

From: [Jennifer Ekstrom](#)
To: [Rulemaking](#)
Cc: [Brad Smith](#); [Cynthia Gibson](#); [Will Tiedemann](#)
Subject: ICL Comments on Proposed Rule IDAPA 20.03.04
Date: Tuesday, September 23, 2025 2:33:36 PM
Attachments:

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Dear Ms. Mensinger-
Please find comments on the Proposed Rule IDAPA 20.03.04 from the Idaho Conservation League, attached.

Thank you for your consideration,

Jennifer Ekstrom (she/her)
North Idaho Director
208.318.5812

Idaho Conservation League
P.O. Box 2308
Sandpoint, ID 83864

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9/23/2025

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

Subject: Proposed Rule IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho

Dear Marde Mensinger:

I am writing on behalf of the Idaho Conservation League (ICL) to provide comments on the Proposed Rule IDAPA 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho*. ICL appreciates your incorporation of some of our previous recommendations submitted regarding Draft Text #2. We are writing now to reiterate recommendations that were not incorporated or acknowledged, as well as to offer additional recommendations regarding the Proposed Rule.

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

As such, we offer the following recommendations:

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

1) 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 for rent or free. Access to this public moorage must not be contingent upon membership in a homeowners' association, club, or any other private entity.” The intended clarification is that the language currently states that 50% of the public is allowed moorage, rather than the intended 50% of the slips being available to the public.

2) 20.03.04.010.09 Community Dock - Definition.

Thank you for deleting the word ‘structures’ and retaining the singular term, ‘structure.’ We recommend further clarification indicating that each Community Dock must be permitted independently just as each single family and two family dock is permitted independently. This would prevent the intent of the rule from being circumvented in the future.

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.

Clear language is needed to highlight 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.

3) 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 1899² and Section 404 of the Clean Water Act³, 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.

² Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401–467

³ Clean Water Act § 404, 33 U.S.C. § 1344

4) 20.03.04.015.08 Encroachment Standard - Riprap

Thank you for including language to allow materials other than rock. We recommend that natural materials other than rock should be explicitly encouraged. Environmentally friendly solutions such as Coir Logs (coconut fiber rolls), logs and vegetative buffers can diminish wave action. Natural shoreline stabilization can absorb or diminish wave action, improve fish habitat and filter polluted runoff.

5) 20.03.04.015.11 Encroachment Standard - Excavating or Dredging

The Idaho Lake Protection Act⁴ 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 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*⁵. 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.

6) 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 Rules⁶, and Section 402 of the Clean Water Act⁷.

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.

7) 20.03.04.015.15 Marine Motor Fuel Dispensing Facilities

We support the [recommendation submitted by the Coeur d’Alene Tribe on April 30th, 2025](#), regarding this Negotiated Rulemaking. For ease of reference, an excerpt is copied here:

“Section 20.03.04.015.15. Marine Motor Fuel Dispensing Facilities: Fuel

⁴ Idaho Lake Protection Act, Idaho Code §§ 58-1301 to 58-1322 (2023)

⁵ *United States v. Idaho*, 533 U.S. 262 (2001)

⁶ Idaho Admin. Code r. 58.01.03

⁷ Clean Water Act § 402, 33 U.S.C. § 1342

dispensing facilities on, in, or above the waters or beds of navigable lakes present significant environmental and water quality concerns. This section is insufficiently vague; without further regulation there is considerable likelihood that these facilities will irreparably harm Tribal Waters, State waters, and Waters of the United States. Water quality standards relating to hazardous spills and petroleum releases should be incorporated by reference; additionally, safety standards for liquified petroleum gas dealers and gas storage facilities should be incorporated by reference. a. A new subsection .015.15.c. should be added to read: "All Marine Motor Fuel Dispensing Facilities permitted under this section must adhere to the standards set forth in IDAPA 58.01.02. 'Department of Environmental Quality-Water Quality Standards,' Subsections: 800. 'Hazardous and Deleterious Material Storage'; 850. 'Hazardous Material Spills'; 851. 'Petroleum Release Reporting, Investigation, and Confirmation'; and 852. 'Petroleum Release Response and Corrective Action' as incorporated by reference in Section 003.05. of these rules. Further, such Facilities must adhere to the standards set forth in IDAPA 24.22.01 'Division of Occupational and Professional Licenses-Rules for the Idaho Liquified Petroleum Gas Safety Board,' as incorporated by reference in Section 003.06." b. IDL should also incorporate by reference the above regulations at subsection 003.05. and 003.06., respectively."

8) 20.03.04.015.16 Fill Material

The Idaho Lake Protection Act⁸ 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 Act⁹ 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*¹⁰. 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.

9) 20.03.04.020.06 Applications - Dredging

The Idaho Lake Protection Act¹¹ 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 Act¹² 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*¹³. Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a

⁸ Idaho Lake Protection Act, Idaho Code §§ 58-1301 to 58-1322 (2023)

⁹ Clean Water Act § 404, 33 U.S.C. § 1344

¹⁰ *United States v. Idaho*, 533 U.S. 262 (2001)

¹¹ Idaho Lake Protection Act, Idaho Code §§ 58-1301 to 58-1322 (2023)

¹² Clean Water Act § 404, 33 U.S.C. § 1344

¹³ *United States v. Idaho*, 533 U.S. 262 (2001)

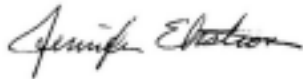
complex legal system, these factors should be clearly stated.

10) 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 Act¹⁴, 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 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 recommendations. We look forward to working with IDL and the Idaho State Legislature throughout the rulemaking process.

Sincerely,



Jennifer Ekstrom
North Idaho Director
Idaho Conservation League
PO Box 2308
Sandpoint, ID 83864
208.318.5812
jekstrom@idahoconservation.org

¹⁴ Idaho Code § 58-1312 (2024). Permitting of existing encroachments. Title 58 – Public Lands, Chapter 13 – Navigational Encroachments.