

**From:** [Gary Hess](#)  
**To:** [Rule Making](#); [Archie Gray](#); [Amy Johnson](#); [Adrienne Morrow](#); [Craig Foss](#)  
**Subject:** Fwd: Idaho Shade Rule Comment Letter  
**Date:** Tuesday, September 21, 2021 5:30:58 PM  
**Attachments:** [UCUT IDL Shade Rule Comment Final.pdf](#)

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**From:** DR Michel <dr@ucut-nsn.org>  
**Sent:** Tuesday, September 21, 2021 4:27:40 PM  
**To:** Gary Hess <GHess@idl.idaho.gov>  
**Cc:** Marc Gauthier <marc@ucut-nsn.org>; John Sirois <john@ucut-nsn.org>; Laura Robinson <laura@ucut-nsn.org>; Lori Rothrock <lori@ucut-nsn.org>  
**Subject:** Idaho Shade Rule Comment Letter

Hello Mr. Hess,

We implore your agency to reconsider our previous set of comments in the attached letter dated May 7, 2021. After reviewing the IDL responses to our comments, the comments of other tribes, and the EPA, we continue to have substantial concerns relating to the proposed rule. Several of your responses lacked scientific justification citing only the results from the Idaho DEQ Shade Effectiveness Study. We continue to have strong concerns regarding your agency's limited interpretation of the study results as well as the assumption that the average loss of shade reflects actual impacts to water temperature.

Additionally, we must comment on the suggestion that 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). We question the validity of this assertion. Competition induced mortality is a critical function within a riparian area. If all large merchantable trees are harvested before they are recruited as LWD (the material for creating pools and habitat complexity), then we forgo one of the major contributions to a healthy riparian area and its contributions to fish habitat. In addition, 10 RS is inadequate and will not provide the level of LWD recruitment that would occur within an unmanaged buffer. States west of the Mississippi have been moving towards greater protections for 25 foot inner zones on class 1 streams for decades. This is clearly a step backward for fish and wildlife that depend on riparian areas for clean cold water and diverse habitats.

Additionally, it is the determination of the experts from our tribal organizations that these proposed rules will prohibit the State from achieving its TMDL goals. Furthermore, if these rules are adopted it may prevent the EPA from approving additional TMDLs in the future.

Considering there is still a lack of consideration of Class II stream protections (as noted in the IDL response comments), this rule also needs to be addressed. Especially if they intend to have FPAC work on this in the near future. Therefore, we recommend that the proposed rule not move forward for approval without addressing Class II stream rules as well.

We hope IDL seriously considers our comments and does their very best to address them in a meaningful way before moving forward with a final rule.

Respectfully,

DR Michel, Executive Director, UCUT



25 W. Main, Suite 434  
Spokane, WA 99201  
t 509.838.1057  
f 509.209.2421  
[ucut.org](http://ucut.org)

May 7, 2021

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

RE: IDAPA20.02.01 Rulemaking

Dear Mr. Hess:

On April 8, 2021 the UCUT received notification from the Idaho Department of Lands to promulgate forest practice rules during a negotiated rulemaking period prior to initiating rulemaking procedures. 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>).

Many Tribes, including UCUT, 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;

- A) Maintain RS60 in innermost Stream Protection Zone (SPZ) (0-25-ft from stream),
  - B) Maintain minimum threshold values,
  - C) Restore protections for class II streams.
- (The attached comments include a more detailed explanation)

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.

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:

**A) Need to 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 relayed 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.

### **B) 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, the minimum Weighted Tree Count (WTC) threshold must be based on RS40.

### **C) 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 and 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.

In summary, the UCUT propose:

- Need to Maintain RS60 in innermost SPZ (0-25-ft from stream)
  - Recommend following EPA's proposed language above (ii), where this

- 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
    - There may be a need to delineate seasonal vs. perennial and we encourage identifying a solution to ensuring the perennial streams maintain adequate shade and that seasonal streams are protected by requiring an equipment limitation zone.
    - Class II streams play a critical role in maintaining water quality and providing cold water and minimal sediment delivery to downstream fish-bearing waters.

Thank you for the opportunity to provide comment and participate in the negotiated rulemaking. Please contact DR Michel, at [DR@ucut-nsn.org](mailto:DR@ucut-nsn.org) if you need any additional information.

Sincerely,



DR Michel  
UCUT Executive Director

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