

Friends of Penobscot Bay

A Waterkeeper Alliance affiliate

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Commissioner Pat Keliher
Maine Department of Marine Resources
21 State House Station
Augusta, ME 04333-0021

August 12, 2016

Dear Commissioner

Friends of Penobscot Bay is a Maine non profit organization dedicated to the protection restoration and conservation of the habitat and water quality needed by Penobscot Bay's seafood species and the ecosystems that support them.

We typically do not get involved in fishery management decisions. But since the latest mercury closure looks to have wider ranging socioeconomic effects beyond the immediate economic loss sustained by fishermen and their support businesses and society, we feel compelled to speak up.

Because the closure seems inconsistent with the facts on the ground and the regulations on the books, we ask that you rescind the June 21, 2016 emergency rule that added a 5.5 square mile area to the seven square miles of the upper estuary of Penobscot Bay to lobstering and crabbing in 2014. We ask that you do NOT make this closure permanent in DMR rule via the 'emergency route. Rather, standard non-emergency rulemaking will be better for this complicated issue that should have far more thorough examination by the affected communities than the comparatively brief time allowed under emergency rule making.

Why is the closure appropriate, if, as your department claims, mercury levels in the tail meat of the lobsters collected in 2014 from the waters riverward of a line between Squaw Point, Cape Jellison and Turner Point, Castine, are less than that found in canned albacore tuna,

If, as we understand, the mercury level in that lobster meat is well below federal and state Action Levels. Why not an advisory as opposed to a closure that forces local fishermen from their grounds.

In fact CDC **includes lobster** on its list of “CDC's Next Best Choices Other Seafood Low in Mercury...”

- “Lobster – but do not eat tomalley, the green stuff inside the body.”

The list of “low in mercury” species also includes • Scallops and Clams • Shrimp – fresh, frozen, canned, from Maine and away • Flounder and Sole • Haddock, Hake, Pollock, and Cod • Imitation Crab or Lobster”

Why the singling out of Penobscot Bay lobster/crab mercury levels for area closures, but no closure efforts on scallops and clams – all four are on the same “low in mercury” list?

If the “low” levels of mercury found in DMR's 2014 Mercury Study of the area just closed are

1. Too low to justify changing CDC Maine's existing consumption advisories for all fish and shellfish of Maine; and 2. Too low to trigger a lobster or crab public health risk warning by the state or federal governments,

Is there a real **is** the justification for closing this geographic area to commercial or recreational lobster and crab fishing?

One of Friends of Penobscot Bay's chief concerns with this closure is its implications for the quality of community oversight over development and discharge applications and licensing that affect those waters and their habitats.

We are concerned that the permanent displacement of commercial fishing communities of these reaches of upper Penobscot Bay, by adding an additional 5.5 square mile area to the existing 7 square miles of Penobscot River mouth closed in 2014 for the foreseeable future, makes that area more vulnerable to ill conceived **coastal development proposals and waste discharge permits.**

Penobscot Bay commercial fishing communities are powerful and informed voices, guiding federal and state decisionmaking on those as well as on dredging proposals and spoils dumping decisions. But when the waters they fish professionally are closed to lobstering and crabbing, those displaced fishermen no longer have “standing” in government decisionmaking affecting the seafood and other species of those waters

If they are displaced then those voices and that knowledge will be less available as guidance.

In closing we reiterate that the emergency rule appears rushed and unjustified and should be withdrawn or rejected, particularly as lobster remains on “CDC's Next Best Choices Other Seafood Low in Mercury...”

Emergency rulemaking is a fast track and has not given the affected communities and soon to be affected communities sufficient warning for them to prepare for the geographic and economic displacement that is occurring. Please withdraw the proposed permanent rule until the issue gets better scrutiny as it should under a standard rulemaking process.

Sincerely,

Ron Huber

Ron Huber, executive director
Friends of Penobscot Bay