Statement of Meredith Comi, NY/NJ Baykeeper, Oyster Program Director in support of A3944
(allowing cultivation of commercial shellfish species in certain coastal and inner harbor waters for research and educational purposes)

Thank you Chairman Andrzejczak for posting this bill. Thank you to bill sponsors Assemblyman Garcia, Assemblyman McKeon, Assemblyman Auth, Assemblyman Eustace, Assemblywoman Pinkin, Assemblyman O'Scanlon, and Assemblyman Diegnan. I urge the Committee members to support A3944. I am Meredith Comi and I am the Oyster Program Director for NY/NJ Baykeeper. Since 1989, NY/NJ Baykeeper has been working to protect, preserve and restore the NY-NJ Harbor Estuary. One of the ways we do that is through the restoration of oysters.

Oysters once thrived in the NY-NJ Harbor, but overharvesting, pollution and sedimentation of reefs mean that there is no longer a sustainable oyster population in our area.

For over a decade Baykeeper has been the lead nonprofit organization conducting important oyster research in NY-NJ Harbor, partnering with Rutgers University in New Jersey and with nearly 20 different federal, state, city and nonprofit partners in New York.

Baykeeper had previously successfully managed two oyster reef projects in New Jersey - one in the Navesink River in Red Bank and the second in the Keyport Harbor. Unfortunately, both projects were shut down due to the New Jersey Department of Environmental Protection's (NJDEP) decision in 2010 to ban research, restoration, and education projects using oysters in contaminated waters or waters classified as "Restricted" or "Prohibited" for shellfish harvest. DEP's reasoning behind the ban was to minimize the risks of illegally harvesting or poaching our shellfish. However, our projects weren't visible to the public and not easily accessible to unlikely poaches. Our reefs were a few feet under water and weighed down in cages. Furthermore, there is no record of anyone getting sick from our research shellfish in the history of the program. Shellfish industry closures in the past have been a result of Vibrio parahaemolyticus or pollution.

Despite offering several different solutions to NJDEP, including offering to install security cameras and assist NJDEP with patrolling, our research projects were destroyed. At the time, NJDEP promised us they would work on finding a way to move forward, but here we are five years later with no solution in sight.
You will hear that NJDEP had to institute the ban because the Food & Drug Administration was threatening to shut New Jersey’s shellfish industry down. But that is simply not true. For years, NJDEP has consistently underfunded its shellfish oversight program, resulting in impacts to not just us, but commercial interests as well. NJDEP did not have the capacity to keep up with necessary patrolling of the waters, as they are required to do so by the FDA. Due to this lack of capacity, we were forced to remove and kill the animals and over 10 years of research, funding, and jobs were disturbed.

This underfunding has led to serious deficiencies in NJDEP’s program as identified by FDA, including:

- No permit for aquaculture activities in NJ
- National Shellfish Sanitation Program (NSSP) Model Ordinance not included in NJDEP rules
- Continued staffing issues will most likely result in NJDEP being out of compliance in patrol frequencies in the near future.

FDA has made it clear that this is NJDEP’s program and they have authorization to move forward with rules. We cannot simply allow NJDEP to continually point to the FDA as if their hands are tied. It would be important to hear directly from FDA on the subject.

In response to the drafted regulations (at N.J.A.C. 7:12), we have been an active part in the stakeholder meetings and have offered comments on the rulemaking. The proposed rulemaking is narrow and would still make obtaining permits difficult if not impossible for our oyster programs. NJDEP would still be able to classify waters of their choosing unsuitable for research. Whether or not the Department is meeting the patrol requirements is an issue wholly outside of the scope of control of the permittee and places restoration projects at a distinct disadvantage when compared to other projects before NJDEP. For example, NJDEP would never state in a rule that it will no longer issue land use permits because the agency does not have enough land use enforcement personnel. Thus, we do not support any amendment to this bill.

We urge you to support A3944 which would lift NJDEP’s ban on shellfish research, restoration, and education programs. Lifting the ban on shellfish research will allow us to continue to collect valuable data to improve the health of the NY/NJ Harbor Estuary. Oysters have the unique capability to filter and clean our waters, prevent shoreline erosion, and provide habitats for other fish, but we need access to NJ waters to learn more.

Above all though, it is most important to we achieve equality and fairness in all our state policies and regulations. All our communities deserve opportunities to have projects that create habitat, improve water quality, reduce storm impacts and assist with the prevention of shoreline erosion. NJDEP has created a system that places the majority of our State’s population on a second tier when it comes to environmental protection.