

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

Background

In September 2015, the Chesapeake Bay Program partnership's Water Quality Goal Implementation Team approved the proposed charge and membership of the Oyster BMP Expert Panel after the initial proposal was presented to the Partnership in April 2015. Since being convened, the Panel has had 8 meetings and hosted a public stakeholder meeting and webinar with around 60 people participating. In addition, the Panel has briefed and presented to the Partnership's Citizens Advisory Committee, the Water Quality Goal Implementation Team, and the Sustainable Fisheries Goal Implementation Team.

Current Status

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. At its April 14th meeting, the Partnership's Management Board asked for a summary of the identified policy issues as well as recommendations for how the Partnership should review, discuss and reach agreement on addressing these policy issues.

Policy Issues Raised by Oyster BMP Expert Panel Members¹

- Oyster Shell
 - Some of the panelists are concerned that the development of crediting protocols for nitrogen and phosphorus assimilation in oyster shell will dis-incentivize returning oyster shell to the Bay, which is an important commodity to support methods to restore the oyster population and increase aquaculture in the Chesapeake Bay.
 - Overall, the panelists feel there is enough science to determine the reduction effectiveness from N and P assimilation in oyster shell.
 - However, panelists feel there could be detrimental unintended consequences if such crediting protocols result in jurisdictions supporting efforts to not return the oyster shell to the Bay.
- Permanent Removal from the Bay Versus Removal from the Water Column
 - Panelists weren't sure whether the N and P sequestered in the shells of oysters that aren't harvested would be considered valid pollutant reductions in a BMP context. The panelists also had a similar question concerning suspended sediment that is deposited on the bottom. Overall, this line of questioning pertains to whether a recommended reduction effectiveness estimate can be based on how much of the pollutant is removed from the water column. Models could be used

¹ These policy issues were summarized by staff from the Oyster Recovery Project based on Panel discussions over the course of the past eight panel meetings held since September 2015.

to estimate this reduction, but the Panel was unsure if they should continue the discussion if it doesn't fit policy-wise.

- Crediting Protocol Based on Water Clarity Instead of Suspended Sediment Reduction
 - Since the water quality standard is specific to water clarity, can the reduction effectiveness be developed with water clarity as the endpoint (e.g., x amount of oysters in x amount of area would result in x percent water clarity improvement) even though the BMP Review Protocol explicitly states effectiveness estimates for nitrogen, phosphorus, and sediment controls. Some panelists have expressed interest in this approach, but weren't sure if it would be acceptable.
 - Other panelists have expressed concern about double-counting if protocols are developed for both N and P removal and water clarity, since water clarity would include removal of organic particles.

Policy Issues Raised by Chesapeake Bay Program Partners and Stakeholders²

- Establishing a Baseline
 - Jurisdictions should not be seeking credit for oysters that are already being grown/raised, but rather should only receive credit for new or expanding projects.
 - Current wild and aquaculture populations should be determined and established as a population baseline with a recommended temporal baseline of January 1, 2011 or after (reflects period after the completion of the Bay TMDL). (CBF)
- Crediting of Oyster Shell Removal
 - Omit oyster shell crediting because of unintended consequence of reducing critically needed sources of oyster shell. (CAC, CBC, CBF)
 - Crediting should be developed in such a way that does not provide disincentives for shell recycling programs. (SELC)
- Scale of Permanent Removal to Make a Real Water Quality Difference
 - "There are serious issues of scale. According to VIMS, in the Lynnhaven River alone nearly 50 million oysters and their shells would have to be permanently removed from the water every year just to meet 1% of the required nutrient reduction. Not only is the scale of this problematic and unrealistic, but this practice also exacerbates the oyster shell shortage that challenges oyster reef restoration." (CAC)
- High-intensity, Large Scale Oyster Aquaculture
 - "High-intensity oyster aquaculture may pose serious un-intended consequences to the Bay and could undermine the progress we had made and the millions of dollars spent to date restoring native oysters. These large-scale culturing

² These policy issues were extracted from the November 2015 letters from the listed organizations responding to the call for public stakeholder feedback on the Panel's then framework as presented during the November 2, 2015 public stakeholder meeting and webinar. CBC: Chesapeake Bay Commission; CBF: Chesapeake Bay Foundation; CBP CAC: Chesapeake Bay Program's Citizen Advisory Committee; SELC: Southern Environmental Law Clinic

operations have the potential to spread diseases and parasites to nearby native oysters and restoration projects.” (CBP CAC)

- Oysters as BMPs for Water Quality trading
 - “While CAC supports efforts to restore native oyster populations and to promote oyster aquaculture in the Chesapeake watershed as an iconic species, food source, and for its habitat and other ecosystem values, we are concerned about whether oysters are appropriate BMPs for water quality trading.” (CBP CAC)

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 Goal Implementation Team which has the lead for the specific BMP panel with responsibility for recommending the membership for a group of program and policy managers with recognized experience and expertise with the proposed BMP.
- 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
- Charge the Management Board with the 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.

Request for Decision for How to Proceed Forward

REQUESTED DECISION: The Water Quality Goal Implementation Team’s approval to present the above set of procedures for addressing policy issues related to BMPs being developed through ongoing BMP panels or presentation of a modified version of the procedures.