

## York, Marylisa

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**From:** Gordon Smith <gsmith@verrill-law.com>  
**Sent:** Tuesday, January 28, 2020 9:24 PM  
**To:** MacNeil, Jami  
**Cc:** Livesay, Nick; Bensinger, Peggy; 'Ervin, Carol B.'  
**Subject:** Comment on Spinney NRPA Application #L-28397-4E-A-N

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Hi Jami,

I have reviewed Jeff Spinney's January 16 email response to the question you posed regarding the compatibility of the proposed project purpose with the requirements of Maine boating laws.

Mr. Spinney's response makes the general statement that "I expect boats traveling up and down river to continue to adhere to all state/federal boating laws independent of my project. I see no issue with the feasibility of adhering to state law(s) be it fishing/boating/littering/etc." However, he makes no representation that where the river is less than 400 feet wide he and club members will operate at or below headway speed or be actively fishing at all times pursuant to 12 M.R.S. Section 13068-A(13).

On the contrary, the bulk of Mr. Spinney's response asserts that the headway speed requirement must not be valid or applicable because he and others regularly ignore it. Instead of stating that he and his club will comply with this provision of Maine law, Mr. Spinney implicitly but clearly states that they will not.

Even if Mr. Spinney did state that he and his club will comply with the headway speed requirement in 12 M.R.S. Section 13068-A(13), such an assertion would not be credible. It is an understatement to say that it would be highly unusual for a boater to gas up his or her motorboat, trailer it to a ramp, launch it, and then each time without variation operate entirely at headway speed for the hours that they are on the water.

As such, and as more fully discussed in my January 10 letter to you, the applicant's alternatives analysis based on an illegal/invalid project purpose does not demonstrate that there is no less environmentally damaging practicable alternative.

If the DEP does approve Mr. Spinney's application, the permit should expressly state that approval is based on the Department's finding that boats launched from the proposed facility will operate at or below headway speed or be actively fishing at all times where the river is less than 400 feet wide.

Thank you very much for your attention to these comments.

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