



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

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

JUN 26 2013

OFFICE OF  
WATER AND WATERSHEDS

Ms. Ara Andrea  
Service and Regulatory Program Manager  
3284 Industrial Loop  
Coeur d' Alene, Idaho 83815

Re: Docket No. 20-0201-1301

Dear Ms. Andrea:

The Environmental Protection Agency has appreciated the opportunity to provide input on the Idaho Department of Lands (IDL's) efforts to develop stream protection zone (SPZ) management rules (shade rule), and IDL assistance in obtaining field data used in rule development. This enabled EPA to provide detailed analysis and consistent input to IDL as the proposed rule and supporting technical analysis were being developed.

Improvements to IDL's shade rule are particularly important because this rule is IDL's primary requirement on state and private forest lands for meeting Idaho water quality standards. The current shade rule allows removal of 25% of existing shade regardless of the level of pre-harvest shade. This is even allowed under the existing shade rule where stream temperatures naturally exceed applicable State water quality standards criteria, as they currently do in many forested areas. As noted below, Idaho water quality standards address these circumstances. Idaho Department of Environmental Quality (IDEQ) total maximum daily loads (TMDLs) have also addressed these circumstances by setting natural shade level targets.

"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).

The IDL proposed shade rule includes two SPZ options, each having a designated inner and outer zone with required relative stocking minimums. The effectiveness of the proposed shade rule in preventing shade loss and associated stream temperature increases is dependent on meeting the relative stocking minimums set for both the inner and outer zones of the SPZ. The modeling conducted by IDL to support shade rule development assumed that the relative stocking minimums for both the inner and outer zones would be applied concurrently.

The EPA now understands that IDL intends to implement the proposed shade rule inner and outer zone relative stocking minimums independently. For example, if relative stocking in the outer zone of an SPZ was above the relative stocking minimum, harvest in the outer zone would be allowed even if the relative stocking level in the inner zone, nearer to the stream had extremely low relative stocking levels. Independent application of the relative stocking minimums would allow for additional shade loss beyond that which was modeled by IDL for the proposed rule options.

Implementation of the proposed shade rule in this manner would potentially allow greater levels of shade loss than the existing shade rules for SPZs.

The EPA reviewed the two proposed shade rule options for managing SPZs and conducted an independent analysis of their potential effect on shade loss, assuming the inner and outer zone minimums must both be met. Our modeling, provided to IDL on March 14, 2013, found even higher shade loss for the proposed shade rule options than IDL's modeling. We believe the EPA's analysis continues to be relevant to the negotiated rulemaking, and is re-attached for the record.

The EPA has supported the proposed rule as an improvement over IDL's current rules for managing SPZs, but we have consistently expressed concerns about shade loss projected for the shade rule options. The EPA's support for the shade rule is now significantly diminished given our current understanding of the separable application of shade rule requirements for the inner and outer portions of the SPZ. Stream shade levels are significantly affected by shade produced from both the inner and outer SPZ. Allowing even further shade loss has a greater potential to lower water quality in Idaho's Class I streams. Substantial timber harvest within the SPZ already is allowed in both shade rule options. We recommend that the minimum relative stocking levels for both the inner and outer portions be applied jointly during rule implementation.

We encourage field evaluation of shade rule effectiveness in meeting water quality standards through joint IDL/IDEQ monitoring. Given the projected shade loss for the rule options under both IDL and the EPA modeling, and the further shade loss associated with disconnected relative stocking implementation, key questions to consider in the future 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 where they have been developed?
- 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 Leigh Woodruff at (208) 378-5774.

Sincerely,



Daniel D. Opalski, Director  
Office of Water and Watersheds

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