



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF  
WATER AND WATERSHEDS

SEP 25 2013

Mr. Craig Foss  
Chief, Bureau of Forestry Assistance  
Idaho Department of Lands  
PO Box 83720  
Boise, Idaho 83720

Dear Mr. Foss:

The Environmental Protection Agency appreciates the Idaho Department of Lands (IDL's) efforts to develop improved streamside protection zone (SPZ) management rules (shade rule), and the opportunity to provide input throughout the rulemaking process.

We recognize nonetheless there are important economic, forest health and safety considerations that IDL must consider, but believe that a key objective of riparian zone management should be meeting water quality standards and protecting fisheries and public water supplies. Although the shade rules would apply only to Class I stream protection zones, which comprise less than 5% of most watersheds in Idaho, SPZ management is disproportionately important for protecting water quality, fisheries and public water supplies.

Improvements to IDL's shade rules are particularly important because the shade rule is IDL's primary requirement on state and private forest lands for meeting Idaho water quality standards. Currently, stream temperatures naturally exceed applicable State water quality standards criteria in many forested areas. Idaho standards address these circumstances as follows:

“When natural background conditions exceed any applicable water quality criteria set forth in Sections 210, 250, 251, 252, or 253, the applicable water quality criteria shall not apply; instead, there shall be *no lowering of water quality from natural background conditions*” (IDAPA 58.01.02.200.09. Natural Background Conditions as Criteria).

Shade retention and improvement is critical to ensuring consistency with water quality standards and Idaho Department of Environmental Quality (IDEQ) total maximum daily load (TMDL) targets set to achieve those standards. Where stream temperature naturally exceeds numeric temperature criteria, Idaho TMDLs set natural shade level targets.

During the lengthy process leading up to negotiated rulemaking, various shade requirements and scenarios were modeled by IDL and its consultants. These analyses assumed that implementation of the inner and outer zone relative stocking (RS) targets applied concurrently. Independent EPA analysis of the two proposed rule options showed similar results to IDL's modeling and indicates that concurrent application of RS targets would result in shade loss ranging from 9-16% depending on forest type (see attached March 14, 2013 analysis).

While we have concerns with the modeled levels of shade loss, we recognize that they are lower than shade loss allowed under the current rules, and make progress towards achieving state water quality standards and therefore are preferable to the current shade requirements. However, during negotiated rulemaking, it became clear that the minimum RS levels in the inner and outer riparian zones could be implemented independent of one another. For example, under the proposed rule implementation, if the inner zone RS was below the rule specified target and causing stream temperature problems, the outer zone could still be harvested down to the minimum RS level, further lowering shade levels and exacerbating existing stream impairment. Even though the effects of implementing the rule in the above manner are not supported by technical analysis, it is clear that greater levels of SPZ harvest would be allowed than were modeled during the rulemaking process.

In our June 29, 2013, comments submitted during negotiated rulemaking, we raised serious concern about this manner of implementing the new rule, and recommended the minimum relative stocking levels for both the inner and outer portions be applied jointly. The final proposed rule continues to allow the harvest of the inner and outer zones independent of one another.

While EPA supports the rule as an improvement over the existing shade requirements, we continue to have concerns as to whether it will meet water quality standards, and we do not support the independent implementation of the inner and outer zone requirements.

We strongly recommend that the rule be revised to specify that the inner and outer zones be implemented jointly, i.e., both inner and outer zone RS targets must be met prior to allowing harvest. Since independent implementation of zone targets is not supported by technical analysis, if the targets are implemented separately, the existing variance process should be used to ensure that the Idaho water quality standards will be met.

Given the uncertainties as to whether the new rule will meet water quality standards, we strongly encourage field evaluation of shade rule effectiveness through joint IDL/IDEQ monitoring. Recognizing the projected shade loss indicated by both IDL and EPA modeling, and further shade loss associated with disconnected relative stocking implementation, key questions to consider in future monitoring include:

- A) Is implementation of the shade rule preventing lowering of water quality below natural background conditions in impaired waters?
- B) Is implementation of the shade rule resulting in shade levels that meet ID DEQ TMDL shade targets?
- C) Are relative stocking targets preventing increased blowdown that could further lower shade levels?
- D) Are relative stocking targets resulting in increased retention of larger diameter trees in SPZs and providing adequate large wood recruitment?

Should you have any questions regarding our comments, please contact me at (206) 553-1855, or your staff may contact Leigh Woodruff in our Idaho Operations Office, at (208) 378-5774.

Sincerely,



Daniel D. Opalski, Director  
Office of Water and Watersheds

Enclosure

cc: Barry Burnell, IDEQ  
Michael McIntyre, IDEQ  
Donald Zaroban, IDEQ  
Sarah Fessenmyer, NOAA Fisheries  
Jeri Wood, USFWS