

# Friends of Penobscot Bay

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A Waterkeeper Alliance affiliate

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## **RE: Comments on Omnibus EFH Amendment II**

Friends of Penobscot Bay is a citizens association dedicated to stewardship of Maine's biggest bay. We are an affiliate of the Waterkeeper Alliance, which is dedicated to protecting and restoring "fishable, swimmable waters" in the Gulf of Maine and beyond.

NMFS is requesting comments from the public on the Omnibus Essential Fish Habitat Amendment 2, which was submitted by the New England Fishery Management Council earlier this year. The amendment revises the Essential Fish Habitat designations for each Council-managed species and designates new Habitat Areas of Particular Concern.

Our comments are directly mainly at these latter; in particular, we support

1. Continuation of the Atlantic Salmon Habitat Areas of Particular Concern and
2. Designating the Habitat Area of Particular Concern for Inshore Juvenile Atlantic Cod.

In addition we strongly urge NOAA and the New England Fishery Management Council to seek cooperation from coastal communities, coastal oriented NGOs and academics to both document existing conditions within the Inshore Juvenile Atlantic Cod Habitat Area of Particular Concern, and to review and update the above list of landbased impacts.

### **Atlantic Salmon HAPC**

Friends of Penobscot Bay strongly supports continuation of this HAPC. These rivers (Dennys, Machias, East Machias, Pleasant, Narraguagus, Ducktrap, Sheepscot, Kennebec, Penobscot, St. Croix, and Tunk Stream) support the only remaining U.S. populations of naturally spawning anadromous Atlantic salmon. These riverine habitats, although not rare, are sensitive to anthropogenic stresses, from dam construction and hydropower operations to logging, agriculture, and aquaculture activities and more including pesticides and acidification.

Such anthropogenic stresses are ongoing and likely to continue into the future. We urge this HAPC be continued as is.

### **HAPC Inshore juvenile Cod**

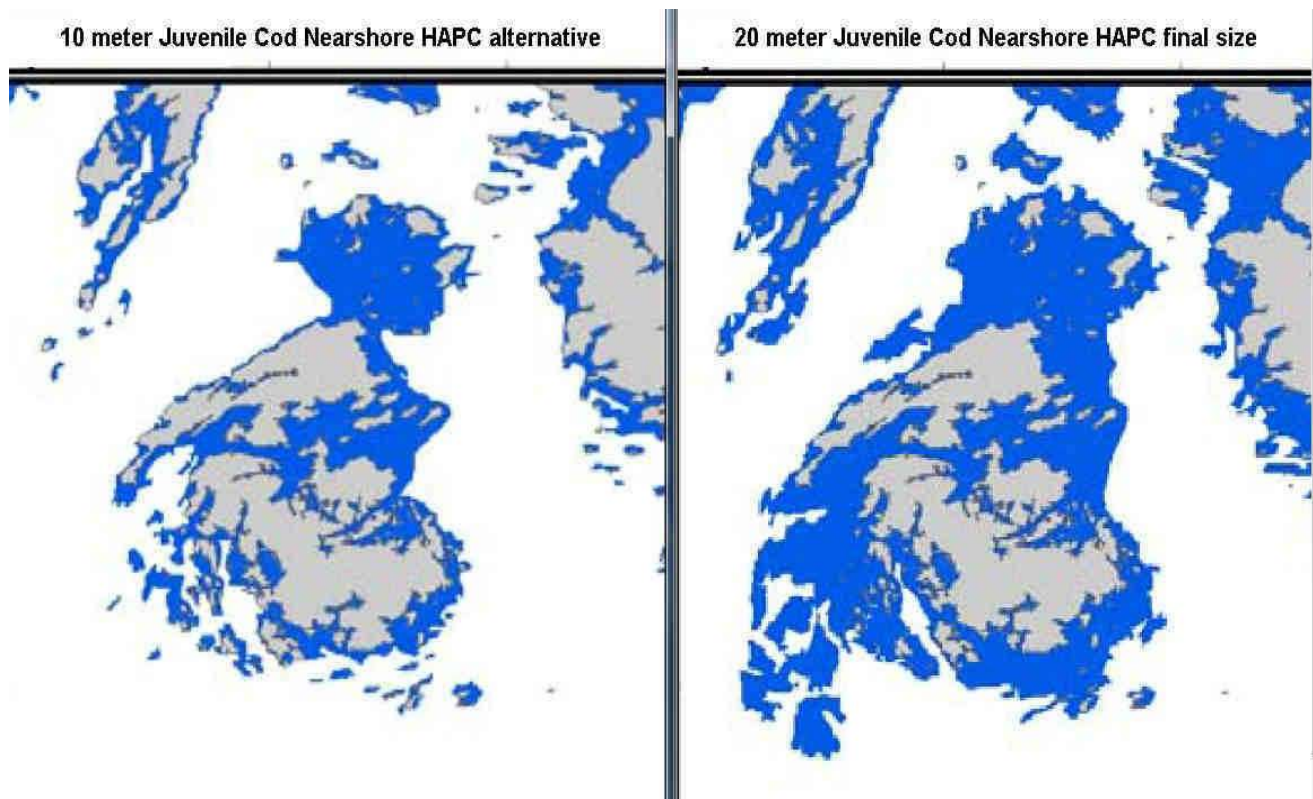
We strongly support adoption of the proposed Habitat Area of Particular Concern for Inshore Juvenile Atlantic Cod. This HAPC recognizes the importance to juvenile Atlantic cod and their prey and habitat species of the structurally complex rocky-bottom habitat of these inshore areas, the wide variety of emergent epifauna and benthic invertebrates that inhabit it and the numerous landbased threats to habitat and water quality within those waters.

Although this habitat type is not rare in the coastal Gulf of Maine, it provides two key ecological functions for juvenile cod: Protection from predation; and readily available prey. At the same time, given its proximity to shore, it is especially subject to anthropogenic impacts, particularly non-fishing impacts, including tainted runoff, licensed dischargers, pollution spills and legacy waste sites

We agree with the NEFMC's findings that the Inshore Juvenile Cod HAPC meets three of the four standards for designation. (*4=rarity*)

1. It is critically important to juvenile lifestages of atlantic cod and a host of the cod's prey and habitat species;
2. Its habitat quality is highly sensitive to both pollution, and physical degradation due to its proximity to land ( the HAPC begins at the mean high water line and extends to the 20 meter depth contour in the Agency preferred option)
3. Growth in coastal development activity within this area is likely, resulting in further habitat and water degradation within this important shallow water area. Climate change is modifying water conditions. .

**We oppose the preferred alternative in one important respect.** We consider the 20 meter depth contour alternative as unnecessarily broad and ultimately counterproductive in helping conserve inshore juvenile cod. The distribution of age-0 cod in their first spring summer and autumn is centered at depths of 4-7 meters MLW with a sharp drop off at 20 m.



In late autumn & early winter, age-0 disperse to deeper water where they congregate primarily over gravel and low relief cover.

So, while the 20 meter depth contour **is** the outer limit for juvenile cod on the GOM coast, according to council documents, the ten meter depth contour is a **meaningful** outer edge to the shallower area that is of **Particular concern** regarding harm from land-based adverse impacts. The landbased impacts are at their greatest strength there and the shallower zone is also most heavily used for survival purposes by inshore juvenile cod

We urge NOAA to substitute its 10 meter depth contour alternative. This will accomplish the objectives of the HAPC while focusing available research and documentation efforts on the shallowest waters and habitats most vulnerable to land based pollution, development and runoff impacts to habitat and water quality.

In addition, the 10 meter depth contour alternative has the advantage of being for all intents and purposes identical to the 30 foot depth contour delineating the outer edge of shoal waters on most Gulf of Maine coastal navigation charts. This makes it easy for decisionmakers, media and the public to identify this HAPC, and hence makes it possible for municipalities to factor it into their reviews of shoreline development proposals

In summary, we want an Inshore Juvenile Cod Habitat Area of Particular Concern that

One. Is of a size meaningful to federal, state and and municipal decisionmakers and comprehensible to the public.

Two. Accomplishes the purpose of the EFH law by identifying the most vulnerable habitats of inshore juvenile cod and their ecological co-habitants, as well as the types of land based sources of pollution and coastal habitat degradation.

We strongly urge NOAA to reconsider the 10 meter depth contour alternative, as opposed to the 20 meter one.

### **Efficacy of the HAPC in improving fish habitat conservation.**

When it comes to land-based impacts to inshore waters, implementation of the Inshore Juvenile Cod HAPC will be of little value unless existing water quality and habitat quality within this habitat zone is documented.

Likewise existing sources of pollution impacting these areas needs to be documented including current licensed dischargers and legacy waste sites from the 19<sup>th</sup> and 20<sup>th</sup> centuries.

NEFMC and NOAA have made a start with their list of potential threats, below however the list is both outdated and incomplete.

*Omnibus EFH Amendment 2 – Volume 2*

<b>Potential Threats</b>	<b>Type</b>	<b>Eggs</b>	<b>Larvae</b>	<b>Juveniles</b>	<b>Adults</b>
PAH	Chemical	M	M	M	M
PCB		M	M	M	M
Heavy Metals		M	M	M	M
Nutrients		M	M	M	M
Pesticides/Herbicides		U	U	U	U
Acid		M	M	M	L
Chlorine		M	M	M	M
Greenhouse Gases		U	U	U	U
Channel Dredging		Physical	M	M	M
Dredge and Fill	M		M	M	M
Dredge Material Disposal	H		M	M	M
Marina/Docks	M		M	M	L
Vessel Operation	M		L	L	L
Utility Lines/Pipelines	U		U	U	U
Oil/Gas Operations	M		M	M	M
Erosion/Flood Control Structures	U		U	U	U
Road Building/Maintenance	U		U	U	U
Dam Construction/Operation	U		U	U	U
Agriculture/Silviculture	U		U	U	U
Water Intake	M		M	L	L
Water Discharge	L		M	M	M
Sewage/Septic Discharge	M		M	M	M
Marine Mining	M		L	L	L
Salinity	L		L	L	L
Suspended Particles	M		M	M	L
Thermal	M		M	M	L
Dissolved Oxygen	M		M	M	M
Exotic Species	Biological		U	U	U
Pathogens		U	U	U	U
Aquaculture Operations		U	U	U	U
Plankton Blooms		U	U	U	U

We strongly urge NOAA and the New England Fishery Management Council to seek cooperation from coastal oriented NGOs and academics to both document existing conditions within the Inshore Juvenile Atlantic Cod Habitat Area of Particular Concern, and in reviewing and updating the above list of landbased impacts.

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Without a finer level of detail, it will be difficult for decisionmakers to determine whether a discharge or a coastal development project would impact important juvenile cod habitat within this area or not.

Active cooperation by state agencies is also critical in advancing protection of this inshore juvenile cod HAPC. We urge NOAA to start these conversations

In closing thank you for finally bringing the Inshore Juvenile Atlantic Cod Habitat Area of Particular Concern forward from its 1999 approval by the New England Fishery Management Council. 17 years!

Best wishes

*Ron Huber*

Ron Huber executive director  
Friends of Penobscot Bay