WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Commissioner of Public Lands

April 23, 2013

MEMORANDUM

TO: Forest Practices Board

FROM: Marc Engel, Forest Practices Assistant Division Manager, Policy and Services

SUBJECT: Adaptive Management Reform and Forest Biomass Rule Making

On May 14, 2013 I will request the Board's approval to initiate the rule making process for both adaptive management reform and forest biomass by filing a CR-102 *Proposed Rule Making* with the enclosed draft language. This will initiate public review of the Adaptive Management Reform and Forest Biomass rule making. The draft rules will amend the adaptive management program based on the settlement agreement on the Forest Practices Habitat Conservation Plan (FP HCP) and implement the recommendations of the Forest Practices Biomass Work Group.

Staff supports the rule making petition from TFW/Forests and Fish Policy Committee (Policy Committee) to amend the adaptive management process (attached). The amendments are a consensus proposal from the Policy Committee and clearly implement changes to the adaptive management process as outlined in the settlement agreement for the FP HCP.

Additionally, staff recommends including forest biomass rule making (attached) with this adaptive management reform rule making. At your August 2012 meeting, the Forest Practices Biomass Work Group recommended adding a definition for "forest biomass" and amending the definition of "forest practice". At that time you decided to incorporate the biomass rule making with another rule making.

Upon your approval to initiate rule making, staff will schedule rule making hearings and file the CR-102 proposed rule language with the Office of the Code Reviser. This rule making is categorically exempt from SEPA review pursuant to WAC 197-11-800 (19) *Categorical exemptions.* It does not require economic analysis pursuant to RCW 34.05.328 *Significant legislative rules* and chapter 19.85 RCW Regulatory Fairness Act.

I look forward to seeing you on May 14th. If you have any questions in the meantime, please contact me at 360-902-1390 or marc.engel@dnr.wa.gov.

SGF/
Enclosures: Rule Proposal for Adaptive Management Reform and Forest Biomass
Policy Committee Petition for Rule Amendment – Adaptive Management Program

Rule Proposal
Adaptive Mangement Reform and Forest Biomass
for the Forest Practices Board
May 2013

WAC 222-12-045 *Adaptive management program.

In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a formal science-based program, as set forth in WAC 222-08-160(2). Refer to board manual section 22 for program guidance and further information.

(1) **Purpose:** The purpose of the program is to provide science-based recommendations and technical information to assist the board in determining if and when it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve resource goals and objectives. The board may also use this program to adjust other rules and guidance. The goal of the program is to affect change when it is necessary or advisable to adjust rules and guidance to achieve the goals of the forests and fish report or other goals identified by the board. There are three desired outcomes: Certainty of change as needed to protect targeted resources; predictability and stability of the process of change so that landowners, regulators and interested members of the public can anticipate and prepare for change; and application of quality controls to study design and execution and to the interpreted results.

(2) **Program elements:** By this rule, the board establishes an active, ongoing program composed of the following initial elements, but not to exclude other program elements as needed:

(a) **Key questions and resource objectives:** Upon receiving recommendations from the TFW policy committee, or similar collaborative forum, the board will establish key questions and resource objectives and prioritize them.

(i) Projects designed to address the key questions shall be established in the order and subject to the priorities identified by the board.

(ii) Resource objectives are intended to ensure that forest practices, either singularly or cumulatively, will not significantly impair the capacity of aquatic habitat to:

(A) Support harvestable levels of salmonids;

(B) Support the long-term viability of other covered species; or

(C) Meet or exceed water quality standards (protection of beneficial uses, narrative and numeric criteria, and antidegradation).

(iii) Resource objectives consist of functional objectives and performance targets. Functional objectives are broad statements regarding the major watershed functions potentially affected by forest practices. Performance targets are the measurable criteria defining specific, attainable target forest conditions and processes.

(iv) Resource objectives are intended for use in adaptive management, rather than in the regulatory process. Best management practices, as defined in the rules and manual, apply to all forest practices regardless of whether or not resource objectives are met at a given site.

(b) **Participants:** The board ~~will~~ manages the program and ~~has empowered~~ empowers the following entities to participate in the program:

- The cooperative monitoring evaluation and research committee (CMER);
- ~~t~~The TFW policy committee (and/or similar collaborative forum);
- ~~t~~The adaptive management program administrator; and
- ~~o~~Other participants as directed to conduct the independent scientific peer review process.

The program will strive to use a consensus-based approach to make decisions at all stages of the process. Specific consensus-decision stages will be established by CMER and approved by the board. Ground rules will follow those established by the TFW process as defined in the board manual.

(i) **CMER.** By this rule, the board establishes a cooperative monitoring evaluation and research (CMER) committee to impose accountability and formality of process, and to conduct research and validation and effectiveness monitoring to facilitate achieving the resource objectives. The purpose of CMER is to advance the science needed to support adaptive management. CMER also has ongoing responsibility to continue research and education in terrestrial resource issues. CMER will be made up of members that have expertise in a scientific discipline that will enable them to be most effective in addressing forestry, fish, wildlife, and landscape process issues. Members will represent timber landowners, environmental interests, state agencies, county governments, federal agencies and tribal governments from a scientific standpoint, not a policy view. CMER members will be approved by the board. This will not preclude others from participating in and contributing to the CMER process or its subcommittees. CMER shall also develop and manage as appropriate:

(A) Scientific advisory groups and subgroups;

(B) Research and monitoring programs;

(C) A set of protocols and standards to define and guide execution of the process including, but not limited to, research and monitoring data, watershed analysis reports, interdisciplinary team evaluations and reports, literature reviews, and quality control/quality assurance processes;

(D) A baseline data set used to monitor change; ~~and~~

(E) A process for policy approval of research, monitoring, and assessment projects and use of external information, including the questions to be answered and the timelines; and

(F) A biennial research, monitoring, and assessment work plan to be presented to the policy committee at their regular April meeting beginning in 2015 and at least every two years thereafter.

(ii) **TFW policy committee (policy committee).** ~~TFW, or a similar collaborative forum, is managed by a policy committee (hereafter referred to in this section as "policy committee").~~ The policy committee is established to consider the findings of CMER research and monitoring; and to make recommendations to the board related to forest practices rules and/or the board manual, and other guidance. Policy committee

membership ~~is self-selecting, and at a minimum should include representatives of the following~~ consists of caucus principals or their representatives from the following nine caucuses: ~~Timber landowners (~~industrial private timber landowners; ~~and~~ nonindustrial private timber landowners~~)~~; environmental community; western Washington tribal governments; eastern Washington tribal governments; county governments; department of natural resources; state departments ~~(including~~of fish and wildlife and ecology~~, and natural resources)~~; and federal agencies (including National Marine Fisheries Service, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency~~ and U.S. Forest Service~~). ~~Policy members will participate without compensation or per diem.~~

Policy committee members or their representatives are the primary participants for discussion and decisions at policy committee meetings, technical or scientific staff may attend policy committee meetings for consultation. Each caucus of the policy committee is allowed one vote on any action before the policy committee. The policy committee will act as a consensus based body.

Beginning in April 2014, the policy committee shall, among other responsibilities, and in cooperation with CMER, prepare for presentation to the board at their regular May meeting:

(A) A CMER master project schedule prioritizing all CMER research and monitoring projects through 2031;

(B) Assurances that the CMER work plan projects are scheduled according to the CMER master project schedule;

(C) A review and update of the CMER master project schedule at least every four years; and

(D) Assurances that all of the projects on the master project schedule, as amended by the Board, will be completed by 2040.

(iii) **Adaptive management program administrator (program administrator).** The department will employ a full-time independent program administrator to oversee the program and support CMER. The program administrator will have credentials as a program manager, scientist, and researcher. The program administrator will:

(A) ~~m~~Make reports to the board and have other responsibilities as defined in the board manual~~.~~;

(B) Work with the policy committee and CMER to develop the CMER master project schedule and present it to the board at their regular May 2014 meeting;

(C) Report to the board every two years, beginning at their regular May 2015 meeting on:

(a) Progress made to implement the CMER master project schedule and recommended revisions;

(b) The status of ongoing projects including adherence to scheduled timelines; and

(c) Policy committee's responses to all final CMER reports.

(iv) **Forest practices board (board).** The board, among other responsibilities, shall:

(A) Require the program to complete work according to the CMER master project schedule;

(B) Determine whether the program is in substantial compliance with the CMER master project schedule every two years, beginning at the regular August 2014 meeting; and

(C) Notify the National Marine Fisheries Service and the U.S. Fish and Wildlife Service by letter within thirty days after their regular meeting if the board determines the program is not in substantial compliance with the CMER master project schedule.

(c) **Independent scientific peer review process.** By this rule, the board establishes an independent scientific peer review process to determine if the scientific studies that address program issues are scientifically sound and technically reliable; and provide advice on the scientific basis or reliability of CMER's reports. Products that must be reviewed include final reports of CMER funded studies, certain CMER recommendations, and pertinent studies not published in a CMER-approved, peer-reviewed journal. Other products that may require review include, but are not limited to, external information, work plans, requests for proposal, subsequent study proposals, the final study plan, and progress reports.

(d) **Process:** The following stages will be used to affect change for managing adaptive management proposals and approved projects. If consensus cannot be reached by participants at any stage, the issue will be addressed within the dispute resolution process.

(i) **Proposal initiation:** Adaptive management proposals can be initiated at this stage by any of the participants listed in (2)(b) of this subsection to the program administrator, or initiation may be proposed by the general public at board meetings. Proposals must provide the minimum information as outlined in the board manual and demonstrate how results of the proposal will address key questions and resource objectives or other program rule and/or guidance issues. The board may initiate proposals or research questions in the course of fulfilling their duties according to statute.

(ii) **Proposal approval and prioritization:** The program administrator will manage the proposal approval and prioritization process at this stage and consult with CMER on the program workplan. CMER proposals will be forwarded by the program administrator to policy and then to the board. The board will make the final determination regarding proposal approvals and prioritization. The board will act on proposal approval and prioritization in a timely manner.

(iii) **CMER implementation of proposal:** Board approved proposals are systematically implemented through CMER at this stage by the program administrator.

(iv) **Independent scientific peer review:** An independent scientific peer review process will be used at identified points within this stage of implementation depending upon the study and will be used on specified final studies or at the direction of the board.

(v) **CMER committee technical recommendations:** Upon completion, final CMER reports and information will be forwarded at this stage by the program administrator to policy in the form of a report that includes technical recommendations and a discussion of rule and/or guidance implications.

(vi) **Policy committee petitions ~~for amendment~~ and recommendations to the board:** Upon receipt of ~~the~~a CMER report or a requested action by the board, the policy committee will prepare a report for the board outlining recommended actions including: need for additional research; program rule petitions; ~~amendments~~ and/or guidance recommendations ~~in the form of petitions for amendment~~. When completed, the recommendations, including rule petitions and the original CMER report and/or other information as applicable will be forwarded by the program administrator to the board for review and action. Policy committee recommendations for rule amendment to the board will be accompanied by formal petitions for rule making (RCW 34.05.330). The ~~P~~policy committee will use the CMER results to make specific ~~petitions~~ recommendations to the board ~~for amending~~on:

(A) The regulatory scheme of forest practices management (Title 222 WAC rules and board manual);

(B) Voluntary, incentive-based, and training programs affecting forestry;

(C) The resource objectives; and

(D) CMER itself, adaptive management procedures, or other mechanisms implementing the recommendations contained in the most current forests and fish report.

(vii) **Board action to ~~adopt~~ accept petitions for ~~amendment~~rule making and/or recommendations for guidance:** Upon receiving ~~a formal petition~~ recommendations from the policy committee for ~~amendment to~~ rules petitions and/or recommendations for guidance, the board will take appropriate and timely action. There will be a public review of all petitions as applicable. The board will make the final determination.

(e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal and performance audits of the program by the department or other appropriate and accepting independent state agency.

(f) **CMER five-year peer review process.** Every five years the board will establish a peer review process to review all work of CMER and other available, relevant data, including recommendations from the CMER staff. There will be a specified, but limited, period for public review and comment.

(g) **Funding.** Funding is essential to implement the adaptive management program, which is dependent on quality and relevant data. The department shall request biennial budgets to support the program priority projects and basic infrastructure needs including funding to staff the adaptive management program administrator position. A stable, long-term funding source is needed for these activities.

(h) **Formal ~~D~~dispute resolution process for CMER and policy committee.** If consensus cannot be reached through the adaptive management program process, participants will have their issues addressed by this dispute resolution process. Potential failures include, but are not limited to: The inability of policy to agree on research priorities, program direction, or recommendations to the board for uses of monitoring and/or research after receiving a report from CMER; the inability of CMER to produce a report and recommendation on schedule; and the failure of participants to act on policy recommendations on a specified schedule. Key attributes of the dispute resolution process are:

(i) Specific substantive and benchmark (schedule) triggers will be established by the board for each monitoring and research project for invoking dispute resolution;

(ii) The dispute resolution process is available to both CMER and the policy committee to resolve disputes that result in the course of their respective processes. Formal dispute resolution will be staged in three parts and may be applied at any level of the adaptive management process. Any ~~participant of CMER or policy,~~ participating policy committee caucus or board approved CMER member, or the board, may invoke each succeeding stage, if agreement is not reached by the previous stage, within the specified time (or if agreements are not substantially implemented) as follows:

(A) Stage one will be an attempt by CMER ~~and~~ or the policy committee, as applicable to reach consensus. ~~On technical issues, CMER shall have u~~Up to ~~six~~ two months to reach ~~a~~ consensus under stage one; unless otherwise agreed upon by CMER or the policy committee if substantive progress is being made. ~~Parties~~Any party may move the process to stage two after an issue has been in dispute resolution before CMER or the policy committee for ~~six~~ two months ~~unless otherwise agreed~~. The time periods commence from the date the dispute resolution process is invoked ~~referral of technical issues to CMER, report by CMER to policy, or the raising of a nontechnical issue (or matter not otherwise referable to CMER) directly at policy~~.

(B) Stage two dispute resolution in CMER or the policy committee will be either ~~informal~~ mediation or ~~formal~~ arbitration. Within one month, one or the other will be picked, with the default being ~~formal~~ mediation unless otherwise agreed. Stage two will be completed within three months (including the one month to select the process) unless otherwise agreed based on substantive progress being made.

(C) If stage two dispute resolution within CMER does not result in consensus, the program administrator will forward the dispute to the policy committee for a decision, which could include initiation of the dispute resolution process in policy.

(~~C~~D) If stage two dispute resolution within the policy committee does not result in consensus, stage three dispute resolution will be action by the board. The ~~board will consider policy and CMER reports, and~~program administrator will report the majority and minority ~~thinking regarding the results and uses of the results can be brought forward to the board~~recommendations to the board for all disputes failing to reach resolution following stage two. The board will make the final determination regarding dispute resolution.

WAC 222-16-010 *General definitions

Unless otherwise required by context, as used in these rules:

. . .

"Forest Biomass" means material from trees, and woody plants that are by-products of forest management, ecosystem restoration, or hazardous fuel reduction treatments on forest land. Although stumps are a by-product of these activities, only those removed for the purpose of road and landing construction, forest health treatments, or conversion activities may qualify as forest biomass.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, and removal through harvesting, or processing timber or forest biomass, including but not limited to:

Road and trail construction;
Harvesting, final and intermediate;
Precommercial thinning;
Reforestation;
Fertilization;
Prevention and suppression of diseases and insects;
Salvage of trees; and
Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

. . .

WAC 222-30-020 *Harvest unit planning and design.

(1) **Logging system.** The logging system, including forest biomass removal operations, should be appropriate for the terrain, soils, and timber type so that yarding or skidding can be economically accomplished and achieve the ecological goals of WAC 222-30-010 (2), (3) and (4) in compliance with these rules.

*(2) **Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

*(3) **Western Washington riparian management zones.** (See WAC 222-30-021 and 222-30-023.)

*(4) **Eastern Washington riparian management zones**. (See WAC 222-30-022 and 222-30-023.)

*(5) **Riparian leave tree areas**. (See WAC 222-30-021, 222-30-022, and 222-30-023.)

. . .

TFW/Forests and Fish Policy
Forest Practices Board

P.O. Box 47012, Olympia, WA 98504-7012

Policy Co-Chairs: Stephen Bernath, Department of Ecology
Adrian Miller, Longview Timber LLC

April 23, 2013

TO: Patricia Anderson, Rules Coordinator, Forest Practices Board

FROM: Stephen Bernath, Co-Chair
Adrian Miller, Co-Chair

SUBJECT: Petition to the Forest Practices Board for Rule Amendment – Adaptive Management Program Rules

The TFW/Forests and Fish Policy Committee (Policy Committee) hereby petitions the Forest Practices Board (Board) to amend WAC 222-12-045 *Adaptive management program*. This petition for rule amendment is authorized by WAC 222-08-100 *Petitions for adoption, repeal, or amendment of a rule* and RCW 34.05.330 *Petition for adoption, amendment, repeal – Agency action –Appeal*.

The reason for the proposed rule amendment is to implement the settlement agreement for the Forest Practices Habitat Conservation Plan. Although the settlement agreement was between only three of the caucuses in the Policy Committee, this amendment has been through the adaptive management process and is a consensus-based request. In brief, the proposal amends the process followed by the adaptive management program (AMP) by:

- clarifying Policy Committee membership and voting authority;
- requiring a Compliance Monitoring, Evaluation, and Research (CMER) Master Project Schedule to be developed and adhered to, and reported to the Board on a specific scheduled timeline;
- modifying the AMP dispute resolution process to be more efficient for CMER and the Policy Committee; and
- clarifying how the Policy Committee makes rule petitions and guidance recommendations to the Board.

This petition only proposes to amend some of the processes followed by the adaptive management program. The proposed amendments incorporate process efficiencies and reporting requirements, and clarify existing rule language. The proposed amendments do not affect public resources or public health, safety, or general welfare. The proposed amendments also do not impose costs or conflict with, duplicate, or differ from other federal, state, or local laws.

cc: Forest Practice Board Liaisons
TFW/Forest and Fish Policy Committee

Policy Committee Rule Proposal
Adaptive Mangement Reform
For the Forest Practices Board
May 2013

WAC 222-12-045 *Adaptive management program.

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(D) A baseline data set used to monitor change; ~~and~~

(E) A process for policy approval of research, monitoring, and assessment projects and use of external information, including the questions to be answered and the timelines; and

(F) A biennial research, monitoring, and assessment work plan to be presented to the policy committee at their regular April meeting beginning in 2015 and at least every two years thereafter.

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membership ~~is self-selecting, and at a minimum should include representatives of the following~~ consists of caucus principals or their representatives from the following nine caucuses: ~~Timber landowners (~~industrial private timber landowners; ~~and~~ nonindustrial private timber landowners~~)~~; environmental community; western Washington tribal governments; eastern Washington tribal governments; county governments; department of natural resources; state departments ~~(including~~of fish and wildlife and ecology~~, and natural resources)~~; and federal agencies (including National Marine Fisheries Service, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency ~~and U.S. Forest Service~~). ~~Policy members will participate without compensation or per diem.~~

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(D) Assurances that all of the projects on the master project schedule, as amended by the Board, will be completed by 2040.

(iii) **Adaptive management program administrator (program administrator).** The department will employ a full-time independent program administrator to oversee the program and support CMER. The program administrator will have credentials as a program manager, scientist, and researcher. The program administrator will:

(A) ~~m~~Make reports to the board and have other responsibilities as defined in the board manual~~.~~;

(B) Work with the policy committee and CMER to develop the CMER master project schedule and present it to the board at their regular May 2014 meeting;

(C) Report to the board every two years, beginning at their regular May 2015 meeting on:

(a) Progress made to implement the CMER master project schedule and recommended revisions;

(b) The status of ongoing projects including adherence to scheduled timelines; and

(c) Policy committee's responses to all final CMER reports.

(iv) **Forest practices board (board).** The board, among other responsibilities, shall:

(A) Require the program to complete work according to the CMER master project schedule;

(B) Determine whether the program is in substantial compliance with the CMER master project schedule every two years, beginning at the regular August 2014 meeting; and

(C) Notify the National Marine Fisheries Service and the U.S. Fish and Wildlife Service by letter within thirty days after their regular meeting if the board determines the program is not in substantial compliance with the CMER master project schedule.

(c) **Independent scientific peer review process.** By this rule, the board establishes an independent scientific peer review process to determine if the scientific studies that address program issues are scientifically sound and technically reliable; and provide advice on the scientific basis or reliability of CMER's reports. Products that must be reviewed include final reports of CMER funded studies, certain CMER recommendations, and pertinent studies not published in a CMER-approved, peer-reviewed journal. Other products that may require review include, but are not limited to, external information, work plans, requests for proposal, subsequent study proposals, the final study plan, and progress reports.

(d) **Process:** The following stages will be used to affect change for managing adaptive management proposals and approved projects. If consensus cannot be reached by participants at any stage, the issue will be addressed within the dispute resolution process.

(i) **Proposal initiation:** Adaptive management proposals can be initiated at this stage by any of the participants listed in (2)(b) of this subsection to the program administrator, or initiation may be proposed by the general public at board meetings. Proposals must provide the minimum information as outlined in the board manual and demonstrate how results of the proposal will address key questions and resource objectives or other program rule and/or guidance issues. The board may initiate proposals or research questions in the course of fulfilling their duties according to statute.

(ii) **Proposal approval and prioritization:** The program administrator will manage the proposal approval and prioritization process at this stage and consult with CMER on the program workplan. CMER proposals will be forwarded by the program administrator to policy and then to the board. The board will make the final determination regarding proposal approvals and prioritization. The board will act on proposal approval and prioritization in a timely manner.

(iii) **CMER implementation of proposal:** Board approved proposals are systematically implemented through CMER at this stage by the program administrator.

(iv) **Independent scientific peer review:** An independent scientific peer review process will be used at identified points within this stage of implementation depending upon the study and will be used on specified final studies or at the direction of the board.

(v) **CMER committee technical recommendations:** Upon completion, final CMER reports and information will be forwarded at this stage by the program administrator to policy in the form of a report that includes technical recommendations and a discussion of rule and/or guidance implications.

(vi) **Policy committee petitions ~~for amendment~~ and recommendations to the board:** Upon receipt of ~~the~~a CMER report or a requested action by the board, the policy committee will prepare a report for the board outlining recommended actions including: need for additional research; program rule petitions; ~~amendments~~ and/or guidance recommendations ~~in the form of petitions for amendment~~. When completed, the recommendations, including rule petitions and the original CMER report and/or other information as applicable will be forwarded by the program administrator to the board for review and action. Policy committee recommendations for rule amendment to the board will be accompanied by formal petitions for rule making (RCW 34.05.330). The ~~P~~policy committee will use the CMER results to make specific ~~petitions~~ recommendations to the board ~~for amending~~on:

(A) The regulatory scheme of forest practices management (Title 222 WAC rules and board manual);

(B) Voluntary, incentive-based, and training programs affecting forestry;

(C) The resource objectives; and

(D) CMER itself, adaptive management procedures, or other mechanisms implementing the recommendations contained in the most current forests and fish report.

(vii) **Board action to ~~adopt~~ accept petitions for ~~amendment~~rule making and/or recommendations for guidance:** Upon receiving ~~a formal petition~~ recommendations from the policy committee for ~~amendment to~~ rules petitions and/or recommendations for guidance, the board will take appropriate and timely action. There will be a public review of all petitions as applicable. The board will make the final determination.

(e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal and performance audits of the program by the department or other appropriate and accepting independent state agency.

(f) **CMER five-year peer review process.** Every five years the board will establish a peer review process to review all work of CMER and other available, relevant data, including recommendations from the CMER staff. There will be a specified, but limited, period for public review and comment.

(g) **Funding.** Funding is essential to implement the adaptive management program, which is dependent on quality and relevant data. The department shall request biennial budgets to support the program priority projects and basic infrastructure needs including funding to staff the adaptive management program administrator position. A stable, long-term funding source is needed for these activities.

(h) **Formal ~~D~~dispute resolution process for CMER and policy committee.** If consensus cannot be reached through the adaptive management program process, participants will have their issues addressed by this dispute resolution process. Potential failures include, but are not limited to: The inability of policy to agree on research priorities, program direction, or recommendations to the board for uses of monitoring and/or research after receiving a report from CMER; the inability of CMER to produce a report and recommendation on schedule; and the failure of participants to act on policy recommendations on a specified schedule. Key attributes of the dispute resolution process are:

(i) Specific substantive and benchmark (schedule) triggers will be established by the board for each monitoring and research project for invoking dispute resolution;

(ii) The dispute resolution process is available to both CMER and the policy committee to resolve disputes that result in the course of their respective processes. Formal dispute resolution will be staged in three parts and may be applied at any level of the adaptive management process. Any ~~participant of CMER or policy,~~ participating policy committee caucus or board approved CMER member, or the board, may invoke each succeeding stage, if agreement is not reached by the previous stage, within the specified time (or if agreements are not substantially implemented) as follows:

(A) Stage one will be an attempt by CMER ~~and~~ or the policy committee, as applicable to reach consensus. ~~On technical issues, CMER shall have u~~Up to ~~six~~ two months to reach ~~a~~ consensus under stage one; unless otherwise agreed upon by CMER or the policy committee if substantive progress is being made. ~~Parties~~Any party may move the process to stage two after an issue has been in dispute resolution before CMER or the policy committee for ~~six~~ two months ~~unless otherwise agreed~~. The time periods commence from the date the dispute resolution process is invoked ~~referral of technical issues to CMER, report by CMER to policy, or the raising of a nontechnical issue (or matter not otherwise referable to CMER) directly at policy~~.

(B) Stage two dispute resolution in CMER or the policy committee will be either ~~informal~~ mediation or ~~formal~~ arbitration. Within one month, one or the other will be picked, with the default being ~~formal~~ mediation unless otherwise agreed. Stage two will be completed within three months (including the one month to select the process) unless otherwise agreed based on substantive progress being made.

(C) If stage two dispute resolution within CMER does not result in consensus, the program administrator will forward the dispute to the policy committee for a decision, which could include initiation of the dispute resolution process in policy.

(~~C~~D) If stage two dispute resolution within the policy committee does not result in consensus, stage three dispute resolution will be action by the board. The ~~board will consider policy and CMER reports, and~~program administrator will report the majority and minority ~~thinking regarding the results and uses of the results can be brought forward to the board~~recommendations to the board for all disputes failing to reach resolution following stage two. The board will make the final determination regarding dispute resolution.