

## **New Jersey Sea Grant Final Report**

### Identifying and Claiming the Coastal Commons in Industrialized and Gentrified Places

#### Co-Principal Investigators:

Bonnie J. McCay, Rutgers the State University, New Brunswick, NJ  
Andrew Willner, NY/NJ Baykeeper, Sandy Hook, Highlands, NJ

#### Associate:

Deborah A. Mans, NY/NJ Baykeeper, Sandy Hook, Highlands, NJ  
Sheri Seminski, Associate Director, NJ Center for Environmental Indicators

#### Graduate Research Assistant:

Johnelle Lamarque, Rutgers the State University, New Brunswick  
Satsuki Takahashi, Rutgers the State University, New Brunswick

### Abstract

The coastal region of New Jersey, like that of most other coastal states, is imbued with a mixture of private, public, and common property rights, including the public trust doctrine. This project, which is focused on the bayshore region of the Raritan-Hudson Estuary and the neighboring northeastern tip of the New Jersey shore, will examine the changing nature of property and access rights in places that are both industrialized and gentrified. Through interviews and archival work, we will also identify the existence of and potentials for local and extra-local institutions that support public and common property rights. Institutions of interest range from local ordinances, zoning, and planning to the state-wide CAFRA permitting system to court cases, legal settlements, and applications of the state's public trust doctrine. Of particular importance are the following common property rights: a "working waterfront" accessible to commercial and recreational fishermen, safe and productive coastal waters, and public access to the beaches, bays, and inshore waters. Industrialization has long narrowed these rights because of its effects on available waterfront and on water quality. Gentrification also threatens such rights because of the competition it creates for waterfront and the privatization of access that often follows. The products will be a report depicting the current status and recent changes in property rights in the area of the study, including the amounts and types of waterfront access loss, and GIS-based mapping, which will build upon existing maps developed by the NY/NJ Baykeeper. This project is a collaboration between Rutgers University and the New York/New Jersey Baykeeper.

### **(22) OBJECTIVES:**

The goal of this project was to document and account for the changing nature of the Arthur Kill, Raritan Bay, Navesink River, and Shrewsbury River shorelines as such changes affect the ability of the general public and commercial and recreational fishing businesses to have access to essential waterfront, intertidal waters, and coastal waters of this region. The major goal was to develop an account of the amounts and types of loss of access to waterfront property and clean and productive intertidal and tidal coastal

waters, and the effect this has on commercial and recreational fishermen and the general public.

The specific objectives of the project included:

- Exploring the socio-political dynamics of gentrification and industrialization as they affect this region's common resources, particularly the "working waterfront" and clean and productive coastal waters that are essential to commercial and recreational fishermen
- Identifying the existence and potentials for local and extra-local initiatives that support public and common rights as distinct from private property rights. These initiatives ranged from local ordinances, zoning and planning to state waterfront permitting, such as the Coastal Areas Facilities Review Act (CAFRA), to court cases, legal settlements, and application of the Public Trust Doctrine. They also included the development of private and collective, but non-profit and non-governmental, initiatives to claim and protect parts or all of the bayshore and northern coastal "commons."
- Expanding the value of existing mapping of the estuary. The team utilized Global Positioning System (GPS) Units to document public access sites in the study region. This information will be coordinated with NY/NJ Baykeeper's existing web-based GIS mapping efforts.

### **(23) METHODOLOGY:**

The research was conducted in two phases. The first phase involved a literature review and compilation; review of municipal master plans, zoning maps and land use ordinances; significant land-use and waterfront-related decisions and case-law; field observations, including boat trips, of access points and their uses to be used for mapping; informal participant-observation in selected communities; and extensive in-depth interviews with appropriate elected officials, members of planning boards or economic development offices, and municipal personnel.

The second phase of the research, which is ongoing, involves the analysis of the information collected during phase one, production of a report that will depict the current status and recent changes to common and public rights in the area of the study; and expansion of Baykeeper's existing mapping efforts of the Hudson-Raritan Estuary.

### **(24) RATIONALE:**

In July 2001 the Coastal Management Program of New Jersey's Department of Environmental Protection (DEP), to meet its Section 308 requirements under the federal Coastal Zone Management Act, raised the question of public access to the highest priority, emphasizing "A general lack of information regarding the locations, number, extent and description of existing public access areas..." as well as the lack of long-term monitoring of access conditions (Ibid). Our proposal will help address this problem for

one large area of the State and with a particular focus on the fishing public, both recreational and commercial (and including subsistence fishing).

There has been no comprehensive study of this region to determine the amounts and types of loss of waterfront access and related facilities and resources, and the effect this has on commercial and recreational fishermen as well as the general public. The commercial and recreational fishermen of New Jersey contribute over \$1 billion to the State of New Jersey (McCay et al. 1995a, 1995b). They face many challenges beyond the usual uncertainties and vagaries of livelihoods and sports dependent on natural systems. Decline in many fish and shellfish stocks, due to overfishing, habitat deterioration, and possible climatic and oceanographic changes, has resulted in increasingly stringent State and Federal regulations. Social and economic assessments of the consequences of regulations are now being done for the Mid-Atlantic Fishery Management Council, and they show very clearly that to understand the effects of fisheries regulations, one must understand the situation on the waterfront as well, which affects their vulnerability to regulatory impacts as well as their resilience (Wilson and McCay 1998; McCay and Cieri 2000). The commercial and recreational fishing ports of the New York bight (from Montauk to Cape May) are enclaves within highly industrialized, tourist-oriented, and /or “gentrified” coastal communities. As such there are competing uses of the docks, piers, parking lots, and other facilities on which they depend, and people dependent on fishing are very concerned about their futures (McCay et al. 1996, McCay and Seminski 1998).

We see this as a “public trust” issue. New Jersey is one of the states that recognizes and has used the public trust doctrine to protect coastal areas and tidal and navigable waterways (Coastal States Organization 1997). The NJDEP emphasizes the importance of the public trust doctrine in ensuring that tidal water bodies be accessible for navigation, fishing, and recreation (NJDEP Office of Coastal Planning 2001: 36). The courts have emphasized the “dynamic nature of the public trust doctrine” in applying it to public rights of access to dry sand areas of beaches, which are reasonably necessary to get to the tidal waters, and ensuring fair and equitable beach access remains a major challenge. (See *Matthews v. Bay Head Improvement Ass’n*, 471 A.2d 355 (N.J. 1984.) Access for fishing, whether beach, pier, or dock, is a similar public trust right, and the situation for piers and docks is even more precarious given the predominance of private land ownership and gentrifying pressures.

## **(25) PROGRESS TO DATE:**

For personnel and scheduling reasons, actual research with the coastal municipalities did not begin until the early summer of 2003, and we do not expect to have finished that work until late in the spring of 2004, although the funding ended in January 2004.

During the first phase of the research the team identified the core set of municipalities in the study area in which to conduct interviews, literature reviews and fieldwork. Nineteen municipalities were selected, along with two counties. The following municipalities and counties were selected:

- Carteret
- Old Bridge
- Perth Amboy
- Sayreville
- South Amboy
- Aberdeen
- Atlantic Highlands
- Fair Haven
- Hazlet
- Highlands
- Keansburg
- Keyport
- Little Silver
- Long Branch
- Middletown
- Red Bank
- Rumson
- Sea Bright
- Union Beach
- Middlesex County
- Monmouth County

Next the team compiled a set of interview questions designed to determine the traditional uses of the municipality's waterfront, major changes within recent decades and future plans, along with specific questions to document waterfront use and planning by the community. The general and focused questions asked during the interviews follows:

General questions:

1. What is the waterfront like in this municipality?
2. How do people use the waterfront?
3. What areas of the waterfront are closed to the public? What areas are open?
4. Where can one find boat launches, walkways, fishing piers, scenic views, parks, and other places where people use the waterfront/water for recreational purposes?
5. How do people find out about and get to special places like beaches, parks, piers? Are there signs? Is there parking? Where it is hard to get to, are there informal, unofficial ways to get there (i.e. old paths)?
6. What about commercial uses of the waterfront? Fishing docks, ferry docks, marine trades, marine railway, restaurants, bait shops, etc.
7. How much of the waterfront is privately owned and devoted to residential uses?
8. What have been the major changes in the waterfront in recent decades?
9. What are the major plans for the future?
10. What if anything has been done to help citizens improve their access to the beaches/bayshore/water?
11. What is anything has been done to control the nature of development on the waterfront? Is there special zoning for water-dependent uses?

More focused questions:

12. What about public or private ownership?
  - a. Are there access points that require people to go onto private land?
  - b. Are there easements for public access on private land?
  - c. Is this an issue in this town?
13. What agency or organization (if any) contributes, either financially or in some other way, to the upkeep of that access?
14. Does the town work with the NJ Department of Environmental Protection's Coastal Zone Management Program or any other government agency to promote or enforce public access?
15. Have there been any beach replenishment or shore protection programs in this town? Has the town worked with the Army Corps of Engineers or the Federal Emergency Management Agency (FEMA) in this regard, and if so, what if any were the public access outcomes?
16. Are there any town plans or business or residential developments that may affect waterfront access for the general public?
17. When was the town's master plan last revised?
  - a. What changes in zoning and land-use for waterfront areas took place then, if any?
18. When do you expect to next revise the master plan?
  - a. What changes in zoning and land-use for waterfront areas do you foresee?
19. What are the major sources of revenue and employment in town?
20. Are there any businesses in town that depend on waterfront access?
  - a. Any commercial or for-hire recreational fishing,
  - b. ferry service?
  - c. Other?
  - d. Describe traditional waterfront uses in your town, even if they no longer exist.
  - e. Plans for the future
21. How does proximity to the bayshore or river affect the town's economy, character, and options for future development?
22. What different kinds of uses are there of the waterfront in this town? Do you have a land-use map and any data that show these different uses, their relationship to each other and the area they cover?

23. What is the zoning for the waterfront areas in town?
  - a. Is a zoning map available? What about waterfront zoning ordinances? How well do zoning and actual land-use match up?
24. Does the town have any problems with tidal or other kinds of flooding?
  - a. If not, is this because of special measures taken?
  - b. If so, please describe the problems and how they affect waterfront access and how the waterfront is used.
25. Are there any other problems, such as pollution, that affect how people and/or businesses in town use the bay and river?
26. Is the town aware of the premise of the Public Trust Doctrine and its implications? (The PTD: on behalf of the citizens, the state 'owns' the land below mean high tide mark, and municipalities have obligations to the public to help them get access to those lands).
27. In what other ways is the town responsive to citizens' rights to public access?

In each of the selected municipalities a member of the team conducted at least one interview. Often the interviewee would then lead the team member on a tour of the municipality's waterfront for further explanation of its use. Additionally, team members conducted personal site visits to document use of the waterfront through informal participant observation. A total of 31 formal interviews were conducted. They generally ranged from 1 to 2 hours. The interviewees responded to the set of questions above and the interviewer asked follow-up questions for clarification or to elicit more details.

Site visits were conducted to the public access points in the municipalities. Informal participant observation was conducted and both formal and informal public access points were documented using digital cameras. Two boat trips were conducted. One surveying the Bayshore communities and the second surveying the communities along the Arthur Kill.

Separately Ms. Mans reviewed each municipality's master plan, zoning map, land use ordinances and any relevant waterfront or redevelopment plan. This research provided valuable information on long-term goals and visions for a municipality's waterfront, how active the municipality was in shaping the development of its waterfront, and any regulatory steps that had been taken to preserve or protect traditional uses of the waterfront and public access sites.

This combination of interviewing, land-use document review and site visits provided a comprehensive picture of waterfront and public access conditions in the region. For example, while the interviews yielded more current information on waterfront use and future plans, the master plans, zoning maps and land use ordinances provided a broader picture of how the municipality, over time, has planned and protected certain types of

waterfront use. Also, it was invaluable to assess whether the visions expressed by the interviewees were possible under the current regulatory and zoning guidelines for the municipality.

## **(26) ACCOMPLISHMENTS:**

The project has produced over fifty hours of interviews, over fifty hours of land use literature review, over one hundred digital photographs documenting waterfront use and public access and a list of public access points throughout the Raritan Bayshore, Arthur Kill, Navesink River and Shrewsbury River. Additionally, this project has documented the changing waterfront, tracing the traditional uses of the waterfront through industrialization and in some cases gentrification.

Preliminary analysis of the data collected has revealed relevant themes and trends that reflect on the history, current use and future of the waterfront in the study area. Our research has yielded insights into the attitudes toward the Public Trust Doctrine and how municipalities are dealing, or not dealing, with its precepts.

## **(27) BENEFITS:**

A report will be written that depicts the current status and recent changes to common and public rights in the area of the study. The results of this study will allow organizations and municipalities to prioritize their efforts to protect public access to the waterfront, including identification of waterfront locations as Commercial Fishing Enterprise Areas. The study will also examine ways in which municipalities can maintain and expand their public access and “working waterfront.”

This research will contribute to efforts to restore and protect the natural systems of the Hudson-Raritan Estuary. Environmental groups are making the Public Trust Doctrine a focus of the region's policymaking processes and this report will provide an accounting of public use of the waterfront.