Kootenai Tribe of Idaho

100 Circle Drive
P.O. Box 1269
Bonners Ferry, ID 83805
Ph# (208) 267-3519
Fax (208) 267-2960

May 4, 2021

Mr. Gary Hess
Regulatory and Stewardship Program Manager
Forestry and Fire Division
Idaho Department of Lands
3284 W Industrial Loop
Coeur d'Alene, Idaho,
83815

RE: IDAPA 20.02.01 - Negotiated Rulemaking

Dear Mr. Hess:

On April 8, 2021, the Kootenai Tribe of Idaho (Tribe or KTOI) received notification from the Idaho Department of Lands (IDL) of its intent to promulgate forest practice rules through negotiated rulemaking. The proposed rule revisions are based on language proposed by the Idaho Forest Practices Advisory Committee (FPAC). The FPAC recommended revisions to IDAPA 20.02.01, which are intended to update and simplify the rule to promote understanding and compliance while maintaining or enhancing water quality protection (https://www.idl.idaho.gov/rulemaking/docket-20-0201-2101).

The Tribe, along with our sister-tribes and our intertribal organization the Upper Columbia United Tribes, participated in numerous IDL-FPAC meetings to propagate, review, and analyze forest practices, methods, and rules in an effort to improve the existing "Shade Rule" (030.07.e.ii (2014)) to translate benefits on the ground to riparian forests and advance healthy water temperatures in fish-bearing streams.

While the FPAC average tree retention approach may limit shade loss from sites with understocked inner zones pre-harvest, which results in lower minimum stocking requirements for the inner zone, it can also result in more significant shade loss at other sites.

Therefore, the Tribe recommends:

- Need to Maintain RS60 in innermost SPZ (0-25-ft from stream)
    - Recommend following EPA's proposed language that ensures the trees that provide the most shade to the stream are retained while allowing for some harvest to remove trees that may be impacting forest health.
    - These inner zone trees are also critical for maintaining quality fish habitat in the form of stabilized banks and pools, the contribution of Large Woody Debris (LWD) and for additional wildlife habitat and cover.
- Maintain Minimum Threshold Values
    - By maintaining a minimum threshold of RS40 and ensuring the minimum WTC is consistent, it ensures that enough shade is present at the site to warrant additional harvest.
- Restore protections for Class II Streams
    - Need a strategy that identifies perennial and seasonal streams and assigns appropriate protections
        - Ensure perennial streams maintain adequate shade
        - Ensure seasonal streams are protected by requiring an equipment limitation zone.
    - Perennial Class II streams should protect shade and temperature by requiring a 25 ft. buffer that maintains RS60.
    - Class II streams play a critical role in maintaining water quality and providing cold water and minimal sediment delivery to downstream fish-bearing waters.

Detailed comments and justification for the recommendations are attached.

FPAC's proposed rule revisions go a long way to simplify rule language and implementation. The Tribe believes this negotiated rulemaking has a great opportunity to improve fish habitat, water quality, wildlife, and other natural resources.

Thank you for the opportunity to provide comment and participate in the negotiated rulemaking. Please contact Carol Kriebs at (208) 267-3519 or by email at ckriebs@kootenai.org if you need any additional information.

Sincerely,

Gary Aitken, Jr.
Chairman

cc: Coeur d'Alene Tribe
Upper Columbia United Tribes

A) Need to Maintain RS60 in innermost Stream Protection Zone (SPZ) (0-25 feet from stream)

During development of the 2013-2014 shade rule revisions, FPAC and IDL concluded that restricting thinning in the stream-adjacent zone to maintain Relative Stocking (RS) 60 could permit greater overall management flexibility in the outer 25–75-foot zone while limiting overall shade loss to ten percent.

The proposed rule should maintain a requirement for RS60 in the 0-25ft SPZ based on the scientific evidence. The IDL-FPAC should continue to utilize the rationale they relied upon during the 2013-14 shade rule development and, specifically, the need to maintain minimum stocking levels in the 0-25ft SPZ.

The concept of allowing for an overall shade loss of 10% and that it is equivalent to an acceptable amount of stream temperature increase, is not yet supported by regional peer reviewed scientific investigation. The results that came out of Idaho's Class I Stream Shade Rule" (Effectiveness Study) demonstrate a range of shade loss from a gain of 11.8% to a loss of 23.9% with the existing rule. The proposed changes allow for the removal of additional trees in the inner zone, which produce the most shade. Sites harvested under the proposed rule should be expected, in some cases, to experience greater shade loss than if harvested under the current rule.

Applying the 10% overall shade loss concept, IDL-FPAC established the existing shade rule to maintain at least RS60 in the 0-25ft SPZ (Teply, 2014). In addition, Teply and McGreer (2013) found that at least 50% of the shadow cast by the entire riparian management zone is provided by the inner 0-25ft zone and, therefore, ensuring the rule continues to retain more trees within the inner zone would result in less overall shade loss from the removal of trees in the outer SPZ.

The proposed rule appears to retain the same number of trees in the SPZ, but it significantly alters the options for distribution of those trees within the SPZ. As stated by the EPA, the FPAC and IDL previously concluded the location of retained trees in the SPZ is of critical importance for maintaining shade (Teply, 2014) and, particularly, the need to maintain RS60 in the innermost 0-25ft SPZ. Significant shade loss will increase solar radiation reaching a stream and consequently increase stream temperature. Therefore, stream shade must be maintained to prevent increases in stream temperature that violate water quality standards established under the Clean Water Act.

The following excerpt from the U.S. Environmental Protection Agency (USEPA) letter Dated 15 April 2021 accomplishes this by adding the underlined text to the proposed rule language inserted below:

> ii. During commercial harvest within Class I stream protection zones, retain the following weighted tree count per one hundred (100) linear feet of stream:
>
> a. fifty-seven (57) north of the Clearwater/Lochsa Rivers
> b. forty-nine (49) between the Clearwater/Lochsa and Salmon Rivers
> c. forty-one (41) South of the Salmon River, and
> d. thirty-seven (37) in drier forests with Stream Protection Zones dominated by Douglas- fir and ponderosa pine.

At least four (4) of the above weighted tree count must be retained in the outer twenty-five feet (25') of the SPZ. *And at least half of the above weighted tree count must be retained in the inner twenty-five (0-*

25') feet of the SPZ.

B) Maintain Minimum Threshold Values

After intensive review, these minimum threshold values appear inconsistent with what the modeling shows is necessary. As addressed in the USEPA Memo dated 23 November 2020, the modeling demonstrated that applying an average RS43 across the 0-75ft SPZ is effective at mitigating shade loss only when the 0-50ft SPZ is at least RS40. To be consistent with USEPA's 15 April 2021 recommendations, the minimum Weighted Tree Count (WTC) threshold must be based on RS40.

C) Restore Protections for Class II Streams

There is a need to revise the current IDL-FPAC Class II stream protections in Idaho to protect water quality (e.g., maintain cold water, minimize sediment delivery), as the tree retention requirements for Class II streams were removed during the 2013-2014 rule revisions.

While there are some concerns regarding the fact that both seasonal and perennial streams are currently included in the Class II designation, a strategy that identifies perennial and seasonal streams and then assigns the appropriate protections should be used. The rule in place before 2013-2014 rule revisions was based on the old strategy, which uses RS over 1000 ft. of stream reach to determine the number of leave trees. FPAC now proposes the WTC over 100 ft.

Moreover, we suggest using the same method we are advocating for on Class I streams. On Class II designation, we suggest the same WTC for the inner zone we have suggested for Class 1 streams and require that as a stand-alone 25ft. buffer on the Perennial Class II streams. For seasonal streams we recommend limiting compaction and soil disturbance by applying an equipment limitation zone. This strategy benefits by aligning the two rules, the associated buffers, and is easy to understand and implement on the ground.

Citations:

TEPLY, M., AND D. MCGREER. 2013. Simulating the effects of forest management on stream shade in Central Idaho. *West. J. Appl. For.* 28: 37–45.

TEPLY, M., D. MCGREER, AND K. CEDER. 2014. Using Simulation Models to Develop Riparian Buffer Strip Prescriptions. *J. For.* 112(3): 302-311

From:	Carol Kriebs
To:	Rule Making
Cc:	Gary Hess; Scott Soults; GaryJr Aitken; William Barquin
Subject:	Shade rule Public Comments for Idaho Department of Lands
Date:	Thursday, May 6, 2021 12:34:34 PM
Attachments:	image001.png oledata.mso IDL_FPAC_ShadeRule_05062021.pdf

To whom it may concern,
The attached letter is from the Kootenai Tribe of Idaho with our comments in regard to the Shade Rule that is open for public comments.

Thank you for your time,
Carol Kriebs

Kootenai Tribe of Idaho
Carol Kriebs
Environmental Director
Chairwoman of NTAA
P.O. Box 1269
Bonners Ferry, Idaho 83805
ckriebs@kooteani.org
816-267-3519 x514