

Negotiated Rulemaking Meeting Notes, 04/22/2021

Name of Negotiated Rulemaking: Rules Pertaining to the Idaho Forest Practices Act (IDAPA 20.02.01)

Docket number: 20-0201-2101

Location: Coeur d'Alene, Idaho and teleconference/web conference

Date/Time: Thursday, April 22, 2021 – 6:00 p.m. to 7:07 p.m. PT

Attendees: See sign-in sheets

Facilitated by: Gary Hess, Regulatory/Stewardship Program Manager, Idaho Department of Lands

This is the second of 4 scheduled meetings during the public comment period April 7 – May 7, 2021.

Craig Foss, Archie Gray, and Gary Hess of the Idaho Department of Lands (IDL) presented on participation guidance, rulemaking, and a summary of rule change recommendations. Gary also provided some information (see attached [Simplified Shade Rule Points](#)) as follow up to Dan Brown's question from the 4/14/2021 negotiated rulemaking meeting, which prompted the following discussion.

Questions about submitted comments pertaining to Class I stream tree retention:

Tom Schultz: You mentioned there was a concern raised by Dan Brown about, I think it was the outer zone, can you elaborate on that? I really wasn't quite sure what the concern was; also, you felt the rule as drafted can sustain any criticism or concern that is going to be raised on that regard.

Gary Hess: Well, we do feel that it will, Tom. The comment was based FPAC's efforts to simplify the rule by averaging the relative stocking for the 60/30 or 60/10 options over the entire 75' SPZ instead of breaking it into different zones. It is implemented on every 100' length of stream, making sure there is a lower limit for the inner 50 feet of the SPZ below which you would not be able to harvest anything in the outer 25 feet. [Gary went through an example of the implemented draft rule using the Northern Idaho Region]. The comment that Dan made was that a 33 weighted tree count in the inner 50 feet is effectively lower than the 60% relative stocking for either one of the existing rule options. And that is a correct statement, it is lower. But we feel that the shade effectiveness study and the operational monitoring study and the operational considerations associated with trying to remove trees from an inner zone when you still have to retain a number of trees in the outer zone are sufficient to provide protection to the streams.

Dan Brown: Thank you Gary for your response to that comment. You said a lot and I am not quite sure I caught it all. Can you share that response in writing is my first question? I can share a perspective with Tom...back in 2012 when IDL was looking at Class I shade they contracted with Mark Teply who did literature reviews and used state of the art models to try to figure out what tree retention was required for protecting shade (which is a surrogate for stream water temperature). All of the research and modeling that was done to support the original shade rules effectively said that you have to have a minimum relative stocking of 55-60 in that inner 25 foot zone. So while we agree and think it is a tremendous improvement this averaging option that maintains shade when you have that meadow condition, we believe that based on all that work that was done prior, that the RS 55-60 is pretty critical for maintaining the water quality standard of temperature. So that is where we are coming from. Gary, again I did not catch it all so I am hoping again that you can share with me.

Dan Brown: It sounds like what IDL is most concerned about is competition induced mortality. Did you guys see a lot of that with the operational study? I hear it is a concern and I am wondering if it is a concern because the operational study found that in the field or you have other evidence to support that. And even with the competition induced mortality another huge goal that Teply found that was super important about that high stocking in the 0-25 foot zone is that it allowed IDL to meet its desire to make sure there is large wood in the stream to produce the habitat that is important for fish. So I don't know if there is a relationship between the competition induced mortality that you are talking about that the ability for that zone to produce the large wood that you also have as a goal for the forest practice rules.

Arche Gray: Yes, we can get to you in writing describing what Gary was talking about. With regard to the competition induced mortality from most of the past studies I have seen, it did not take a tremendous number of trees to reach the necessary number to over time to get the type of large organic debris recruitment that we are looking at. In fact, the old Class II retention rule that only required small trees was actually considered adequate in some studies...so we felt like the number of trees we were talking about here was going to be sufficient to meet that. Another aspect to that is the overall forest health question. Our concern is making sure that landowners have the opportunity to address forest health issues even within the stream corridors. Having the ability to address potential forest health issue is a significant benefit of our draft rules. One of the best benefits is that it does provide that flexibility to landowners. Did that answer your question, Dan?

Gary Hess: Well, the other part of Dan's question was whether or not the operational monitoring identified a lot of mortality. It was not something that the field crews were specifically tasked to look at. I do not recall that during the DEQ shade effectiveness study it was something they were looking for either. They were really measuring existing shade which would include dead trees and then measuring again post harvest for the shade effectiveness study. And the operational monitoring study was looking at which option landowners chose, whether or not they harvested, and the degree to which they harvested and where they harvested. They were not really looking at dead and down. When we implement the shade rule we only count at live trees, not dead ones. Speaking from personal experience one of my Class I SPZs that was heavily stocked with grand fir was falling apart. That is why I chose to harvest it. It has plenty of dead and down trees over it already. The other SPZ had a lot of decedent cedar that was starting to fall apart. Many of those had already fallen over the stream, providing a large amount of large woody debris. And some of trees that we were able to take out had really poor crown ratios, not very much live foliage on the branches at all, and many of upper branches were falling out, the lower part of the trees were completely rotting out. But there was still some good quality wood and small poles in the upper lengths of these trees to harvest. This is my own personal experience. Other landowners would have to attest to the degree of mortality they are seeing with that high level of stocking. I will say that the inner 25 feet of my SPZs were just slightly above that 60% and one of them was really starting to fall apart.

Dan Brown: Thank you Gary. It is still something that I would like to talk more about. Not necessarily right now, but if you guys can share your comments and we can dissect those a little bit.

I hear what you are saying and it seems like it is quite frankly a little concerning for the requirements for temperature. But I will have to look more closely at it.

Dan Brown: I do want to ask Archie about a comment that I thought I heard him say and I do not want to leave thinking that you said something that you didn't. I thought I heard you say that the old Class II retention rules that are no longer in the rule, which is another comment that the EPA has made, supplied a lot of large wood previously. Did I hear you correctly?

Archie Gray: I don't know that I would say supplied a lot, but supplied what was at the time was thought to be sufficient. I cannot remember the study that I saw.

Dan Brown: Okay, thank you. EPA's comments are focused primarily on water quality and temperature I know there are many other stakeholders in Idaho concerned about habitat and large wood and I am urging the IDL to consider Class II stream protections for temperature and as you said tonight their importance for supplying large wood to streams as well.

Archie Gray: I may have misspoken too, what you are considering large wood to a Class II stream we consider large woody debris essentially anything that going to hold up. So by the definition I am familiar with it could be 4, 5, 6 inch material. It is anything that is not a twig or that floats away. That is my understanding of the definition.

Gary Hess: Another thing that I should point out is my recollection of the simulation results that Mark Teply put together with an objective of an overall average of no more than 10% shade reduction those calculations also showed that there was very little difficulty in meeting large woody debris recruitment levels they were much higher with the existing rule structure than what would be necessary at that 60% RS.

Comments about the public access to documents and resources:

Amy Johnson: I make the web updates for this rulemaking with the information that Gary and Archie send over to me. If there is anything that you can't find, feel free to send me an email at rulemaking@idl.idaho.gov. That is also the email you can use to submit comments.

Gary Hess: You can search IDAPA 20.02.01 from any web browser and see the existing rule and compare that side by side with the strikethrough document posted on the rulemaking webpage.

Simplified Shade Rule Points

- Original simulations and recent calculations were extremely helpful in establishing the current rule and guiding its simplification.
- Current 60 RS stocking inner zone was a conservative starting point but is right at competition induced mortality
- Simulations are only one key factor among three
 - they cannot account for conditions on the ground
 - they do not model actual harvest implementation within the current rule structure
- Average shade reduction demonstrated in the effectiveness modeling was less than 3%
- When shade increase on the control sites is considered, it was still less than 5%.
- Recommended simplified methodology solves the problem of the high shade loss outlier sites in the study
- IDL made a commitment to landowners that we would practice adaptive management regarding the Class I tree retention rule based on the results of effectiveness and operational monitoring
- Effectiveness modeling demonstrated that shade reduction under the current rule is well within the bounds of the original 10% average reduction objective
- Operational monitoring demonstrated that landowners, if they actually harvest the SPZ at all, mainly treat the outer 25 feet.
- Restricting landowners to leaving the inner 25 or 50 feet at competition induced mortality under current rule is not conducive to developing resilient Stream Protection Zones