



## COEUR D'ALENE TRIBE

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May 7, 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 - Negotiate Rulemaking

Dear Mr. Hess:

The Coeur d'Alene Tribe has 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)), where these efforts are intended to translate benefits on the ground to riparian forests, and advance healthy water temperatures down 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, we believe there is a need to:

- 1) Maintain RS60 in innermost Stream Protection Zone (SPZ) (0-25-ft from stream),
- 2) Maintain minimum threshold values,
- 3) Restore protections for class II streams.

To address the proposed rule revisions, we propose the following measures (e.g., including excerpts from the Environmental Protection Agency (EPA) letter dated 4-15-2021) that provide an alternative approach to recommended revisions to IDAPA 20.02.01:

### **1) Maintain RS60 in innermost SPZ (0-25-ft 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) RS60 could permit greater overall management flexibility in the outer 25-75ft zone while limiting overall shade loss to 10%.

We believe the proposed rule must 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.

We offer the following example (duplicated from EPA letter Dated 4/15/21) of how this can be done 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.

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

## 2) Maintain Minimum Threshold Values

After our intensive review, these minimum threshold values appear inconsistent with what the modeling shows is necessary. As addressed in the R10 EPA Memo, (11/23/2020) 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 EPA's recommendations, (letter dated 4-15-21) we also recommend modeling serve as the basis for the proposed rule, and that the minimum Weighted Tree Count (WTC) threshold must be based on RS40.

## 3) Restore Protections for Class II Streams

We feel there is a need to revise the current IDL-FPAC Class II stream protections in Idaho as it is necessary to protect water quality. These protections should be included in the negotiated rulemaking, as the tree retention requirements for Class II streams were removed during the 2013-2014 rule revisions.

We understand there are concerns regarding the fact that both seasonal and perennial streams are currently included in the Class II designation. We suggest a strategy that identifies perennial and seasonal streams and then assigns the appropriate protections. The rule in place before 2013-2014 rule revisions were based on the old strategy which uses RS over 1000 ft. of stream reach to determine the number of leave trees, but now FPAC is proposing 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 Class II streams. This strategy benefits by aligning the two rules, the associated buffers, and is easy to understand and implement on the ground.

FPAC's proposed rule revisions go a long way to simplify rule language and implementation. We believe 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 Cam Heusser, at [cheusser@cdatrbi-be-nns.gov](mailto:cheusser@cdatrbi-be-nns.gov) if you need any additional information.

Sincerely,



Caj Matheson  
Natural Resource Director  
Coeur d'Alene Tribe