

From: [Jennifer Ekstrom](#)
To: [Rulemaking](#)
Cc: [Brad Smith](#); [Will Tiedemann](#)
Subject: Negotiated Rulemaking for IDAPA 20.03.04 Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in Idaho
Date: Friday, June 13, 2025 8:00:03 AM
Attachments:

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Dear Ms. Mensinger -
Please find the Idaho Conservation League's comments regarding the rulemaking for IDAPA 20.03.04 - Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in Idaho, attached.
Thank you for the opportunity to provide comments.

Sincerely,

Jennifer Ekstrom (she/her)
North Idaho Director
208.318.5812

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6/13/2025

Idaho Department of Lands
Attn: Marde Mensinger – Rulemaking
P.O. Box 83720
Boise, Idaho 83720-0050

Subject: Negotiated Rulemaking for IDAPA 20.03.04 Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in Idaho

Dear Marde Mensinger:

I am writing on behalf of the Idaho Conservation League (ICL) to provide comments for the Negotiated Rulemaking for IDAPA 20.03.04 - *Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in Idaho*.

Founded in 1973, the mission of ICL is to create a conservation community and pragmatic, enduring solutions that restore and protect the air you breathe, the water you drink, and the land and wildlife you love. ICL's seven strategic initiatives include confronting climate change, recovering Idaho's wild salmon and steelhead, cleaning up the Snake River, protecting public land, restoring abundance and diversity of Idaho's wildlife, safeguarding North Idaho lakes and waters, and reducing pollution. ICL achieves these goals through public outreach and professional advocacy. With offices in Boise, McCall, Ketchum, and Sandpoint, the organization is a consistent, statewide voice for conservation in Idaho and represents more than 30,000 members and supporters. ICL's members and supporters care deeply about restoring and protecting the environment.

The Idaho Department of Lands must ensure that the legislative intent of *The Lake Protection Act*, Idaho Statute Title 58, Chapter 13, is upheld through this rulemaking process.

*Encroachment on navigable lakes — Legislative intent. The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, **fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality** be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. (emphasis added)*

¹

¹ Idaho Lake Protection Act, Idaho Code §§ 58-1301 to 58-1322 (2023)

As such, ICL offers the following recommendations in regard to the Draft Rule Text #2.

1) **20.03.04 Title – RULES FOR ENCROACHMENTS ON NAVIGABLE WATERWAYS**

The word ‘waterways’ must be reverted back to ‘lakes,’ as it was in the previous version of this rule. The Lakes Protection Act² specifically defines ‘navigable lake’ as

‘any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes.’

The extent of the IDL’s authority is limited to this definition of lakes, and must not be presumptively extended to rivers and other water bodies.

2) **20.03.04.010.07 Commercial Marina - Definition.**

The proposed definition for a Commercial Marina is unclear. It states: “A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to at least 50% of the general public.” The definition for Commercial Marinas should state: “A commercial navigational encroachment primarily intended to provide moorage must make at least 50% of its moorage available for use by the general public. Access to this public moorage must not be contingent upon membership in a homeowners’ association, club, or any other private entity.”

3) **20.03.04.010.09 Community Dock - Definition.**

This definition should be limited to one ‘structure’, and the word ‘structures’ must not be added. The term ‘Community Dock,’ which is being defined, is a singular term, not plural. Each Community Dock must be permitted independently just as each single family dock is permitted independently. While lack of clarity regarding the singular nature of a Community Dock in the previous version of this rule may have been considered a ‘loophole,’ IDL is now attempting to explicitly allow such divisions. It is unacceptable to do so, as it effectively removes size limitations for Single-Family Docks and Two-Family Docks.

The size limit for a Single-Family Dock is 700 square feet and the size limit for a Two-Family Dock is 1100 square feet. Each Community Dock is limited in size by the littoral footage owned by three or more adjacent owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations. The permissible square footage for a community dock is determined by the total littoral footage times a factor of seven, so is virtually unlimited and only based on the amount of littoral ownership by the applicant.

² Idaho Lake Protection Act, Idaho Code §§ 58-1302 (2023)

Littoral owners have in certain cases been allowed to divide their total permissible community dock square footage into multiple individual structures, effectively undermining the size limits for Single-Family Docks and Two-Family Docks. For example, the Camp Bay Community Association, Inc's Encroachment Permit Application No. L-96-S-2687 was approved, allowing a community dock 'system' composed of 13 docks without the size limitations required for Single-Family and Two-Family Docks.

The current loophole and proposed lack of appropriate regulation undermine the legislative intent of the Lakes Protection Act to protect fish and wildlife habitat, aquatic life and water quality. Large docks and extensive dock systems cause a loss of littoral zone habitat for fish, amphibians, insects, and other aquatic life. They can also change wave patterns and water circulation, leading to erosion or sediment accumulation. As such, fish spawning areas may be smothered and water clarity reduced.

4) 20.03.04.012.01 Policy - Public Trust Resources Protection

It should be clearly stated that the State Board of Land Commissioners is not the only entity responsible for managing lake beds in Idaho. Under Section 10 of the Rivers and Harbors Act of 1899³ and Section 404 of the Clean Water Act⁴, the U.S. Army Corps of Engineers also has regulatory authority over lake beds of "Waters of the United States," including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case *United States v. Idaho*. Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.

5) 20.03.04.015.08 Encroachment Standard - Riprap

Natural materials other than rock should be encouraged. Environmentally friendly solutions such as Coir Logs (coconut fiber rolls), logs and vegetative buffers can diminish wave action rather than exacerbate it as rock riprap does. Natural shoreline stabilization can absorb or diminish wave action, improve fish habitat and filter polluted runoff.

6) 20.03.04.015.11 Encroachment Standard - Excavating or Dredging

The Idaho Lake Protection Act⁵ makes no reference to excavating or dredging, and IDL does not have authority to regulate these activities. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory

³ Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401–467

⁴ Clean Water Act § 404, 33 U.S.C. § 1344

⁵ Idaho Lake Protection Act, Idaho Code §§ 58-1301 to 58-1322 (2023)

authority over dredging and excavation of lake beds. Section 404 of the Clean Water Act⁶ establishes that the U.S. Army Corps of Engineers has regulatory authority over “Waters of the United States,” including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case *United States v. Idaho*⁷. Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.

7) 20.03.04.015.13.h General Encroachment Standards (connected with upland sewer or septic systems)

Permits for facilities and infrastructure designed to hold or transfer sewage need to be coordinated with the Idaho Department of Environmental Quality (DEQ) or the relevant Public Health District, depending on the type of system they connect to. The DEQ derives its authority to regulate upland sewage disposal through the Individual/Subsurface Sewage Disposal Rules⁸, and Section 402 of the Clean Water Act.⁹

The DEQ administers the Individual/Subsurface Sewage Disposal Rules in collaboration with Idaho’s seven public health districts under a memorandum of understanding. While DEQ sets the standards and provides oversight, the public health districts are responsible for permitting and inspecting septic systems.

Individuals or entities seeking to connect to community sewer or septic systems in Idaho must consult with the local public health district to ensure compliance with all applicable regulations and to obtain the necessary permits.

This needs to be stated in IDL’s rules in order to provide clarity to the applicant.

8) 20.03.04.015.15 Marine Motor Fuel Dispensing Facilities

Thank you for addressing this important issue. For clarity, consider changing the suggested language, “Wharves, piers, or docks at marine motor fuel dispensing facilities must be used exclusively for the dispensing or transfer of petroleum products to or from marine craft.” to “Dispensing or transfer of petroleum products to or from marine craft must happen exclusively at marine motor fuel dispensing facilities.”

⁶ Clean Water Act § 404, 33 U.S.C. § 1344

⁷ *United States v. Idaho*, 533 U.S. 262 (2001)

⁸ Idaho Admin. Code r. 58.01.03

⁹ Clean Water Act § 402, 33 U.S.C. § 1342

9) **20.03.04.015.16 Fill Material**

The Idaho Lake Protection Act¹⁰ makes no reference to ‘fill material,’ and IDL does not have authority to regulate this activity. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over fill material being placed in lake beds. Section 404 of the Clean Water Act¹¹ establishes that the U.S. Army Corps of Engineers has regulatory authority over “Waters of the United States,” including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d’Alene Tribe owns the southern third of Lake Coeur d’Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case *United States v. Idaho*¹². Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.

10) **20.03.04.020.06 Applications - Dredging**

The Idaho Lake Protection Act¹³ makes no reference to dredging, and IDL does not have authority to regulate this activity. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over dredging lake beds. Section 404 of the Clean Water Act¹⁴ authorizes the U.S. Army Corps of Engineers as the regulatory authority over “Waters of the United States,” including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d’Alene Tribe owns the southern third of Lake Coeur d’Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case *United States v. Idaho*¹⁵. Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.

11) **20.03.04.080 Violations - Penalties**

Fines should be assessed for encroachments that are built without permits, when applications for permits are submitted after the fact or not submitted at all. According to the Lake Protection Act¹⁶, a civil penalty ranging from \$150 to \$2,500 for each violation may be assessed. If the violation causes harm to water quality, fisheries, or other public trust values, the penalty may increase to up to \$10,000 per violation or \$1,000 for each day of a continuing violation, whichever is greater. It is very common to see permit applications after the fact, but very

¹⁰ Idaho Lake Protection Act, Idaho Code §§ 58-1301 to 58-1322 (2023)

¹¹ Clean Water Act § 404, 33 U.S.C. § 1344

¹² *United States v. Idaho*, 533 U.S. 262 (2001)

¹³ Idaho Lake Protection Act, Idaho Code §§ 58-1301 to 58-1322 (2023)

¹⁴ Clean Water Act § 404, 33 U.S.C. § 1344

¹⁵ *United States v. Idaho*, 533 U.S. 262 (2001)

¹⁶ Idaho Code § 58-1312 (2024). Permitting of existing encroachments. Title 58 – Public Lands, Chapter 13 – Navigational Encroachments.

uncommon for IDL to assess fines. This effectively undermines IDL's authority to regulate encroachments, and even incentivises unpermitted activity. Assessing fines in these situations would encourage compliance and also increase funding for IDL.

Thank you for considering our comments. We look forward to working with IDL and the Idaho State Legislature throughout the rulemaking process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Ekstrom". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Ekstrom".

Jennifer Ekstrom
North Idaho Director
Idaho Conservation League

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