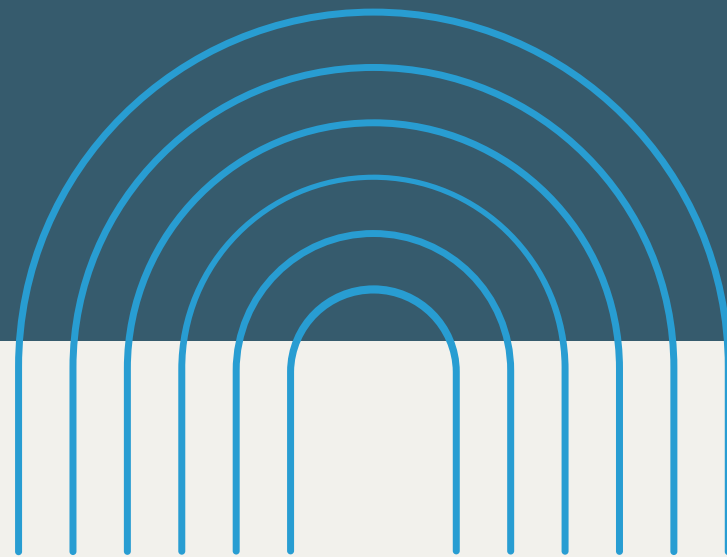




Navigating Legal Seas: Challenges in Using Shellfish for Restoration

Michele Langa, Staff Attorney
NY/NJ Baykeeper & Hackensack Riverkeeper



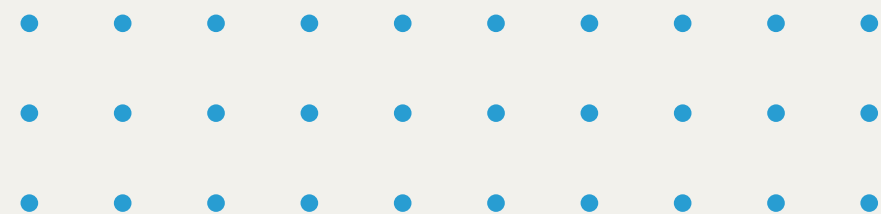


01. The Great 2010 & 2016 Oyster Heists

02. Working Under Federal Guard

03. Promises, Promises

04. What's Next?



01.

DEP, citing water contamination, ends restoration project

By KIRK MOORE
Staff Writer

KEYPORT — Even as scuba divers wearing bright yellow air tanks dismantled their oyster restoration site, workers with the NY/NJ Baykeeper said earlier this month that they still hoped for a last-minute reprieve for their Raritan Bay project from the state Department of Environmental Protection.

"They will be going in the Dumpster," Baykeeper Executive Director Deborah Mans said of the first batch of oysters brought ashore at the start of a two-day removal of 50,000 shellfish from the site. "I would rather take them to the Earle Naval Weapons Station pier."

State officials forced the shutdown of the project, saying the oysters were in bacteria-contaminated waters. The oysters could be stolen by poachers and sold illegally, and if consumers got sick from eating them, New Jersey's entire shellfish industry could be endangered, the officials argued. DEP officials said a search of the Keyport site showed oysters of marketable size, but Baykeeper workers dispute they are anything to attract poachers.

Baykeeper workers had approached the Navy about using the strictly controlled pier security zone at Earle as an alternate location for the oysters. Having access to the oysters then under the Navy's control would address the DEP's position that the Keyport site was too vulnerable to poachers.



Alec Smith of the NY/NJ Baykeeper shows some of the reef balls removed from the site.



Baykeeper Executive Director Deborah Mans speaks about the shutdown of the oyster restoration project.

As of press time, there was word on a compromise. According to DEP officials, the only viable relocation site in New J

say the problem is really state government shortchanging its marine resources.

New Jersey does not do enough enforcement patrols on 70 percent of its shellfish waters, according to a critique by the U.S. Food and Drug Administration.

"We have laws in place to protect our environment from poachers. Why don't we enforce the law?" said Assemblywoman Joan Voss, D-Bergen, who is sponsoring legislation to restore the oyster project, and appeared at a harborside news conference with Baykeeper supporters.

The DEP says removing the Keyport oysters is a step toward meeting FDA mandates, although the federal agency called only for

Fear of poachers could end oyster study

Oil could have spill effect here

BY MICHAEL LAMENDOLA
Managing Editor

A vital study on the Hackensack River where scientists were gauging the feasibility of introducing oysters to the polluted water-

MEADOWLANDS way not for consumption, but to aid in cleaning the river, could be squashed because of a problem over 1,000 miles away. But two senators penned legislation Monday attempting to fight for New Jersey oyster gardens created for educational, research or restoration purposes.

As a side effect to the massive BP oil spill in the Gulf of Mexico



STAFF PHOTOS/JAMIE WINTERS

The oil spill in the Gulf could affect local water studies. An oyster study may have to be halted if the NJ Department of Environmental Protection insists that the oyster beds be pulled from the Hackensack due to fear of poachers. Senators Sarlo and Cardinale have penned legislation to fight the DEP.

The Great Oyster Heist of 2010

...and 2016



2010 Removals

On June 7, 2010, NJDEP banned the use of commercial shellfish for research projects in contaminated waters under the guise of protecting New Jersey's \$790 million-a-year shellfish industry.



2016 Rule

In 2016, the rules required a 24/7/365 security plan for any installations including shellfish in waters deemed "closed" for harvest.

"Although the Department is not aware of any specific instances of tampering with shellfish restoration projects in waters other than Approved in New Jersey, the security requirements of the permit are intended to protect the public health by ensuring that shellfish are not illegally harvested from waters other than Approved." (48 N.J.R. 1923) - September 2016 Rule

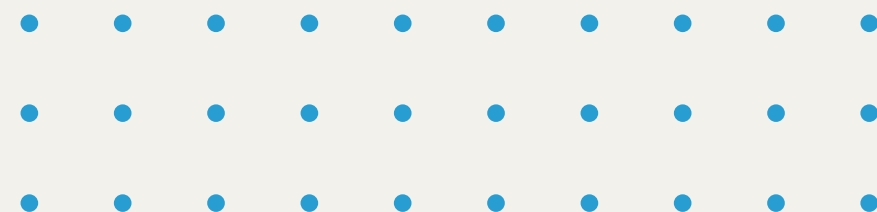
02. Working Under Federal Guard

US NAVY DEFENDS OYSTER REEF
INSTALLATION



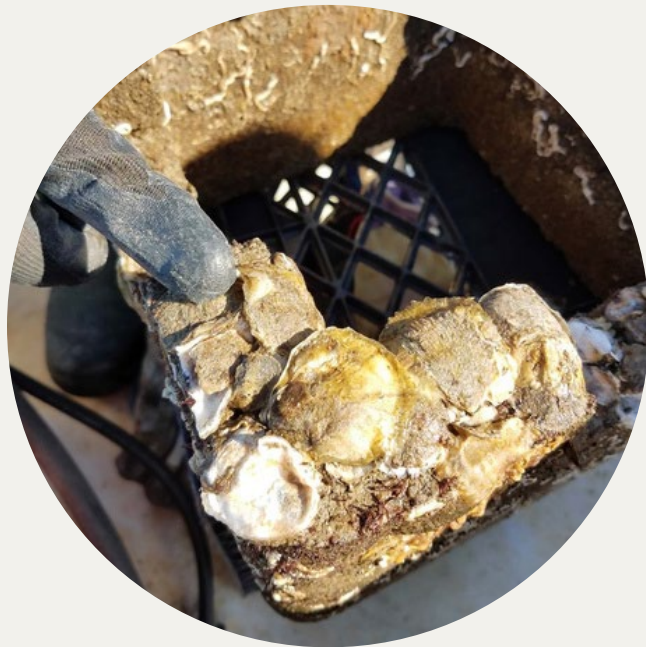
US NAVAL WEAPONS STATION EARLE

The restrictions put in place by NJDEP forced us to get creative. Baykeeper partnered with USACE, the US NAVY, and NOAA in 2016 to install living shoreline in protected waters over nearly 12 acres of Sandy Hook Bay.

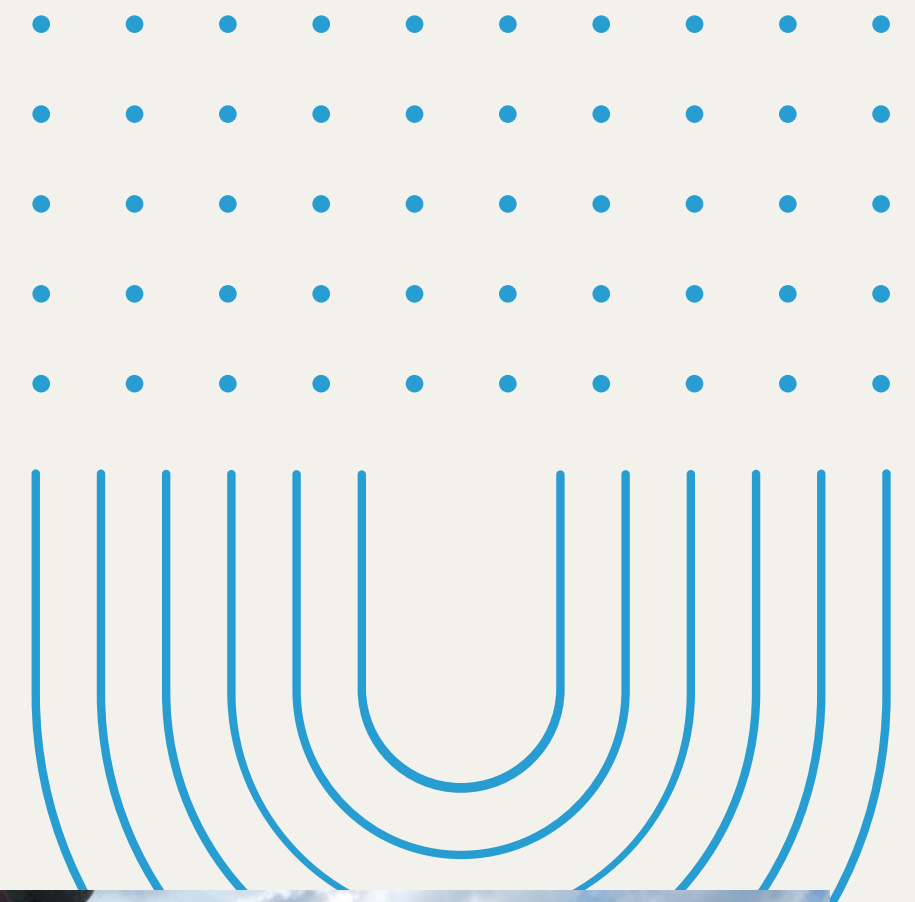




The partnership has been incredible. Our partners in NOAA, USACE, and USN have been supportive and fully backed the work and the product. There are more than 200 linear yards of castles installed and being monitored.

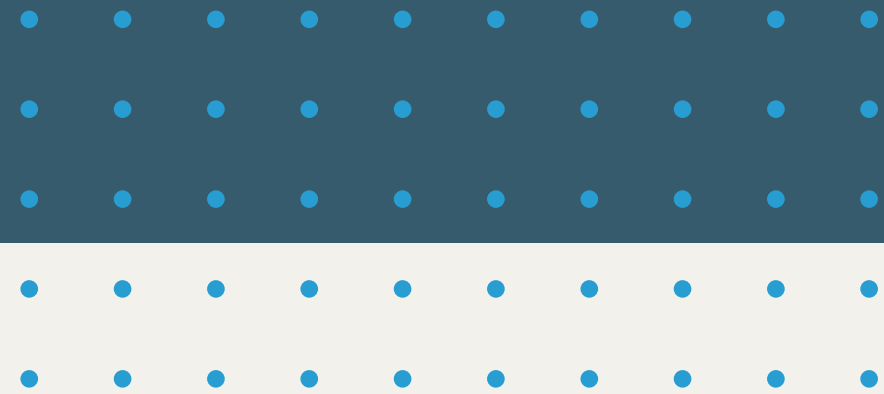


However... Working in a restricted area, guarded by the USN, has been a challenge. It means working around Navy schedules and getting full DoD background checks for any volunteer or staff person and access badges.



03.

Promises, Promises



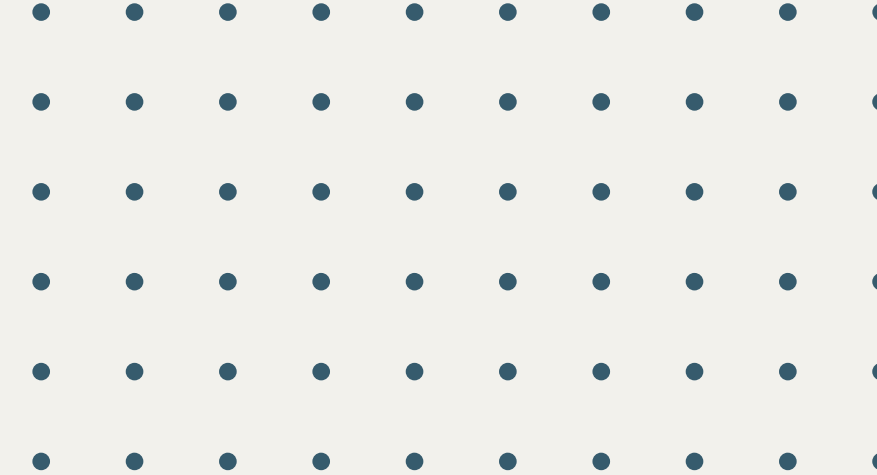
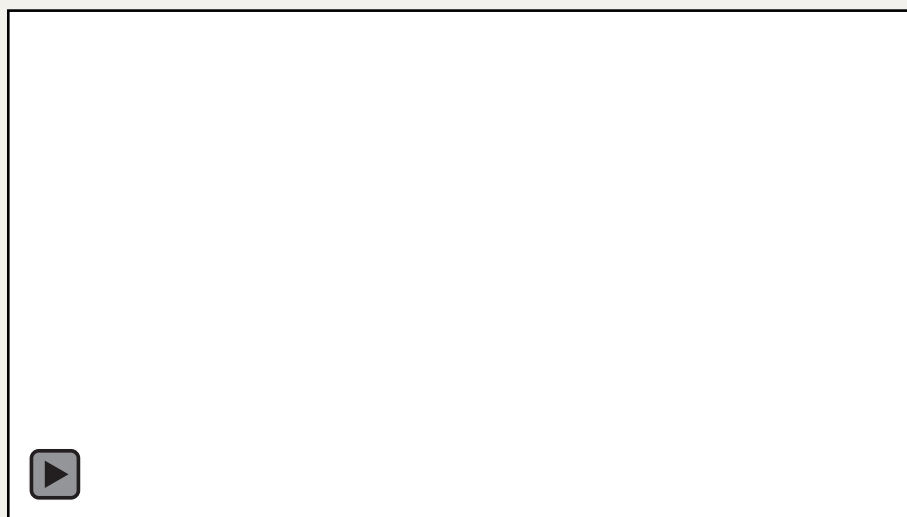
2010- 2021 Promises

NY/NJ Baykeeper worked with NJDEP on updating the Shellfish Management Rules

Over several years, many hours of meetings, and multiple staff attorneys, little was accomplished that mattered.

The resulting Shellfish Management Rule, adopted in September 2016, hindered more than helped the expansion of research, installations, and applicability of using shellfish.

Opting for collaboration over legal measures has not made the rules better.



**Oyster Gardening,
Volunteer Engagement,
Educational Opportunities**
All of the most community-focused
engagement is made near
impossible by these rules

**Urban Waters are all but left out
of planning and rulemaking**
The most vulnerable areas, along urban
shores, are being denied in
water natural solutions

2022 Promises

NJDEP Held a Stakeholder Meeting on the Shellfish Restoration Rules

The NJDEP proposed several changes, one of which was of particular interest to those of us working on restoration.

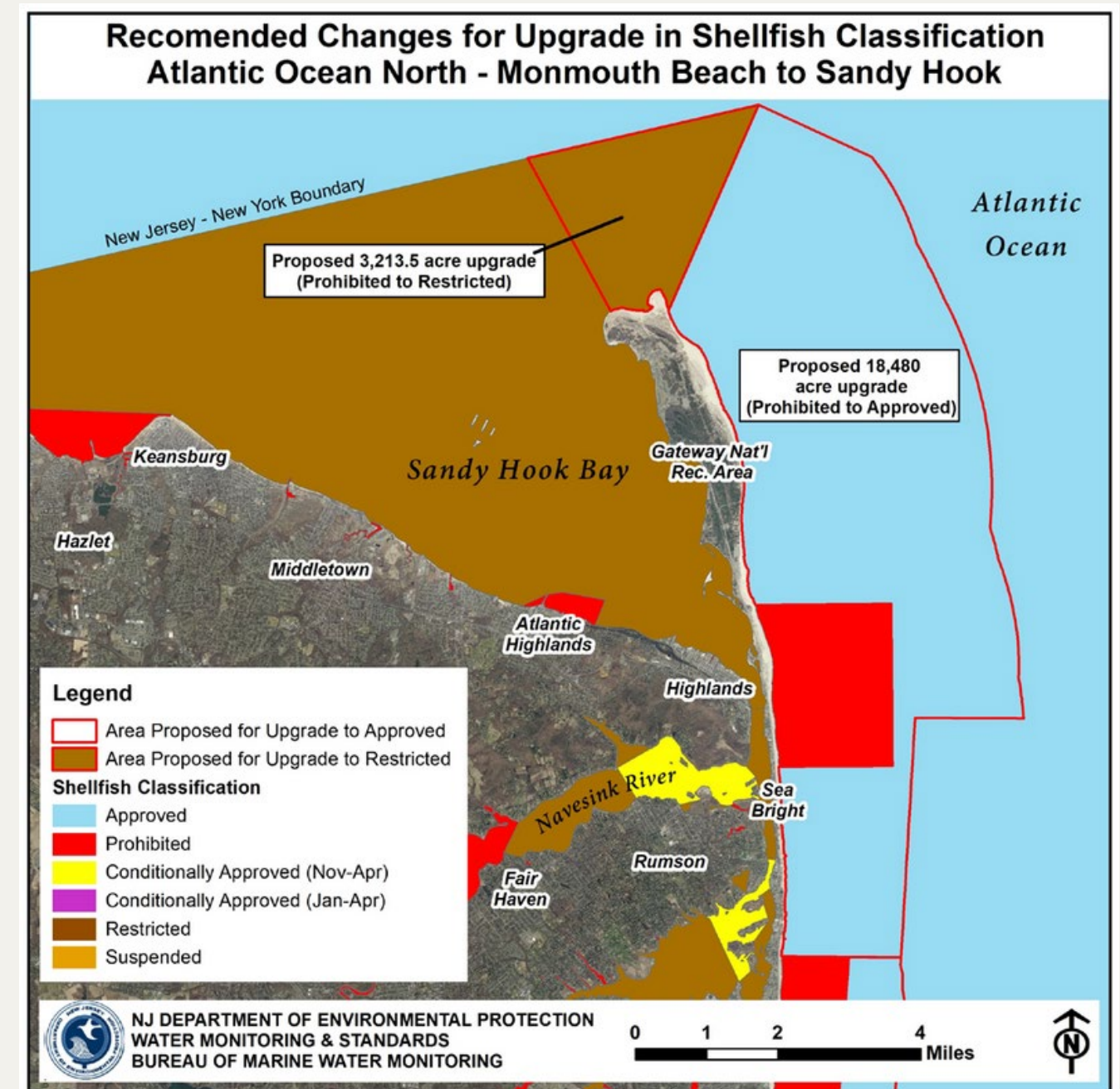
“Proposing to change the language of the restoration permit that currently requires 24 hour a day 7 day a week surveillance.”

New language would allow for acceptable types of technology to provide sufficient surveillance.

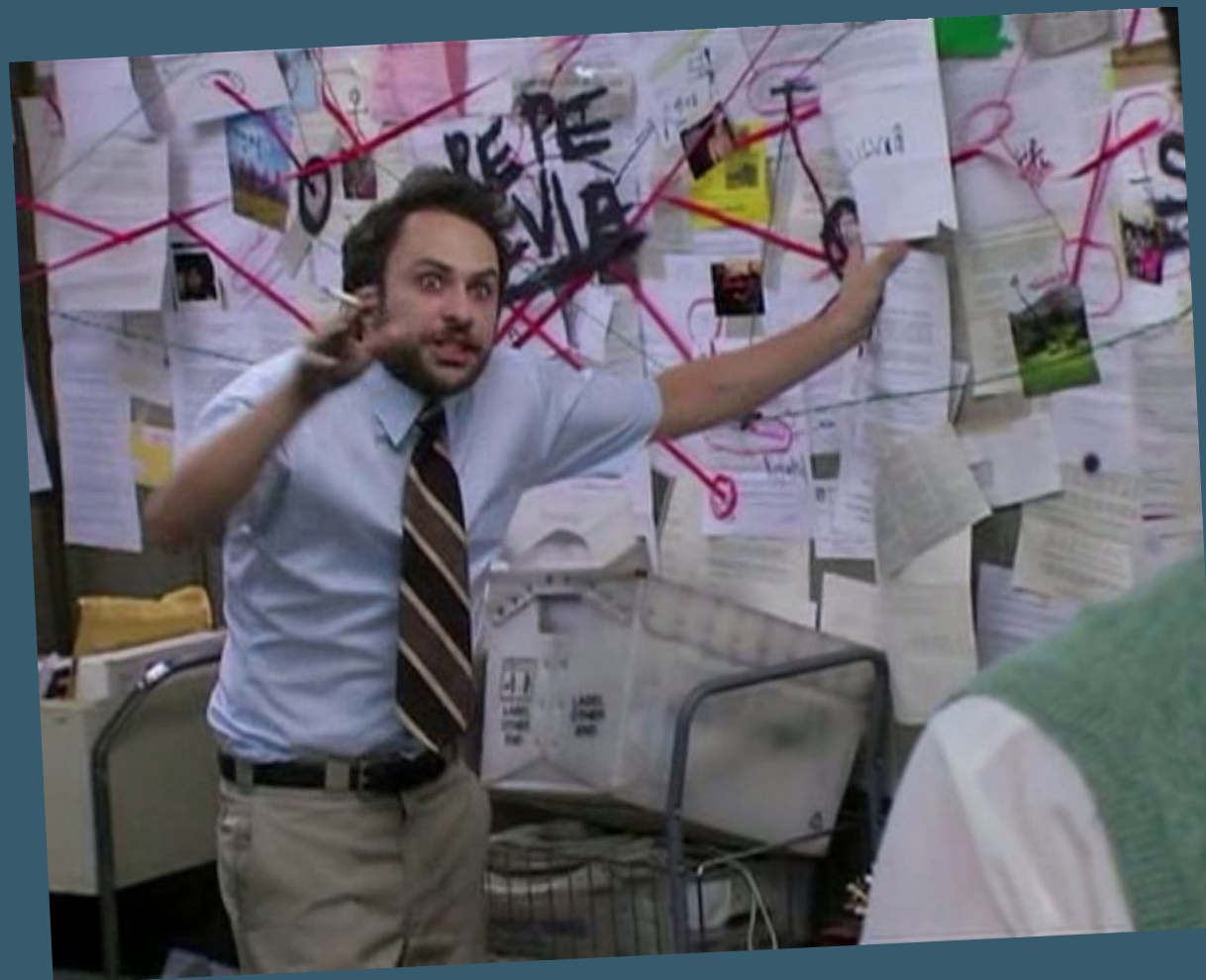
All applications to use technology-based surveillance will require consultation between BMW and Fish & Wildlife’s Marine Enforcement staff before being approved.”

Disappointment reigned when the previous rule version was readopted without change in Q2 2022. Promised stakeholder meetings to follow never happened.

Additional Changes
expanded or recategorized
waters that were previously
prohibited or restricted



03.



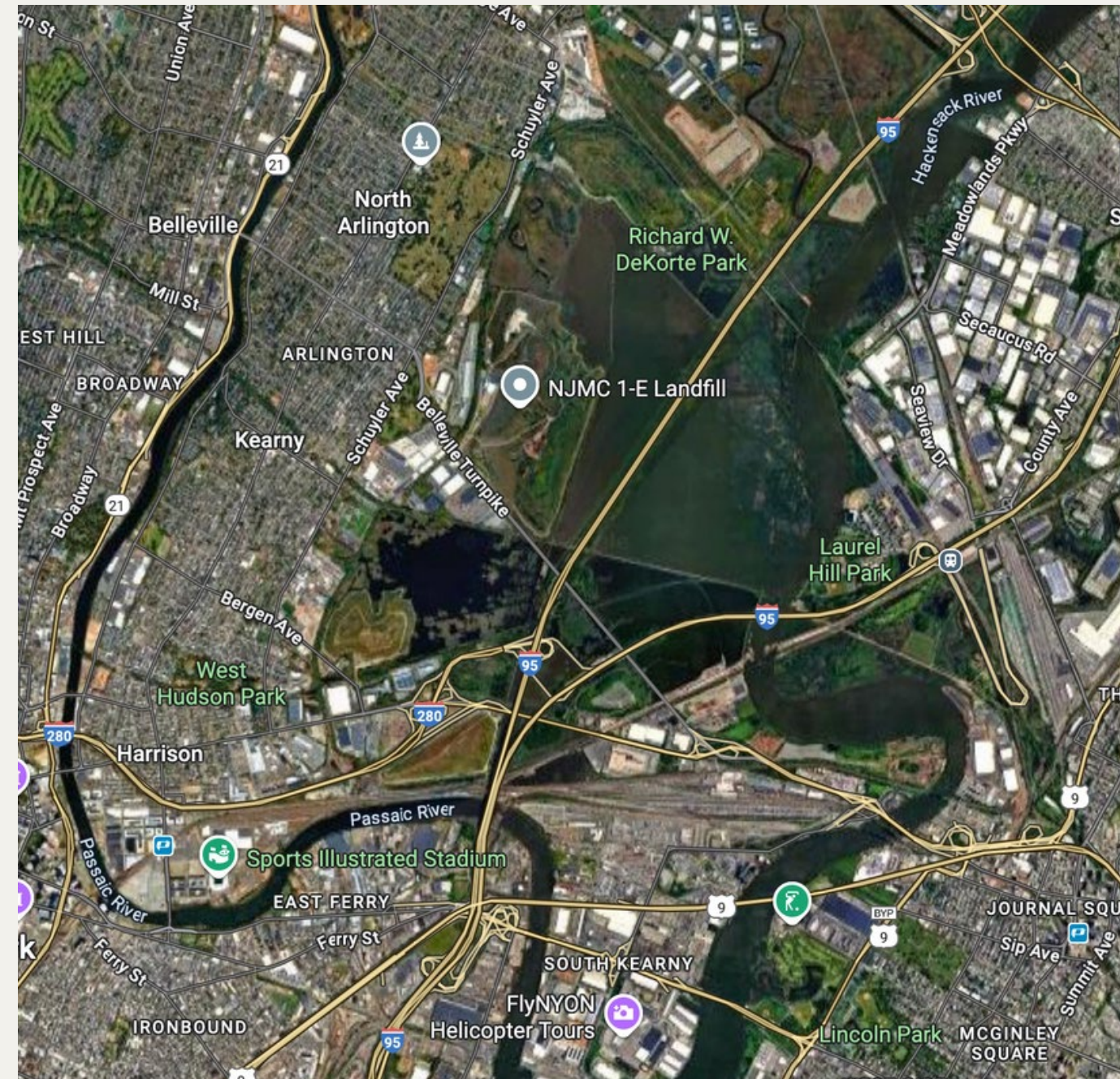
What's Next?

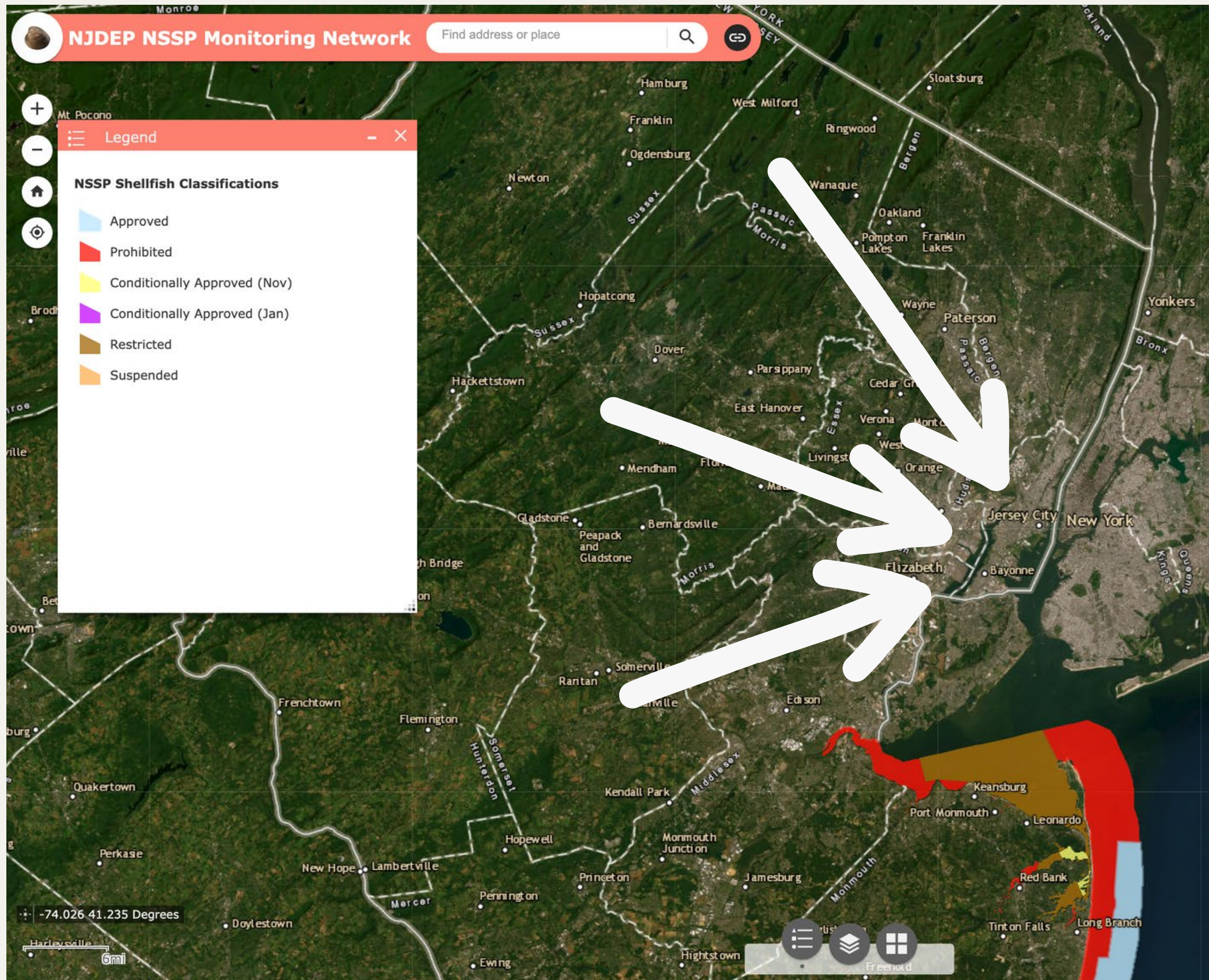
The Security Restrictions Remain in Place

24/7 Security Monitoring is unnecessary and prohibitive

We are working, still, to see the Shellfish Management Rules updated to remove this restriction.

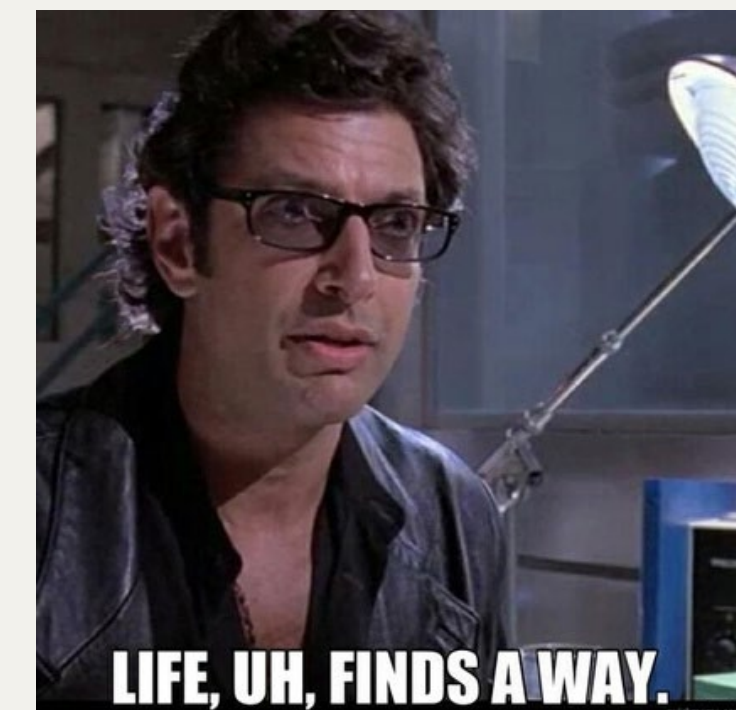
This will not only open up more areas to much needed installation efforts, but also bring the public into the process by not restricting projects to naval weapons-level protection.





You'll notice that none of these bodies of water are classified for shellfish. At least, not in *New Jersey*. We can look out across the Arthur Kill and watch USACE install a living shoreline on the Staten Island side. Or across the Hudson at the work being done by BOP in NYC.

And yet, oysters are resurging in these waters on their own...

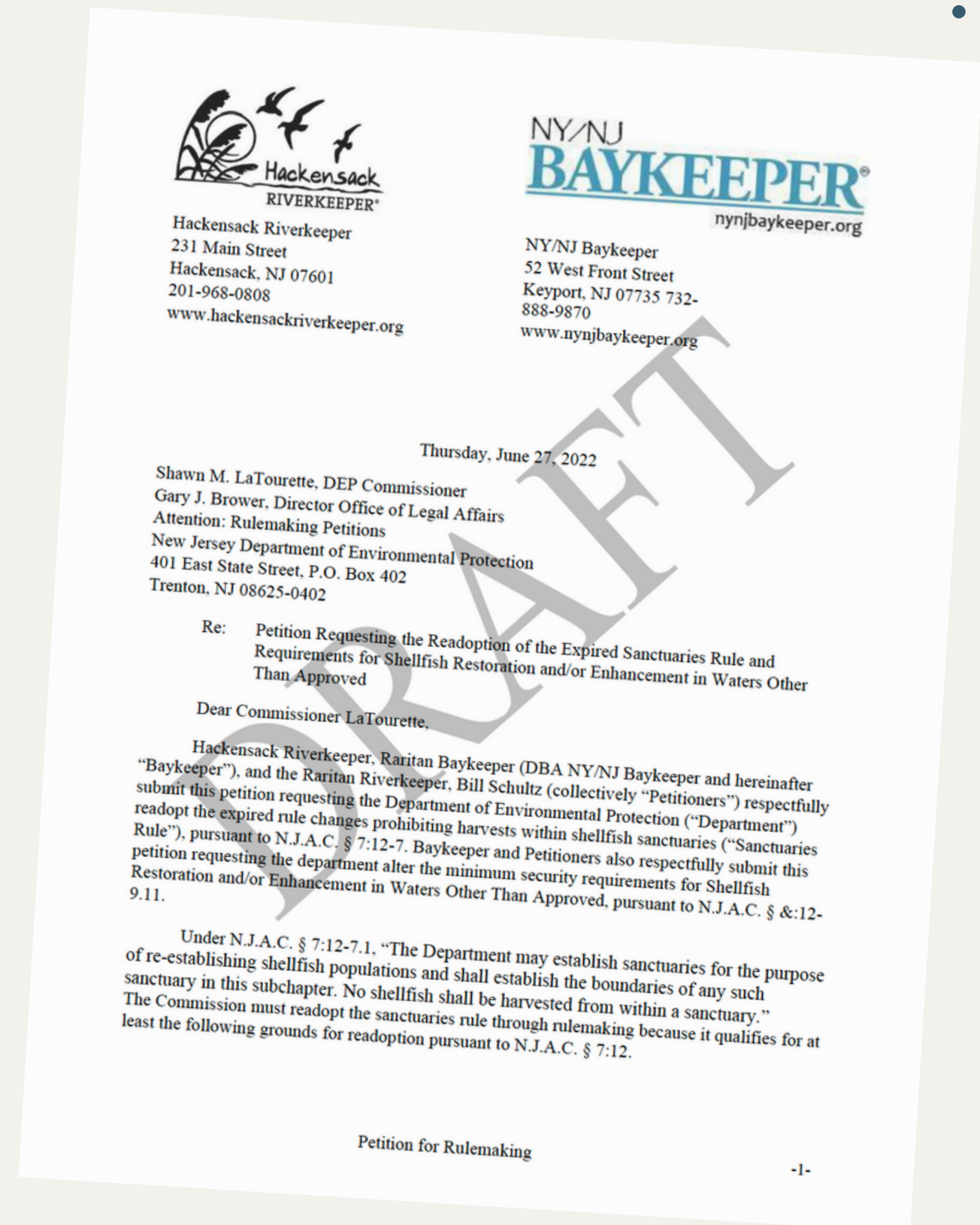


Petition for Rulemaking to reopen the stakeholder process and update the rule

Part of my potential long-term plan is to push for the rule to be reexamined now. We tried for several years to work with NJ DEP to fix the broken aspects of this rule, born from partisan pettiness and little more.

This is not meant to be adversarial, but is a firm step toward pushing for change via official channels. We would seek support from all stakeholders should the petition make it into the register.

The potential to correct the errors of past administrations is worth the effort to make more tools available in our work toward a resilient NJ - at both the shore and in our urban riverfront communities.





Thank you!

Do you have any question?

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