On/Off-Bottom Shellfish Culture Permit

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.

Submission of this permit application is required if you are interested in establishing a commercial shellfish farm. 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) 444-0481
Email: fw.marine@dec.ny.gov

Mail: NYSDEC Division of Marine Resources, Shellfish Management Unit
123 Kings Park Blvd. (Nissequogue River State Park), Kings Park, NY 11754

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 DEC's 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 (2 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 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
123 Kings Park Blvd. (Nissequogue River State Park)
Kings Park, NY 11754

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, Region 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

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

Phone: **(917) 790-8411**

Submit an electronic copy to:
https://rrs.usace.army.mil/rrs

Submit questions electronically to:
CENAN-R-Permit-App@usace.army.mil

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>
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• 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 Shellfish Culture Permit Application

FOR QUESTIONS ABOUT THIS APPLICATION, CONTACT US:

Phone: (631) 444-0481
Email: fw.marine@dec.ny.gov

Mail: NYSDEC Division of Marine Resources, Shellfish Management Unit
123 Kings Park Blvd. (Nissequogue River State Park), Kings Park, NY 11754

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 and supplementary documents to:

NYSDEC Division of Marine Resources, Shellfish Management Unit
123 Kings Park Blvd. (Nissequogue River State Park), Kings Park, NY 11754

Applicant's Signature	Title	Date