any underwater lands of the Marine District?

□ Yes □ No □ Not Known

If yes, explain briefly: _____

_____

_____

_____

4. Does activity involve the construction of a new well or increasing the capacity of an existing well?

□ Yes □ No □ Not Known

If yes, explain briefly: _____

_____

_____

_____

5. Does activity involve the discharge of water or other substances into ground water, streams, or marine waters of the state?

□ Yes □ No □ Not Known

If yes, explain briefly: _____

_____

_____

_____

6. Provide an **aerial map** of the project area that clearly establishes the project site by including either latitude/longitude coordinates (decimal degrees) or an exact street address.

7. Provide **photographs** of the project site showing orientation to surroundings (shoreline, docks, *etc.*).

8. Provide a copy of the deed or other legal documentation identifying ownership of the the property where the marine hatchery or nursery facility will operate. If applicant is not the property owner, provide a copy of the written authorization (*e.g.,* lease agreement, license, letter of permission) authorizing applicant to access and use property for the purpose of operating a marine hatchery or nursery facility.

9. Provide a ***detailed*** **Cultivation/Operational Plan** which includes the following:

- Species to be cultured and source
- Quantity of each species to cultured annually
- Description of a typical production cycle and husbandry practices for each species, including when and at what size(s) species will be sold and/or relocated and final dispostion (*e.g.*, for shellfish: seed sales to growers; stocking the applicant's own farm)
- Descriptions and specifications for hatchery/nursery gear and equipment to be used
- Representative drawings of hatchery/nursery gear and equipment to be used and labeled with dimensions or volume as applicable (*e.g.*, plan and cross-section drawing of a floating upweller system (FLUPSY) with with components and dimensions labeled; the infrastructure of a hatchery, including water sources and discharges.
- Descriptions and specifications of feed, if applicable (*e.g.*, for shellfish: identify the algal species to be cutlured and production system involved)

Appendix F – Water Discharge Form

MCR-5b
06/21

WATER DISCHARGE FORM

Additional Information on Discharges from Marine Hatcheries to State Waters

1. Is there an existing or proposed discharge to ground water? Yes _____ No _____

2. Is there an existing or proposed discharge to surface water? Yes _____ No _____

   If yes, indicate the type and name of the receiving water body.

   _____

3. What is the source of water for this discharge?

   _____

4. Is the flow continuous, intermittent, or batch discharge?

   _____

5. Is there a year-round flow? If no, list the months of discharge/flow.

   _____

6. What is the total flow/flow rate of this discharge?

   _____

7. Explain the tank/system cleaning process. _____

   _____

   a. Are any cleaning chemicals used? _____

   b. Are chemicals or diluted solutions of cleaning chemicals a part of the discharge to the waters stated above?

      _____
      If no, how are the chemicals disposed of?

      _____

   c. List the chemicals used and the total amount of each used during a single cleaning process. (If applicable attach a copy of the Material Safety Data Sheet)

Cleaning Chemical	**Amount Used**
_____	_____
_____	_____
_____	_____

d. How often is the tank/system cleaned? _____

8. What type of aquatic plant or animal is produced by this facility?

_____

9. How many pounds of aquatic plant or animal does this facility produce per year?

_____

10. What is the name and type of food used? _____

_____

11. How many pounds of food is used during the calendar month of maximum feeding?

_____

12. Is the food produced at this facility? Yes _____ No _____

If yes, does the production of this food involve a discharge to state waters? Please explain.

_____

_____

_____

13. List all additives to the waters used in the processes contributing to the flow, the amount and frequency of each used, and the significance of each. This list should include all antibiotics, nutrients, and/or biocides.

Additive	**Amount and frequency of application**	**Reason for use**
_____	_____	_____
_____	_____	_____
_____	_____	_____

14. Additional information pertaining to this facility's water discharge.

_____

_____

15. Please enclose a preliminary site plan and one or more appropriately informative photographs of the project site.

MCR-5b
12/95

WATER DISCHARGE FORM

Additional Information on Discharges from Marine Hatcheries to State Waters

1. Is there an existing or proposed discharge to groundwater?
   Yes _____ No _____

2. Is there an existing or proposed discharge to surface water?
   Yes _____ No _____

   If yes, indicate the type and name of the receiving water body.

   _____

3. What is the source of water for this discharge?

   _____

4. Is the flow a continuous, intermittent, or batch discharge?

   _____

5. Is there a year-round flow? If no, list the months of discharge/flow.

   _____

6. What is the total flow/flow rate of this discharge?

   _____

7. Explain the tank/system cleaning process. _____

   _____

   a. Are any cleaning chemicals used? _____

   b. Are chemicals or diluted solutions of cleaning chemicals a part of the discharge to the waters stated above?

      _____

      If no, how are the used chemicals disposed of?

      _____

   c. List the chemicals used and the total amount of each used during a single cleaning process. (If applicable attach a copy of the Material Safety Data Sheet)

Cleaning Chemical	Amount Used
_____	_____
_____	_____
_____	_____
_____	_____

   d. How often is the tank/system cleaned? _____

8. What type of aquatic plant or animal is produced by this facility?

_____

9. How many pounds of aquatic plant or animal does this facility produce per year?

_____

10. What is the name and type of food used? _____

11. How many pounds of food is used during the calendar month of maximum feeding?

_____

12. Is the food produced at this facility? Yes ____ No ____

If yes, does the production of this food involve a discharge to state waters? Please explain _____

_____

_____

_____

13. List all additives to the waters used in the processes contributing to the flow, the amount and frequency of each used, and the significance of each. This list should include all antibiotics, nutrients, and/or biocides.

Additive	**Amount and frequency of application**	**Reason for use**
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

14. Additional information pertaining to this facility's water discharge.

_____

_____

_____

_____

_____

15. Please enclose a preliminary site plan and one or more appropriately informative photographs of the project site.

Appendix G – Aquaculture Activity Review

MCR-1
08/10

AQUACULTURE ACTIVITY REVIEW SHEET

Complete ALL questions on this form in as much detail as possible.

Applicant:

Name: _____
Individual/Company/Municipality Representative

Home Address: _____
Street City/Town State Zip

Telephone Numbers / Email Address:

Home: _____ Cell: _____

Fax : _____ Email: _____

Activity to be undertaken:

☐ **On-Bottom Culture**

☐ **Off-Bottom Culture**

☐ **Marine Hatchery**

1. Does activity involve the construction or placement of buildings or other permanent structures in the water or within 300 feet of either the landward edge of a tidal wetland boundary or a tidal body of water?

☐ Yes ☐ No ☐ Not Known

If yes, explain briefly: _____

_____

_____

_____

2. Does activity involve the placement of any rafts, racks, floats or other structures in the navigable waters of the state?

☐ Yes ☐ No ☐ Not Known

If yes, explain briefly: _____

_____

_____

_____

3. Does activity involve filling, dredging, or other similar activities which will result in the alteration of a tidal wetland or any underwater lands of the Marine District?

☐ Yes ☐ No ☐ Not Known

If yes, explain briefly: _____

_____

_____

_____

4. Does activity involve the construction of a new well or increasing the capacity of an existing well?

☐ Yes ☐ No ☐ Not Known

If yes, explain briefly: _____

_____

_____

_____

5. Does activity involve the discharge of water or other substances into ground water, streams, or marine waters of the state?

☐ Yes ☐ No ☐ Not Known

If yes, explain briefly: _____

_____

_____

_____

6. Provide an **aerial map** of the project area that clearly establishes the project site by including either latitude/longitude coordinates (degrees, minutes, seconds) or an exact street address.

7. Provide **photographs** of the project site illustrating orientation to surroundings (land, docks, etc.).

8. Provide an ***detailed*** **Cultivation Plan** which addresses the following issues:

On/Off-Bottom Culture Applicants

List the **species** to be cultured:_____

_____

Quantity of **each species** to be cultured each year:

_____

_____

_____

Provide a ***detailed*** **diagram** of the cultivation equipment and gear to be used, if applicable (e.g., cross-sectional view of a rack system).

Size of gear: _____

Number of units: _____

Cultivation density of each species: number of organisms per container (cage, tray, bag, etc.) or on-bottom planting densities (organisms per unit area)

_____

_____

Using a **map**, specify the **area and acreage** of the underwater land that will be utilized and provide a **diagram illustrating your planting design** (e.g., area to be used for a given seeding activity, numbers of gear per trawl, number of trawls, etc.)

For **on-bottom culturists**, describe the **planting AND re-harvest method(s),** including the **frequency of planting/harvesting** (e.g., days per week, months per year):

_____

_____

_____

_____

_____

For **off-bottom culturists,** describe your **gear deployment AND retrieval/re-harvest method(s),** including duration of deployment and frequency of retrieval/re-harvest. Also, describe method(s) and frequency of **gear maintenance** (e.g., biofouling removal)

_____

_____

_____

_____

_____

Where do you plan on obtaining juvenile marine species (e.g., shellfish seed) for culture?

_____

_____

What is the purpose of this aquaculture activity? _____

_____

_____

Marine Hatchery Applicants

List the **species** to be cultured: _____

_____

Quantity of **each species** to be cultured each year: _____

_____

_____

Provide a ***detailed* diagram** of the cultivation equipment and gear to be used (e.g., a cross-section of a FLUPSY, the infrastructure of a hatchery, including water sources and discharges) and describe its use:

_____

_____

_____

_____

Describe the **Cultivation Plan** for your marine hatchery: _____

_____

_____

_____

_____

When and at **what size** will cultured species be relocated? _____

_____

_____

Indicate proposed disposition of cultured species (e.g., shellfish - seed sales, planting):

_____

_____

Where will cultured species be relocated to? _____

_____

List the species of algae to be used, if applicable: _____

_____

NOTE: Please use additional sheets as necessary to give your proposed aquaculture activities sufficient detail for a complete review by the department. All applications MUST include a *detailed* Cultivation Plan which provides a narrative of the proposed culture activities to be conducted under this permit.

Submit to: New York State Department of Environmental Conservation
Bureau of Marine Resources – Shellfish Management Unit
205 North Belle Mead Road, Suite 1
East Setauket, New York 11733
Attn: Wade E. Carden

Appendix H – DEC Permission to Inspect Property Application

New York State
Department of Environmental Conservation

PERMISSION TO INSPECT PROPERTY

By signing this permission form for submission with an application for a permit(s) to the Department of Environmental Conservation ("DEC"), the signer consents to inspection by DEC staff of the project site or facility for which a permit is sought and, to the extent necessary, areas adjacent to the project site or facility. This consent allows DEC staff to enter upon and pass through such property in order to inspect the project site or facility, without prior notice, between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. If DEC staff should wish to conduct an inspection at any other times, DEC staff will so notify the applicant and will obtain a separate consent for such an inspection.

Inspections may take place as part of the application review prior to a decision to grant or deny the permit(s) sought. By signing this consent form, the signer agrees that this consent remains in effect as long as the application is pending, and is effective regardless of whether the signer, applicant or an agent is present at the time of the inspection. In the event that the project site or facility is posted with any form of "posted" or "keep out" notices, or fenced in with an unlocked gate, this permission authorizes DEC staff to disregard such notices or unlocked gates at the time of inspection.

The signer further agrees that during an inspection, DEC staff may, among other things, take measurements, may analyze physical characteristics of the site including, but not limited to, soils and vegetation (taking samples for analysis), and may make drawings and take photographs.

Failure to grant consent for an inspection is grounds for, and may result in, denial of the permit(s) sought by the application.

Permission is granted for inspection of property located at the following address(es):

_____

_____

*By signing this form, I affirm under penalty of perjury that I am authorized to give consent to entry by DEC staff as described above. I understand that false statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.**

_____	_____	_____
Print Name and Title	Signature	Date

*The signer of this form must be an individual or authorized representative of a legal entity that:

- owns fee title and is in possession of the property identified above;
- maintains possessory interest in the property through a lease, rental agreement or other legally binding agreement; or
- is provided permission to act on behalf of an individual or legal entity possessing fee title or other possessory interest in the property for the purpose of consenting to inspection of such property.

Appendix I – State Environmental Quality Review Act Short Environmental Assessment Form, Part 1

Short Environmental Assessment Form
Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information		
Name of Action or Project:		
Project Location (describe, and attach a location map):		
Brief Description of Proposed Action:		
Name of Applicant or Sponsor:	Telephone:	
	E-Mail:	
Address:		
City/PO:	State:	Zip Code:

	NO	**YES**
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☐	☐
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:	☐	☐

3.a. Total acreage of the site of the proposed action? _____ acres
b. Total acreage to be physically disturbed? _____ acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____acres

4. Check all land uses that occur on, adjoining and near the proposed action.

☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☐ Residential (suburban)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____
☐ Parkland

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	☐	☐	☐
b. Consistent with the adopted comprehensive plan?	☐	☐	☐

	NO	YES
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	☐	☐

	NO	YES
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?		
If Yes, identify: _____	☐	☐

	NO	YES
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	☐	☐
b. Are public transportation service(s) available at or near the site of the proposed action?	☐	☐
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☐	☐

	NO	YES
9. Does the proposed action meet or exceed the state energy code requirements?		
If the proposed action will exceed requirements, describe design features and technologies: _____	☐	☐

	NO	YES
10. Will the proposed action connect to an existing public/private water supply?		
If No, describe method for providing potable water: _____	☐	☐

	NO	YES
11. Will the proposed action connect to existing wastewater utilities?		
If No, describe method for providing wastewater treatment: _____	☐	☐

	NO	YES
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	☐	☐
b. Is the proposed action located in an archeological sensitive area?	☐	☐

	NO	YES
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☐	☐
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☐	☐
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____		

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:

☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional

☐ Wetland ☐ Urban ☐ Suburban

	NO	YES
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	☐	☐

	NO	YES
16. Is the project site located in the 100 year flood plain?	☐	☐

	NO	YES
17. Will the proposed action create storm water discharge, either from point or non-point sources?		
If Yes, a. Will storm water discharges flow to adjacent properties? ☐ NO ☐ YES	☐	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: ☐ NO ☐ YES		

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	☐	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	☐	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	☐	☐

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: _____ Date: _____

Signature: _____

PRINT FORM

Appendix J – Federal Consistency Assessment Form

NEW YORK STATE DEPARTMENT OF STATE
COASTAL MANAGEMENT PROGRAM

Federal Consistency Assessment Form

An applicant, seeking a permit, license, waiver, certification or similar type of approval from a federal agency which is subject to the New York State Coastal Management Program (CMP), shall complete this assessment form for any proposed activity that will occur within and/or directly affect the State's Coastal Area. This form is intended to assist an applicant in certifying that the proposed activity is consistent with New York State's CMP as required by U.S. Department of Commerce regulations (15 CFR 930.57). It should be completed at the time when the federal application is prepared. The Department of State will use the completed form and accompanying information in its review of the applicant's certification of consistency.

A. **APPLICANT** (please print)

1. Name: _____
2. Address: _____
3. Telephone: Area Code ( ) _____

B. **PROPOSED ACTIVITY:**

1. Brief description of activity:

_____
_____
_____

2. Purpose of activity:

_____
_____

3. Location of activity:

_____	_____	_____
County	City, Town, or Village	Street or Site Description

4. Type of federal permit/license required: _____

5. Federal application number, if known: _____

6. If a state permit/license was issued or is required for the proposed activity, identify the state agency and provide the application or permit number, if known:

_____

C. **COASTAL ASSESSMENT** Check either "YES" or "NO" for each of these questions. The numbers following each question refer to the policies described in the CMP document (see footnote on page 2) which may be affected by the proposed activity.

1. Will the proposed activity result in any of the following: YES/NO

a. Large physical change to a site within the coastal area which will require the preparation of an environmental impact statement? (11, 22, 25, 32, 37, 38, 41, 43) ☐☐
b. Physical alteration of more than two acres of land along the shoreline, land under water or coastal waters? (2, 11, 12, 20, 28, 35, 44) ☐☐
c. Revitalization/redevelopment of a deteriorated or underutilized waterfront site? (1) ☐☐
d. Reduction of existing or potential public access to or along coastal waters? (19, 20) ☐☐
e. Adverse effect upon the commercial or recreational use of coastal fish resources? (9,10) ☐☐
f. Siting of a facility essential to the exploration, development and production of energy resources in coastal waters or on the Outer Continental Shelf? (29) ☐☐
g. Siting of a facility essential to the generation or transmission of energy? (27) ☐☐
h. Mining, excavation, or dredging activities, or the placement of dredged or fill material in coastal waters? (15, 35) ☐☐
i. Discharge of toxics, hazardous substances or other pollutants into coastal waters? (8, 15, 35) ☐☐
j. Draining of stormwater runoff or sewer overflows into coastal waters? (33) ☐☐
k. Transport, storage, treatment, or disposal of solid wastes or hazardous materials? (36, 39) ☐☐
l. Adverse effect upon land or water uses within the State's small harbors? (4) ☐☐

2. Will the proposed activity affect or be located in, on, or adjacent to any of the following: YES/NO

a. State designated freshwater or tidal wetland? (44) ☐☐
b. Federally designated flood and/or state designated erosion hazard area? (11, 12, 17) ☐☐
c. State designated significant fish and/or wildlife habitat? (7) ☐☐
d. State designated significant scenic resource or area? (24) ☐☐
e. State designated important agricultural lands? (26) ☐☐
f. Beach, dune or Barrier Island? (12) ☐☐
g. Major ports of Albany, Buffalo, Ogdensburg, Oswego or New York? (3) ☐☐
h. State, county, or local park? (19, 20) ☐☐
i. Historic resource listed on the National or State Register of Historic Places? (23) ☐☐

3. Will the proposed activity require any of the following: YES/NO

a. Waterfront site? (2, 21, 22) ☐☐
b. Provision of new public services or infrastructure in undeveloped or sparsely populated sections of the coastal area? (5) ☐☐
c. Construction or reconstruction of a flood or erosion control structure? (13, 14, 16) ☐☐
d. State water quality permit or certification? (30, 38, 40) ☐☐
e. State air quality permit or certification? (41, 43) ☐☐

4. Will the proposed activity occur within and/or affect an area covered by a State-approved local waterfront revitalization program, or State-approved regional coastal management program? (see policies in program document*) ☐☐

D. **ADDITIONAL STEPS**

1. If all of the questions in Section C are answered "NO", then the applicant or agency shall complete Section E and submit the documentation required by Section F.

2. If any of the questions in Section C are answered "YES", then the applicant or agent is advised to consult the CMP, or where appropriate, the local waterfront revitalization program document*. The proposed activity must be analyzed in more detail with respect to the applicable state or local coastal policies. On a separate page(s), the applicant or agent shall: (a) identify, by their policy numbers, which coastal policies are affected by the activity, (b) briefly assess the effects of the activity upon the policy; and, (c) state how the activity is consistent with each policy. Following the completion of this written assessment, the applicant or agency shall complete Section E and submit the documentation required by Section F.

E. **CERTIFICATION**

The applicant or agent must certify that the proposed activity is consistent with the State's CMP or the approved local waterfront revitalization program, as appropriate. If this certification cannot be made, the proposed activity shall not be undertaken. If this certification can be made, complete this Section.

"The proposed activity complies with New York State's approved Coastal Management Program, or with the applicable approved local waterfront revitalization program, and will be conducted in a manner consistent with such program."

Applicant/Agent's Name: _____

Address: _____

Telephone: Area Code ( ) _____

Applicant/Agent's Signature: _____ Date: _____

F. **SUBMISSION REQUIREMENTS**

1. The applicant or agent shall submit the following documents to the **New York State Department of State, Office of Planning and Development, Attn: Consistency Review Unit, One Commerce Plaza-Suite 1010, 99 Washington Avenue, Albany, New York 12231.**

a. Copy of original signed form.
b. Copy of the completed federal agency application.
c. Other available information which would support the certification of consistency.

2. The applicant or agent shall also submit a copy of this completed form along with his/her application to the federal agency.

3. If there are any questions regarding the submission of this form, contact the Department of State at (518) 474-6000.

*These state and local documents are available for inspection at the offices of many federal agencies, Department of environmental Conservation and Department of State regional offices, and the appropriate regional and county planning agencies. Local program documents are also available for inspection at the offices of the appropriate local government.

Appendix K – Environmental Questionnaire

ENVIRONMENTAL QUESTIONNAIRE

This is intended to supplement ENG Form 4345, Application for Department of the Army Permit, or the Joint Application for Permit used in the State of New York. Please provide complete answers to all questions below which are relevant to your project. Any answers may be continued on separate sheet(s) of paper to be attached to this form.

PRIVACY ACT STATEMENT

The purpose of this form is to provide the Corps of Engineers with basic information regarding your project. This information will be used to facilitate evaluation of your permit application and for public dissemination as required by regulation. Failure to provide complete information may result in your application being declared incomplete for processing, thereby delaying processing of your application.

GENERAL--APPLICABLE TO ALL PROJECTS

1. Explain the need for, and purpose of, the proposed work.

2. Provide the names and addresses of property owners adjacent to your work site (if not shown on the application form or project drawings).

(Please note that depending upon the nature and extent of your project, you may be requested to provide the names and addresses of additional property owners proximate to your project site to ensure proper coordination.)

3. Photographs of the project site should be submitted. For projects in tidal areas, photographs of the waterway vicinity should be taken at low tide. Using a separate copy of your plan view, indicate the location and direction of each photograph as well as the date and time at which the photograph was taken. Provide a sufficient number of photographs so as to provide a clear understanding of conditions on and proximate to your project site.

4. Provide a copy of any environmental impact statement, or any other environmental report which was prepared for your project.

5. Provide a thorough discussion of alternatives to your proposal. This discussion should include, but not necessarily be limited to, the "no action" alternative and alternative(s) resulting in less disturbance to waters of the United States. For filling projects in waters of the United States, including wetlands, your alternatives discussion should demonstrate that there are no practicable alternatives to your proposed filling and that your project meets with current mitigation policy (i.e. avoidance, minimization and compensation).

DREDGING PROJECTS

Answer the following if your project involves dredging.

1. Indicate the estimated volume of material to be dredged and the depth (below mean low water) to which dredging would occur. Would there be overdepth dredging?

2. You can apply for a ten-year permit for maintenance dredging. If you wish to apply for a ten-year permit, please provide the number of additional dredging events during the ten-year life of the permit and the amount of material to be removed during future events.

3. Indicate of your drawings the dewatering area (if applicable) and disposal site for the dredged material (except landfill sites). Submit a sufficient number of photographs of the dewatering and disposal sites as applicable so as to provide a clear indication of existing conditions. For ten-year maintenance dredging permits, indicate the dewatering/disposal sites for future dredging events, if known.

4. Describe the method of dredging (i.e. clamshell, dragline, etc.) and the expected duration of dredging.

5. Indicate the physical nature of the material to be dredged (i.e. sand, silt, clay, etc.) and provide estimated percentages of the various constituents if available. For beach nourishment projects, grain size analysis data is required.

6. Describe the method of dredged material containment (i.e. hay bales, embankment, bulkhead, etc.) and whether return flow from the dewatering/disposal site would reenter any waterway. Also indicate if there would be any barge overflow.

MOORING FACILITIES

Answer the following if your project includes the construction or rehabilitation of recreational mooring facilities.

1. It is generally recommended that any fixed piers and walk ramps be limited to four feet in width, and that floats be limited to eight feet in width and rest at least two feet above the waterway bottom at mean low water. Terminal floats at private, non-commercial facilities should be limited to 20 feet in length. If you do not believe your proposal can meet with these recommendations, please provide the reason(s).

2. Using your plan view, show to scale the location(s), position(s) and size(s) (including length, beam and draft) of vessel(s) to be moored at the proposed facility, including those of transient vessel(s) if known.

3. For commercial mooring sites such as marinas, indicate the capacity of the facility and indicate on the plan view the location(s) of any proposed fueling and/or sewage pumpout facilities. If pumpout facilities are not planned, please discuss the rationale below and indicate the distance to the nearest available pumpout station.

4. Indicate on your plan view the distance to adjacent marine structures, if any are proximate and show the locations and dimensions of such structures.

5. Discuss the need for wave protection at the proposed facility. Please be advised that if a permit is issued, you would be required to recognize that the mooring facility may be subject to wave action from wakes of passing vessels, whose operations would not be required to be modified. Issuance of a permit would not relieve you of ensuring the integrity of the authorized structure(s) and the United States would not be held responsible for damages to the structure(s) and vessel(s) moored thereto from wakes from passing vessels.

BULKHEADING/BANK STABILIZATION/FILLING ACTIVITIES

Answer the following if your project includes construction of bulkheading (also retaining walls and seawalls) with backfill, filling of waters/wetlands, or any other bank stabilization fills such as riprap, revetments, gabions, etc.

1. Indicate the total volume of fill (including backfill behind a structure such as a bulkhead) as well as the volume of fill to be placed into waters of the United States. The amount of fill in waters of the United States can be determined by calculating the amount of fill to be placed below the plane of spring high tide in tidal areas and below ordinary high water in non-tidal areas.

2. Indicate the source(s) and type(s) of fill material.

3. Indicate the method of fill placement (i.e. by hand, bulldozer, crane, etc.). Would any temporary fills be required in waterways or wetlands to provide access for construction equipment? If so, please indicate the area of such waters and/or wetlands to be filled, and show on the plan and sectional views.

The foregoing requests basic information on the most common types of projects requiring Department of the Army permits. It is intended to obviate or reduce the need for requesting additional information; however, additional information may be requested above and beyond what is requested in this form.

Please feel free to add any additional information regarding your project which you believe may facilitate our review.

NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGIONAL OFFICE

EFH ASSESSMENT WORKSHEET (08/01/02 v.)

Introduction:

The Magnuson-Stevens Fishery Conservation and Management Act mandates that federal agencies conduct an EFH consultation with NMFS regarding any of their actions authorized, funded, or undertaken that may adversely effect EFH. An adverse effect means any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (e.g. contamination or physical disruption), indirect (e.g. loss of prey, or reduction in species' fecundity), site-specific or habitat-wide impacts including individual, cumulative, or synergistic consequences of actions.

This worksheet has been designed to assist Federal action agency project managers in determining whether an essential fish habitat (EFH) consultation is necessary, and developing the needed information should a consultation be required. This worksheet will lead you through a series of questions that will provide an initial screening to determine if an EFH consultation is necessary, and help you assemble the needed information for determining the extent of the consultation required. The information provided in this worksheet can then be used to develop the required EFH Assessment.

Instructions for Use:

An EFH Assessment must be submitted by the Federal action agency to NMFS as part of the EFH consultation. An EFH Assessment must include the following information:
1) A description of the proposed action;
2) An analysis of the effects of the action on EFH, the managed species and associated species;
3) The Federal action agency's view regarding the effects of the action on EFH.
In many cases, this worksheet can be used as an EFH Assessment. If the Federal action agency determines that the action will not cause substantial impacts to EFH, then this worksheet will suffice. If the action may cause substantial adverse effects on EFH, then a more thorough discussion of the action and its impacts in a separate EFH Assessment will be necessary.

The information contained at the NMFS Northeast Regional Office's website will assist you in completing this worksheet (http://www.nero.nmfs.gov/ro/doc/newefh.html). The EFH web site contains information regarding: the EFH consultation process; Guide to EFH Designations which provides a geographic species list; Guide to EFH Species which provides the legal description of EFH as well as important ecological information for each species and life stage; and other EFH reference documents including examples of EFH Assessments and EFH Consultations.

Appendix L – Essential Fish Habitat Assessment Worksheet

EFH ASSESSMENT WORKSHEET (05/14/01 v.)

PROJECT NAME:_____ **DATE:**_____

PROJECT NO.:_____ **LOCATION:**_____

PREPARER:_____

Step 1. Generate the species list from the EFH website for the geographic area of interest. Use the species list as part of the initial screening process to determine if EFH occurs in the vicinity of the proposed action. Attach that list to the worksheet because it will be used in later steps. Make a preliminary determination on the need to conduct an EFH Consultation.

1. INITIAL CONSIDERATIONS

EFH Designations	Y	N
Is action located in or adjacent to EFH?		
Is EFH designated for eggs?		
Is EFH designated for larvae?		
Is EFH designated for juveniles?		
Is EFH designated for adults?		
Is there Habitat Areas of Particular Concern (HAPC) at or near project site?		
Does action have the potential to adversely affect EFH for any life stages checked above to any degree? *If no, consultation is not required. If yes, consultation is required -complete remainder of worksheet.*		

Step 2. In order to assess impacts, it is critical to know the habitat characteristics of the site before the activity is undertaken. Use existing information, to the extent possible, in answering these questions. Please note that, there may be circumstances in which new information must be collected to appropriately characterize the site and assess impacts.

2. SITE CHARACTERISTICS	
Site Characteristics	***Description***
Is the site intertidal/sub-tidal/ water column?	
What are the sediment characteristics?	
Is there HAPC at the site, if so what type, size, characteristics?	
Is there submerged aquatic vegetation (SAV) at or adjacent to project site? If so describe aerial extent.	
What is typical salinity and temperature regime/range?	
What is the normal frequency of site disturbance, both natural and man-made?	
What is the area of proposed impact (work footprint & far afield)?	

Step 3. This section is used to describe the anticipated impacts from the proposed action on the physical/chemical/biological environment at the project site and areas adjacent to the site that may be affected.

3. DESCRIPTION OF IMPACTS			
Impacts	***Y***	***N***	***Description***
Nature and duration of activity(s)			
Will benthic community be disturbed?			
Will SAV be impacted?			
Will sediments be altered and/or sedimentation rates change?			
Will turbidity increase?			
Will water depth change?			
Will contaminants be released into sediments or water column?			
Will tidal flow, currents or wave patterns be altered?			
Will ambient salinity or temperature regime change?			
Will water quality be altered?			

Step 4. This section is used to evaluate the consequences of the proposed action on the functions and values of EFH as well as the vulnerability of the EFH species and their life stages. Identify which species from the EFH species list (generated in Step 1) will be adversely impacted from the action. Assessment of EFH impacts should be based upon the site characteristics identified in Step 2 and the nature of the impacts described within Step 3. The Guide to EFH Descriptions on the website should be used during this assessment to determine the ecological parameters/preferences associated with each species listed and the potential impact to those parameters.

4. EFH ASSESSMENT

Functions and Values	*Y*	*N*	*Describe habitat type, species and life stages to be adversely impacted*
Will functions and values of EFH be impacted for:			
Spawning			
Nursery			
Forage			
Shelter			
Will impacts be temporary or permanent?			
Will compensatory mitigation be used?			

Step 5. This section provides the Federal action agency's determination on the degree of impact to EFH from the proposed action. The EFH determination also dictates the type of EFH consultation that will be required with NMFS.

5. DETERMINATION OF IMPACT		
Federal action agency's EFH Determination		
Overall degree of adverse effects on EFH (not including compensatory mitigation) will be: ***(check the appropriate statement)***		***There is no adverse effect on EFH*** ***EFH Consultation is not required***
		The adverse effect on EFH is not substantial. ***This is a request for an abbreviated EFH consultation. This worksheet is being submitted to NMFS to satisfy the EFH Assessment requirement.***
		The adverse effect on EFH is substantial. ***This is a request for an expanded EFH consultation. A detailed written EFH assessment will be submitted to NMFS expanding upon the impacts revealed in this worksheet.***