



**Docket No. 20-0304-2401**  
Negotiated Rulemaking Summary

**Negotiated Rulemaking Summary**  
**IDAPA 20.03.04 — Rules for the Regulation of Beds, Waters,**  
**and Airspace over Navigable Lakes in the State of Idaho**  
**Docket No. 20-0304-2401**

Members of the public participated in the Department's negotiated rulemaking process by attending the meetings and submitting written comments. Key information considered by the Department included applicable statutes, information provided by the public, and the Department's legal counsel during the negotiation process. In addition, the Department solicited information from the Idaho State Fire Marshal and the Idaho Office of Administrative Rules.

Key documents from the rulemaking record, which includes rule drafts, written public comments and documents distributed during the negotiated rulemaking process, are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0304-2401/>. The entire rulemaking record is available for review upon request to the Department. At the conclusion of the negotiated rulemaking process, the Department formatted the final rule draft for publication as a proposed rule in the Idaho Administrative Bulletin.

In developing the draft rule, the Department considered all comments received during the negotiated rulemaking process. Following are comments on the draft rule and the Department's response to those comments:

Commenter	Written Comments	Rule Section	Response
Brian Hirschi 5/8/2024	IDL should adopt rules specific to Bear Lake, since its fluctuating water levels distinguish it from the other large recreational lakes.	General Encroachment Standards 015.15	1. Lake-Specific encroachment permit terms are not within the scope of this rulemaking and are written as conditions of the permits. IDL will consider adding a condition specific to the needs of Bear Lake.
Brian Hirschi 5/8/2024	IDL should clarify that the one guaranteed moorage for littoral owners is not a limitation on moorages for commercial operations/marinas with lots of beachfront	Mooring Buoys 015.09	2. IDL adjusted the draft of the rule for mooring buoys, changing the rule from "one mooring buoy per littoral owner" to "one mooring buoy per single family owner". This will enable commercial and community operations to have more than one mooring buoy.

Commenter	Written Comments	Rule Section	Response
Brian Hirschi 5/8/2024	The rules should more expressly contemplate your jet ski moorage system and/or contain a "catch-all" set of standards that applies to things that don't fit neatly within the categories of encroachments in the rules.	Encroachment Standards 015	3. The definitions of "encroachments in aid of navigation" and "encroachments not in aid of navigation" found in I.C. 58-1302 help define navigational and non-navigational encroachments.
Brian Hirschi 5/8/2024	The rules should define the term "encroachment" and/or identify items and activities that do not qualify as encroachments.	Definitions 010	4. The definitions of "encroachments in aid of navigation" and "encroachments not in aid of navigation" found in I.C. 58-1302 help define navigational and non-navigational encroachments.
Dylan B. Lawrence 6/12/2024	This rule purports to incorporate the International Fire Code (IFC) by reference. In my experience, an agency incorporates other legal provisions by reference when it has legal jurisdiction to enforce them. I do not read Director Miller's April 17, 2024 Final Order to suggest IDL has jurisdiction to enforce the IFC, which is administered by the Department of Insurance and local fire authorities. Clearly, the IFC has been adopted with amendments by the State of Idaho, and it is enforceable law. However, I question the propriety of IDL's adoption of the IFC in administrative rules specifically promulgated under the Lake Protection Act (LPA).	Incorporation by Reference 003.04	5. IDL does not purport to enforce the International Fire Code (IFC), but encroachments must fall within the IFC guidelines as they are enforced by the Idaho State Fire Marshal.
Dylan B. Lawrence 6/12/2024	The terms "encroachment," "navigational," and "nonnavigational" are all key concepts under the LPA and the Encroachment Rules, yet they remain undefined. In my experience, it is very unusual for such important terms in a regulatory program to remain undefined. In my opinion, there is enough legislative guidance in the LPA to provide definitions in the Encroachment Rules. This would	Definitions 010	6. There is no current definition of "encroachment" in either 58-1302 or IDAPA 20.03.04. However, there are definitions of "encroachments in aid of navigation" and encroachments not in aid of navigation" in I.C. 58-1302(h) and 58-1302(i). These terms may be used interchangeably with "navigational" and "nonnavigational" encroachments.

Commenter	Written Comments	Rule Section	Response
	be particularly helpful for parties who are not represented by attorneys or consultants		
Dylan B. Lawrence 6/12/2024	I suggest inserting the phrase "subject to decisions by the Idaho Supreme Court" before "will generally be at right angles to the shoreline." As I recall, the Idaho Supreme Court applies flexible standards to littoral lines that are highly specific to the particular lake and shoreline at issue. For unrepresented parties, it may be helpful to reference generally that it is important to consult Idaho Supreme Court opinions on this issue.	Definitions 010.26	7. IDL will consider this, but littoral right lines can also be determined through upland owner agreements, or local county officials. IDL will remove the sentence that states "Littoral right lines will generally be at right angles to the shoreline and are not an extension of upland property lines."
Dylan B. Lawrence 6/12/2024	The new language is helpful for littoral owners on Bear Lake, but the language is still vague and subject to multiple interpretations. IDL should more specifically state whether this is a minimum or maximum of one moorage per littoral landowner. To the extent it is the latter, I question the legal basis for the limitation in the first place. If IDL prefers docks to moorage, it should say so expressly in the rules so that applicants are aware of the preference.	Encroachment Standards Rule 015.09	8. IDL adjusted the draft of the rule for mooring buoys, changing the rule from "one mooring buoy per littoral owner" to "one mooring buoy per single family owner". This will enable commercial and community operations to have more than one mooring buoy. IDL considers docks and mooring buoys to be navigational aids.
Dylan B. Lawrence 6/12/2024	See general comment above. IDL has given itself authority to adopt lake specific rules. It should do so for Bear Lake.	General Encroachment Standards 015.15	9. Lake-Specific encroachment permit terms are written as conditions of the permits. IDL will consider adding condition(s) specific to the needs of Bear Lake.
Dylan B. Lawrence 6/12/2024	The language about what "will" be considered an encroachment should either be removed or revised to more specifically track the language of the LPA, which does not reference "dredged material" at all, and which only references "landfills" once. Otherwise, IDL is administratively revising the Legislature's definition of encroachments.	Applications 020.01	10. IDL has removed the language regarding all fill material from this section and moved it to the encroachment standards section under 015.16.

Commenter	Written Comments	Rule Section	Response
Dylan B. Lawrence 6/12/2024	The standards in the LPA and its three sets of rules that govern when easements and leases are required are extremely vague. When legal standards are vague, courts will often decline to enforce them, because the legislature and agency have not provided the courts with enough guidance. I believe that is the case here. Given the lack of guidance provided by the Legislature regarding easements and leases, IDL should develop rules that are consistent with the traditional understanding of those terms. There is significant judicial case law defining leases and easements. IDL should use those as guidance in developing rules governing leases.	Leases and Easements Rule 055.01	11. IDL will consider this comment as we consider future revisions to IDAPA 20.03.09 –Easements on State-Owned Navigable Waterways and 20.03.17 – Rules Governing Leases on State-Owned Navigable Waterways.
Gary MacDonald 11/20/2024	ACCESS to the water: Generally speaking, unless the land itself is owned by a government agency, the public at large does not have access to the water unless granted by the land owner. It is not likely that a private citizen is going to promote or allow the general public to have access to the water. That privilege has historically been provided by the state via public access sites AND private enterprises like ours, resorts and marinas that cater to the public. For a fee a citizen or a visitor can rent space at a marina for their watercraft. With that fee they are free to enjoy the docks and property. It used to be that almost all marinas were truly open to the public. Even if you were not a slip renter, you would still be able to walk the docks, use the restrooms, or just be "on the water." increasingly you will find gates on the docks and the public is locked out. In Bayview, I believe that MacDonald's Resort is the only place that the public can freely visit. Resorts and marinas who welcome the public provide genuine public	General	12. IDL does not control public access to navigable waterways, but there are terms in leases that allow discounts to commercial marinas to provide public moorage at their marina. These discounts are set and approved by the authority of the Land Board. There is room to allow for more discounts if comments are brought before the Land Board.

Commenter	Written Comments	Rule Section	Response
	access including the right to fish, access to restrooms, or just a pleasant walk on the docks. The current Idaho rules do make an attempt to reward marinas that provide public access, BUT public access is absolutely not being enhanced, it is being eroded. We really need to reverse this trend because the population is increasing and the state and counties do not have sufficient resources to give the public access to "their" water. The days are approaching quickly where people will drive by on the roadways and remark, "took at that beautiful lake, too bad we can't get near it."		
Gary MacDonald 11/20/2024	Resort/Marina sales to Developers: There is tremendous pressure on resort/marina owners to sell to developers. The developer then carves up the property into parcels, advertises that the buyer can "own your private access to the lake," and with the sale the public loses another possible access to the waterfront. It is extremely easy to find examples of this public access erosion. In the past, it would be common to find multiple family resorts that offered public access to the water. There are lakes now where there are no resorts or marinas. All of the former resorts have been made into parcels and sold which effectively locks out residents and tourists. I believe that the state needs to actively work on programs that will keep family operations going so that the temptation to just "hang it up and take the money" is less of an option. When family run marinas are lost to the developers and their individual sales, they will NEVER return to a property that welcomes the public at large. The citizens of Idaho and tourists who bring vacation dollars to Idaho will be locked out. We can't let this happen.	General/ Commercial Marina	13. IDL does not have jurisdiction on operations above the Ordinary High Water Mark of a navigable lake. It would be at the discretion of local city and county officials to limit the development of waterfront properties.

Commenter	Written Comments	Rule Section	Response
Gary MacDonald 11/20/2024	Layers of "Red Tape" and let's have more!? - At the meeting in Sandpoint this spring one of the rule "proposals" was the idea of incorporating the "Universal Building Code" or something similar into the state permit process. I mentioned at the time that I felt the proposal was an unnecessary burden on the resort/marina owners. I still feel that way because I have not seen a need for another layer of bureaucratic oversight of a resort/marina operation. Additionally, the compliance process has REAL costs associated with the increased compliance level. One would ask, "so what." Well, the "so what" part means that those costs have to be passed on to the people using the facility. That results in higher prices. Every year when our family meets to set prices, we actually worry about individual people who may not be able to afford to stay here. We want to continue to include as many income levels as possible in our customer and visitor clientele. If additional layers of compliance requirements are added, the financial impact will be the possibility that someone will be excluded because of that additional cost.	General/ Incorporation by Reference	14. IDL has removed the incorporation of the International Building Code rules from the draft rule. IDL anticipates no additional costs of compliance with the current rule draft.
Gary MacDonald 11/20/2024	A subject mostly unique to Bayview: Bayview for my 73year lifetime and even previous to my birth, has been a land and water village. The floathouses/floathomes that make up a good deal of waterfront offer a unique community. Tourists visit Bayview to view and sometimes utilize that unusual community. The health of the floathouse/floathome community is reliant on people being able to continue to improve and maintain the integrity and the look of the buildings. I believe that within the leased area that comprises our marina, our customers should be given a good	General/ Pend Oreille Specific/ Float Homes	15. Float homes must meet minimum standards for plumbing and electrical work, and must comply with minimum standards for building according to regional building codes. IDL does not allow new float homes nor the conversion of existing buildings into float homes.

Commenter	Written Comments	Rule Section	Response
	<p>degree of latitude when it comes to interior home modifications. I really don't see a need to overly complicate life by restricting my customers choosing to make improvements or modifications to their home's interior layout or uses. We want to promote those improvements to help the floathouse/floathome community remain vibrant so they will not ever constitute an eyesore. We want them to invite ownership and vitality! A. Having said that, we are <u>not</u> in favor of the proliferation of floathomes/floathouses. We are not in favor of making boat houses, which were originally built just to house boats, into floathouses/floathomes with their necessary plumbing and living facilities. We are comfortable having the 100 or so historical floathouses/floathomes as the unique community it is.</p>		
<p>Gary MacDonald 11/20/2024</p>	<p>Boat Sewage, Gray Water, Sanitation: Believe it or not, I think that the boat sewage pump out facilities at MacDonald's Resort are the ONLY working pump outs on the entire Southern end of Lake Pend Oreille. For years I thought that all marinas were required to have them, but I think I was wrong. Here are some of my comments regarding the current situation: A. We pump out sewage from a LOT of boats and we charge a small fee for that work. However, there are some boats, who very likely have heads/toilets that we NEVER see. I know they have the same bodily functions that I do, but we never see them at our pump out stations. I believe that they are illegally dumping their sewage overboard via macerator pumps exiting the boats via thru-hulls. Our recreational waters are being compromised by this practice.</p>	<p>General/Pump-Out/Sewage Disposal</p>	<p>16. Pump out of grey water and sewage is regulated under the Idaho Safe Boating Act, and rules administered by the Idaho Department of Environmental Quality. IDL does not regulate watercraft pump-out. Inspection of watercraft is regulated by the local marine deputies, or the U.S. Coast Guard.</p>

Commenter	Written Comments	Rule Section	Response
	<p>B. Some of the larger monohull boats, power and sail, and most houseboats have extensive gray water producing facilities including sinks, tubs, showers, and even clothes washers with dryers. It is a rare boat that has graywater retention facilities. Most of this gray water is going right into the take along with the suspended soils, organic matter, soap, shampoo, detergent, and various and sundry additives. Again, this practice, with the increase in human population and lake use, will compromise our recreational waters. The take can take some of this abuse, but the growing population will likely overtax the take's ability to remain unsullied.</p> <p>C. What should be done? I believe that in order to get a boat license any boat with head/toilet facilities should be inspected by an authorized technician. That inspection should confirm that the boat does have an adequate holding tank for sewage. If there is an overboard discharge option via y-valve or direct discharge that option should be sealed with a tamperproof tag so that it cannot be used. If on inspection by law enforcement the tag has been compromised there should be a weighty fine so that people are not tempted to cheat. In past years I have had conversations with the local health district and they have been interested but the problem has certainty not been at the top of their List. No progress on possible enforcement has been done to date. However, the increasing population might necessitate another look at the growing problem. Regarding gray water, that is a more complicated issue because having to retrofit boats for gray water retention would be a big problem. However, it is worth addressing so that over time boats may be required to be</p>		



Commenter	Written Comments	Rule Section	Response
	equipped with gray water retention as an industry standard. It is a subject worth some time and investigation.		
Gary MacDonald 11/20/2024	Abandoned Boats on Idaho State Property: I didn't think I would live long enough to see the day when people would just abandon boats. Now it is turning into a real problem. There is a boat now stuck in the mud in Buttonhook Bay because the owner left it there and when the lake went down it got stuck. That particular boat has been there all season. He is not paying for any dockage or space use to the state. It is an eyesore and has been taking up space that people who actually buy a boat license could use. The sheriff's office has been contacted as well as the Parks and Recreation people. Everyone wants to do something, but no one seems to have any authority. I think we need some legislation giving the state the right to lien the owner's property so there is a way to get the boat out of the water, sold, sent to the landfill, or other possibilities. At this point in time, it seems like the authorities do not have a clear path to removal.	General/Illegal Dumping and Waste	17. Illegal dumping of vessels is a problem that is managed by several entities. The marine sheriff deputies have the authority to cite individuals that dumps vessels or docks. Ultimately, the upland land owner is responsible for any unpermitted encroachments within their littoral right lines. Unpermitted encroachments are a violation of I.C. 58-1301, 58-1303, and are subject to penalties outlined in I.C. 58-1308 and 58-1310.
Coeur d'Alene Tribe 4/30/2025	There is significant inconsistency regarding the scope and applicability of the proposed rules, which must be remedied. The Heading and Sections 20.03 .04.012.02., .015.16.a., .015.16.a.(misnumbered in draft rule), .020.01., and .055.02., all state the rules apply to "navigable waterways." Yet the Scope (20.03.04.001) and numerous other Sections, confine the regulations to navigable lakes. The Lake Protection Act, Title 58, Chapter 13, Idaho Code applies specifically to navigable lakes, not navigable waterways. If IDL intends to extend these rules to all navigable waterways under its authority in I.C. § 58-104(9),	Scope 001	18. Navigable lakes are defined in Title 58, Chapter 13 Idaho Code. This definition does not limit the authority of federally-recognized entities. The title of the rule is now "Rules for Encroachments on Navigable Lakes". The other references to "waterways" have been changed to "lakes".

Commenter	Written Comments	Rule Section	Response
	then it should clearly state so and remove all inconsistencies.		
Coeur d'Alene Tribe 4/30/2025	Section 20.03.04.001. Scope reads: "These rules govern encroachments on, in, or above navigable lakes in the state of Idaho." However, there are navigable lakes in Idaho under the exclusive jurisdiction of the Coeur d'Alene Tribe and the Federal Government. Please revise the Scope to read: "These rules govern encroachments on, in, or above navigable lakes in the state of Idaho, except where those lakes are in the exclusive jurisdiction of a Federally recognized Indian tribe or the Federal Government."	Scope 001	19. See previous comment.
Coeur d'Alene Tribe 4/30/2025	1. As a general rule, key terms in regulations should be defined for clarity and simplicity purposes. Defining key terms in administrative rules is particularly important when the statutory definitions referenced by the rules are non-exclusive. a. The statutory definition of Encroachments in Aid of Navigation "means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake." I. C. § 58-1302(h). This key term must be defined in the rules because the insertion of the terms "includes" and "other such aids" renders the statutory list of encroachments non-exclusive-without a definition there is no clarity on what "other such aids" are considered encroachments in aid of navigation. b. The statutory definition of Encroachments Not in Aid of Navigation "means and includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills or other structures not constructed primarily for use in aid	Definitions 010	20. a. IDL has determined that the definition of "encroachments in aid of navigation" defined in I.C. 58-1302 is sufficient to cover encroachments that are known navigational aids, and leaves sufficient room for any future or unique aids to navigation that would fall under that definition. b. See answer to a. above. c. Under the Executive Order 2020-02, Zero Based Regulation, that Idaho's citizens must review both Idaho statutes and rules in order to be law-abiding. Under the Rule Writers Manual published by the Idaho Office of Administrative Rules, "The purpose of a rule is to balance the statutory mandates and legislative intent of the law with any constitutional or federal mandates, executive orders of the Governor, and the agency mission." IDL has chosen not to adopt this suggested change.

Commenter	Written Comments	Rule Section	Response
	<p>of the navigability of the lake." I.C. § 58-1302(i). This key term must be defined in the rules because the insertion of the terms "includes" and "all other encroachments ... not constructed primarily for use in aid of the navigability of the lake," renders the statutory list of encroachments non-exclusive- without a definition there is no clarity on what "all other encroachments" are considered encroachments not in aid of navigation.</p> <p>c. Beds of Navigable Lakes is a term of art that is defined differently in Title 58, Chapter 13, Idaho Code than in other statutes, federal law, tribal law, and case law. Because I.C. § 58-1302(b) defines beds of navigable lakes "for purposes of this act only," as the land (1) below the natural or ordinary high-water mark, and (2) between the natural or ordinary high-water mark and artificial high-water mark, the rules should state this departure from regular parlance for clarity purposes. If IDL does not define "beds of navigable lakes," then it should, at the very least, define the terms "ordinary and normal high-water mark" and "artificial high-water mark," and state that the rules are applicable to the land between the different high-water marks. It is unreasonable to assume regulated parties, unrepresented by legal counsel, will delve into both administrative rules and statutes to determine whether their actions fall within the scope of statutes or regulatory rules.</p>		
Coeur d'Alene Tribe 4/30/2025	<p>If IDL chooses not to define key terms in its rules, then at the bare minimum, it must state in each definition when a structure is a navigational or nonnavigational encroachment for clarity purposes. It is particularly troubling that the draft rules use terms such as "structure" or "mechanism" in place</p>	Definitions 010	21. IDL has chosen to adopt the suggested changes for adding "navigational" or "nonnavigational" to encroachment definitions, as well as using the more standardized word of "encroachment" in said definitions.

Commenter	Written Comments	Rule Section	Response
	<p>of "encroachment;" without using the statutorily correct key term, a regulated party cannot know whether the rules apply to them. Absent definitions of key terms, the following definitions should be revised to denote what rules apply to each encroachment:</p> <p>a. 010.03.: Boat Garage. "A nonnavigational encroachment with one (1) or more slips that is completely enclosed with walls, roof, and doors."</p> <p>b. 010.04.: Boat Lift. "A navigational encroachment mechanism for mooring boats partially or entirely out of the water."</p> <p>c. 010.05: Boat Ramp: "A navigational encroachment consisting of a structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers."</p> <p>d. 010.06.: Breakwater: "A navigational encroachment that is designed to protect moorage by reducing wave energy."</p> <p>e. 010.09.: Community Dock. "A navigational encroachment that provides private moorage for three (3) or more adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock."</p> <p>f. 01 0.14.: Float Home. "A nonnavigational encroachment that is designed and built to be used, or is modified to be used, as a stationary residential dwelling and is not self-propelled."</p> <p>g. 010.16.: Jet Ski Ramp, Port, or Lift. "A navigational encroachment mechanism for mooring jet skis or other personal watercraft similar to a boat lift."</p>		

Commenter	Written Comments	Rule Section	Response
	h. 010.24.: Piling. "A navigational encroachment made of commercially available materials intended to be used for such purpose, that is driven into the lakebed and used to secure other encroachments." i. 010.27.: Pylon. "A nonnavigational encroachment made of commercially available materials intended to be used for such purpose, that is placed into the lakebed and used to support other encroachments."		
Coeur d'Alene Tribe 4/30/2025	The definition of Public Trust Doctrine should be revised to reflect the accurate definition, consistent with I.C. § 58-1202(5) and the common law referenced therein. The definition should read: "The common law doctrine holds, the State owns in trust the beds and banks of navigable waters-not otherwise held in trust by the United States for the benefit of a Federally recognized Indian tribe-for the use and benefit of the public, including the uses of navigation, commerce, 'fish and wildlife habitation, recreation, aesthetic beauty, and water quality.'" Newton v. MJK/BJK, LLC, 469 P.3d 23, 29 (Idaho 2020); see also Byrd v. Idaho State Bd. of Land Comm'r, 505 P.3d 708, 714 (Idaho 2022).	General/Legal Authority	22. Definitions found in I.C. Title 52 chapter 12 are outside the scope of this rulemaking process.
Coeur d'Alene Tribe 4/30/2025	Section 20.03.04.015.15. Marine Motor Fuel Dispensing Facilities: Fuel 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	Encroachment Standards 20.03.04.015.15	23. The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.

Commenter	Written Comments	Rule Section	Response
	<p>gas storage facilities should be incorporated by reference.</p> <p>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."</p> <p>b. IDL should also incorporate by reference the above regulations at subsection 003.05. and 003.06., respectively.</p>		
Coeur d'Alene Tribe 4/30/2025	<p>Section 20.03.04.015.16. Fill Material:</p> <p>a. Fill material has significant deleterious effects on water quality and aquatic habitat. IDL should not allow "refuse or waste matter," to be used as fill material. Any fill material should be naturally occurring and environmentally sound to protect water quality.</p> <p>b. There should be no ambiguity about what rules apply to this kind of encroachment. The section states fill material is an encroachment requiring "written approval by the Department." The term "written approval" is not synonymous with "encroachment permit," and must be changed to</p>	<p>Encroachment Standards</p> <p>20.03.04.015.16</p>	<p>24. a. IDL will adopt this suggested change in the new draft of the rule.</p> <p>b. IDL will adopt this suggested change in the new draft of the rule.</p> <p>c. IDL has referenced in the rule under 20.03.04.020.03 that a person seeking to make an encroachment must also obtain any additional approvals lawfully required by federal, local or other state agencies. IDL has chosen not to adopt this suggested change.</p> <p>d. 58-1301 establishes the sideboards that IDL considers when reviewing applications.</p>

Commenter	Written Comments	Rule Section	Response
	<p>accurately reflect that an encroachment permit is required, consistent with I.C. § 58-1306.</p> <p>c. The State is not solely responsible for regulating discharge of dredge or fill material into navigable lakes-the rule should reflect that other agencies share regulatory authority to put a regulated party on notice that they must acquire all necessary permits prior to discharging fill material into navigable lakes.</p> <p>d. The section should be revised to say: "The placing of dredged or fill material, on or in the beds of waters of any navigable lake is an encroachment and requires a nonnavigational encroachment permit from the Department, in addition to any other requisite permits from state, local, or federal agencies with jurisdiction. Any such fill material shall be naturally occurring and environmentally sound, no encroachment permit shall be issued if fill material will negatively affect water quality or aquatic habitat."</p>		
Dave and Helen Blyton 6/8/2025	<p>There is one section in Draft 2 regarding the Marine Motor Fuel Dispensing Facilities that we would like to see changed. The current language is very restrictive and will be virtually impossible to comply with, or for the State to enforce. On Lake Pend Oreille, it would require boaters to go approximately 10 miles to get fuel. Since many of the boaters use their boats year round on the lake to get to their cabins, or to fish, this trip could be present unnecessary challenges trying to get to the limited fuel dispensing facilities on the lake. Many other lakes in Idaho are similar with year round boaters and limited fuel dispensing facilities. We propose changing the language from requiring a marine motor fuel dispensing facility to requiring</p>	Encroachment Standards 20.03.04.015.15	<p>25. Portable gas cans are not fixed equipment. The public may refill their watercraft in a manner that complies with all local rules and codes. Marine motor fuel dispensing facilities are regulated under the International Fire Code and require an encroachment permit from IDL when located below the Ordinary High Water Mark.</p>

Commenter	Written Comments	Rule Section	Response
	<p>a fuel dispensing hose that has an automatic shut off nozzle and drip elimination device. These hoses and drip elimination options are available for purchase for \$40.00 - \$75.00 and can be used with portable gas cans. This keeps the can on the dock and the hose with a shut off nozzle at the boat or wave runner. This would be very similar to how it is dispensed at a fuel dispensing facility. This approach may still be difficult to enforce, but we believe its simplicity and common sense will get support from boaters so the end result will be less fuel getting into the water. Required signage at public boat ramps and moorage facilities could ensure all boaters are aware of the new fuel regulation. This would not only educate the boaters but help other boaters, property owners, marinas, and moorage associations say something to those who are not following the rules.</p>		
<p>Dylan Lawrence 6/9/2025</p>	<p>Newly proposed Encroachment Rule 003.04 incorporates IDAPA 18.08.01 by reference. Typically, "incorporation by reference" means that the incorporating agency has the legal authority to enforce the external regulations that are being incorporated. A good example of this is that because Idaho DEQ has authority over regulatory programs delegated by EPA, DEQ often incorporates EPA regulations by reference. I do not believe a similar legal relationship exists between the Department of Lands and the Department of Insurance ("DOI"), and incorporating DOI's legal authorities by reference may exceed IDL's statutory authorities. Instead of incorporating those regulations by reference (and perhaps the other regulations referenced in Encroachment Rule 003),</p>	<p>Incorporation by Reference 003.04</p>	<p>26. I.C. § 67-5229(1)(d) gives IDL the authority to incorporate IDAPA 18.08.01 by reference.</p>



Commenter	Written Comments	Rule Section	Response
	I suggest revising the initial language of that rule to read, "The following sets of regulations may also apply to activities regulated by these rules and should be consulted."		
Dylan Lawrence 6/9/2025	<p>Newly proposed Encroachment Rule 015.15(a) currently reads, "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." This language appears to be taken verbatim from the International Fire Code (2018) ("IFC"). However, it is an incomplete reference. Section 2310.3.1 of the IFC provides: Wharves, piers or floats at marine motor fuel-dispensing facilities shall be used exclusively for the dispensing or transfer of petroleum products to or from marine craft, <b>except that transfer of essential ship stores is allowed.</b> (Emphasis added).</p> <p>The need to load and unload essential items from wharves and piers is universal. As an initial matter, I question the wisdom of quoting other regulatory programs, rather than simply referencing them to put the public on notice of their existence. For one thing, if the IFC is amended, then the Encroachment Rules could become outdated and inconsistent with the amended IFC. The same concern applies to the adoption of a new definition of "marine motor fuel-dispensing facility" in newly proposed Rule 010.20. While that appears mostly consistent with the definition of that phrase in IFC Section 202, that may not always be the case in the future. Given the reference to the state</p>	Encroachment Standards 015.15	27. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."

Commenter	Written Comments	Rule Section	Response
	regulations adopting the IFC in newly proposed Rule 003.04 as previously discussed, I question whether it is necessary to quote Section 2310.3.1 at all. However, if IDL keeps the reference, it should restore the italicized language above and monitor amendments to the IFC to ensure consistency.		
Dylan Lawrence 6/9/2025	Newly proposed Rule 015.16(a) makes the affirmative statement that the following items are encroachments: (1) dredged material; (2) fill material; (3) refuse; and (4) waste matter intended as or becoming fill material. The Encroachment Rules are adopted pursuant to the statutes in the Lake Protection Act, Title 58, Chapter 13 of the Idaho Code (the "LPA"). The term "dredged" appears nowhere in the LPA, and the phrase "fill material" also appears nowhere in the LPA, though there is a reference to "landfills" being considered non-navigational encroachments in Idaho Code Section 58-1302(i). To ensure consistency with IDL's authorities under the LPA, this Rule should read, "The placing of landfills on or in the beds or waters of any navigable waterway is an encroachment and requires written approval by the Department."	Encroachment Standards 015.16	28. Dredging and fill below the Ordinary High Water Mark are considered encroachments. The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Dylan Lawrence 6/9/2025	IDL is suggesting mostly minor revisions to newly renumbered Encroachment Rule 016, regarding lake-specific permit terms. In the past, IDL has described an intent to coordinate a public planning process for Bear Lake, but it has not followed through. While this comment may be outside the scope of a zero-based regulation rulemaking effort, given Bear Lake's uniqueness, IDL should consider resuming that effort, which could also involve	Encroachment Standards 015.17	29. Lake-Specific encroachment permit terms are written as a condition(s) of the permits. IDL will consider adding a condition specific to the needs of Bear Lake.

Commenter	Written Comments	Rule Section	Response
	development of standard permit conditions specific to Bear Lake.		
Idaho Conservation League 6/13/2025	<b>20.03.04 Title – RULES FOR ENCROACHMENTS ON NAVIGABLE WATERWAYS</b> The word 'waterways' must be reverted back to 'lakes,' as it was in the previous version of this rule. The Lakes Protection Act 2 specifically defines 'navigable lake' as ' <i>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.</i> ' 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.	20.03.04 Title	30. IDL has elected to adopt this change. The title of the rule is now "Rules for Encroachments on Navigable Lakes".
Idaho Conservation League 6/13/2025	<b>20.03.04.010.07 Commercial Marina - Definition.</b> 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."	Definitions 010.07	31. The standards for commercial marinas can be found in section 015.03.
Idaho Conservation League 6/13/2025	<b>20.03.04.010.09 Community Dock - Definition.</b> 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	Definitions 010.09	32. The word "structure" has been removed from this definition and replaced with "encroachment". Applicants that meet the definition of a community dock may apply for

Commenter	Written Comments	Rule Section	Response
	<p>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.</p> <p>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</p>		<p>community docks allowable under Title 58, Section 1306 Idaho Code.</p>

Commenter	Written Comments	Rule Section	Response
	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.		
Idaho Conservation League 6/13/2025	<b>20.03.04.012.01 Policy - Public Trust Resources Protection</b> 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 1899 3 and Section 404 of the Clean Water Act 4 , 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 <i>United States v. Idaho</i> . 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.	Policy 012.01	33. Jurisdiction over navigable lakes is defined in Title 58, Chapter 13 Idaho Code. IDAPA 20.03.04.020.03 states "A person seeking to make an encroachment must also obtain any additional approvals lawfully required by federal, local or other state agencies.". Section 070.04 also states "The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources."
Idaho Conservation League 6/13/2025	<b>20.03.04.015.08 Encroachment Standard - Riprap</b> 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.	Encroachment Standards 015.08	34. IDL has revised the first sentence of Section 015.08 to say "Riprap used to stabilize shorelines will consist of rock or other materials that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow."

Commenter	Written Comments	Rule Section	Response
Idaho Conservation League 6/13/2025	<b>20.03.04.015.11 Encroachment Standard - Excavating or Dredging</b> The Idaho Lake Protection Act 5 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 Act 6 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 <i>United States v. Idaho 7</i> . 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.	Encroachment Standards 015.11	35. Dredging is considered an encroachment. The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Idaho Conservation League 6/13/2025	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 Rules 8 , and Section 402 of the Clean Water Act. 9 The DEQ administers the Individual/Subsurface Sewage Disposal Rules in collaboration with Idaho's seven	Encroachment Standards 015.13	36. Sewer and septic systems must adhere to IDAPA 24.39.20, "Rules Governing Plumbing", incorporated by reference in these rules. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.

Commenter	Written Comments	Rule Section	Response
	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.		
Idaho Conservation League 6/13/2025	<b>20.03.04.015.15 Marine Motor Fuel Dispensing Facilities</b> 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."	Encroachment Standards 015.15	37. IDL has chosen to revise Section 015.15.a to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit." Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Idaho Conservation League 6/13/2025	<b>20.03.04.015.16 Fill Material</b> The Idaho Lake Protection Act 10 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 Act 11 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	Encroachment Standards 015.16	38. Fill is considered an encroachment on navigable lakes. IDL works with the U.S. Army Corps of Engineers to address and/or permit fill below the Ordinary High Water Mark. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.

Commenter	Written Comments	Rule Section	Response
	through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho 12</i> . 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.		
Idaho Conservation League 6/13/2025	<b>20.03.04.020.06 Applications - Dredging</b> The Idaho Lake Protection Act 13 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 Act 14 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 <i>United States v. Idaho 15</i> . 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.	Applications 020.06	39. Dredging is considered an activity that may require an encroachment permit under IDAPA 20.03.04. IDL works with the U.S. Army Corps of Engineers to address and/or permit dredging below the Ordinary High Water Mark. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Idaho Conservation League 6/13/2025	<b>20.03.04.080 Violations - Penalties</b> 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 Act 16, 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	Violations/ Penalties 080	40. Imposing additional fees and penalties lies outside of the scope of Executive Order 2020-02, Zero Based Regulation. Cost recovery for noncompliance is regulated under the Lake Protection Act.



Commenter	Written Comments	Rule Section	Response
	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 incentivizes unpermitted activity. Assessing fines in these situations would encourage compliance and also increase funding for IDL.		
Zack Spencer 6/13/2025	The part of the bill that concerns refilling only at marinas is not practical or almost all boat owners in medium to large size lakes. By the time that someone has driven there boat to and from a marina they will have used up the same amount or more gas then they started with. And as a person who workers at a marina on lake pend Oreille it would just cause even more of a headache for us because of the people would take there boats out for 5 minutes to refill with a gas can, then take another 10 minutes trying to put there boat back into the water, thus making our job harder. Also the gas prices for the floating pumps is stupidly expensive so no one with any sense will use them.	Encroachment Standards 015.15	41. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."
Ian and Kristen Burge 6/13/2025	The proposed requirements under section "Marine Motor Fuel Dispensing Facilities" creates many concerns for users on larger lakes in the state of Idaho, such as Lake Pend Oreille, Priest Lake and Lake Coeur d'Alene. Refueling locations can be many miles from marinas and private docks on the lakes. For example a boat that is kept at Garfield Bay on Lake Pend Oreille, would need to travel more than 20 miles round trip on water to obtain fuel or the owner would need to trailer their boat and travel about 20 miles round trip to refuel a		42. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."

Commenter	Written Comments	Rule Section	Response
	<p>boat at the closest land gas station in Sagle. Many of the boats kept at docks/marinas on the lake are challenging to transport for fuel, such as a sail boat.</p> <p>Higher Costs: Marina fuel is often more expensive than regular gas station fuel. Restricting fueling options could force boaters to pay these higher prices.</p> <p>Economic Impact on Boating: Restricting options could potentially hurt the recreational boating industry by making it more expensive and less convenient for boaters.</p> <p>I understand the desire to restrict refueling boats on the water, not at an approved marina gas facility. Perhaps instead of the draft language provided there can be restriction that marina gas stations must be used if located within 1-2 miles of where your boat is normally kept. Or put rules in place about the types of gas cans or transfer methods that can be used.</p>		

In-Person Comments	Rule Section	Response
<p>The following comment is a summation of a discussion that took place during the Sandpoint Public Meeting on April 15, 2025.</p> <p>The section that sets standards for Marine Motor Fuel Dispensing Facilities is considered too restrictive and limits individual needs to refuel a boat in an area with little access to a marine service station.</p>	20.03.04.015.15	<p>1. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."</p>

In-Person Comments	Rule Section	Response
<p>The following comment is a summation of a discussion that took place during the Sandpoint Public Meeting on April 15, 2025.</p> <p>The section under application requirements that suggests that applications for all encroachments that are enclosed structures require engineered plans stamped by a licensed engineer in the state of Idaho is overly restrictive and places an undue cost burden on applicants to get a stamped engineered drawing.</p>	<p>20.03.04.020.07.a.vi ii.</p>	<p>2. IDL has chosen to revise the language in Section 020.07.a.viii to read "Plans submitted for enclosed encroachments must accurately depict all interior and exterior features. Public, commercial, and residential encroachments may require engineered plans approved by a licensed professional engineer in the state of Idaho."</p>