




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

1 **WAC 222-12-045 *Adaptive management program.**

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

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

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

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

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

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

27 (A) Support harvestable levels of salmonids;

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

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

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

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

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

- The cooperative monitoring evaluation and research committee (CMER);
- ~~†~~The TFW policy committee (and/or similar collaborative forum);
- ~~†~~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

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

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

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

- 24 (A) A CMER master project schedule prioritizing all CMER research
25 and monitoring projects through 2031;
- 26 (B) Assurances that the CMER work plan projects are scheduled
27 according to the CMER master project schedule;
- 28 (C) A review and update of the CMER master project schedule at least
29 every four years; and
- 30 (D) Assurances that all of the projects on the master project schedule,
31 as amended by the Board, will be completed by 2040.

- 32 (iii) **Adaptive management program administrator (program**
33 **administrator).** The department will employ a full-time independent
34 program administrator to oversee the program and support CMER. The
35 program administrator will have credentials as a program manager,
36 scientist, and researcher. The program administrator will:
 - 37 (A) ~~Make~~ reports to the board and have other responsibilities as
38 defined in the board manual;
 - 39 (B) Work with the policy committee and CMER to develop the CMER
40 master project schedule and present it to the board at their regular
41 May 2014 meeting;
 - 42 (C) Report to the board every two years, beginning at their regular
43 May 2015 meeting on:
 - 44 (a) Progress made to implement the CMER master project
45 schedule and recommended revisions;

- 1 (b) The status of ongoing projects including adherence to
2 scheduled timelines; and
3 (c) Policy committee’s responses to all final CMER reports.
4 (iv) **Forest practices board (board).** The board, among other responsibilities,
5 shall:
6 (A) Require the program to complete work according to the CMER
7 master project schedule;
8 (B) Determine whether the program is in substantial compliance with
9 the CMER master project schedule every two years, beginning at
10 the regular August 2014 meeting; and
11 (C) Notify the National Marine Fisheries Service and the U.S. Fish and
12 Wildlife Service by letter within thirty days after their regular
13 meeting if the board determines the program is not in substantial
14 compliance with the CMER master project schedule.
15 (c) **Independent scientific peer review process.** By this rule, the board establishes
16 an independent scientific peer review process to determine if the scientific studies
17 that address program issues are scientifically sound and technically reliable; and
18 provide advice on the scientific basis or reliability of CMER’s reports. Products
19 that must be reviewed include final reports of CMER funded studies, certain
20 CMER recommendations, and pertinent studies not published in a CMER-
21 approved, peer-reviewed journal. Other products that may require review include,
22 but are not limited to, external information, work plans, requests for proposal,
23 subsequent study proposals, the final study plan, and progress reports.
24 (d) **Process:** The following stages will be used to affect change for managing
25 adaptive management proposals and approved projects. If consensus cannot be
26 reached by participants at any stage, the issue will be addressed within the dispute
27 resolution process.
28 (i) **Proposal initiation:** Adaptive management proposals can be initiated at
29 this stage by any of the participants listed in (2)(b) of this subsection to the
30 program administrator, or initiation may be proposed by the general public
31 at board meetings. Proposals must provide the minimum information as
32 outlined in the board manual and demonstrate how results of the proposal
33 will address key questions and resource objectives or other program rule
34 and/or guidance issues. The board may initiate proposals or research
35 questions in the course of fulfilling their duties according to statute.
36 (ii) **Proposal approval and prioritization:** The program administrator will
37 manage the proposal approval and prioritization process at this stage and
38 consult with CMER on the program workplan. CMER proposals will be
39 forwarded by the program administrator to policy and then to the board.
40 The board will make the final determination regarding proposal approvals
41 and prioritization. The board will act on proposal approval and
42 prioritization in a timely manner.
43 (iii) **CMER implementation of proposal:** Board approved proposals are
44 systematically implemented through CMER at this stage by the program
45 administrator.

- 1 (iv) **Independent scientific peer review:** An independent scientific peer
2 review process will be used at identified points within this stage of
3 implementation depending upon the study and will be used on specified
4 final studies or at the direction of the board.
- 5 (v) **CMER committee technical recommendations:** Upon completion, final
6 CMER reports and information will be forwarded at this stage by the
7 program administrator to policy in the form of a report that includes
8 technical recommendations and a discussion of rule and/or guidance
9 implications.
- 10 (vi) **Policy committee petitions for amendment and recommendations to**
11 **the board:** Upon receipt of ~~the~~ CMER report or a requested action by
12 the board, the policy committee will prepare a report for the board
13 outlining recommended actions including: need for additional research;
14 program rule petitions; amendments and/or guidance recommendations in
15 the form of petitions for amendment. When completed, the
16 recommendations, including rule petitions and the original CMER report
17 and/or other information as applicable will be forwarded by the program
18 administrator to the board for review and action. Policy committee
19 recommendations for rule amendment to the board will be accompanied
20 by formal petitions for rule making (RCW 34.05.330). The Ppolicy
21 committee will use the CMER results to make specific petitions
22 recommendations to the board for amending on:
- 23 (A) The regulatory scheme of forest practices management (Title 222
24 WAC rules and board manual);
- 25 (B) Voluntary, incentive-based, and training programs affecting
26 forestry;
- 27 (C) The resource objectives; and
- 28 (D) CMER itself, adaptive management procedures, or other
29 mechanisms implementing the recommendations contained in the
30 most current forests and fish report.
- 31 (vii) **Board action to adopt-accept petitions for amendment rule making**
32 **and/or recommendations for guidance:** Upon receiving a ~~formal~~
33 ~~petition~~ recommendations from the policy committee for amendment to
34 rules petitions and/or recommendations for guidance, the board will take
35 appropriate and timely action. There will be a public review of all
36 petitions as applicable. The board will make the final determination.
- 37 (e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal
38 and performance audits of the program by the department or other appropriate and
39 accepting independent state agency.
- 40 (f) **CMER five-year peer review process.** Every five years the board will establish
41 a peer review process to review all work of CMER and other available, relevant
42 data, including recommendations from the CMER staff. There will be a specified,
43 but limited, period for public review and comment.

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

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

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

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

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

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

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

5 (€D) If stage two dispute resolution within the policy committee does
6 not result in consensus, stage three dispute resolution will be action
7 by the board. The board will consider policy and CMER reports,
8 and program administrator will report the majority and minority
9 thinking regarding the results and uses of the results can be
10 brought forward to the board recommendations to the board for all
11 disputes failing to reach resolution following stage two. The board
12 will make the final determination regarding dispute resolution.
13

14 **WAC 222-16-010 *General definitions**

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

16 ...

17 "Forest Biomass" means material from trees, and woody plants that are by-products of forest
18 management, ecosystem restoration, or hazardous fuel reduction treatments on forest land.

19 Although stumps are a by-product of these activities, only those removed for the purpose of road
20 and landing construction, forest health treatments, or conversion activities may qualify as forest
21 biomass.

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

- 25 Road and trail construction;
- 26 Harvesting, final and intermediate;
- 27 Precommercial thinning;
- 28 Reforestation;
- 29 Fertilization;
- 30 Prevention and suppression of diseases and insects;
- 31 Salvage of trees; and
- 32 Brush control.

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

38 ...

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

41 | (1) **Logging system.** The logging system, including forest biomass removal operations,
42 should be appropriate for the terrain, soils, and timber type so that yarding or skidding
43 can be economically accomplished and achieve the ecological goals of WAC 222-30-010
44 (2), (3) and (4) in compliance with these rules.

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

- 1 *(3) **Western Washington riparian management zones.** (See WAC 222-30-021 and 222-
2 30-023.)
- 3 *(4) **Eastern Washington riparian management zones.** (See WAC 222-30-022 and 222-30-
4 023.)
- 5 *(5) **Riparian leave tree areas.** (See WAC 222-30-021, 222-30-022, and 222-30-023.)
- 6 ...



**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 Management Reform
For the Forest Practices Board
May 2013**

1 **WAC 222-12-045 *Adaptive management program.**

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3 formal science-based program, as set forth in WAC 222-08-160(2). Refer to board manual
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34 and/or guidance issues. The board may initiate proposals or research
35 questions in the course of fulfilling their duties according to statute.
36 (ii) **Proposal approval and prioritization:** The program administrator will
37 manage the proposal approval and prioritization process at this stage and
38 consult with CMER on the program workplan. CMER proposals will be
39 forwarded by the program administrator to policy and then to the board.
40 The board will make the final determination regarding proposal approvals
41 and prioritization. The board will act on proposal approval and
42 prioritization in a timely manner.
43 (iii) **CMER implementation of proposal:** Board approved proposals are
44 systematically implemented through CMER at this stage by the program
45 administrator.

- 1 (iv) **Independent scientific peer review:** An independent scientific peer
2 review process will be used at identified points within this stage of
3 implementation depending upon the study and will be used on specified
4 final studies or at the direction of the board.
- 5 (v) **CMER committee technical recommendations:** Upon completion, final
6 CMER reports and information will be forwarded at this stage by the
7 program administrator to policy in the form of a report that includes
8 technical recommendations and a discussion of rule and/or guidance
9 implications.
- 10 (vi) **Policy committee petitions for amendment and recommendations to**
11 **the board:** Upon receipt of ~~the~~ CMER report or a requested action by
12 the board, the policy committee will prepare a report for the board
13 outlining recommended actions including: need for additional research;
14 program rule petitions; amendments and/or guidance recommendations in
15 the form of petitions for amendment. When completed, the
16 recommendations, including rule petitions and the original CMER report
17 and/or other information as applicable will be forwarded by the program
18 administrator to the board for review and action. Policy committee
19 recommendations for rule amendment to the board will be accompanied
20 by formal petitions for rule making (RCW 34.05.330). The Ppolicy
21 committee will use the CMER results to make specific petitions
22 recommendations to the board for amending on:
- 23 (A) The regulatory scheme of forest practices management (Title 222
24 WAC rules and board manual);
- 25 (B) Voluntary, incentive-based, and training programs affecting
26 forestry;
- 27 (C) The resource objectives; and
- 28 (D) CMER itself, adaptive management procedures, or other
29 mechanisms implementing the recommendations contained in the
30 most current forests and fish report.
- 31 (vii) **Board action to adopt-accept petitions for amendment rule making**
32 **and/or recommendations for guidance:** Upon receiving a ~~formal~~
33 ~~petition~~ recommendations from the policy committee for amendment to
34 rules petitions and/or recommendations for guidance, the board will take
35 appropriate and timely action. There will be a public review of all
36 petitions as applicable. The board will make the final determination.
- 37 (e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal
38 and performance audits of the program by the department or other appropriate and
39 accepting independent state agency.
- 40 (f) **CMER five-year peer review process.** Every five years the board will establish
41 a peer review process to review all work of CMER and other available, relevant
42 data, including recommendations from the CMER staff. There will be a specified,
43 but limited, period for public review and comment.

- 1 (g) **Funding.** Funding is essential to implement the adaptive management program,
2 which is dependent on quality and relevant data. The department shall request
3 biennial budgets to support the program priority projects and basic infrastructure
4 needs including funding to staff the adaptive management program administrator
5 position. A stable, long-term funding source is needed for these activities.
- 6 (h) **Formal Dispute resolution process for CMER and policy committee.** If
7 consensus cannot be reached through the adaptive management program process,
8 participants will have their issues addressed by this dispute resolution process.
9 Potential failures include, but are not limited to: The inability of policy to agree
10 on research priorities, program direction, or recommendations to the board for
11 uses of monitoring and/or research after receiving a report from CMER; the
12 inability of CMER to produce a report and recommendation on schedule; and the
13 failure of participants to act on policy recommendations on a specified schedule.
14 Key attributes of the dispute resolution process are:
- 15 (i) Specific substantive and benchmark (schedule) triggers will be established
16 by the board for each monitoring and research project for invoking dispute
17 resolution;
- 18 (ii) The dispute resolution process is available to both CMER and the policy
19 committee to resolve disputes that result in the course of their respective
20 processes. Formal dispute resolution will be staged in three parts and may
21 be applied at any level of the adaptive management process. Any
22 ~~participant of CMER or policy, participating policy committee caucus or~~
23 ~~board approved CMER member,~~ or the board, may invoke each
24 succeeding stage, if agreement is not reached by the previous stage, within
25 the specified time (or if agreements are not substantially implemented) as
26 follows:
- 27 (A) Stage one will be an attempt by CMER ~~and or the policy~~
28 committee, as applicable to reach consensus. On technical issues,
29 ~~CMER shall have a~~ Up to six-two months to reach a consensus
30 under stage one; unless otherwise agreed upon by CMER or the
31 policy committee if substantive progress is being made. Parties Any
32 party may move the process to stage two after an issue has been in
33 dispute resolution before CMER or the policy committee for six
34 two months unless otherwise agreed. The time periods commence
35 from the date the dispute resolution process is invoked ~~referral of~~
36 ~~technical issues to CMER, report by CMER to policy, or the~~
37 ~~raising of a nontechnical issue (or matter not otherwise referable to~~
38 ~~CMER) directly at policy.~~
- 39 (B) Stage two dispute resolution in CMER or the policy committee
40 will be either ~~informal~~ mediation or ~~formal~~ arbitration. Within one
41 month, one or the other will be picked, with the default being
42 ~~formal~~ mediation unless otherwise agreed. Stage two will be
43 completed within three months (including the one month to select
44 the process) unless otherwise agreed based on substantive progress
45 being made.

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- (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.
- (ED) 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.