

Negotiated Rulemaking Meeting Notes, 05/04/2021

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

Docket number: 20-0201-2101

Location: McCall, Idaho and teleconference/web conference

Date/Time: Tuesday, May 4, 2021 – 6:01 p.m. to 7:20 p.m. MT

Attendees: See participant list

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

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

Archie Gray and Gary Hess of the Idaho Department of Lands (IDL) presented on participation guidance, rulemaking, and a summary of rule change recommendations, which prompted the following discussion.

Questions about the definitions:

Dennis Daw: With regard to the cable yarding, is there anything that restricts dragging the logs and causing trenches that would create erosion issues?

Gary Hess: The definition says “to transport fully or partially suspended logs or trees to landings”. Cable yarding has been used in this way in Idaho for a long time.

Dennis Daw: My question revolves around what is written in Pacfish, with NOAA fisheries and the US Forest Service, when the log is being partially dragged during cable yarding, particularly when it gets up close to the landing, it creates some pretty deep trenches if not done correctly. This creates some erosion and sediment production issues and I was wondering if in the rules there is anything that puts some kind of restriction on that particular issue?

Gary Hess: We do have rules specifically associated with providing cross-drainage in situations and stabilizing soil so that it minimizes risk of soil movement toward streams. And as I get a little further into the presentation you will see we have a soil protection rule where most of that is clarified.

Archie Gray: We could also use our rutting rules in that situation if you did have what could be considered a rut, and require installation of cross-drainage as mitigation.

Dennis Daw: On Class II streams that are used by only a few if any fish for spawning and rearing, is there a different rule set in waters that contain ESA listed anadromous fish versus non-listed species? It seems that even if there is a small amount of listed fish in a water body it should receive higher protection rates than non-ESA listed areas. Are there any rules pertaining to ESA listed fish? It seems that there should be additional protections.

Gary Hess: That is not something that is currently in our rule set. We have definitions for fish bearing and non-fish bearing streams and there is no differentiation for the type of fish that are in those streams.

Dennis Daw: Particularly in the Potlatch drainage there are streams that would be classified as Class II intermittent streams but in the spring, when they are running, adult steelhead will run

and spawn, then come back or die. As the year moves on, the streams become intermittent and dry up. Pools remain where juvenile steelhead continue to survive the summer. With increased water in the fall or spring, the streams refill and the pools become connected again. The fish move downstream. It seems like those unique systems might benefit from additional protection.

Archie Gray: For clarification, a Class I stream can be intermittent. A Class II stream can be perennial or intermittent. The “few if any fish” can be confusing, admittedly. What that means is that we have never found a fish there and we have tried. Where fish have been found, we will continue to call a stream a Class I all the way until the end of potential habitat. Hopefully, we are not missing those streams you described. If we have one misclassified just let us know and we will address that. But if there is any chance a fish uses the stream at any time of the year, it should be a Class I.

Dennis Daw: I would suggest giving additional protection for ESA listed waters. That is just a suggestion.

Dennis Daw: On the 30 foot buffer for Class II streams, does that mean there is no harvest of timber within that 30 foot buffer. What is exactly is meant?

Gary Hess: It is a 30 foot ground equipment exclusion zone. You are not allowed to locate a landing or a road or a skid trail within that 30 foot Stream Protection Zone on a non-fish bearing stream.

Dennis Daw: Does that mean you can log right up to the edge of the stream?

Gary Hess: Yes. You can harvest the timber within that 30 foot zone.

Dennis Daw: There is a lot of research that suggests these secondary intermittent streams produce a lot of sediment that ends up in Class I fish-bearing streams. One recent study out of Washington suggests that even a 50 foot non-harvest buffer does not provide enough protection. I am concerned with the idea of harvesting timber right up to the edge of the stream. That seems a little scary for the health and well-being of fish and the stream and the water quality.

Gary Hess: FPAC has been looking into this issue for several years. Our focus has been on the simplification of the shade rule for Class I streams. Discussion on the Class II stream stocking and tree density within the Class II Stream Protection Zone is ongoing within FPAC but nothing was proposed within this draft.

Dennis Daw: We will probably be making comments on that as well.

Alexis Baker: Where did Idaho Department of Lands get the numbers for 30 foot and 5 foot? Where did you come up with those numbers?

Gary Hess: When the first set of Forest Practices Rules were implemented in Idaho in 1975, there was no Stream Protection Zone (SPZ) defined. There was no differentiation between fish bearing and non-fish bearing streams. At that time, Oregon did have those distinctions. In the late 1970's or early 1980's Idaho adopted the definitions that Oregon had, which

established the 75 foot Class I SPZ and 30 foot Class II SPZ. I cannot recall when the 5-foot exclusion for non-contributing streams was added.

Dennis Daw: On the removal of all temporary stream crossings, is there a requirement that it be rehabilitated to the original state including the slope and banks being restored to their natural state and some type of sediment control?

Archie Gray: It is kind of implied.

Gar Hess: It is in the guidance. There are other erosion control rules that apply to soil stabilization in general. Stabilization of bare mineral soil is required to reduce the risk of sediment delivery into the streams. Even though the definition says remove the crossing and where applicable cross-drain the approach, there are other rules that require specific measures to be sure erosion does not take place.

Questions and comments pertaining to road construction:

Dennis Daw: In regard to the effective forest floor filtration is there anything that requires a certain amount of duff or debris left on the ground for the purpose of filtration after a logging operation or harvest has been completed?

Gary Hess: No, not specific in our rules.

Archie Gray: Other than the requirement that when you disturb the forest floor and expose bare mineral soil, you do have to add something like straw bales, mulch, and/or grass seeding.

Ara Andrea: We do count putting slash mats on skid trails as an appropriate erosion control measure.

Dennis Daw: Pacfish has a specific pounds per acre of duff that has to be left for keeping sediment out of streams and I was wondering if there is anything similar in Idaho's rule set.

Gary Hess: No there is not.

Alexis Baker: What exactly is the definition Idaho has for forest floor filtration? What does effective forest floor filtration mean and what would be proper? It is not clearly defined in that statement; we will be commenting on that in our written comments.

Gary Hess: This is specifically associated with constructing a stream crossing. In specific instances where it is identified that there is not enough forest floor filtration within that Stream Protection Zone this is a requirement to install supplemental filtration. This is going to be based upon one of our Forest Practices Advisors going out and looking at the site and seeing evidence that the existing filtration is not adequate. This is done through a combination of training and documented guidance. This addition proposed by FPAC is something that the state has been doing on its lands for quite some time in response to the Snake River Basin Adjudication. FPAC thought it was appropriate and voted to include that in the proposed rule.

Questions and comments pertaining to rule implementation:

Alexis Baker: With putting these rules into implementation, what exactly does enforcement of the rules look like? How is it determined that the rules are being followed?

Gary Hess: We have a multistep process. If you read the statute, it will describe that process best. We have a dozen Forest Practices Advisors throughout the state who inspect logging operations. If they find a situation where a rule has not been followed, they can issue an unsatisfactory report outlining the violation, the specific mitigation measures, and a timeline to avoid additional enforcement actions. Further enforcement action can include a misdemeanor Notice of Violation where the operator is issued a ticket. Another deadline is set to provide particular mitigation measures associated with the rule violation. Again, if the mitigation is not followed, a stop work order/cease and repair order can be issued where the operator has to stop what they are doing and make necessary repairs before being allowed to resume operation. The Sustainable Forestry Initiative (SFI) in Idaho has had a dramatic impact on operator compliance with the rules. There has been a steady increase in compliance since the mid 1980's when SFI and FSC came about. Log purchasers participating in third party certification have to demonstrate during their own audits that they are buying wood from landowners who are practicing sustainable forestry. When an operator or landowner has seen one or more of these unsatisfactory findings on their property or operation, the log purchasers take those very seriously. In some cases, they will not take any more logs until measures that we have recommended have been put in place. In addition, an operator receives a notice of violation on an operation, we will not accept a notification of forest practice from that operator until that notice of violation has been cleared. The consequence is a purchaser cannot take logs from someone who does not have a valid notification of forest practice for the operation they are working on.

Archie Gray: We have a target of inspecting at least 50% of the notifications each year with a prioritization matrix where our Private Forestry Specialists emphasize operations with Class I streams as the number one priority inspected. Notifications with Class II streams are the second greatest priority for inspection. I do not have the exact numbers, but it is reasonable to say that we inspect over 90% of logging operations that contain a Class I stream each year.

Questions and comments pertaining to Stream Protection Rules:

Dennis Daw: I have a comment expressing my concern about the Stream Protection Zones. They seem fairly small. This will come up in our written comments as well. Pacfish has a 300-foot buffer where there have to be some special circumstances to harvest within the 300-foot buffer on fish bearing streams and 150 feet on the non-fish bearing. This is considerably different from the 75-foot buffer on Class I and basically no buffer on Class II streams. I would like to see at least a 25-foot buffer on non-fish bearing streams because the sediment input from non-fish bearing streams can be pretty substantial. This will be part of our written comments, but I just wanted to make that point here as well.

Questions and comments pertaining to process and procedure:

Alexis Baker: When will the recording be available on your webpage for this meeting and previous meetings?

Archie Gray: For past meetings the notes have already been posted. We will not be posting the recordings nor the chat transcripts for the meetings. Detailed comments, questions and

responses are documented in notes and posted within a few days to a week of the meeting.

A. Morrow: Will responses to comments be sent directly to the individuals or groups that have provided them or just posted publicly?

Archie Gray: We will develop a response matrix to address all of the comments that have been submitted. That will be posted on the public webpage. It would not be very difficult for us to send that directly to the individuals or groups who have commented as well.