



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

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**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 proposed rulemaking process by attending the public hearing 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.

Key documents from the rulemaking record, which includes rule drafts, written public comments and documents distributed during the proposed 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 proposed rulemaking process, the Department formatted the rule draft for publication as a pending rule in the Idaho Administrative Bulletin.

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

	<b>Commenter</b>	<b>Written Comments</b>	<b>Rule Section</b>	<b>Response</b>
1.	Nick Snyder – Kootenai County Parks and Waterways 9/4/2025	Thank you for providing an opportunity to comment on this important topic which may affect nearly 200,000 residents of Kootenai County. Kootenai County is blessed to have eighteen lakes and rivers with over 45,000 boatable acres available for our citizens to enjoy. Kootenai County also has the highest number of registered boats in the state, along with several thousands of shoreline property owners. These two factors often create conflict between the boating/floating/angling public vs. shoreline	Non-specific/ Section 030 – Processing Applications	§ 58-1301 Idaho Code states "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

	<p>property owners. I often receive comments from our recreating citizens that; "IDL keeps permitting docks, float homes, and other stuff that is ruining our lakes and rivers and the property owners act like they own the public water." Conversely, shoreline property owners complain that; "Boats are ruining our docks and shorelines." I am sure these comments are common in every county in Idaho.</p> <p>I have had the opportunity to observe changes to our waterways for nearly 20-years in my current position and based on those observations, as well as other factors, I recommend IDL consider adoption of the following language to assist in protecting all state waterways. Idaho lakes and rivers are both unique and magnificent resources that must be protected for future generations. I believe that the language I drafted below will provide IDL with additional tools necessary to address unique circumstances where an application for encroachment may pose significant risk to the items listed below.</p> <p><b>REASONS FOR DENIAL OF ENCROACHMENT PERMIT:</b></p> <p>"Any application that may change historic public use of a waterway, interfere or adversely affect navigation, degrade public recreational opportunities, limit or otherwise restrict any use by the public, adversely affect commerce, or impact public safety as determined by the</p>	<p>justification for, or benefit to be derived from the proposed encroachment."</p> <p>Public safety is weighed and considered during review of all encroachment permits, and that authority is captured by this statute.</p>
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		County Sheriff, shall be considered when approving encroachment permits.”		
2.	Alexander Nickolatos – KOREPower 9/11/2025	Thank you for hosting the call today. I noticed that on page 37 (“28”), a pylon is no longer defined with the deletions. As edited, it seems to read “A that is placed in placed into the lakebed and used to support encroachments.”	Definitions Section 010.28	IDL will adopt this suggest change so that the definition now reads “A post that is placed in placed into the lakebed and used to support encroachments.”
3.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	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.	20.03.04.010.07 Commercial Marina - Definition	IDL will adopt part of this recommendation. The definition will now read “A commercial navigational encroachment whose purpose is to provide at least 50% of its moorage available for rental or for free to the general public.”
4.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	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	20.03.04.010.09 Community Dock - Definition	Community docks are limited in size by their shoreline length, or by the discretion of the Department. If a community dock were to cause adversely affects, the Department would consider these factors in reviewing the application. Applicants that meet the definition of a community dock may apply for community docks allowable under Title 58, Section 1306 Idaho Code.

		<p>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.</p> <p>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.</p>		
5.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	<p>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 and Section 404 of the Clean Water Act , 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</p>	20.03.04.012.01 Policy - Public Trust Resources Protection	<p>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."</p>

		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.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	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.	20.03.04.015.08 Encroachment Standard - Riprap	Applicants may use whichever material would be best suited for their erosion control needs allowable under Idaho law. IDL encourages applicants to consider all options for erosion control in order to find a method that best suits their needs.
7.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	The Idaho Lake Protection Act 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</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.	20.03.04.015.11 Encroachment Standard - Excavating or Dredging	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.

8.		<p>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 , and Section 402 of the Clean Water Act.</p> <p>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.</p> <p>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.</p>	20.03.04.015.13.h General Encroachment Standards (connected with upland sewer or septic systems)	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.
9.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	<p>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: "<i>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</i></p>	20.03.04.015.15 Marine Motor Fuel Dispensing Facilities	Applicants that wish to install marine motor fuel dispensing facilities 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.

		<p><i>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."</i></p>		
10.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	<p>The Idaho Lake Protection Act 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 establishes that the U.S. Army Corps of</p>	20.03.04.015.16 Fill Material	<p>Fill is considered an encroachment on navigable lakes, and is included in the definition of "Encroachments not in aid of Navigation" in § 58-1302. 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</p>

		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</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.		local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
11.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	The Idaho Lake Protection Act 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</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.	20.03.04.020.06 Applications - Dredging	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.

12.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	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, 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.	20.03.04.080 Violations - Penalties	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.
13.	IDL 9/24/2025	Under Section 20.03.04.010.26., Public Hearing, the word coordinator should be removed and replaced with the word “officer”.	20.03.04.010.26 – Public Hearing	This change will be accepted.
14.	IDL 9/24/2025	Under Section 20.03.04.015.13.f., Weather Conditions, there is a stray period that needs to be removed from the sentence. The sentence should read as “Flotation devices must be reasonably resistant to puncture and other damage.”	20.03.04.015.13.f - Weather Conditions	This change will be accepted.
15.	IDL 9/24/2025	Under Section 20.03.04.015.13.l.i., Overhead Clearance, the words “in the permit” need to be removed from the last sentence of the paragraph.	20.03.04.015.13.l.i - Overhead Clearance	This change will be accepted.
16.	IDL 9/24/2025	Under Section 20.03.04.015.13.l.ii., Overhead Clearance, the reference to Paragraph 015.13.h needs to be replaced with an updated reference to Paragraph 015.13.l.	20.03.04.015.13.l.ii - Overhead Clearance	This change will be accepted.

17.	IDL 9/24/2025	Under Section 20.03.04.015.14.a., Floating Toys, the sentence should be amended to remove the words "encroachment, and an" so that the sentence simply reads as "An encroachment permit is required for floating toys when they are anchored to the lakebed with an anchor that requires equipment for removal or when located waterward of the line of navigability for more than twenty-four (24) consecutive hours."	20.03.04.015.14.a - Floating Toys	This change will be accepted.
18.	IDL 9/24/2025	Under Section 20.03.04.020.07.a., the word "must" should be included in the first sentence. It should read as "Plans must include detailed information to demonstrate compliance with the applicable standards of these rules, and the following information at a scale sufficient to show the information requested:"	20.03.04.020.07.a	This change will be accepted.
19.	IDL 9/24/2025	Under Section 20.03.04.020.07.c., there is an "a" missing from the sentence. The correct language should read as "If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of an entity or a designated homeowner's or property management association."	20.03.04.020.07.c	This change will be accepted.
20.	IDL 9/24/2025	Under Section 20.03.04.020.07.h., the word "intake" should be removed from the sentence. It should read as "No publication cost is required for applications for noncommercial navigational encroachments not extending beyond the line of navigability or for application for installation of buried or submerged water lines and utility lines."	20.03.04.020.07.h	This change will be accepted.

21.	IDL 9/24/2025	Under Section 20.03.04.030.09., Judicial Review, the word "decision" should be removed from the first sentence. It should read as "Any applicant or party aggrieved by the Director's final order has the right to judicial review of the final order by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final order."	20.03.04.030.09. - Judicial Review	This change will be accepted.
22.	IDL 9/24/2025	Under Section 20.03.04.055.02., Seawalls, Breakwaters, Fill., there is a stray comma after the word "authorized" that needs to be removed from the sentence. It should read as "Seawalls, breakwaters, and fill on or over state-owned beds, designed primarily to create additional land surface, will only be authorized by an encroachment permit and submerged land lease or easement, upon approval by the Department."	20.03.04.055.02. - Seawalls, Breakwaters, Fill	This change will be accepted.