



Negotiated Rulemaking Summary

IDAPA 20.02.01 — Rules Pertaining to the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code)

Docket No. 20-0201-2101

This rulemaking was requested by the Forest Practices Advisory Committee (FPAC) after deliberative efforts in public meetings over the last five years. The Notice of Intent to Promulgate Rules was published in the Idaho Administrative Bulletin on April 7, 2021. Upon initiation of negotiated rulemaking, the Idaho Department of Lands (IDL) held four public meetings between April 14 and May 4 to discuss draft changes to the rules and receive comments from interested parties.

Members of the public participated in the negotiated rulemaking process by attending the meetings and submitting written comments. Key information considered by IDL included recommendations from FPAC and results from studies commissioned and conducted by IDL and the Idaho Department of Environmental Quality (DEQ).

Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0201-2101/>, including the draft rule, written public comments, and documents presented during the negotiated rulemaking process. The entire rulemaking record is available for review upon request.

At the conclusion of the negotiated rulemaking process, IDL formatted the draft rule for publication as a proposed rule in the Idaho Administrative Bulletin. Additional non-substantive changes, such as grammatical edits, were included in the proposed rule as suggested by the Deputy Attorney General and the Office of Administrative Rules.

Written comments were received from the Idaho Forest Owners Association (IFOA); Idaho Forest Group (IFG); Idaho Farm Bureau; Idaho Conservation League (ICL); Riley Stegner and Associates representing Bennett Lumber Products Incorporated, Hancock Forest Management, Idaho Forest Group, Molpus Woodlands Group, and Stimson Lumber Company; PotlatchDeltic Corporation; private citizens and private landowners; Idaho Department of Environmental Quality; Coeur d'Alene Tribe; Kootenai Tribe; Nez Perce Tribe; Upper Columbia Unified Tribes; Upper Snake River Tribes Foundation; and EPA Region 10 representatives.

The IDL thoroughly reviewed and considered all comments received during the negotiated rulemaking process; IDL developed informative and comprehensive responses to sets of similar, relevant, summary comments. The following table is organized by rule section and relevancy and is devoted to comments (and responses to those comments) that were not incorporated into the draft rule. Comments supportive of the draft rule are included for completeness.

| Commenter | Rule Section | Comment | Response |
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| Upper Snake River Tribes Foundation | 010 | The new definition for cable yarding should require logs to be fully suspended to prevent trenching and increased sediment transportation. | 1 FPAC chose to draw distinctions among traditional harvesting methods such as cable yarding, ground-based skidding and newer, hybrid, traction assisted technologies. IDL relied upon definitions found in: https://www.fs.fed.us/forestmanagement/equipment-catalog/cable.shtml to achieve this. Specific rule sections and paragraphs establish minimum best management practices for minimizing erosion and sediment transport (See 030.03, 030.03.05, and 030.03.08). |
| IFOA | 010 | The Idaho Forest Owners Association express our full support of the FPAC proposed changes to refine the definition of Class I streams (010.60.a) to apply only to aquatic life beneficial use. | 2 ***IDL and FPAC thank you for this comment in support of the draft rule language*** |
| IFG | 010 | We support the proposed rule changes adding Traction-Assisted Harvesting to the IDAPA ruleset; it is opportune as this "new" method of harvesting provides enhanced operational capacity for ground-based harvesting operations while maintaining low soil disturbance and increasing safety. | |
| PotlatchDeltic | 010 | We support addition of definitions for Traction-Assisted Harvesting and elimination of the requirement to obtain a variance for cable-assisted machinery to work immediately adjacent to a stream. Our logging contractors have been utilizing cable-assisted (tethered) equipment since 2016 and our experience has been that cable-assisted machinery has a light footprint and virtually eliminates loss of traction, spinning of tracks and sliding that can cause soil disturbance. Importantly this technology also increases safety for logging contractors. | |
| IFOA | 010 | The Idaho Forest Owners Association express our full support of the FPAC proposed changes to use ground-based equipment on steep slopes. | |
| Upper Snake River Tribes Foundation | 010 | For Class II streams, the 30' zone described in 20.02.01.010.60(d) is misleading – it only prevents the use of equipment within that 30' zone. Timber is still allowed to be harvested to the streambank. | 3 Other states use similar terms, such as Riparian Management Zone. which, admittedly, is broader. The term "Stream Protection Zone" has been and will remain the verbiage by which Idaho establishes fixed, stream adjacent, geometric areas of forest land for referencing additional natural resource protection requirements. |
| Upper Snake River Tribes Foundation | 010 | There is currently no definition for forest floor filtration. The new language added to 20.02.01.040.03(g) identifies when supplemental filtration is needed (when forest floor filtration isn't available) but doesn't define what adequate forest floor filtration actually is. | 4 Not all terms used in IDAPA 20.02.01 are provided with formal definitions (e.g., see 010.13., 030.05.a., and 030.05.b.). IDL depends upon the professional judgement of Private Forestry Advisors, their frequent field calibrations with program staff and Rule Guidance to support rule application. Keeping rule text simple and concise is also consistent with Governor Little's Red Tape Reduction and Zero-Based Regulation Executive Orders. |

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| PotlatchDeltic | 030 | We agree that Class II stream tree retention rules should not be changed as part of this rulemaking and that any future rules considered should be based on actual resource impacts from forest management and should be well informed by research. | 5 For the past few years FPAC and IDL have received comments from all stakeholders regarding the definitions and minimum Best Management Practices (BMPs) in IDAPA 20.02.01 related to streams on forest land in Idaho. IDL, DEQ and landowners have participated in research associated with fish-bearing (Class I) and non-fish-bearing (Class II) streams and the results have been deliberated extensively in FPAC and FPAC task force meetings. This led to the weighted tree count (WTC) concept for tree retention in Class I SPZs. A great deal of progress toward adapting verbiage to the science and developing tools to address many issues associated with rule implementation is apparent in the draft rule. The same can be said for general road construction and maintenance rules which are important to water quality in all streams. During this rulemaking FPAC and IDL decided to postpone additional work on Class II issues due to the complexity and workload related to Class I stream rules. FPAC plans making Class II stream definitions and associated BMPs the next priorities. |
| Nez Perce Tribe Water Resources Division | 030 | The 2020 Forest Practices Water Quality Audit recommended that FPAC work to establish minimum tree retention requirements for Class II streams, and we agree with that recommendation. We recommend that all Class II streams receive protection through a minimum 50-foot buffer. | |
| ICL | 030 | The proposed rule fails to address minimum tree retention requirements for Class II streams, and we encourage IDL to reinstate the protections that were removed from the 2013-14 rule. We recommend that IDL continue working with FPAC and IDEQ to establish minimum stocking standards for Class II streams that provide meaningful protections against increasing stream temperatures and as bank stabilization and erosion control measures. | |
| Upper Columbia United Tribes | 030 | Restore protections for class II streams. | |
| Kootenai Tribe | 030 | We recommend that you restore protections for Class II streams using a strategy that identifies perennial and seasonal streams and applies appropriate protections. Perennial Class II streams should protect shade and temperature by requiring a 25 ft. buffer that maintains RS 60. 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. | |
| Coeur d'Alene Tribe | 030 | We recommend that you restore protections for Class II 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. | |
| Coeur d'Alene Tribe | 030 | For Class II streams, we suggest a strategy that identifies perennial and seasonal streams and then assigns the appropriate protections. | |
| Upper Snake River Tribes Foundation | 030 | Class II streams need to have a legitimate protection zone that prohibits timber harvest for at least 25', if not more (as per discussion on Washington State Department of Natural Resources 2018 study). | |
| EPA | 030 | Reinstating Class II stream protections in Idaho are necessary to protect water quality and should be included in the negotiated rulemaking. EPA's recommendation is echoed by the recently completed 2020 Forest Practices Water Quality Audit, which recommends FPAC work on establishing a minimum tree retention requirement for Class II streams. | |

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| Upper Snake River Tribes | 030 | IDL should consider adopting the riparian habitat protection zones set forth in the Finding of No Significant Impact/Environmental Assessment for the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (commonly known as "PACFISH"). | 6 The IDL appreciates your comments. The independent research upon which our rules are based addresses the regional needs specific to conditions in Idaho. Under a Memorandum of Agreement among the USFS, BLM, IDL and DEQ, every four years DEQ audits timber sales among all forest management entities throughout Idaho in all the IDL Supervisory Areas to ensure they meet DEQ water quality objectives and the terms of the Clean Water Act. The objectives of this audit are to assess the compliance with and the effectiveness of the Idaho Forest Practices Rules. Since 1996, overall percentages greater than 96% are demonstrated in each quadrennial audit. Often, the highest achievement rates are demonstrated by sales on private industrial and federally managed forest land. Every audit assesses rule compliance for operations with fish-bearing, Class I streams and determines if the best management practices called for in rule are effective. FPAC evaluates and recommends modifications to IDAPA 20.02.01 based upon DEQ recommendations in the associated audit reports. In response to several consecutive report conclusions that the pre-2014 stream protection rules were not achieving adequate levels of shade and large wood recruitment objectives, IDL hired Cramer Fish Sciences to conduct research and simulation of riparian conditions of fish-bearing streams in Idaho on state forest land. IDL is implementing the adaptive management framework Cramer Fish Sciences recommended in their 2012 report and FPAC is using this research, described in subsequent Teply articles (2013, 2014), as the basis for rulemaking recommendations. The Cramer Fish Sciences Report on page 4 specifically stated that long-term, landscape level benefits to riparian function result from intensive management activities of stands that are upward trending. This benefit is gained by managing the entire buffer to generally accepted, silvicultural targets less than 55 relative stocking. Thinning targets above this level have limited benefit, and lack of activity in a no harvest buffer could lead to long-term shade levels lower than those attained from active management. |
| EPA | 030 | 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 RPZ. | 7 This is not an accurate characterization. The present rule with two options was a compromise from a previous formulation; the IDL and FPAC used the modeling results developed by Cramer Fish Sciences and Mark Teply as a starting point for implementing the adaptive management framework, e.g. "For rule-making, effectiveness monitoring conducted within an adaptive management framework should be considered by FPAAC (sic) to validate and refine the models and rules moving forward" Cramer Fish Sciences Report (2012). This report recommended thinning throughout the 75-foot SPZ. The report found that stream adjacent stocking was an important contributor to the overall shade, but thinning the inner zone to levels greater than 55 RS limits the benefit of treatment. As documented in this report there were multiple objectives associated with rulemaking that might result from the study, including balancing economic and forest health considerations with achievements in maintaining or improving water quality. |
| Coeur d'Alene Tribe | 030 | 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. | |
| Kootenai Tribe | 030 | During development of the 2013-14 shade rule revisions, IDL and FPAC 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 while limiting overall shade loss to 10%. 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 RS 60 in the innermost 0-25 ft. SPZ. Based on the scientific evidence, the IDL-FPAC should continue to use the rationale they relied upon during the 2013-14 shade rule development, and specifically the need to retain minimum RS 60 stocking levels in the 0-25 ft. SPZ. | |

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| EPA | 030 | Adhering to the FPAC's desire to have a more easily implemented rule, we offer adding "And at least half of the above weighted tree count must be retained in the inner twenty-five (0-25') feet of the SPZ" after the proposed 4 WTC minimum in the outer 25'. | 8 IDL has reviewed this suggestion and concluded it would result in several undesirable situations if implemented. Requiring one half of the weighted tree count (WTC) in the inner 25 feet would be equivalent to 65 Relative Stocking, which is not only higher than the present rule but is 10 RS above onset of competition induced mortality (RS 55). Additionally, FPAC and IDL intended to simplify the rule, but this requirement adds complexity. IDL evaluated a similar, less restrictive alternative, but concluded the added complication is not justified when balanced with operational implementation limitations. The draft recommended changes, as written, apply to each 100-foot length of the SPZ. Stream sinuosity, tree size and stem distribution, even over such a short distance, are highly variable. When coupled with log manufacturing decisions and extraction limitations, this additional restriction to the weighted tree count methodology limits an operator's ability to easily comply with the rule. In its present form, a landowner only needs to count trees by size range and confirm the inner 50-foot stocking is greater than the minimum threshold. Adding a requirement to leave a particular count in the inner 25 feet requires an additional calculation and tradeoff for each 100-foot segment of stream. There are no physical data regarding Idaho Class I stream protection levels from 2015 through 2018 that support discontinuing the adaptive management approach recommended by Cramer Fish Sciences. IDL wants to study the impact of this simplification before implementing a complication based on only simulation and will seek funding to conduct additional monitoring. |
| Kootenai Tribe | 030 | Adhering to the FPAC's desire to have a more easily implemented rule, we offer adding "And at least half of the above weighted tree count must be retained in the inner twenty-five (0-25') feet of the SPZ" after the proposed 4 WTC minimum in the outer 25'. | |
| Coeur d'Alene Tribe | 030 | Adhering to the FPAC's desire to have a more easily implemented rule, we offer adding "And at least half of the above weighted tree count must be retained in the inner twenty-five (0-25') feet of the SPZ" after the proposed 4 WTC minimum in the outer 25'. | |
| EPA | 030 | Modeling shows that applying an average RS43 can mitigate shade loss across the 75-ft SPZ only when the inner 0-25ft SPZ is above RS40. | 9 IDL and FPAC reviewed the calculations presented in EPA Memo IFPA WAFactorEvaluation 7120 and concluded these calculations (along with results from similar modeling conducted by Mark Teply for IDL) are supportive of the approach FPAC has taken with the recommended rule modification when combined with the effectiveness study results demonstrated by DEQ. |

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| ICL | 030 | Modeling by the Environmental Protection Agency (EPA) demonstrates that an averaged RS43 only retains adequate trees for shade when the inner 25-foot zone equals or exceeds RS40. The current base average value in the proposed rule is RS37. We recommend that IDL alter language in the proposed rule to establish a minimum Relative Stocking rate of 60 in the inner, pre-harvested 0-25-foot zone. | <p>10 To be precise the Environmental Protection Agency modeling reported in the EPA Memo IFPA WAFactorEvaluation 7120 described a minimum threshold pre-harvest value of RS40 for the inner 50-foot zone below which the RS43 SPZ average stocking shade loss would increase above 12%. Their calculations indicate the present 60/10 RS minimum stocking requirements represent the same modeled 12% shade loss when the upland outside the SPZ is clear-cut. The implicit assumption is that all harvest operations clear-cut the area outside the SPZ for the entire length of a stream. Generally, this is not the case. SPZs usually represent stand boundaries. Industry forest land managers follow Sustainable Forestry Initiative Best Management Practices which can require a landowner's average harvest size to be less than 120 acres and an individual unit maximum of 270 acres. For example, timber harvest plans typically involve individual timber stands that average 100 acres in size, and it is rare for a harvest unit size to approach the maximum. Adjacent stands are left untouched until the previous stand plantation reaches 5-foot height or after 3 years. This is easily observable on a landscape basis in time lapse satellite imagery. Watersheds with managed timber stands display a mosaic of small patches that start out dark green, are quickly replaced by site-prepared brown and then, over a several year period, turn light green and eventually dark green again. State forest land managers follow similar adjacency restrictions. Small private landowners rarely clear-cut their property and typically only lightly treat the SPZ. The initial 2014 shade rule objective was to demonstrate that, on average, shade reduction would be no greater than 10%, if either the Option 1 or Option 2 prescription were followed. The DEQ Shade Effectiveness Study demonstrated that shade reduction was less than 3% and less than 5% when shade increases for the control sites were included (this average includes the high shade loss sites). The anomalous high shade loss sites observed in the study mostly resulted from improper application of the minimum Relative Stocking prescription or from treatment of sites with low pre-harvest inner zone stocking. The proposed modification in the draft rule is expected to eliminate this problem. IDL considers the modeled, implicit 6% shade loss from clear-cutting the upland to be overstated given the results of the shade study and therefore is not considered a significant factor in this current rulemaking. IDL and FPAC are using all of the science and operational considerations available to adapt Class I stream protections, including the demonstrated average 2% per year increase in shade of the control sites. Treated stands can be expected to show at least that much if not more growth. Further, the RS37 minimum threshold used in FPAC's recommended modification to the shade rule is shown by EPA's calculations to represent a shade reduction of only 13% vs 12% for RS40; less the implicit 6% loss assumption this is only a 7% reduction that will quickly disappear due to vegetation response. Given the demonstrated results from the Shade Effectiveness Study and elimination of the independent "zones", IDL is confident this RS37 minimum threshold requirement in the inner 25' of the SPZ before any harvest can occur in a given 100' segment provides adequate protection for that stream segment without overly restricting a landowner's ability to treat the outer 50' of the SPZ in that segment. Numerous examples from field observation show that the outer 50' (indeed the entire 75') RS can be much greater than the stocking for competition induced mortality and far greater than the common thinning levels described by Cramer Fish Sciences (2012, pg. 17). To avoid stand break-up, such overstocked segments need to be treated. This can be accomplished if there is a minimum threshold for the inner zone to ensure excess shade loss is avoided where there are stream adjacent roads or meadows.</p> |
| EPA | 030 | As currently written, the proposed WTC approach is likely to result in excessive shade loss when the preharvest 0-25ft SPZ is overstocked (>RS60) and allowed to be harvested below RS60. | |
| Upper Columbia United Tribes | 030 | Maintain the minimum Weighted Tree Count (WTC) threshold based on RS 40. | |
| Upper Columbia United Tribes | 030 | Maintain RS60 in innermost Stream Protection Zone (SPZ) (0-25-ft from stream). | |
| Nez Perce Tribe Water Resources Division | 030 | We recommend that a minimum RS60 be kept for the innermost SPZ (0-25 ft.) | |
| Kootenai Tribe | 030 | Maintain the minimum Weighted Tree Count (WTC) threshold based on RS 40. | |
| Coeur d'Alene Tribe | 030 | We recommend that modeling serve as the basis for the proposed rule and that the minimum Weighted Tree Count (WTC) threshold must be based on RS40. | |
| Kootenai Tribe | 030 | The results that came out of Idaho's Class I Stream Shade Rule (Effectiveness Study) demonstrate a shade loss from a gain of 11.8% to a loss of 26.9% with the existing rule. The proposed changes allow for the removal of additional trees in the inner zone and should be expected in some cases to experience greater shade loss than if harvested under the current rule. | |

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| Private landowner | 030 | I appreciate the simplification of the layout but I strongly disagree with linking the zones. Many class 1 streams in my area are surrounded by marshy vegetation and prohibiting harvest due to a natural lack of trees seems counterproductive to the goals of healthy working forests. Also I think a target RS of 50 might encourage management of SPZs instead of stagnation. | 11 |
| EPA | 030 | The IDEQ/IDL shade effectiveness study found that when the innermost 0-25ft SPZ is understocked (<RS60) and the outer 25-75ft SPZ is harvested to minimum tree retention requirements it can result in greater than 20% shade loss. | <p>The present 030.07.e.ii tree retention rule for Class I streams uses “Zones” with distance parameters that fluctuate based on which rule Option is being exercised. This forces landowners to perform comparative calculations for the entire length of SPZ they intend to manage. FPAC and IDL are recommending a modification that eliminates both the Options and the variable dimension “Zones” and averages the required relative stocking over the entire 75 foot width of the SPZ. The equivalent average relative stocking is RS43 which IDL and FPAC hope will encourage landowners to address stagnating riparian stands and avoid significant mortality which over the long-term will promote healthier, more resilient riparian areas (See Response #13). The DEQ Shade Effectiveness and the IDL Operational Monitoring studies each observed sites with stream adjacent areas that had little or no tree canopy due to roads, grassy meadow conditions, heavy brush cover or swampy ground. In some of these situations, adjacent outer area trees provided the only available shade; promoting too much thinning of that timber for the study or misapplication of the rule resulted in large shade reduction. The recommended modification sets a lower limit for the outer 25 foot area of the SPZ in each 100 foot length of stream and requires the remaining trees for that segment to be left in the interior area of the SPZ. For example, north of Clearwater River if a landowner chooses to leave a no-cut 60’ buffer, as is often seen on a landscape basis, they must still have or at least leave a WTC of 33 in the inner 25 feet, 20 WTC in the middle 25 feet and 4 WTC in the outer 25 feet. IDL and FPAC are confident that operational considerations for well-stocked SPZs will result in greater than the minimum threshold being retained in the inner 25’.</p> <p>The modification also sets a minimum pre-harvest tree density for the interior before any tree removal can occur in that segment. Thus, the rule will adapt to the changing conditions along any length of stream. In cases where an entire length of stream does not have protective levels of shade, trees are left in the outer 50 feet to compensate. Operational Monitoring crews observed similar conditions to what you describe in your area:</p> <p><i>"Relative stocking calculations at un-harvested sites varied widely. Typically, the inner zone RS was less than outer zone RS. Field notes indicate swampy conditions, meadows, and dense understory brush near the streams at these sites."</i></p> <p>The rigid zone boundaries and complexity of the present rule does inhibit riparian area forest management, perhaps in some cases needlessly. (See Response # 18 regarding site-specific riparian management prescription.)</p> |
| EPA | Other | It is important for IDL and FPAC to maintain the scientific basis of the existing shade rule while addressing ongoing areas of concern. | 12 |

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| Upper Snake River Tribes Foundation | 030 | IDL should not allow timber harvest within the 25' inner zone of fish bearing streams, and limit removal and equipment usage within the 75' inner zone. | 13 Completely excluding harvest from the inner 25 foot of the SPZ is not consistent with achieving and maintaining riparian zone forest health (See 030.01. Purpose). Riparian areas in Idaho with more extensive management exclusion restrictions have been devastated by catastrophic wildfire often taking many years for fish populations and habitat to return to pre-fire conditions. Temporary shade reduction from appropriate thinning has minimal impact and more aggressive treatments in some cases can foster increased populations and migration of salmonids into previously uninhabited reaches (Gravelle FPAC November 2018). Forest managers and hazardous fuels experts have observed that when upland areas are treated to reduce wildfire risks, but riparian buffers are left untreated, fire can sweep through the riparian areas in a dramatic and devastating way. Forest landowners that sustainably manage their timber want to avoid this. Regardless of these catastrophes, the Cramer Fish Sciences report concluded that allowing stands to move out of the stem exclusion phase can result in shade loss from mortality that takes longer to recover. Although this does provide important large woody debris for fish habitat, it can also generate dangerous levels of hazardous fuels. Managing riparian forest stands before they reach this condition results in faster shade recovery and greater overall shade on the landscape (Cramer Fish Sciences, 2012, pg. 28). A 75' equipment exclusion zone for Class I streams has been Idaho's Stream Protection Zone for nearly 40 years and is expected to remain in IDAPA 20.02.01. Forest practice advisers prioritize inspection of operations with streams (with and without fish) above all others. Repeated water quality audits have demonstrated no sedimentation on operations that have complied with the basic stream protection rules. |
| PotlatchDeltic | 030 | Our experience over the last 10 months has been that use of WTC decreases the amount of time necessary to install Stream Protection Zones (SPZs) and provides equal or greater tree retention and stream shade. The proposed rule's linkage of the WTC in the inner 50' of the SPZ with harvest in the outer 25' of the SPZ within 100' longitudinal sections is a workable solution to those few instances where we encounter a poorly stocked inner zone and a well-stocked outer zone. The value of the proposed rule to landowners and to achieving resource protection is embodied in its simplicity and ease of implementation and we urge IDL to maintain simplicity during this rulemaking. | 14 ***IDL and FPAC thank you for this comment in support of the draft rule language*** |
| IFOA | 030 | The Idaho Forest Owners Association express our full support of the FPAC proposed changes to provide for a simplified "Shade Rule" (030.07.e.ii (2014)) next to fish-bearing (Class I) streams. | |
| IFG | 030 | The proposed Class I Stream Protection Rule revision to IDAPA 20.02.01.30.07e. ii - viii. Stream Protection, resulting in simplified field application is to be commended. The proposed rule language is easier to understand, more efficient to implement on the ground, and provides for greater management flexibility while maintaining appropriate protections. | |

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| Idaho Farm Bureau | 030 | Only 8 percent of all Idaho forestland is in NIPF ownership. IDL must demonstrate through data a negative impact on stream temperatures from harvest of NIPF before requiring continued compliance with the shade rule by NIPF landowners. It is an undue burden because they pay property taxes on land they cannot manage. | 15 | The Rules Pertaining to the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code) must be applied equitably to all citizens of Idaho. IDL encourages all landowners to manage their forest land, including the SPZs, where they occur. All forest landowners are required to maintain a minimum amount of timber in their SPZs to protect water quality for all Idaho citizens, and all private forest landowners pay property tax on their SPZ acreage. According to the University of Idaho Policy Analysis Group (Idaho Forest Factbook, 2019), there are 21.7 million acres of forestland in Idaho. Eighty percent of the total forestland is federally managed, 14% is privately owned and 6% is state owned; thus 3 million acres of Idaho forestland is owned by industrial, non-industrial and tribal private landowners. Of the 1.06 billion board feet of timber harvested in 2017, 625 million board feet (59%) came from private forestland. State timber harvest was 21% and federal 20% of the total. In any given year, non-industrial forest landowners typically provide twice as many Forest Practice Notifications as industrial forest landowners, but industrial landowners report far more harvest volume per Notification than non-industrial landowners. In 2020, non-industrial private timber sales accounted for 23% of total private harvest volume (573 million board feet total) and industrial timber sales accounted for 77%. Trends indicate industrial forestland is being subdivided and sold to small private landowners as a highest and best use option as the Wildland/Urban acreage grows. This can lead to more construction that is often near streams, and it is important to maintain stream protections across the landscape as this occurs. Regardless of ownership changes, small private landowners reported 131 million board feet of harvested timber in 2020, which is nearly 50% of what is annually harvested on state lands. |
| ICL | 030 | Opening the rule to consider other shade sources that may influence water temperature is outside the scope of forest practices. We believe this rule should remain focused on the retention of live trees within the riparian SPZ. | 16 | IDL also believes the stream protection rules associated with Class I streams should depend upon retention of live trees in the SPZ, since it is the most reliable metric on a landscape basis. To avoid overly complicated rules, FPAC has steered clear of more descriptive metrics that also have an impact on stream temperature because they are so highly variable and often site-specific. Stream width and orientation, topography and understory vegetation are important contributors to shade and maintenance of stream temperature. The present rule was based on simulations conducted for IDL for average ground conditions, including a fixed 10-foot stream width, trees with 50% live crown ratio on a horizontal plane, using a vegetation simulator that is known to over predict shade reduction from thinning (Teply 2013, 2014). Moreover, the effective shade values used in the simulations were developed from data from 106 IDL Riparian Plots in the Clearwater area. More than 53 of these streams were wider than 30' and fewer than 26 streams were narrower than 10'. The wider streams' outer edge of the inner 25' of the SPZ would be > 40 feet from stream center and clearly would depend more heavily on inner zone stocking than streams less than 10'. The Cramer Fish Sciences report indicated that for narrow streams, branch over-hang rather than canopy cover is the dominant shade component from trees. FPAC members expressed concern during development of the 2014 rule that the simulations were not representative of the narrow streams where the most harvesting occurs. The sites selected for the DEQ Shade Effectiveness Study were based upon typical forest types in areas with historically high levels of forest management. For example, of the 573 million board feet from private lands in 2020, 65% came from Boundary, Bonner, Kootenai, Benewah, Shoshone and Latah counties (i.e., north of Clearwater River) and only 27% came from Clearwater County. The other 8% of harvest volume came from private lands in Idaho, Valley, and Boise counties. |
| Kootenai Tribe | 030 | 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. | 17 | The pre-2014 rule did not use the Relative Stocking concept but had instead a one-size-fits-all tree-retention table that applied to each 1000-foot length of stream. The recommended simplification of the present rule uses a stream segment approach based on a 100-foot length of stream. Each 100-foot segment in the SPZ treatment will have to follow the rule minimums. |
| Coeur d'Alene Tribe | 030 | 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. | | |

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| Idaho Farm Bureau | 030 | The shade rule is a “one size fits all rule” that is being applied from north to south in the region and over all habitat types with no deviation. IDL should authorize projects on NIPF lands which would allow for data gathering in the SPZ across different forest types and different systems/levels of harvest, to demonstrate the stream temperature impact of increased harvest in SPZ, and the length of time for naturally regenerated shade from both riparian and tree sources. | <p>18 Tension exists in rulemaking in Idaho between simple, understandable, and concise verbiage and the complexity of the rule set. A permit to harvest timber in Idaho is not required, neither is a harvest plan; IDL and FPAC support keeping it that way. The same cannot be said of other regional states whose forest practice programs entail much more stringent, complicated rules. FPAC and IDL go to great lengths to research, deliberate and craft rules based on minimum required best management practices (BMPs) that will provide flexibility for forest land managers to achieve their management objectives while providing adequate protection to water quality consistent with the purpose of the Timber Harvesting rule section (See 030.01) and the landscape observations and recommendations from the quadrennial audits. A rule cannot be made for every landowner and a rule should not be restrictive based on the most extreme example. Shade is commonly used as a proxy for stream temperature in the forest environment. This common use is supported by numerous hydrological and aquatic life biological research efforts. This was done in the shade simulation efforts that established the present tree retention rule, 030.07.e.ii. (Cramer Fish Sciences 2012, Teply 2013 and 2014), which does deviate both regionally and by forest type. In the same way minimum required BMPs cannot accommodate every nuance of forest land ownership, simulations cannot model every nuance of the stream adjacent environment across all Idaho. For that reason, FPAC and IDL are implementing the adaptive management framework recommended by Cramer Fish Sciences. The present rule used habitat-based forest types that varied regionally. These were found to be too difficult to apply and administer by landowners, Private Forestry Advisors and the DEQ and IDL field crews that gathered data for both the DEQ Shade Effectiveness and the IDL Operational Monitoring studies on state, volunteer private industrial and volunteer private non-industrial SPZs in all but the Eastern Supervisory Area.</p> <p>The FPAC crafted recommended modifications to the present rule in response to the following:</p> <ul style="list-style-type: none"> • The tree retention rule itself was found by NIPF landowners to be too complicated and difficult to comply with. • The simulations were not able to account for the narrower width of and surrounding riparian vegetation and topography for most streams in the most actively managed regions of the state and thus predicted greater shade loss than what was observed. • The shade study showed rapid growth in shade on control sites, which implies more rapid shade growth for the harvested sites. • The operational study showed that many landowners chose not to harvest the SPZ or to only remove a few trees. • The operational study showed that the majority of landowners that do harvest the SPZ do not remove timber from the inner 25 feet of the SPZ and extract only a limited amount in the middle 25 feet. <p>There are several regional paired watershed studies that show the transient temperature and suspended sediment impacts to streams from different levels of harvest and some specific to North Idaho (See Karwan, Gravelle and Hubbart 2007 and Gravelle and Link 2007). The dominant factor driving temperature increase in headwater streams is incoming solar radiation, although, as the Idaho Farm Bureau points out, there are many factors that can affect stream temperature. Definitive experimental studies of timber harvest on stream temperature are complicated, costly, and time-consuming. It is the view of IDL and FPAC that Idaho taxpayers need not fund additional studies on NIPF forestland at this time.</p> |
| Private Landowner, Clearwater Co. | 030 | I request that methods to waive the Class I Stream Side Protection be added. I propose that IDL add a Waiver process specific to the tree stocking requirement along Class I streams to allow for the harvest in excess of 20% of the timber stocked within the 150-foot Stream Protection Zone. | |
| Idaho Farm Bureau | 030 | The shade rule focuses on one thing only; shade from trees. What about shade from topography, shade from riparian vegetation and shade from banks. What about temperature impacts from groundwater, springs, and substrate types. There is a dramatic difference in impact on stream temperature resulting from substrate such as bedrock vs alluvial gravel. The one thing the shade rule focuses on (shade from trees) is the one thing that impacts landowner profitability the most. Topography is not factored into the shade protection rule. Shade from all sources must be recognized in the shade rule, not just shade from trees. | <p>19 Response #18 addressed this in part, and it is important to further point out these are site-specific factors that are best addressed on that basis. General Rule 020.01.a. provides the procedure for a variance to practices prescribed by rule if site conditions warrant. In the case of Class I stream protections, the operator is encouraged to submit a Site-specific Riparian Management Plan (SSRMP) to address use of a different practice. Forest Practice Advisors are available to assist landowners with this.</p> |

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| PotlatchDeltic | 031 | Elimination of Stream Segments of Concern will remove inconsistent language from the FPA rules and will improve understanding. | 20 | ***IDL and FPAC thank you for this comment in support of the draft rule language*** |
| Private Landowner, Clearwater Co. | 040 | I request that methods to waive the Culvert Design rules subject to a remediation plan, be included in the revised the new rule; I do not agree that the requirement 040.02.eii, mandating that Culverts 30" and larger must now "armor the inlet or use a flared inlet structure," should be included in the FPA revisions. | 21 | The modification this refers to is part of a set of road construction design standards commonly used by IDL on state endowment land management and by industrial landowners. It applies to new stream crossing construction or re-construction when an existing culvert is replaced. Rule 020.01.a. provides a procedure by which an operator can obtain a variance when an alternative practice can provide for equivalent or better results over the long term. |
| IFG | 040 | IFG supports road specifications that result in actual reductions of sediment delivery including the added measures for rocking of Class I stream crossings and armoring the inlet of new stream crossing culverts greater than 30" diameter. We do note, however, that these measures are an additional management cost that will be a greater burden on small private forest owners. | 22 | ***IDL and FPAC thank you for this comment in support of the draft rule language*** |
| PotlatchDeltic | 040 | The road measures and clarified language for road Best Management Practices (BMPs) are well targeted to minimize sediment and increase stream protection. | | |
| Riley Stegner and Assoc. on behalf of: Bennett Lumber, Hancock Forest Mgmt, Idaho Forest Group, Molpus Woodlands Group, Stimson Lumber Co. | Other | Maintaining a robust and defensible FPA developed in consultation with FPAC is paramount to protecting Idaho's natural resources, environment, wildlife, and the forest products industry. As such, we recognize and support the changes IDAPA 20.02.01 proposed by IDL. | 23 | ***IDL and FPAC thank you for this comment in support of the draft rule language*** |
| IFG | Other | IFG supports the proposed rule changes and believes that the simplified language in the revised rules provide a more concise and clear explanation of IDAPA 20.02.01 rules and regulations. These revisions should allow for more practicable implementation of Forest Practice Act rules as well as Best Management Practices on forest lands in Idaho. | | |
| Private Landowner, Clearwater Co. | Other | I commend your revised rule set simplifying the language and clarifying some of the terminology of the established rule set. | | |
| DEQ | Other | DEQ respectfully, requests the Idaho Department of Lands (IDL) retain unaltered Section 070 SLASHING MANAGEMENT and, Section 071 PRESCRIBED FIRE of this docket per Idaho Code Section 38-1304(1)(e). | 24 | We thank you for your comments and will retain these sections while IDL and DEQ work on a consistent Smoke Management approach. |
| Private Landowner, Clearwater Co. | Other | I request that a method for the reduction in tax burden be considered, for the economic costs borne by private landowners subject to these rules. | 25 | The cost of complying with forest practices rules is difficult to define, but IDL believes the rules are appropriate and reasonable, especially in the context of the regulatory burden on property owners in adjacent states. Tree retention requirements do not represent a taking because the trees retained to comply with rule could become available for future harvest as shade recovers along a stream. The Idaho State Tax Commission and the counties of Idaho levy and collect property tax from landowners. This request is outside the scope of Negotiated Rulemaking for IDAPA 20.02.01. |