

## Negotiated Rulemaking Meeting Notes – April 15, 2025

**Name of Negotiated Rulemaking:** Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho (IDAPA 20.03.04)

**Docket number:** 20-0304-2401

**Location:** Sandpoint, Sandpoint Public Library and on Teams teleconference

**Date/Time:** Tuesday, April 15, 2025 – 1:00 p.m. PT

**Attendees:** See participant list

**Facilitated by:** Marde Mensinger, Navigable Waterways Program Manager – Resource Protection and Assistance Bureau, Idaho Department of Lands (IDL)

This is the first of 3 scheduled meetings during the public comment period April 3, 2024 – June 13, 2025.

Marde Mensinger presented an overview of rulemaking and reviewed the draft rule changes.

### Discussion:

- Discussion began with questions about who makes the final decision about the changes that are proposed to the rule. The rulemaking process takes place by how the agency begins by making draft changes to the rule, then follows up with public participation, and then uses notes from the public to make any additional changes. The rule ultimately gets approved by the Idaho legislature.
- Discussion also took place around the difference between the ordinary and artificial high water marks on navigable lakes, specifically Lake Pend Oreille. On Pend Oreille, the ordinary high water mark is 2,051 feet and the artificial high water mark is 2062.5 feet, which is controlled by the Albeni Falls Dam. Idaho may regulate encroachments up to the artificial high water mark, but only owns the bed of the lake below the ordinary high water mark.
- Discussion was held about the difference between navigational encroachments and non-navigational encroachments. The statute (58-1302) defines these as “encroachments in aid of navigation” and “encroachments not in aid of navigation”.
- There was a brief discussion around the meeting in Sandpoint last year for the rule. The topics presented were inclusion of the International Building Code and penalties for after-the-fact permitting. IDL opted to not include those additions in the latest draft of the rule.
- There was discussion around including the International Fire Code as incorporated by reference. A question was asked about how that would change the current permitting process. The international fire code applies to all property statewide, regardless of ownership. The fire code is enforced by local deputized fire agencies. The only change that would occur with applications is that some applications will be sent to the local fire marshal to review and comment on. Applications for buildings, gas docks, and event spaces would be the primary applications that would undergo this review.
- Discussion occurred around commercial marinas, and how they differentiate from private community docks. Marinas must make sure that 50% of their moorage is available to use by the general public. Private community docks are not required to have public moorage available, but they are subsequently limited in size by the amount of shoreline they own. A follow-up discussion took place around HOAs, and how some waterfront owners can consolidate into an HOA and still keep their individual single-family docks. These situations, while rare, are still considered community docks and their combined square footage is limited by the 7:1 ratio.

- There was a question during the meeting about how long the 700 sq. foot limitation has been in the rule. That was unknown during the meeting, but after follow-up research, the 700 sq. foot limitation on single family docks was adopted in the rule in 1998.
- There was some discussion that clarified that IDL will not accept applications for new boat garages and float homes, but existing ones may be rebuilt.
- There was some discussion around mooring buoys and who may or may not have more than one. A proposed change to the rule would be to clarify that only one mooring buoy would be allowed per single-family dock owner, but more would be allowed for commercial or community docks. No mooring buoys should be used as a method to keep others away from their dock. They should only be for mooring watercraft.
- There was some brief discussion around the use of beaded foam floatation. The use of beaded foam floatation is becoming more outdated. Some concerns were raised that loose beaded foam can cause a navigational hazard. While the use is largely discouraged, IDL cannot limit the use of beaded foam floatation. Just clarify that it must be encased in weather-resistant material.
- A larger discussion took place surrounding the standards for marine motor fuel dispensing facilities. The participants found that the suggested language was too restrictive, or unenforceable by reasonable deputies. IDL will be taking a closer look at the language proposed and will consider scaling back the proposed standards.
- In the application materials, there was discussion around the requirement for enclosed structures to have engineered stamped plans. There was a lot of back and forth about the feasibility and affordability of that, plus the difference between “stamped” plans vs. unstamped plans. Ultimately, IDL has decided to revisit this section and attempt to make the language more simple for the sake of the applicants.
- There was some brief discussion surrounding hearings, and where hearings should or should not be held. Hearings are referred to the Idaho Office of Administrative Hearings, which appoints a hearing officer to determine the time, place, and necessities for a hearing.
- Comments were made about dumping sewage and pump out stations inappropriately. This would be a health or safety hazard and should be reported to local authorities for enforcement.
- Comments were also made about house boats. IDL does not regulate house boats.
- Comments were made about how commercial operations that provide public access and utilities should receive incentive or benefits for providing that access. That would fall under the scope of the leasing rule, IDAPA 20.03.17, but those are considerations that IDL will look into.
- Additional comments were made about specific encroachment questions.

After answering additional questions about the permitting and rulemaking process, the meeting was concluded.