

# Alternative to Pilot Rule Making: Scientific Research as a Forest Practice

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# Background

- The Board approves pilot rules allowing landowners to selectively deviate from specific rules (relying on APA (RCW 34.05.313))
- Exclusively used for Adaptive Management Projects
- Board seeks alternatives to pilot rule making (February 2023)
- Staff reported the following options:
  - Amend WAC 222-16-050(5) and add scientific research as an activity under Class III forest practices requiring an application
  - Staff also recommended negotiated rulemaking



# Alternative to Pilot Rules

- Forest Practices Act authorizes the Board add activities to classes of forest practices
- The Board can amend WAC 222-16-050(5) (administrative; negotiated rulemaking)
- To have the desired effect, amendment should also allow selective deviations from existing rules
- The authority to suspend rules does not exist in Forest Practices Act (unlike experimental use permits in other statutes)
- Currently, the Board can only rely on APA to suspend its own rules



# Alternative to Pilot Rules

- The Board can amend WAC 222-16-050(5) through negotiated rulemaking
- Without the authority to suspend its own rules and not relying on APA, this option is unlikely to produce the desired outcome
- For this option to work, legislative authority to suspend rules is needed

# Agency Request Legislation

## RCW 76.09.040 Forest practices rules—Adoption—Review of proposed rules...

(1)(a) Where necessary to accomplish the purposes and polices stated in RCW 76.09.010... **the Board shall adopt forest practices rules** pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

- (i) Establish minimum standards for forest practices
- (ii) Provide procedures for voluntary development of resource management plans....
- (iii) set forth necessary administrative provisions;

....

**(vi) Adopt by rule procedures for the conduct of scientific research that may deviate from the minimum standards in a(i) if such scientific research advances the purposes and policies stated in RCW 76.09.010 and is of limited scope.**

# Rule Making

(vi) Adopt by rule procedures for the conduct of scientific research that may deviate from the minimum standards in a(i) if such scientific research advances the purposes and policies stated in RCW 76.09.10 and is of limited scope.

## **Board Rule Making to:**

- Define scientific research and requirements (study design, peer review and etc.)
- Research FPA that must establish research intent
- Class IV special triggers
- Mitigation measures
- Clear identification of specific rules deviation from which is necessary
- Agreement allowing DNR access to research site

# Next Steps

## **Two Technical Reviews:**

- 1- Legal review
- 2- Legislative staff review

And

A Board motion requesting the Chair to advance ARL (by August 24)