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February 5, 2026

Chair, Board of Environmental Protection
c/o Board Clerk
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Augusta, ME 04333-0017

By email to: clerk.bep@maine.gov
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**RE: Notice of Appeal of Department of Environmental Protection
Decision (Findings of Fact and Order) under the Natural Resources
Protection Act / Coastal Wetland Alteration.**

Decision dated January 8, 2026 / L – 100093-0001

Dear Chair and Members of the Board:

Please accept this letter of appeal submitted on behalf of the Spruce Head Fishermen's Co-op (the "Co-op" or "Appellant") as a timely Notice of Appeal of the January 8, 2026 decision of the Maine Department of Environmental Protection (the "Department") issued under the Natural Resources Protection Act ("NRPA") (38 M.R.S. §§ 480-A et seq.), approving the proposed expansion of Maine Lobster and Processing, LLC's wharf system (the "Project"). The Project's proposal includes permanent structures on the shore as well as proposed expansions of a wharf / float system.

The Appeal of the Project contains the information specified in 06-096 C.M.R. Chapter 2, Section 23(B) and applicable provisions of Title 38 MRSA.

I. Appellant and Standing

The Co-op is a commercial fishing cooperative that has operated continuously for more than fifty (50) years at its existing wharf in Spruce Head,

Maine, directly abutting the Applicant's property and directly and adversely impacted by the proposed significant expansion.

The Co-op is an aggrieved person within the meaning of Chapter 2, Section 1(c) because the Department's decision will cause a direct and particularized injury by materially impairing and effectively eliminating navigational access to the Co-op's wharf. As a result of the approved Project, the Co-op will be unable to conduct its long-standing commercial fishing operations and will be functionally shut down.

II. Decision Being Appealed

The Co-Op appeals the Department's Findings of Fact and Order dated January 8, 2026 (the "Decision"), approving the Project under the Natural Resources Protection Act.

III. Issues on Appeal

The Co-op challenges the Department's Decision on the following grounds:

A. Failure to Consider or Address Impacts to Existing Wharf Access.

The Department's Findings of Fact and Order ignore and fail to analyze the Project's interference with safe and practical navigational access to Spruce Head Co-op's wharf.

B. Erroneous Conclusion That the Project Will Not Unreasonably Interfere with Existing Uses.

The decision incorrectly concludes, or implicitly assumes, that the Project complies with NRPA standards despite evidence that it will unreasonably interfere with an existing, lawful, and long-established navigational use by the Co-op.

C. Failure to Apply NRPA Standards Protecting Existing Uses and Navigation.

The Department failed to properly apply NRPA criteria requiring consideration of existing uses, navigation, and unreasonable interference, particularly where a permitted activity would effectively eliminate an existing commercial operation.

D. Fabrications and Mis-statements Provided by the Applicant to the DEP in Support of its Application.

The Department recently provided counsel with documents that it reviewed in conjunction with its decision-making process. Amongst the documents are multiple emails from the Applicant's representative suggesting that there are agreements in place and cooperation between Atwood's and the Co-op. That suggestion is inaccurate at best.

IV. Procedural Background

On or about March 20, 2025, Maine Lobster and Processing, LLC ("MLP" or the "Applicant") submitted an application to the Maine Department of Environmental Protection ("DEP") pursuant to the Natural Resources Protection Act, 38 M.R.S. §§ 480-A et seq. (the "NRPA"). On March 31, 2025, the DEP deemed the application complete.

The Co-op submitted written opposition to the application by email dated April 3, 2025, and by email and U.S. mail dated April 23, 2025. The Co-op's submissions (as well as approximately nine (9) other interested parties) requested that the DEP hold a public hearing on the application. The Co-op's submission included an overlay plan created by Michael Sabatini, P.E. of Landmark Corporation in Rockport Maine. Mr. Sabatini is a professional engineer who expected to be able to provide expert testimony regarding his plan that demonstrated the fact that the Project runs contrary to multiple requirements under the NRPA.

Spruce Head Co-op heard nothing further from the DEP until the Decision was issued on January 8, 2026. This, despite the fact that a decision had been made on June 2, 2025 indicating that the request for a public hearing was denied. A copy of that decision should have been provided to the Co-op, but was not. The Co-op had anticipated an opportunity would be provided for a public hearing where historical use testimony, expert testimony from a professional engineer, video evidence and technical evidence would have been provided to the Department in order that a fair decision based upon actual facts could have been made.

V. Factual Background

To begin, the Co-op asks this Board to review Exhibit A, the affidavit of David Cousens. This alone demonstrates facts that prevent the approval of the Applicant's application. The Co-op incorporates the Cousens' Affidavit into this submission by reference thereto. Additionally, Exhibit B is the affidavit of Michael Sabatini, licensed engineer, who created the overlay presented with the Co-op's initial submission, and who had anticipated providing testimony at a public hearing. The Co-op also incorporates the Sabatini Affidavit into this

submission by reference thereto. Lastly, the Co-op is presenting video evidence demonstrating that the proposed expansion will make traditional navigation / access to the existing Co-op loading area impossible. The Co-op incorporates said video evidence by reference thereto.

A. The Spruce Head Fishermen's Co-op.

The Co-op is located on Island Road in Spruce Head, Maine, and is a littoral neighbor to MLP. The Co-op began operations in 1972 and has since grown into the third-largest fishing cooperative in the State of Maine, serving as a critical economic and cultural anchor for the local community.

For more than fifty years, the Co-op has provided essential infrastructure for local lobstermen, including docking, unloading, fueling, and bait loading. The Co-op's importance has been formally recognized by the State of Maine; in 2020, the Land for Maine's Future Board supported efforts to protect the Co-op and its working waterfront.

Both the Co-op and MLP are engaged in the business of purchasing lobster from fishermen and selling that catch into the market, though they employ different business models. In 2011, the longstanding Atwood Lobster Co., Inc. sold its business to MLP, a Delaware limited liability company and a subsidiary of Mazzetta Company, LLC, headquartered in Highland Park, Illinois.

B. The Application

MLP's application proposes the construction of new over-water structures directly within the navigational corridor that has been used continuously by the Co-op since 1972.

There is no other way to say it: As proposed, the project would entirely eliminate the ability of Co-op fishermen to safely access the Co-op's wharf for routine and essential activities, including docking, unloading lobster, fueling vessels, and loading bait.

Approval of the project in its current form would therefore render continued Co-op operations impracticable, effectively forcing the closure of a working waterfront enterprise that has existed for more than half a century.

C. Deck Expansion

The application proposes to "extend the bait storage building deck area," asserting that the expansion would "enhance safety for Maine Lobster and Processing employees and co-op users." That assertion is unsupported and inaccurate.

In fact, the proposed expansion would not improve safety for Co-op members. To the contrary, by further constricting the navigational corridor relied upon by Co-op vessels, the expansion would increase navigational

conflicts and safety risks, particularly for fishermen attempting to maneuver vessels in confined waters. The Co-op requested a public hearing in order to be able to demonstrate this fact through straight-forward use of survey materials and a video presentation. The facts – if reviewed by an objective observer – would demonstrate without question that the proposed expansion is unlawful.

Please review Exhibit A, David Cousens’ affidavit, for further clarification of this issue.

D. Proposed Floating Dock System

The application also seeks approval for the construction of a new 16-foot by 28-foot floating dock system. As demonstrated in the overlay provided by the Co-op’s professional engineer, this dock system interferes with the Co-op’s littoral rights. Further, it completely impedes an existing and the **ONLY** navigational corridor that can be used by the Co-op to access its wharf for bait, fuel, unloading traps, lobster, etc. Essentially, all aspects of the Co-op’s business are essentially would be shut down if the DEP’s decision is not overturned. As explained in greater detail below, and as demonstrated in the overlay exhibit attached to the Co-op’s previous submission in opposition to the Application, the location of this proposed dock system directly conflicts with the Co-op’s established navigational access and littoral rights.

The Co-op’s submission of the overlay plan, at a minimum, demonstrates credible conflicting technical information regarding a licensing criterion. Additionally, there is no indication that the Department even considered our expert’s technical submission. There must be an opportunity provided for testimony to be given at a public hearing.

IV. Legal Analysis

A. NRPA Standards

The NRPA declares that Maine’s coastal waters and related natural resources are resources of state significance and that their protection is essential to the economic, cultural, and environmental well-being of the State. 38 M.R.S. § 480-A.

Under 38 M.R.S. § 480-D, the DEP may grant a permit only upon finding that the applicant has demonstrated compliance with the statutory standards. The first and foundational standard requires a showing that the proposed activity: “will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.” 38 M.R.S. § 480-D(1).

The application before the Board fails to satisfy this standard.

B. The Project Would Unreasonably Interfere with the Co-op's Existing – and Critical – Navigational Uses

From both a practical and legal standpoint, the proposed Project would have such a dramatic adverse impact on the Co-op's operations that continued use of the Co-op wharf would no longer be feasible.

The proposed 16-foot by 28-foot floating dock system is located within the navigational corridor that Co-op vessels have used continuously since 1972. The attached survey, which overlays the proposed MLP structures on existing conditions, demonstrates that vessels used by Co-op fishermen would be unable to safely navigate to and from the Co-op's dock. The overlay presented previously needs the benefit of expert testimony to explain its critical relevance to the decision in this matter.

In short, absent reliable access, Co-op fishermen would be unable to conduct basic operational tasks, including unloading lobster, loading and unloading lobster traps, and loading bait. The resulting interference is not minor, speculative, or incidental—it is total and outcome-determinative.

The application fails to meaningfully acknowledge, analyze, or mitigate these impacts. The failure to allow for the professional engineer that provided the overlay exhibit clearly demonstrates that the Decision has failed to consider the facts that are critical to Due Process and critical to a fair and just decision in this matter. That failure alone requires denial of the permit under § 480-D(1).

C. The Project Violates the Co-op's Littoral Rights

Independently – and as further demonstrated by the overlay exhibit previously provided, the proposed project violates well-established principles of littoral rights recognized under Maine law and applied by Maine's Bureau of Parks and Lands.

The Bureau's guidance regarding littoral zones and setbacks establishes clear rules governing the location of over-water structures relative to adjacent shorefront owners. Applying those standards to the facts here—as illustrated in the Co-op's submitted survey—it is evident that MLP's proposed structures intrude into the Co-op's littoral zone and fail to meet required setbacks.

The relevant provisions include, among others:

1. The establishment of littoral sidelines perpendicular to the shoreline;
2. Termination of littoral zones at the navigational channel or midline;
3. Required 25-foot setbacks from littoral sidelines; and
4. A minimum 50-foot separation between docking or berthing structures not designed for joint use.

As Mr. Sabatini shows through the overlay exhibit, and as he would have testified had a chance been given, the proposed floating dock and associated structures do not comply with these guidelines, nor has the Applicant demonstrated that no reasonable alternative location exists or that an exemption is warranted. Again, the Co-op requests an opportunity to demonstrate, through expert testimony and video presentation – of this very obvious violation of existing rights at a public hearing.

Because the project would unlawfully encroach upon the Co-op's littoral rights, the application must be denied.

V. Remedy Requested

The Appellant respectfully requests that the Board of Environmental Protection:

1. Vacate or remand the Department's January 8, 2026 Decision;
2. Require the Department to make specific findings regarding impacts to the Spruce Head Co-op's wharf access and operations; and
3. Deny the permit or impose conditions sufficient to prevent unreasonable interference with the Co-op's continued use of its wharf

VI. Hearing Request and Supplemental Evidence.

The Co-op appreciates that the decision to provide a public hearing is discretionary. But where there are nine interested parties in opposition to an application – who also requested the opportunity to be heard at a public hearing – and where the Co-op provided a technical submission that requires expert explanation, it flies in face of basic principles of Due Process to move forward without allowing the Co-op to present evidence at a public hearing. Credible, conflicting technical information related to a licensing criterion exists and the Maine DEP did not provide a public hearing to consider it. In this case, there was no communication from the Department to the Co-op whatsoever related to the decision-making process, draft decisions, the request for the public hearing, etc. until the final Decision was made.

The Co-op again requests a public evidentiary hearing on this appeal pursuant to 06-096 C.M.R. Chapter 2, 23(B)(4). At hearing, the Appellant anticipates presenting the following:

- (i) Expert witness testimony from its professional engineer, Michael Sabatini, who previously provided an overlay plan demonstrating the Project's non-compliance with NRPA,
- (ii) Technical witness (including David Cousens, who served as President of the Maine Lobstermen's Association for 27 years and

- who is currently the President of the Spruce Head Fishermen's Co-op) with decades of navigational experience who will opine as to the impact of the Project on the Co-op's ability to navigate and operate,
- (iii) Video footage which demonstrates the impact of the proposed Project on the Co-op's operations, and
 - (iv) Other evidence regarding navigational access, historic use of the Co-op wharf, and the Project's massive and devastating impact on continued commercial fishing operations for the Co-op.

Some of the proposed information, particularly the historical use, professional engineer's testimony and video footage, would have been presented at the public hearing component of this process had that opportunity been afforded. That opportunity was not provided and notice of that decision was not provided. Had the Co-op been aware that no public hearing would be held, it would have supplemented the record.

Without having been given notice that there was to be no public hearing, the Co-op now respectfully requests the opportunity to provide evidence that is referenced herein in order that a fair decision based upon the facts can be made, as intended by the governing rules, regulations and the NRPA.

Respectfully submitted,

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