

**Feedback from CBP WQGIT Members and Other CBP Partners and Stakeholders
on the April 2016 Draft of the “Reaching Partnership Agreement on How to
Address the Policy Issues Raised As the Oyster BMP Expert Panel Carries Out its
Charge” Issue Briefing Paper**

Responses to Partner and Stakeholder Comments and Recommendations
Compiled and Responded to by CBPO Staff¹ May 7, 2016

Pennsylvania Department of Environmental Protection May 4, 2016

Pennsylvania Alternative for WQGIT consideration

**Reaching Partnership Agreement on How to Address the Policy Issues Raised As the
Oyster BMP Expert Panel Carries Out its Charge**

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

- Charge each 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. The Expert Panel will only identify gaps where there is a limited supply of research and data, they will not make an attempt to address those gaps. The Expert Panel Report will be used to inform the sector workgroup which has the lead for the specific BMP panel. The Sector workgroup in turn will make recommendations as to how to apply the findings of the expert panel based on their best professional judgments from a practical standpoint. The Panel Coordinator will provide the final Expert Panel report to the workgroup 60 days prior to when the public comment period begins.

RESPONSE: The above recommendation addresses the Partnership’s existing *Protocol for the Development, Review, and Approval of Loading and Effectiveness Estimates for Nutrient and Sediment Controls in the Chesapeake Bay Watershed Model*, not the specific topic of the subject issue paper: procedures to address policy issues identified through the BMP expert panel process. The above recommendation will be fully considered by the WQGIT during the separate process for revising the Partnership’s BMP protocol which is coming up later in the late spring to summer time period.

- Charge the Modeling Team representative on the Expert Panel to communicate the direction of the panel to the modeling workgroup to determine feasibility from a modeling standpoint and provide any needed redirection to the sector workgroup and panel during deliberative process for developing recommendations in the Expert Panel reports.

¹ Lucinda Power, U.S. EPA Chesapeake Bay Program Office (CBPO), David Wood, Chesapeake Research Consortium/CBPO, and Rich Batiuk, U.S. EPA CBPO.

RESPONSE: The above recommendation addresses the Partnership's existing BMP protocol, not the specific topic of the subject issue paper: procedures to address policy issues identified through the BMP expert panel process. The above recommendation will be fully considered by the WQGIT during the separate process for revising the Partnership's BMP protocol which is coming up later in the late spring to summer time period.

- Charge the Watershed Technical Team representative on the Expert Panel to communicate the direction of the panel to the watershed technical workgroup to determine feasibility from a reporting and verification standpoint and provide any needed redirection to the sector workgroup and panel during their deliberative process for developing recommendations in the Expert Panel reports.

RESPONSE: The above recommendation addresses the Partnership's existing BMP protocol, not the specific topic of the subject issue paper: procedures to address policy issues identified through the BMP expert panel process. The above recommendation will be fully considered by the WQGIT during the separate process for revising the Partnership's BMP protocol which is coming up later in the late spring to summer time period.

- Charge the respective Sector Workgroup with responsibility to review identified policy issues and formulate Recommendations to address these policy issues. Sector Workgroups have signatory, jurisdiction and at-large members who are the program and policy managers with recognized experience and expertise for the proposed BMP. The expert panel report will only include scientific analysis and objective statements regarding the BMP and/or efficiencies in question. The expert panel report will then be used to inform the workgroup, which will be charged with developing the recommendations, such as locations where the practice is implementable, qualifying conditions for credit, feasibility of implementation and verification. Recommendations and alternatives will be developed by the source sector workgroup and included with the original expert panel report as a supplement for public roll-out. The expert panel report will be kept separate from the program and policy implementation and verification recommendations, so as to keep the integrity of the science intact, but also to allow for workgroup review and discretion. Both draft reports will be followed by public roll-out and thirty (30) day comment period followed by a review of the comments and revisions as necessary. Signatories will be permitted use of alternatives to align the proposal with their programmatic and policy regime, so long as there is logical and sound support for those alternatives and they do not represent a substantial departure from the science.

RESPONSE: During discussions at the Management Board's April 14, 2016, a number of Management Board members made it clear that policy issues arising from the technical BMP expert panels should be resolved by policy makers, not technical staff. The history of making decisions on BMP expert panels' recommendations and report at the sector workgroup, Watershed Technical Workgroup and even the Water Quality Implementation Team level includes a number of examples where consensus could not be reached (e.g., the most recent example being the Street Sweeping BMP Expert Panel) and

the request for decisions were elevated. Given it was a mix of technical and programmatic/policy issues which were at the heart of the inability to reach consensus-based decisions, that is exactly the reason why resolution of BMP expert panel-related policy issues need to be at the Management Board level within the Partnership.

- Charge the respective Goal Implementation Team to review and consider action on the Sector Workgroup consensus actions on the combined BMP Expert Panel Report and the Policy Recommendations. Identify and resolve any conflicts between workgroup recommendations and model feasibility/compatibility.

RESPONSE: See the above response in regard to the first sentence. The second sentence actually addresses the charge to the Watershed Technical Workgroup under the Partnership's existing BMP protocol.

- Charge the Management Board with the final responsibility for reviewing and approving the recommendations for addressing all BMP related policy issues on behalf of the larger Partnership, should the respective Goal Implementation Team be unable to come to consensus.

RESPONSE: The Management Board is given this approval responsibility in the recommended procedures.

- Carry out the above listed procedures immediately in regards to the provided list of policy issues for the Oyster BMP and other expert panel reports in queue.

RESPONSE: The proposed procedures are fully consistent with this recommendation.

- Formally amend 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 panel focused on developing the technical basis for crediting pollutant load reductions.

RESPONSE: The proposed procedures are fully consistent with this recommendation.

Bill Angstadt April 25, 2016

Draft Alternative for WQGIT consideration

Reaching Partnership Agreement on How to Address the Policy Issues Raised As the Oyster BMP Expert Panel Carries Out its Charge

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

- Charge each 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.
- Charge the respective Sector Workgroup Goal Implementation Team which has the lead for the specific BMP panel with responsibility to review identified policy issues and formulate Recommendations to address these policy issues. for recommending the membership for a group Sector Workgroups have signatory, jurisdiction and at-large members who are of the program and policy managers with recognized experience and expertise for with the proposed BMP.

RESPONSE: During discussions at the Management Board's April 14, 2016, a number of Management Board members made it clear that policy issues arising from the technical BMP expert panels should be resolved by policy makers, not technical staff. The history of making decisions on BMP expert panels' recommendations and report at the sector workgroup, Watershed Technical Workgroup and even the Water Quality Implementation Team level includes a number of examples where consensus could not be reached (e.g., the most recent example being the Street Sweeping BMP Expert Panel) and the request for decisions were elevated. Given it was a mix of technical and programmatic/policy issues which were at the heart of the inability to reach consensus-based decisions, that is exactly the reason why resolution of BMP expert panel-related policy issues need to be at the Management Board level within the Partnership. Just using the existing source sector workgroups to resolve programmatic and policy issues will just end up with elevation to the Management Board anyways.

- Charge the respective Goal Implementation Team to review and consider action on the Sector Workgroup consensus actions on the combined BMP Expert Panel Report and the Policy Recommendations.
- ~~Charge the Management Board with responsibility for reviewing and approving the respective Goal Implementation Team's recommended membership of a group of program and policy managers who will be charged by the Management Board with reviewing the listed policy issues and developing recommendations for addressing each issue~~

RESPONSE: See the response to the prior above comment.

- Charge the Management Board with the final responsibility for reviewing and approving the recommendations for addressing all BMP related policy issues on behalf of the larger Partnership.
- Carry out the above listed procedures immediately in regards to the provided list of policy issues for the Oyster BMP.

- Formally amend 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 panel focused on developing the technical basis for crediting pollutant load reductions.

Chesapeake Bay Foundation May 4, 2016

The Chesapeake Bay Foundation (CBF) appreciates the opportunity to comment on the document entitled “Reaching Partnership Agreement on How to Address the Policy Issues Raised as the Oyster BMP Expert Panel Carries Out its Charge.” We have given a good deal of thought to the legal, policy, and technical implications that would arise from the use of “instream treatment” technologies such as oysters for compliance with the Chesapeake Bay Total Maximum Daily Load (TMDL). We shared some of that thinking via our comments on the expert panel outline and are glad to see that the policy list includes many of the concerns that we raised. We want to take this opportunity to reaffirm our position on those issues and, it probably is no surprise, but we have opinions on the other issues raised by the panel and other stakeholders, too! CBF agrees there is a critical need to discuss the diverse set of policy questions raised and we appreciate your efforts to lay out an approach to resolve them. Assuming the proposed process moves forward, CBF also has a keen interest in participating in the group charged with making recommendations for how these issues should be addressed.

RESPONSE: Good to hear affirmation that CBF’s previously raised policy issues are fully accounted for the compiled list of policy issue in the issue briefing paper. As the WQGIT member, we welcome CBF’s continued direct involvement in these discussions.

CBF believes the “Recommendations for How the Partnership Would Address Policy Issues Raised During the BMP Expert Panel Process into the Future” describes a good path forward and could provide the framework to address similar issues in the future. We do, however, have a couple of suggestions.

First, one fundamental question that needs to be addressed, but we don’t think has been yet, is where in the progress run accounting will any reductions due to an oyster BMP be credited? That is, which pollution source sector? We have stated our position that oysters should not be used for compliance with Clean Water Act permits (i.e., the waste load allocation of the TMDL),² but could be, under limited circumstances defined by the Expert Panel be counted toward the load allocation. We ask that the proposal clarify that the proposed policy group should not be making recommendations about the use of oysters in Clean Water Act permits or nutrient trading, as these decisions should be made by the jurisdictions with broad stakeholder input, the opportunity for public comment, input from legal experts and EPA, etc. They should, however, give a recommendation for how (under what sector? Or a new category?) the oyster BMP should be counted and tracked toward progress toward the load allocation, as appropriate.

² April 15, 2015 letter from Ann Jennings, CBF to David McGuigan, EPA Region III.

RESPONSE: We have added a new policy issue on page 3 of the revised issue briefing paper which directly quotes CBF's above language.

Second, like the composition of the BMP Expert Panels, we believe there is a need to ensure this and any future "policy group" also represent different stakeholders and perspectives that don't have a real or perceived conflict of interest. We would suggest taking some language from the BMP protocol to include in your description.

RESPONSE: Given the recommendation to formally incorporate the policy group procedures into 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*, all of the existing requirements under the Protocol will also apply to the policy group procedures including conflict of interest. Language has been added to the issue briefing paper to ensure this point is clear in its intent.

Lastly, also similar to the BMP expert panel process, we believe there needs to be the opportunity for public comment on the resulting recommendations. It was unclear whether the recommendations from the policy group would be a "stand alone" document or be folded into the final report of the expert panel. If the latter, then there would be an opportunity for a broader group of interested parties to comment on the policy and technical recommendations. We think this approach makes the most sense. But, if the former is envisioned then we think there needs to be the chance for broader input. The implications for some of these policy decisions could be as, if not more, impactful on nutrient reductions/crediting than the BMP efficiencies themselves and warrant input from a large community of interested stakeholders.

RESPONSE: Language has been added to the issue briefing paper to recommend a 30-day partnership/public review period of the policy group's recommendation prior to submission to the Management Board for review and approval. Language has also been added to clarify that the Management Board approved recommendations from the policy group will be documented in a separate appendix to the respective BMP expert panel's report with the authors of that appendix clearly defined as the policy group, not the BMP expert panel members.

Thanks for the opportunity to weigh in and for your leadership in helping define a path forward.

RESPONSE: Thanks for investing the time to share your comments and recommendations with your partners.

Southern Environmental Law Center

In response to your request for feedback, the Southern Environmental Law Center (SELC) respectfully submits the following comments on the briefing paper summarizing policy issues identified to date through the Oyster BMP Expert Panel process and a potential new process for how this and other Expert Panels would address policy issues ("Reaching Partnership Agreement on How to Address the Policy Issues Raised As the Oyster BMP Expert Panel Carries Out

its Charge”). We applaud the efforts being made to address the critical policy questions arising in connection with the work of the Oyster BMP Expert Panel.

RESPONSE: Thanks for investing the time to share your comments and recommendations with your partners.

At the outset, we would like to thank you for providing this opportunity for public comment. As with the work of the Oyster BMP Expert Panel, we believe it is vital that there be opportunities for stakeholders and interested members of the public to comment on the important work of the proposed policy group, including their resulting recommendations. Accordingly, we urge the Chesapeake Bay Program to provide similar opportunities for public comment on the work of the policy group and to amend 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 (“Protocol”) to reflect those opportunities.

RESPONSE: Language has been added to the issue briefing paper to recommend a 30-day partnership/public review period of the policy group’s recommendation prior to submission to the Management Board for review and approval. Language was in the original draft of the issue briefing paper recommending the policy group procedures be formally amended 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*.

Similarly, we believe that the composition of the policy group membership is as important as that of the BMP Expert Panels. As such, we believe the policy group also should be composed of members who represent different stakeholders and perspectives. And as with BMP Expert Panels, efforts should be made to ensure that no actual or potential conflicts of interest exist. We thus recommend that related provisions in the Protocol be extended to the proposed policy group as well.

RESPONSE: Given the recommendation to formally incorporate the policy group procedures into 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*, all of the existing requirements under the Protocol will also apply to the policy group procedures including conflict of interest. Language has been added to the issue briefing paper to ensure this point is clear in its intent.

The briefing paper captures many of our policy-related comments to the Oyster BMP Expert Panel, including correctly identifying the issue of scale as a policy issue and whether or not oysters could realistically be applied toward TMDL reductions. However, the intent of our original comments was to question the both the realistic ability to grow and remove the incredibly large number of oyster necessary to meet even very small nutrient reduction percentages AND the user conflicts that would arise from putting that many oysters and cages into the Chesapeake Bay’s tributaries. Even at current levels of aquaculture operations, user conflicts have become quite heated in portions of Chesapeake Bay.

RESPONSE: The SELC's above language has been added as written to the list of policy issues in the revised issue briefing paper on page 3.

In addition, we recommend that the proposed policy group develop a framework for the verification of an oyster BMP and associated accountability measures, and consider where oyster-related reductions due to an oyster BMP will be credited, i.e., which pollution source sector or new category.

RESPONSE: We have added a new policy issue on page 3 of the revised issue briefing paper which directly quotes SELC's above language. CBF raised a similar concern which resulted in adding another issue to the revised briefing paper as well.

Regarding your proposal for how the Chesapeake Bay Program would handle policy issues during this and future Expert Panels, as well as the questions posed above, we respectfully submit the following questions on the process:

- Will the recommendations of the policy group be incorporated into the final work of the Oyster BMP Expert Panel? If so, how? Given the relatedness of the technical and policy issues, this seems preferable to separating the work and final products of the panels. What feedback mechanisms would be put into place to allow the Expert Panel and the new policy group to collaborate/interface on these issues?

RESPONSE: The following language has been added to the revised issue briefing paper to address the above comment: "Management Board approved policy recommendations will be appended to the respective final BMP expert panel reports in a separate appendix clearly denoted as documentation written by the policy group not the BMP expert panel."

This separate appendix approach is fully consistent with the Partnership's existing BMP protocol through which the Partnership's Watershed Technical Workgroup authors a separate appendix to each BMP expert panel's report spelling out the BMP tracking, verification, reporting, and crediting procedures and details for the subject BMPs. These procedures are completely separate from the panel's recommendations but included in the panel's report so that all documentation related to the Partnership's tracking, verification, reporting, and crediting of those BMPs remains with the documentation of the BMP's definitions and pollutant load reduction efficiencies.

- Can this initial policy group be convened, deliberate, and provide its own recommendations within the timeline already proposed for the Oyster BMP Expert Panel (first set of draft recommendations in late June/early July and the second set in October-December)? Or would this shift your recently adjusted timeline?

RESPONSE: The following language has been added to the revised issue briefing paper to address this and other similar comments: "Charge the policy group to develop their recommendations for resolution of the identified policy issue 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."

- Would materials and recommendations from the policy group be subject to similar public review processes as those for the Expert Panels?

RESPONSE: Yes. The following language has been added to the revised issue briefing paper to address this and other similar comments: “The policy group’s recommendations will be released for a 30-day Partnership and public review period prior to submission to the Management Board for review and approval. This approach will ensure the Management Board members fully benefit from seeing partnership and public feedback on the policy recommendation prior to making a decision.”

Again, we appreciate this opportunity to submit comments and questions on the proposed policy group and look forward to continued work on this important issue.

RESPONSE: Thanks for investing the time to share your comments and recommendations with your partners.

Jeremy Hansen, Project Coordinator, Expert Panel BMP Assessment, Virginia Tech May 6, 2016

I request that you use the May 9th WQGIT conference call to clarify the logistical and operational expectations of “the recommendations for how the partnership would address policy issues during the BMP expert panel process...” on page 3 of the memo. This way the WQGIT and panel coordinators will have a clearer sense of what the new steps would entail if adopted. Specifically, please address the following:

RESPONSE: That is exactly our intent by clearly writing out these recommended procedures—the WQGIT, the BMP expert panel chairs, coordinators and members as well as all the partners and involved stakeholders know what everyone’s respective roles and responsibilities are and what the process being followed.

- The recommendations imply that the ad hoc group (group) convened by the Management Board (MB), and not the expert panel (panel) itself, would carry out the actions described in the memo. Is there an expectation that members of the panel, the Panel Chair, or Panel Coordinator would be involved with the MB’s ad hoc policy group? If so, will they be involved for the duration of the group, or just in the group’s early stages to describe the issues? The extent and timing of the commitment from expert panel members, the Chair, the Coordinator or other support staff is an important consideration as it could reasonably impact those individuals’ ability to fulfill their existing responsibilities at a crucial point in the expert panel process.

RESPONSE: Correct, the policy group convened by the Management Board will take on the roles and responsibilities outlined in the procedures in the revised issue briefing paper. Each BMP expert panel will not play a role in resolution of the policy issue

beyond their initial identification. The following language has been added to clarify the narrow/y defined role and responsibilities of each Panel Coordinator:

“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 chair of the 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 and the need to convene a policy group.”

“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.”

- The memo states that the Panel Coordinator would be responsible for identifying policy issues either “raised during the discussions and deliberations of the panel itself or raised by partners or stakeholders” during the partnership review and comment process. Should the issues be identified immediately, or should they be reserved for a certain point in the process, e.g., once the initial 30-day comment period ends? To whom should the Panel Coordinator raise the issues and what is expected in terms of description or documentation of the issue(s)?

RESPONSE: See the response to the prior above comment for specific response to each of these excellent questions.

- The memo implies that the ad hoc group would at the very least summarize and describe the policy issues and policy options associated with each issue raised during the panel process. It seems reasonable that the group would thus be tasked with developing its own memorandum as a written description of their discussions and recommendations.

RESPONSE: The following language has been added to the revised issue briefing paper: “Management Board approved policy recommendations will be appended to the respective final BMP expert panel reports in a separate appendix clearly denoted as documentation written by the policy group not the BMP expert panel.”

- What are the expectations about the content of the document that the group would produce? While the length and content will vary according to the issues and BMP under consideration, it is important to set some general expectations now. I.e., would a two-page memo to the MB suffice for a BMP when only one or two policy issues are involved? Would the document reasonably exceed 15+ pages if the issues are more complex?

RESPONSE: Like each convened BMP expert panel, each convened the policy group will determine for themselves the appropriate length and content of the documentation of their policy recommendations. The Management Board will be the final judge as to whether or not sufficient documentation has been provided to support the policy recommendations.

- How far would groups be asked to go in terms of their recommendations? Every signatory jurisdiction is unique, especially on matters of environmental policy. So, would the recommendations be limited to executive actions that are feasible under each partner's current set of laws, policies, and budgets, or would the recommendations include legislative options? Would the recommendations be limited to areas common to CBP partners (e.g., areas captured under the goals and outcomes of the 2014 Watershed Agreement), or would the group identify policy options for jurisdictions to consider on their own?

RESPONSE: You raised a series of good questions which will be answered differently with respect to each set of BMP expert panel related policy issues. The proposed procedures in the revised issue briefing paper cannot address these questions.

- Would the partnership still be able to approve the expert panel's scientific recommendations for the BMPs before the group concludes its activities? Or would the panel be placed in a holding pattern until the group has completed its policy considerations? The answer may depend on the specific BMP, but it would be helpful to clarify if the WQGIT or MB would have the option to accept the panel's technical recommendations before the policy group completes its work. Some policy options may have no effect on the effectiveness estimates or other technical recommendations from the panel. If that is the case then it would be a professional courtesy to release the panel of its charge while the extraneous policy issues are resolved by the partnership itself.

RESPONSE: The following language has been added to the revised issue briefing paper to address this comment:

“Charge the policy group to develop their recommendations for resolution of the identified policy issue 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.”

- Please clarify if the proposed process is expected to impact panels that are currently developing or about to release their recommendations for CBP review and comment. The current BMP Protocol states that “any changes to the Protocol will take effect immediately upon adoption by the WEQGIT. Panels already underway will be exempt from changes to those process steps that have already occurred within a Panel.” Since the proposed steps are near the very end of the BMP Protocol’s process it is presumed that they would apply to panel’s that have recently released, or will soon release, their recommendations.

RESPONSE: The following language has been added to the revised issue briefing paper to address this comment: “Carry out the above listed procedures immediately in regards to the provided list of policy issues for the Oyster BMP. These procedures will also apply to all BMP expert panels currently underway and those panels convened in the future.”

In my nearly four years at the Chesapeake Bay Program (CBP) I have been involved with at least nine BMP expert panels convened under various sector workgroups. While every panel is unique based on their charge and the personalities of its members, they all share an incredible commitment to improving the scientific basis of the effectiveness estimates assigned to nonpoint source BMPs by the CBP. They also share demonstrable patience. The existing process, on average, takes a year at minimum for a panel to be formed, deliberate and draft its report under the current BMP protocol. Completion of the CBP’s full process for review, comment and approval requires another 3-4 months or more. As with previous revisions to the BMP Protocol, therefore, the partnership needs to balance additional layers or steps against their expected value-added.

RESPONSE: The CBP partnership has been extremely fortunate to have hundreds of well recognized experts participate in the BMP expert panel process over the past decade, investing their time and expertise all in support of better shared decision making. The proposed policy issue oriented procedures are being recommended to actually help not hinder the Partnership’s review and approval process. A growing number of panels are running into issues which are more of a policy or programmatic nature, not the intended scientific and technical issues for which they were originally convened. By extracting out the programmatic and policy issues from the charge of each BMP expert panel and convening a separate, yet parallel policy group better situated to address policy issues, we will prevent the past and present often prolonged decision making process.

The BMP expert panels are a tremendous source of information inside and outside the partnership. I hope that these new proposed steps, if adopted, will further improve the partnership’s process to vet and accept expert panels’ recommendations in a timely manner. Let me know if you have any questions regarding my request. Thank you for the clarifications and the opportunity to discuss your proposal.

RESPONSE: With the help of the larger Partnership, that is the intent of these policy issue oriented procedures. Thanks for investing the time to share your comments and recommendations with your partners.

Verna Harrison, Verna Harrison Associates, LLC

Very nice to see a policy group being appointed.

I hope you don't mind my suggestions of some names for the group. I have not contacted them and have no idea whether any of the following would be interested but would be good members:

John Griffin johnrgriffin5@gmail.com
Roy Hoagland royhoagland@hopeimpacts.com;
Nick Carter nmcarter1@verizon.net
Tom Horton swanfall@gmail.com

All are independent and know a lot about oysters.

Have one more name but need to find email.

RESPONSE: Thanks for sharing the list of recommended members for an oyster BMP policy issue group. We will forward the list of recommended members to the WQGIT, Vital Habitats Goal Implementation Team, and Sustainable Fisheries Goal Implementation Team chairs and coordinators for their GIT's consideration.

John Schneider, Delaware Department of Natural Resources and Environmental Control April 21, 2016

This is an awkward sentence... "Over the course of their work, the Panel as well as involved partners and stakeholders have been identifying policy issues which were concerned outside of the Panel's charge from the Partnership."

RESPONSE: This sentence has been edited to be more understandable in the revised issue briefing paper.

My connection with oysters comes from managing an "oyster culture" operation in Apalachicola, FL (the end of the earth) for most of the 80s. We collected shells from scores of local shucking operations, "cured" them (piled them up & let the seagulls, sun, & rain remove any remaining soft tissue), loaded them on a 100-ft barge, & sprayed them off with a high-pressure stream of Bay water to enhance existing reefs. 90% of FL's oysters came from Apalachicola Bay. I also lost 52 consumers who died from Vibrio infections after eating Bay oysters. But I digress.

Despite the industry's understanding of the need to return shell to the Bay, shells were constantly sold to contractors & private individuals & used for driveways, parking lots, & even septic drainfields. We actually had a State law that made shucked shell the property of the State. But we had oyster dealers who would forbid us from collecting their shells & constantly threatened lawsuits. Imagine defending a law that allows a State to take possession of a byproduct created by a private business. So our lawyers told us to back off. Which, of course, created huge

inequities between those allowed to sell their shell versus those with enough foresight to want to see it go back into the Bay. My point is that I completely understand not encouraging folks to keep the shell on land. To that end, I would not allow credit for harvested shell, but I would allow credit for N, P & sediment reduction for shell making up a reef or as part of an aquaculture operation. I include sediment because reefs are really good at removing suspended sediment, both from the feeding/pseudofeces generation process & by slowing down flow. If we had an SAV BMP panel, wouldn't we give credit for suspended sediment removal/sequestration? Although we had oyster dealers who leased bare bottom from the State & deposited shucked shell on their leases, that is likely not a common practice in the Chesapeake region. So the protocol needs to be clear that the sediment credit will only be given to reefs, not caged or bagged oysters. Any sediment settling on or under cages or bags will be resuspended during the cleaning & harvesting processes (& then some). One might make the same argument for dredging or tonging on reefs, but resuspension is localized & minor in comparison.

RESPONSE: Thanks for identifying the above series of policy issues. An additional policy issue has been added to page 3 of the revised issue briefing paper.

With respect to water clarity, I don't consider it double counting, but I do think it unnecessarily complicates the crediting process.

Since DE doesn't have a dog in the fight, I'll leave the baseline conversation to the oyster producing states. However, given the scale issue, I wonder if it would be worth the effort to determine what existed in 2011.

States have programs in place to guard against the introduction of parasites & oyster diseases. So, on the surface, we needn't be concerned about high-intensity, large scale operations. There will always be questions about how effective these programs are. But private entrepreneurs certainly have an economic incentive to avoid introducing contaminated stock to their operations. We should probably be more concerned about the cooties coming to us in ship ballast water.

And I agree with all of the Recommendations for How the Partnership Would Address Policy Issues Raised During the BMP Expert Panel Process into the Future.

RESPONSE: Thanks for investing the time to share your comments and recommendations with your partners.