

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 2
47-40 21st Street, Long Island City, NY 11101
P: (718) 482-4997 | F: (718) 482-4975
www.dec.ny.gov

June 7, 2022

Danielle Bissett, Director of Restoration
NYHF DBA Billion Oyster Project
10 South St, Slip 7, Battery Maritime Building
New York, NY 10004

Re: NYSDEC Permit No. 2-6500-00068/00007
Billion Oyster Project – Bush Terminal Park Community Oyster Research Project
Bush Terminal Park lagoons, E of Upper Bay, adjacent Bay Ridge Channel
Brooklyn, NY
ECL Article 25 – Tidal Wetlands
ECL Article 15 – Protection of Waters
6 NYCRR 608 – Water Quality Certification
NOTICE OF PERMIT MODIFICATION

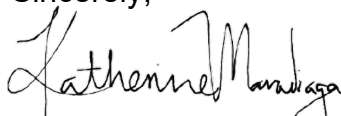
Dear Danielle Bissett:

In response to your request, please be advised that the expiration date of the above referenced permit has been extended until December 31, 2022. Your renewed permit is attached. Please read it carefully. Conditions 6, 9, 10, 11 and 12 were updated to reflect current language and contact information. Compliance with all conditions is required.

Please note that Natural Resources Condition 4 of the permit requires submittal of the attached "Notice of Intent to Commence Work" at least 5 days prior to the start of the permitted activity. Also, please note that Natural Resources Condition 5 of the permit requires submittal of the attached "Notice of Completion of Work" within 10 days of the completion of work.

If you have any technical questions or administrative questions, please email dep.r2@dec.ny.gov.

Sincerely,



Katharine Maradiaga
Environmental Analyst





PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:

NEW YORK HARBOR FOUNDATION INC
10 SOUTH ST SLIP 7
NEW YORK, NY 10004
(917) 284-2754

Facility:

Billion Oyster Project
East River, Atlantic Ocean, Long Island Sound
New York City, NY

Facility Location: in SEVERAL COUNTIES in THIS REGION **Village:** Brooklyn

Facility Principal Reference Point: NYTM-E: 583.296 NYTM-N: 4504.815
Latitude: 40°41'24.1" Longitude: 74°00'51.1"

Project Location: Bush Terminal Park lagoons, E of Upper Bay, adjacent Bay Ridge Channel

Authorized Activity: Installation of five (5) new welded steel "cabinets" (each 10'x2'x2') containing oyster shell and larvae, continued monitoring of five (5) cabinets from a previous effort, and 384 mesh bags, arranged in four (4) 10' x 7.5' plots, located within the east and west lagoons of Bush Terminal Park in Brooklyn, New York. Installed quantities of oysters, oyster spat-on-shell, and unseeded oyster shell must comply with License to Collect and Possess (LCP) #2074.

Modification #1: Renewal of permit until 12/31/2022. Conditions 6, 9, 10, 11 and 12 updated to reflect current language and contact information.

Permit Authorizations

Tidal Wetlands - Under Article 25

Permit ID 2-6500-00068/00007

New Permit	Effective Date: <u>11/21/2017</u>	Expiration Date: <u>12/31/2021</u>
Modification # 1	Effective Date: <u>6/7/2022</u>	Expiration Date: <u>12/31/2022</u>

Excavation & Fill in Navigable Waters - Under Article 15, Title 5

Permit ID 2-6500-00068/00008

New Permit	Effective Date: <u>11/21/2017</u>	Expiration Date: <u>12/31/2021</u>
Modification # 1	Effective Date: <u>6/7/2022</u>	Expiration Date: <u>12/31/2022</u>

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 2-6500-00068/00009

New Permit	Effective Date: <u>11/21/2017</u>	Expiration Date: <u>12/31/2021</u>
Modification # 1	Effective Date: <u>6/7/2022</u>	Expiration Date: <u>12/31/2022</u>



NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: STEPHEN A WATTS, Regional Permit Administrator

Address: NYSDEC Region 2 Headquarters
47-40 21st St
Long Island City, NY 11101 -5401

Authorized Signature: _____

Date 06 / 07 / 2022

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITION

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: TIDAL WETLANDS; EXCAVATION & FILL IN NAVIGABLE WATERS; WATER QUALITY CERTIFICATION

1. Conformance With Plans All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by the New York Harbor Foundation/Billion Oyster Project.

2. Conformance with Plans - Addenda In addition to plans referenced in the Condition titled "Conformance with Plans", the activities authorized by this permit must be in strict conformance with the following approved plans and/or submissions made as part of the permit application:

- a. Drawings by Billion Oyster Project entitled "Bush Terminal Park Community Oyster Reserach Project", Figure 1 (Plan View of Project Area Showing Cabinet and Mesh Bag Locations) dated August 19, 2017, Figure 2 (Section and Plan Views of Mesh Bag Installations) dated August 19, 2017, and Figures 3 through 7, all received by NYSDEC on September 14, 2017.
- b. Permit renewal request dated December 23, 2021 from Danielle Bissett of Billion Oyster Project to Stephen Watts, NYSDEC, titled, "Permit Renewal Request for Bush Terminal Community Oyster Research Project, Permit Number 2-6500-00068/00016; expires December 2021," received by NYSDEC on December 27, 2021.



- c. Resubmission letter dated March 4, 2022 from Billion Oyster Project to Katharine M. Maradiaga, NYSDEC, titled, "RE: Notice of Incomplete Application 2-6500-00068/00007," received by NYSDEC on March 9, 2022.
- d. Document titled, "Bush Terminal Park Updated Security Measures," received by NYSDEC on May 20, 2022.

3. Conformance with License to Collect and Possess The possession and introduction of oysters of any size and quantity in connection with this project are subject to and require the issuance of a License to Collect or Possess (LCP) prior to conducting any of the activities in association with this project. Furthermore, all activities authorized by this permit must be in strict compliance with LCP #2074, which regulates the quantities of oysters and spat-on-shell for this project and currently authorizes the following:

- Eastern Lagoon
 - Installation and/or monitoring of a total of 10 oyster cabinets (5 new cabinets, 5 cabinets from previous installations). Each newly installed cabinet will be stocked with 40,000-100,000 4mm spat-on-shell oysters, for a maximum of 500,000 4mm spat-on-shell in newly installed cabinets.
 - Installation of a maximum of 192 mesh bags (deployed in two on-bottom plots with 96 bags each). Within the individual plots of 96 bags, 66 bags would contain oyster spat-on-shell (approximately 600 4mm spat-on-shell per bag), and 30 bags would contain unseeded shell. The maximum allowable spat-on-shell for mesh bags in the Eastern Lagoon is 91,000.
 - The maximum total spat-on-shell oysters for the Eastern Lagoon is 631,000.
- Western Lagoon
 - Installation of a maximum of 192 mesh bags (deployed in two on-bottom plots with 96 bags each). Within the individual plots of 96 bags, 66 bags would contain oyster spat-on-shell (approximately 600 4mm spat-on-shell per bag), and 30 bags would contain unseeded shell. The maximum allowable spat-on-shell for mesh bags in the Western Lagoon is 91,000.
 - The maximum total spat-on-shell oysters for the Western Lagoon is 91,000.

The maximum total amount of oyster spat-on-shell for Bush Terminal Park (both lagoons combined) is 722,000. Any changes to the number of oysters or spat-on-shell must be approved under LCP #2074.

4. Notice of Intent to Commence Work At least five (5) days prior to the start of work, Permittee must complete and submit the attached "Notice of Intent to Commence Work" form to the NYSDEC Division of Marine Resources, 47-40 21st Street, Long Island City, NY 11101.

5. Notice of Completion of Work Within ten (10) days of the completion of work, Permittee must complete and submit the attached "Notice of Completion of Work" form to the NYSDEC Division of Marine Resources, 47-40 21st Street, Long Island City, NY 11101.

6. Notification to NYSDEC Law Enforcement In addition to the notification to NYSDEC described in the Condition titled "Notice of Intent to Commence Work", Permittee must also notify NYSDEC Region 2 Division of Law Enforcement at 718-482-4885 of the commencement of work at least 24 hours prior to the installation of oyster cabinets.



- 7. Remedial Cover System and Requirements** Bush Terminal Park is located on the site of the former Bush Terminal Landfill Piers, which were subject to environmental remedial actions (DEC Site No. B00031), including a clean material cap under the lagoons. In consideration of the site's history:
- Permittee shall coordinate with NYC Parks Environmental Remediation Unit, Capital Projects Division prior to commencing any work under this permit. The Environmental Remediation Unit shall coordinate with the remedial engineer of record to ensure oversight of the work.
 - Permittee shall comply with all relevant sections of the approved Site Management Plan for this site, dated October 2014, prepared by TRC Environmental Corporation.
 - Permittee may not engage in any activity that may damage or interfere with any of the remedial systems at the site, including, but not limited to, the site cap.
 - Periodically, as directed by the remedial engineer of record, and also upon expiration of this permit, Permittee must generate a survey of the top of cap elevation in the work area, for comparison against the initial conditions to determine if any cap restoration is required.
- 8. Post Sign and Permit** The NYSDEC permit and permit sign must be conspicuously posted in a publically accessible location at the project site. They must be visible, legible, and protected from the elements at all times.
- 9. Shellstock - Information to be Provided to NYSDEC Prior to Start of Work** At least fifteen (15) days prior to the start of work, the Permittee must provide the following information to the Department (attn. Joanna Field and Debra Barnes) for review and approval:
- Proof of the origin of the shell to serve as a settlement substrate; shell must be obtained from shellstock native to NY State and/or approved by the Department.
 - The date at which shell will arrive on site and when it is expected to be deployed for reef construction. The Department reserves the right to inspect the shell prior to deployment. All shell must be devoid of any tissue material, sediment, fouling organisms, or any other attached material on the shell prior to introduction.
 - The air curing process to be used for all shell deployed on the reef site. All shell shall be subject to an air curing process approved by the Department prior to any deployment at the site.
- 10. Reporting Requirements** A report on the results of pre- and post-construction monitoring efforts must be provided to the Department by December 31st for each year of the project. This annual report must include a section on site security that summarizes, and where practicable quantifies, patrol frequency, encounters with the public, notifications to NYSDEC Division of Law Enforcement, and poaching events and provides an assessment of the overall effectiveness of the updated 2022 security plan. Copies must be directed to:
- Joanna Field, NYSDEC Marine Resources, 47-40 21st Street, Long Island City, NY 11101 and email to r2.naturalresources@dec.ny.gov.
 - Debra Barnes, NYSDEC Marine Resources, 123 Kings Park Blvd (Nissequogue River State Park), Kings Park, NY 11754 and email to debra.barnes@dec.ny.gov.
- 11. Report Evidence of Tampering** If any evidence of tampering of oyster cabinets, theft of oysters, or theft of equipment is discovered, the Permittee must notify NYSDEC Region 2 Division of Law Enforcement at 718-482-4885 immediately.



12. Removal of Oysters and Cabinets In accordance with the timeline of installation and research described in the permit application, all installed materials (cabinets, oyster shell, etc.) must be removed no later than December 31, 2022. Consultation with and approval from NYSDEC will be required to evaluate whether materials may remain in the tidal wetlands beyond this date.

13. Minimize Adverse Impacts to Wetlands, Wildlife, Water All work must be accomplished in a manner which minimizes adverse impacts to tidal wetlands, wildlife, water quality, and natural resources.

14. Prior Approval of Changes If the Permittee desires to make any changes in construction techniques, species to be planted, the site plan, any mitigation plan, scheduling or staging of construction, or any other aspect of this project, the Permittee shall submit a written request to the Regional Permit Administrator to make such proposed changes and shall not make such changes unless authorized in writing by the Department.

15. Failure to Meet Permit Conditions Failure of the permittee to meet all the conditions of this permit is a violation of this permit and grounds for an order to immediately cease the permitted activity at the project site.

16. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

17. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

18. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

19. No Interference With Navigation There shall be no unreasonable interference with navigation by the work herein authorized.



20. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.

2. Water Quality Certification The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.



3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 2 Headquarters
47-40 21st St
Long Island City, NY 11101 -5401

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Excavation & Fill in Navigable Waters, Tidal Wetlands, Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.



NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

NOTICE OF INTENT TO COMMENCE WORK

Date: _____

**NYSDEC Natural Resources
Attn. Habitat Supervisor
N.Y.S.D.E.C Region 2 Office
47-40 21st Street
Long Island City, N.Y. 11101**

**Re: NYSDEC Permit No. 2-6500-00068/00007
Billion Oyster Project – Bush Terminal Park Community Oyster Research Project
Bush Terminal Park lagoons, E of Upper Bay, adjacent Bay Ridge Channel
Brooklyn, NY**

Dear NYSDEC Natural Resources Supervisor:

In accordance with Natural Resource Condition 4 of the referenced permit, I hereby serve notice to commence work on _____, 20____.

This is also to certify that, having read this entire permit, I am fully aware of and understand the general and natural resource conditions therein, and agree to comply with all such conditions further understand that prior to undertaking any modification to the subject work, I must seek and receive written approval of the NYSDEC Regional Permit Administrator.

Signature of Permittee

Signature of Contractor

Name of Permittee (please print)

Name of Contractor (please print)

Street Address of Contractor

City, State, & Zip Code of Contractor

Telephone Number of Contractor

WARNING

The permittee and his contractor (if any) are required to follow all permit conditions. Violations of the permit may lead to legal action, including the imposition of substantial monetary fines and corrective work.

**cc: Environmental Permits
Division of Marine Resources**

NOTICE OF COMPLETION OF WORK

Date: _____

**NYSDEC Natural Resources
Attn. Habitat Supervisor
N.Y.S.D.E.C Region 2 Office
47-40 21st Street
Long Island City, N.Y. 11101**

**Re: NYSDEC Permit No. 2-6500-00068/00007
Billion Oyster Project – Bush Terminal Park Community Oyster Research Project
Bush Terminal Park lagoons, E of Upper Bay, adjacent Bay Ridge Channel
Brooklyn, NY**

Dear NYSDEC Natural Resources Supervisor:

In accordance with Natural Resource Condition 5 of the referenced permit, I hereby serve notice that the work allowed by the above referenced permit has been completed as of _____, 20____, consistent with the requirements of the above referenced permit.

Signature of Permittee

Signature of Contractor

Name of Permittee (please print)

Name of Contractor (please print)

Street Address of Contractor

City, State, & Zip Code of Contractor

Telephone Number of Contractor

**cc: Environmental Permits
Division of Marine Resources**

New York State
Department of Environmental Conservation

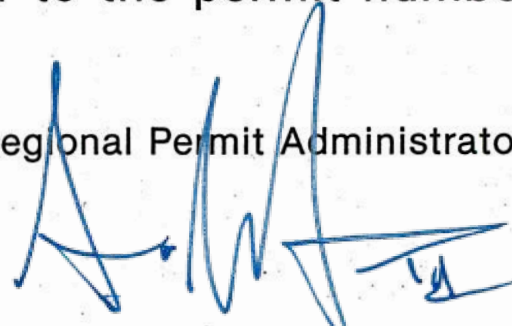
 **NOTICE** 

The Department of Environmental Conservation (DEC) has issued permit(s) pursuant to the Environmental Conservation Law for work being conducted at this site. For further information regarding the nature and extent of work approved and any Departmental conditions on it, contact the Regional Permit Administrator listed below. Please refer to the permit number shown when contacting the DEC.

Permit Number _____

Expiration Date _____

Regional Permit Administrator



Stephen A. Watts III
47-40 21st Street
LIC, NY 11101
(718) 482-4997

NOTE: This notice is **NOT** a permit