

Mixing Zone Policy Rulemaking Summary of Comment Received

Docket 58-0102-1401, Negotiated Rule Draft No. 2, June 27, 2014 comment deadline
This summary lists the comments received that were specific to subsections 01(d)

Commenters –

NOAA – National Oceanic and Atmospheric Administration, National Marine Fisheries Service
CP – Clearwater Paper
EPA – U.S. EPA Region 10
IMA - Idaho Mining Association
IACI - Idaho Association of Commerce and Industry
Simplot - J.R. Simplot Company

Section 060.01.d

EPA – recommends clarifying that this section and all components address protection of existing and designated beneficial uses.

Simplot – concerns regarding determining what is interference and the amount of effort involved in demonstrating that no unreasonable interference with aquatic life exists. Concerns were raised that the level of effort would rise to the same as required for a Section 7 consultation.

IACI – similar to Simplot comments.

CP – recommended changing language about “existing beneficial uses”.

Section 060.01.d.i

EPA – recommends clarification of the type of interference and including migratory species and drifting organisms.

NOAA – recommended changes to the language similar to what was discussed during the last meeting.
Simplot – how will the agency determine interference with fish passage, spawning, egg incubation or rearing? Discussion during June 12th meeting addressed much of this.

IMA – concerned about language that suggested any interference with fish passage, spawning, egg incubation or rearing would constitute unreasonable interference. This was addressed during the June 12th rulemaking meeting and the language was subsequently changed.

CP – suggested qualifying the interference to clarify the level of interference that would be considered unreasonable.

Section 060.01.d.ii

EPA – recommends removal of the term “Jeopardy”.

NOAA – recommends a new subpart to deal with ESA listed species and critical habitats.

CP – requested clarification that not all mixing zones should require ESA consultation.

Section 060.01.d.iii

Simplot – what are the criteria for determining thermal shock or loss of cold water refugia.

IACI – similar to Simplot comments.

CP – requested clarification of the terms thermal shock, instant lethality and loss of cold water refugia.

Section 060.01.d.iv

EPA – recommends more specificity about when a pollutant would be considered bioaccumulative. Referenced language from the Great Lakes System.

NOAA – recommended changes to draft rule language to reflect that physical, chemical and biological monitoring shall be conducted to determine effects when bioaccumulation occurs.

Simplot – requested further discussion regarding the nature of bioaccumulation. Discussion on this topic lead to changes during the June 12th rulemaking meeting.

IACI – similar to Simplot comments.

IMA – raised concerns regarding the bioaccumulative nature of pollutants and the appropriateness of these being listed as causing unreasonable interference.

CP – requested clarification regarding bioaccumulative pollutants or that the Department consider removing this from the rule.

Section 060.01.d.v

EPA – recommends changes to draft rule language to address protection against lethality to passing organisms and preventing exceedances of acute criteria outside the zone of initial dilution.

NOAA – recommends changes to draft rule language that show acutely toxic conditions should not exist in any part of the mixing zone.

Simplot – questioned how acute toxicity outside the zone of initial dilution would be determined. This was addressed during the rulemaking meeting by changing language under this subheading to lethality from acute toxicity.

IACI – similar to Simplot comments.

CP – suggested substituting “exceeding any acute water quality criteria” for “acute toxicity to aquatic life”.

Section 060.01.d.vi

No comments

Section 060.01.d.vii

EPA – recommends incorporating broader provisions of unreasonable interference to recreational uses to include activities other than swimming.

Simplot – requested further clarification of what is a public swimming area.

CP – suggested clarifying “public swimming area” and substituting “unacceptable impact” for “interference”.

Other recommendations received include:

EPA – recommends additional language to 060.01 on determining when a mixing zone shall be authorized. Additional section in 060.01.d specific to adverse effects on spawning, egg incubation or rearing. Additional section on exceedance of acute aquatic life criteria outside zone of initial dilution be added to 060.01.d. Recommends introducing concepts of narrative “free froms” in rule to ensure basic level of water quality is preserved. Comments were also made regarding the 25% mixing zone restrictions and a request for clarity how the restrictions in h and i will be evaluated with the no larger than necessary language. Recommended language for dealing

NOAA – recommended language for a new subpart on addressing ESA-listed species and critical habitats.

IACI – recommends that discharges to lakes and reservoirs should be addressed in the mixing zone policy.

IMA – raised the question regarding the removal of mixing zones for outstanding resource waters and if this may trigger provisions in 39-3603 Idaho Code.

CP – suggested the addition of “vii. Background and/or natural conditions associated with the receiving water” to 060.01.d.