

Reaching Partnership Agreement on How to Address the Policy Issues Emerging from Partnership Convened BMP Expert Panels

Revised for the May 19, 2016 Management Board Meeting

Background

The mixing of technical issues (the purview of the Panel) and policy issues (the purview of the Partnership) is often a reason why draft reports and recommendations from Partnership-convened BMP expert panels can take many months, or longer, to be successfully approved by the sponsoring Goal Implementation Team (or Management Board). The Oyster BMP Expert Panel is a perfect example. While the panel members were diving into some very complex technical issues and scientific findings, they kept coming up against policy issues that were often intertwined with technical issues. The charge to the Panel made it very clear that the Panel would focus only the technical and science-based issues, while only identifying policy issues and passing them onto the Panel Coordinator.

Current Status

At its April 14th meeting, the Partnership's Management Board asked for a summary of the identified the oyster BMP policy issues as well as recommendations for how the Partnership should review, discuss and reach agreement on addressing these policy issues. An earlier version of this issue paper was distributed on April 21st to Water Quality Goal Implementation Team (WQGIT) members as well as the chairs and coordinators of the five Goal Implementation Teams, and the coordinators of the Partnership's three advisory committees. Comments were provided to the WQGIT coordinator and staffer by May 6th. A revised version of this issue paper and the accompanying recommended procedures for resolving BMP panel policy issues (previously a single combined issue paper) were then shared with the WQGIT members on May 8th in preparation for the WQGIT's May 9th conference call¹.

During the conference call, WQGIT members discussed, in-depth, the revised issue paper and the recommended set of procedures for resolving policy issues being raised from the work of the Partnership-convened BMP expert panels. After working through a number of different approaches, the WQGIT reached agreement on the following recommended set of procedures.

Key considerations agreed by the WQGIT were:

- Need to separate out the policy issues from the technical issues, keeping the panel members focused on addressing technical and scientific issues.
- Provide the involved sector workgroup chair and Goal Implementation Team chair with several options for how to best go about resolving identified policy issues coming out of the work of their convened BMP expert panels.
- Preference will be given to the sector workgroup taking the lead for resolution of policy issues, to keep this work within the established Partnership groups and to follow the existing BMP protocol.

¹ A compilation of all partner and stakeholder comments provided on the April 21st version of the issue paper, along with CBPO staff responses to each comment received, is available at:
<http://www.chesapeakebay.net/calendar/event/23833/>.

Proposed Procedures for How the Partnership Would Address Policy Issues Raised During the BMP Expert Panel Process into the Future

Charge each BMP Expert Panel Coordinator with responsibility for identifying policy issues which are either raised during the discussions and deliberations of the Panel itself or raised by partners or stakeholders during or following the public stakeholder meeting/webinar as well as during the Partnership and public review and comment process. Once these policy issues have been identified, they should be raised immediately to the chairs of the sector workgroup and Goal Implementation Team responsible for the specific BMP panel. The Goal implementation Team chair will, in turn, notify the Management Board chair of the policy issues. In cases where panel coordinators are identifying policy issues common to multiple BMP expert panels, those policy issues will be immediately elevated to the attention of the Management Board for action and resolution.

The sector workgroup chair will discuss with their respective Goal Implementation Team chair which of the following three optional approaches they will follow in resolving the identified BMP panel policy issues.

- 1) When facing policy issues clearly within the purview of the sector workgroup and at the recommendation of the sector workgroup chair, the Goal Implementation Team chair will charge the respective sector workgroup with responsibility for working towards resolution of the identified issues.
- 2) When facing policy issues not solely within the purview of the sector workgroup or relatively straightforward policy issues which involve two or more Goal Implementation Teams, the chairs of the involved Goal Implementation Teams will collaborate on identifying a small group of workgroup and Goal Implementation Team members and charge them with responsibility for working towards resolution of the identified policy issues.
- 3) When facing more complex policy issues (e.g. crediting in-situ practices) or policy issues with implications for a wide cross-section of the Partnership (e.g., trading), the involved Goal Implementation Team chair or chairs will ask for the Management Board's approval to convene a policy group.

The Goal Implementation Team(s) which has the lead for the specific BMP panel will have the responsibility for recommending the membership for a group of program and policy managers with recognized experience and expertise with the proposed BMP, representing a range of programmatic and policy perspectives. Potential members for the policy group must disclose actual or potential conflicts of interest in writing to the Goal Implementation Team, as described in the Partnership's *Protocol for the Development, Review, and Approval of Loading and Effectiveness Estimates for Nutrient and Sediment Controls in the Chesapeake Bay Watershed Model*.

The Management Board will have the responsibility for reviewing and approving the respective Goal Implementation Team's recommended membership of the group of program and policy managers. This policy group will be charged by the Management Board with reviewing the listed policy issues and developing recommendations for addressing each issue. It is anticipated that the BMP Expert Panel Coordinator will

initially be involved in the work of the policy group to describe the origin of the policy issues and provide the necessary background on the work of BMP expert panel.

Regardless of the option selected above, the workgroup/separate group/policy group charged with responsibility for resolution of the identified policy issues will develop their recommendations in parallel with the development, review and approval processes of the respective BMP expert panel's report to ensure there are no delays to a panel's decision-making timeline. In the instance where the time need to develop policy recommendations will exceed a panel report's decision-making timeline, this delay should not prevent a Partnership decision on the panel report, as that latter document is focused solely on the scientific and technical recommendations of the BMP Expert Panel. The Partnership will recognize there will be cases where approval of a BMP expert panel's report will hinge on a full understanding of resolution of the policy issues.

The recommendations of the workgroup/separate group/policy group charged with resolution of the identified policy issues will be documented in an appendix to the respective final BMP expert panel reports. This separate appendix will be clearly denoted as documentation written by the assigned workgroup/separate group/policy group, not the BMP expert panel.

The recommendations for resolution of the identified policy issues will be released for a 30-day Partnership and public review period prior to approval, consistent with the Partnership's existing BMP protocol. This review can take place either concurrently with review of the associated BMP expert panel's draft report or separately, which ever approach will move the review and decision making process forward efficiently, yet inclusively.

Depending on the nature of the policy issues, the Management Board can request to provide the final approval of the recommended resolution of the identified policy issues in place of final approval by the respective Goal Implementation Team(s).

Request for Decision to Proceed Forward

REQUESTED DECISION: The Management Board's approval for applying the above set of procedures to all BMP expert panels currently underway and those panels convened in the future.

REQUESTED DECISION: The Management Board's agreement to move forward with convening a policy group to develop recommendations for the identified policy issues associated with the oyster BMP expert panel.

REQUESTED DECISION: The Management Board's approval for formally amending the Partnership's *Protocol for the Development, Review, and Approval of Loading and Effectiveness Estimates for Nutrient and Sediment Controls in the Chesapeake Bay Watershed Model* to include the above specific procedures for addressing BMP-related policy issues in parallel to the work of the respective BMP expert panels focused on developing the technical basis for crediting pollutant load reductions.