

## TFW Policy- Dispute resolution process

As part of the process in delivering the requested consensus or majority/minority reports to the Board, any Policy caucus may choose to initiate dispute resolution. The dispute resolution section from the rule and a portion of the Board Manual Section 22 detailing dispute resolution is provided here. Please review. Note that:

1. Dispute resolution must begin with a formal request by a caucus to the co-chairs.
2. Dispute resolution must be on the advance agenda in order to be initiated. If dispute resolution is requested but is not on the advance agenda, dispute resolution can be initiated at the next regularly scheduled or special meeting.

*Only sub (h) included here -*

### **WAC 222-12-045 \*Adaptive management program. [Effective 10/20/13]**

In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a formal science-based adaptive management program (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. . .
- (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:
  - (h) **Formal 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 and can be initiated by both CMER and the policy committee to resolve disputes that result in the course of their respective processes. Formal dispute resolution involves two stages and may be applied at any level of the adaptive management process. Any participating policy committee caucus, board approved CMER member, or the board, may invoke stage two, if agreement is not reached in stage one, within the specified time (or if agreements are not substantially implemented) as follows:
      - (A) Stage one dispute resolution will be an attempt by CMER or the policy committee, as applicable, to reach consensus. CMER and the policy committee have up to two months to reach consensus under stage one; unless otherwise agreed upon by CMER or the policy committee if substantive progress is being made. Any party may move the process to stage two after an issue has been in dispute resolution before CMER or

- the policy committee for two months. The time periods commence from the date the dispute resolution process is invoked.
- (B) Stage two dispute resolution in CMER or the policy committee will be either mediation or arbitration. Within one month, one or the other will be picked, with the default being 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.
  - (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 within the policy committee.
  - (D) If stage two dispute resolution within the policy committee does not result in consensus, the program administrator will report the majority and minority recommendations to the board. The board will make the final determination regarding dispute resolution.

[end]

*Excerpted from Board Manual Section 22 – only Policy’s process -*

## **PART 5. DISPUTE RESOLUTION**

### **5.1 Introduction**

CMER and the Policy Committee operate most effectively in the collaborative consensus-based approach of the TFW process. However, an important feature of the Adaptive Management Program is specified time allotted for decision-making at critical junctures and the Policy Committee’s consideration related to the effectiveness of forest practices rules. Time certainty ensures that management will respond to scientific information in an appropriate and timely manner to close the adaptive management loop.

Adaptive management under the forest practices rules is a process that contains many decision points. CMER and the Policy Committee are respectively charged with conducting scientific and policy review of specific forest practices rules and forwarding recommendations to the Board as to effectiveness of those rules. Decisions must be reached at CMER and at the Policy Committee at each step along the way in order for the program to function. For the most part, consensus decisions are routine and non-controversial. However, in an arena where aquatic resource protection necessitates some level of restriction of forest practices activities and where changes to established rules could have a significant economic impact on forest owners or pose a significant risk to the aquatic resources, disputes can arise at many decision junctures. Left unresolved, disputes could slow or stop the adaptive management process by delaying recommendation or preventing them from reaching the Board altogether. Unless mandated by legislative action or court order, the Board cannot act to change aquatic resource related forest practices rules outside the adaptive management process (RCW 76.09.370).

Part 5 provides guidance for Adaptive Management dispute resolution under forest practices rules WAC 222-12-045(2)(h). The purpose of dispute resolution is to provide a time sensitive structure to the decision making process where routine methods for reaching consensus are not successful. The primary objective of the process outlined here is to achieve consensus. The rules establish dispute resolution as a staged process that provides two structured opportunities for the participants to reach agreement before a dispute is taken to the Board for resolution in the form of a petition as outlined in WAC 222-08-100.

## **5.2 The Stages of Dispute Resolution**

Adaptive management dispute resolution can involve up to two stages. The CMER and Policy Committee may utilize mediation or arbitration as outlined in Parts 5.3 and 5.4 below.

Stage 1: Resolve issues within two months. Any party may move the process to Stage two after an issue has been in dispute resolution for two months.

Stage 2: Complete mediation or arbitration within three months following initiation of Stage 2.

If consensus is not reached at Stage 2 by CMER or the Policy Committee, the dispute is forwarded to the Policy Committee or the Board respectively.

Stage 1 and 2 time limits may be extended by CMER or the Policy Committee by consensus if substantive progress is being made.

## **5.3 Mediation or Arbitration**

CMER or the Policy Committee may use mediation or arbitration to resolve disputes. Mediation involves a professional mediator to organize and manage discussions between or among the parties with the clear purpose of reaching consensus on an issue. If mediation is successful, the results are recorded and sent to the Administrator for notice to either the Policy Committee (in the case of CMER) or the Board (in the case of a Policy Committee dispute).

Although arbitration is normally a binding process similar in many ways to the judicial system, within the adaptive management process, the results of arbitration can be binding only if parties agreed prior to arbitration to be bound. Arbitration in this context is a method for employing a third party to provide an informed and reasoned assessment of disputed issues(s). If the Policy Committee utilizes arbitration to resolve a dispute, the arbitrator transmits his or her results to the Administrator and the Administrator takes results of arbitration to the Board. In the case of CMER, the Administrator transmits the arbitrator's results to the Policy Committee. In cases of Board initiated CMER projects, the Administrator transmits it directly to the Board.

## **5.4 Guidance**

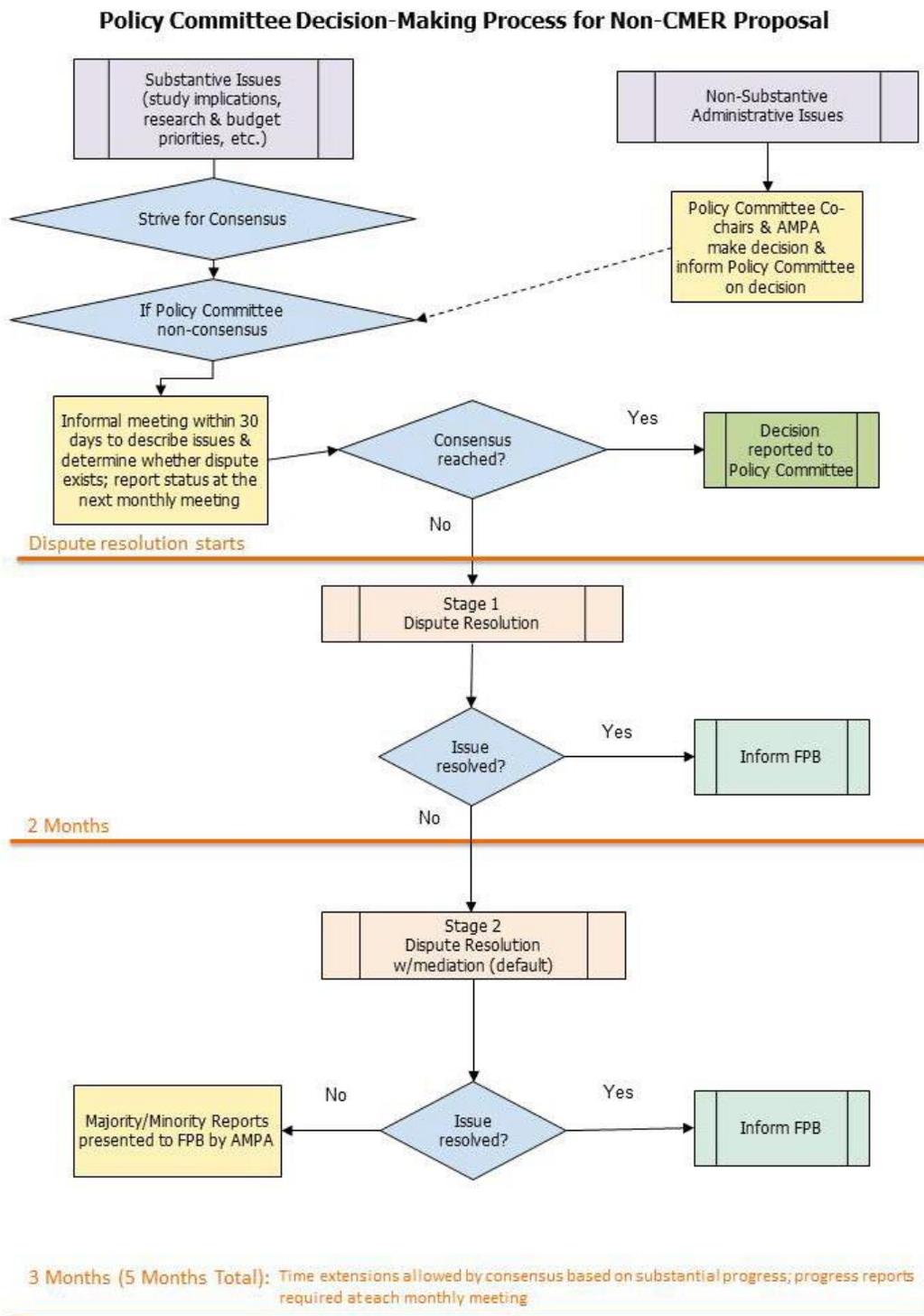
The following guidance for conducting dispute resolution is divided into three sections. The first covers initiation of dispute resolution. The second section provides guidance for CMER and the Policy Committee on conducting Stage 1 dispute resolution and the third section contains guidelines for CMER and the Policy Committee for conducting Stage 2. In the case of a dispute in CMER, if dispute resolution is not successful the Administrator transmits the information to the Policy Committee. In the case of a dispute in Policy Committee, if dispute resolution is not successful the Administrator transmits the information to the Board.

### **Initiating Dispute Resolution**

1. Dispute resolution may be initiated within CMER or the Policy Committee.
2. The dispute resolution process can be initiated when CMER or the Policy Committee fails to reach consensus on an issue and that failure of agreement prevents a project or a recommendation from moving forward to the next step. When a CMER or Policy Committee member feels that ordinary discussion and debate of an issue has been exhausted without satisfactory resolution they may initiate dispute resolution.
3. A Board approved CMER member or Policy Committee caucus can initiate dispute resolution by making a formal request to the co-chairs of these respective committees. If the request for dispute resolution is on the advance agenda of a meeting and is requested at the meeting with a written or verbal statement sufficient to clarify the nature of the dispute, this meeting date will constitute initiation of dispute resolution. If there is disagreement over the framing of the issue by the member initiating dispute resolution or other members, the disputants, along with the chair/co-chairs of the

responsible committee, in consultation with the Administrator, will further clarify the dispute and agree on the issue in writing within 30 days (See figure 3, Policy Decision-Making Process for Non-CMER Proposal). If the request for dispute resolution is not on the advance agenda of the meeting, initiation of formal dispute resolution can occur at the next regularly scheduled or special meeting of the respective committee. The initiation of dispute resolution should be recorded in the committee meeting minutes.

- The CMER or Policy Committee co-chairs should immediately inform all committee members that formal dispute resolution has been initiated.



## Guidance for Dispute Resolution Stage 1

### *Policy*

1. As a body, the Policy Committee may have to conduct dispute resolution on technical issues or policy questions originating in CMER or policy issues that originate within the Policy Committee
2. The Policy Committee has up to two months following formal initiation of dispute resolution to complete Stage 1.
3. The Policy Committee co-chairs should get disputes on the agenda as soon as possible after being informed that a member wishes to initiate dispute resolution.
4. Policy disputes originating in CMER will be framed and forwarded to the Policy Committee by the Administrator.
5. Policy Committee co-chairs should seek additional clarification from the CMER co-chairs when they are unclear of the nature of a policy dispute or the technical issues involved.
6. The initiation of dispute resolution should be recorded in the formal meeting minutes and the Board should be notified through the Administrator.
7. The Policy Committee co-chairs are responsible for setting up a dispute resolution discussion and can employ a variety or combination of methods to attempt to resolve the dispute. The method selected and the time period available for resolution should be announced to the Policy Committee via e-mail before the first meeting at which the dispute is scheduled to be discussed. The following are suggested methods for seeking resolution. Other methods not listed may be equally effective.
  - a. Placing the dispute on the agenda where it will be aired and the group will attempt to come to consensus through a normal chair facilitated discussion.
  - b. Asking for and distributing written discussions of the disputed issues and potential solutions from the party or parties requesting dispute resolution and response from those with opposing views. This exchange would have to be scheduled so that discussion leading to potential consensus could occur on time.
  - c. Asking an impartial volunteer from the group to mediate the dispute and facilitate an attempt to reach consensus.
  - d. Adding a fact-finding step to any one of the above methods to insure that the decision is properly informed on the issues of the dispute. Fact-finding would have to be scheduled so that discussion leading to potential consensus could occur on time.
  - e. Seeking outside technical advice.
  - f. Arranging for discussion outside of formal Policy Committee meetings to facilitate agreement among disputing parties.
  - g. Reaching consensus on a customized method of addressing the dispute as long as it can be accomplished within the allotted time period.
8. If consensus is reached within the Policy Committee, dispute resolution is terminated. The consensus agreement should be recorded in the formal summary of the Policy Committee meeting.
9. If consensus is not reached, any participating Policy Committee caucus may elevate the dispute to Stage 2.

## Guidance for Dispute Resolution Stage 2 for CMER and the Policy Committee

1. Issues not resolved in Stage 1 are elevated to Stage 2 by a request from a Board approved CMER member or a Policy Committee caucus to the CMER or the Policy Committee co-chairs, respectively. The time period is initiated at the next regularly scheduled CMER or Policy Committee meeting or 30 days following the request, whichever is shorter. The initiation of Stage 2 dispute resolution must be recorded in the formal summary of the next meeting in which it was formally invoked.

2. Within one month of the initiation of Stage 2:
  - a. If within CMER, CMER must agree if technical disputes will be resolved through mediation or arbitration.
  - b. If within the Policy Committee, the Policy Committee must agree if policy disputes require technical support through CMER and if resolution can be achieved through mediation or arbitration, with mediation being the default.
3. The Administrator should have a qualified individual with experience in natural resources task on short notice.
4. The Administrator should assist the mediator or arbitrator as needed to:
  - Identify the disputed issue(s);
  - Introduce the parties; and
  - Set up meeting dates, times and location.
5. If consensus is reached within the Policy Committee or within CMER, dispute resolution is terminated. The consensus agreement must be recorded and distributed to the appropriate committee.
6. In the case of Stage 2 dispute resolution in CMER, CMER will follow its dispute resolution process as described in its Protocols and Standards Manual. Unresolved CMER issues will be forwarded to Policy. In the case of Stage 2 dispute resolution in Policy, if consensus is not reached, the Administrator will forward the issue(s) and relevant information to the Board.
7. Results of Stage 2 must be recorded in the official CMER and Policy Committee meeting summary.

[end]