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TO THE CHESAPEAKE EXECUTIVE COUNCIL

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May 10, 2024

Martha Shimkin, Director, EPA Chesapeake Bay Program
Anna Killius, Executive Director, Chesapeake Bay Commission
Beyond 2025 Steering Committee Co-Chairs

Dear Martha and Anna,

Members of the Stakeholders' Advisory Committee have carefully reviewed the ERG "Chesapeake Bay Program Beyond 2025 Evaluation: Draft and Deliberative Interim Report." We are pleased to share a compilation of member questions, observations, recommendations, and other commentary. As you'll see, our review was quite broad and free ranging, covering editorial issues as well as matters of technical substance, program implementation, long-term strategy, and even policy. Since the period allotted for review of this report was quite short, we were unable to interact, deliberate, and craft consensus positions. For this reason, we have simply included all feedback provided by our members and you will likely notice some inconsistencies among the items in our compilation.

We do recognize that some of our comments fall outside the purview of the ERG report, but trust that you will give them due consideration as part of the broader Beyond 2025 discussion and process. The feedback that is applicable to ERG providing additional context or clarifying language of the draft interim report are labeled with **To ERG** in the attached compilation of comments.

Comments aside, thank you for commissioning this evaluation. Your decision to invite critique of the Chesapeake Bay Program is a mark of enlightened leadership and good governance. Please feel free to contact me or Jess Blackburn if you have any questions or concerns regarding our comments.

Sincerely,

Chuck Herrick
Chair, Stakeholders' Advisory Committee



Jessica M. Blackburn, Committee Coordinator

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Stakeholders' Advisory Committee Comments & Reactions to the draft ERG Evaluation May 10, 2024

General Comments

The Stakeholders' Advisory Committee circulated the ERG report among our membership and urged close and careful review. Initial feedback among some of the membership expressed vehement frustration that the Beyond 2025 process has become little more than a paper exercise. We have encouraged members to frame their disappointments in the form of actionable comments and recommendations, but nevertheless feel compelled to share that disappointment and frustration underlie many of our comments.

The report demonstrates how large and complex the bureaucracy of the CBP has become – while continuously failing to meet the water quality goals at the core of the TMDL. The Bay Watershed Agreements have grown to include so many issues linked to the watershed that it becomes more difficult for jurisdictions to engage fully and to provide staffing capacity across the 10 goals and 31 outcomes. We remain uncertain how this massive bureaucracy can drive the voluntary actions necessary to meet all of the goals. It is our belief that the jurisdictions, including EPA, are not using existing regulatory and enforcement authority – changing that could change the game. While the Chesapeake Bay Program structure can certainly be part of the problem, the states have clearly not met implementation goals.

We observe that a number of the findings and considerations align with the Beyond 2025 Steering Committee's People small group recommendation #1, **Governance, Structure, Accountability Framework, and Decision-making**.

Specific Observations and Recommendations

Executive Summary

Section 1: Overview and Project Components

1. **To ERG:** For the sake of transparency, the report should better document the full nature and extent of ERG's relationship with EPA. The report refers to ERG as an "independent," "third-party" evaluator. Within the field and practice of evaluation, an independent evaluator is presumed to have no business relationship with the organization subject to the assessment except for the evaluation commission itself. This is a well-accepted practice. It is important that readers of this report understand that ERG currently has at least 17 active contracts with EPA, with a combined ceiling value of approximately \$525 million. EPA's listing of active contracts can be accessed and reviewed at:
https://19january2017snapshot.epa.gov/sites/production/files/2016-10/documents/active_contracts_vendor_name_excluded_0.pdf.
2. Section 1.2, **Evaluation Questions**, were any "stakeholders" consulted in this process?

3. Section 1.2, **Evaluation Questions**

Purpose and Justification, “The partnership also has a set of processes in place (formal and informal) that defines how the partnership functions.”

We wonder why the report does not address the CBP “consensus” approach to decision making, a practice that can force outcomes to a “lowest common denominator?”

Structure, The report should have included the PSC and EC.

EQ2: To ERG: Purpose and Justification, “Furthermore, the people and entities who live and exist in the watershed are stakeholders just by being in the watershed; communicating results to them is important.” We agree with this point – but wonder what points might be recommended for improvement of Structure to accomplish this end?

EQ2: Definitions

Decision-makers: Individuals or entities who/which are external to the Program who/which make decisions that can impact the Program’s goal attainment. This includes (but not limited to) local government officials, businesses, landowners, farms and other businesses, and individuals living in the watershed. This should include the federal government.

4. **To ERG: Section 1.4 Definitions**, The structure of “Stakeholders” and “External to the Program” is a bit confusing. Everyone who resides in the watershed is included as a stakeholder, but many of them would also be defined as “external to the program” based on a lack of regular participation (for many reasons). In reality, there’s a differentiation between those who can and choose to participate vs those who can’t or choose not to. Only the folks who can get to the table are effectively “stakeholders.”
5. Section 1.3 **Scope**, Excluding evaluation of **EPA’s authorizations or appropriations**. This is particularly challenging. While we understand that analyzing the funding is a large and specific task, the structure, activities and, ultimately, success or failure of the Program are so linked to funding levels, constraints, and decisions, it very difficult to characterize the issue simply as, “**The scope defined by the evaluation questions does not include EPA’s or other federal agencies’ authorizations or authorized funding. Authorizations and appropriations are the purview of Congress.**”
6. **To ERG: In Section 1.4** the report describes project components and the analytical framework for the evaluation exercise. In a footnote #4, we note that the original evaluation plan included a process mapping component that has since been eliminated. We question this decision and suggest that the Steering Committee and EPA consider reinstatement of this process. We suggest this for several reasons. First, Finding F1 outlines excessive complexity as a drag on program performance. We suggest that careful mapping of key processes would

help program partners to isolate sources of complexity and help to identify potential changes in organizational structure and/or decision-making practices. This would be worthwhile because the report includes numerous references to ineffective process management within the CBP. For instance, in Section 4.0, page 14, the GIT process is referred to as a “plate of spaghetti.” On page 15, under heading F7, the report includes an observation that processes “die” at the Management Board level. Observations such as these strongly suggest that work-flow assessments and associated process schematics would benefit the overall Beyond 2025 process. The mapping of key processes would help identify potential redundancies; outdated, inefficient, or ineffective subprocesses; and help identify any as-yet-unidentified or unprioritized points of potential failure that could constrain the Program moving forward.

Section 2: Approach

7. **Section 2.3 Logical Model and Outcome Assessment, ERG reviewed data and information on the [Chesapeake Progress](#) (CP) website for each outcome.** This is a very important point: the CP website contains inaccurate information on the status of blue crabs – something that has been brought to CBPO attention during 2 Stakeholders’ Committee meetings. Since the tool was used to evaluate the definition of outcome, the comment above is mostly relevant to the nature of information that is communicated to the public. Additionally, is it troubling that the graphs reporting “modeled” progress will likely be perceived by uninitiated stakeholders as “real” progress.

Section 3: Analytical Outcomes

To ERG: Some members found the Table 1 SMART assessment inconsistent.

8. **To ERG:** page 8, Under oysters, The SMART outcome analysis is confusing for the “Restore native oyster habitat and populations in 10 tributaries by 2025 and ensure their protection.” There are no metrics for outputs or outcomes, by number, percent, or anything, yet it received all green checks.
9. **To ERG:** page 9, the Stream Health Outcome analysis is confusing, the indicators are not terribly useful for predicting or measuring stream health.
10. page 9, Forest Buffer Outcome, recognizing the forest buffer outcome has specific metrics, we are hard pressed to agree that this meets the “good structure” criterion of the outcomes assessment since it obviously hasn’t driven success in implementation. One could say the same about the WIPs- a good structural process for a WIP shouldn’t be scored well if it still fails to lead to accomplishing the outcomes.
11. We note that ERG’s assessment of the Diversity Outcome includes three red and one yellow ranking. We suggest that CBP’s attempt to rectify this through creation of diversity outcomes with a focus on making grant funding more accessible to small, community level organizations. This might include funding set-asides reserved for small organizations,

requirements that large grantees commit a specified percentage of their award value to community level organizations, and/or the provision of technical or networking support services. Each of these suggested metrics would satisfy all the SMART criteria utilized in ERG's analysis. We also recommend that one SMART criteria be added to expand the current slates of grant reviewers within the next year via outreach, intentional recruitment of reviewers with lived experience, etc. This would be a powerful way to expand the program's reach and build capacity within watershed communities.

12. Many of our members remain frustrated that CBP is not acting more aggressively to implement and operationalize a meaningful program of diversity, equity, and inclusion within all its areas of activity, including strategic visioning, decision-making, programmatic implementation, and external funding. The CBP DEIJ Strategy Implementation Plan Vision document was approved and published in November 2021 and it frustrates us that EPA has yet to establish a senior-full time authoritative presence in this area.
13. I wholeheartedly agree with their assessment on Toxics and Climate, for ex. - haven't done nearly enough as far as I know

Section 4: Statement of Findings

14. **F1: The Program and its key components are viewed as being complex and the level of complexity is a concern to stakeholders.** We agree with finding F1. Our membership frequently expresses frustration and confusion regarding CBP structure. We frequently engage in learning sessions and less formal interactions intended to help members better understand the structure of the Program they are charged with advising.
15. **F3: There is a perception that the voices of external stakeholders are not being listened to.** We strongly agree with finding F3. On February 27th and April 3rd 2024, the three advisory committees submitted joint letters to the PSC requesting enhanced engagement with the Advisory Committees and suggesting ways to do that. Additionally, unless you have the capacity to be at the table, raising and emphasizing your concerns, the process is so big, complex, and convoluted, that you are not effectively a stakeholder.
16. **F4: The program operates in a set of silos and these silos decrease the ability of the Program to operate effectively as a partnership.** We agree with finding F4, dealing with the CBP's tendency to operate within silos. It occurs to us that the EC members possess the authority to designate "bay czars" at the federal and state levels to help crack silos and coordinate work across all agencies of the partnership. There is precedent for such an action: a bay czar was appointed during the Obama administration and worked effectively to coordinate the execution of the Bay Executive Order and other federal bay implementation actions. Governor Schaefer of Maryland also appointed a bay czar to help coordinate and facilitate work across the state's agencies.

17. **F5: The Program components, especially the GITs, operate in a situation of constrained capacity in terms of both personnel time and funding.** This is an enormous staff capacity demand for jurisdictions, NGO's, and certainly private stakeholders. Particularly when you look at the lack of success on core outcomes.

18. **To ERG: F6: Combined Finding- The combined impact of (F1), potential lack of transparency of (F2), perception of not listening to external stakeholders (F3), siloed operations (F4), and constrained capacity (F5) may add to more than the sum of the individual findings...ERG suggests these be addressed in tandem.** What does that look like, can you provide an example?

19. **To ERG: F8: Social science is an emerging need for the Program.** First, the content analysis involved ERG reviewing a full report reflecting the need. The average person won't understand what they mean by the general statement of needing more social science in the Program. It could use more explanation and definition by ERG - more examples would help.

Second, the CESR report identified "implementation gaps" as a key component in why the TMDL has not been met. In short, the implementation gap reflects the idea that *voluntary* best management practices (BMPs) were not being implemented at a rate that would help achieve the TMDL. The BMPs would need to be implemented by those in the watershed (e.g., landowners, farmers). As such, approaches would need to be developed to incentivize them to implement BMPs. Those approaches would need to be based in social science. Finally, the small group discussions routinely mentioned social science as an area of need for the program, especially in contributing to the use of science in decision-making. Addressing outcome gaps in voluntary actions through application of more and better social science is not – by itself – a credible approach. Regulations and enforcement, better funding delivery program structures and outcomes, and other changes will also have to play a critical role in accelerating progress.

20. **To ERG: F9: The Program appears to be trying to do too many things-** Agreed, In our view, the ERG report says very little about the Bay Program's regulatory roots and responsibility to deliver on specific TMDL objectives. The 44-page report only mentions the term "TMDL" 6 times and never treats it as a major focus of program activity. Indeed, Finding 9 almost reads as if the TMDL stands in the way of other program objectives. We wish that the ERG analysis had included a specific and prominent focus on adjustments to organizational structure and program practice that might help to accelerate and achieve compliance with TMDL stipulations. Further, the report does not clarify or explore the programmatic goals of the Bay TMDL relative to the numerous sub-watershed TMDLs that have existed throughout the Bay since the 1990s. In other words, what is the Bay TMDL intended to do that the others are not? Perhaps more basically, the report does not address the

complicated and difficult constellation of issues involved in the coordination of mandated compliance efforts across multiple layers of federal, state, and local water quality regulation.

21. **F10: In many cases, there is a disconnect between the actions being performed by the Program and goal/outcome attainment.** Absolutely agree - the Black Duck Outcome is a good example but there are others that could be trimmed from the list. A Stakeholders' Committee member repeatedly says in our meetings, "Taxpayers expect (demand) that the Bay's Water quality be improved".
22. **F11: The Program's logical outcome structure contains components that are not defined properly as outcomes and lack measurable qualities.** More specifically, it was noted that several of the outcomes in the current Agreement reflect outputs rather than outcomes. Furthermore, some items are also not defined in a manner that allows for measurement of progress or the attainment of goals. If CPB can't keep straight the difference between "outputs" and "outcomes" in their own documents, we suggest that this is testimony to the inherent ambiguity that underlies these concepts. Perhaps CBP affiliated funders should stop using such verbiage when soliciting RFPs and interacting with organizations (especially small, capacity-limited community-level organizations) seeking funding through the Bay Program.

Section 5: Considerations

23. **To ERG: C-1 Developing a logic model that works backward from the ultimate goals to appropriate activities incorporating a theory of change that reflects how outcomes can be obtained from activities and outputs.**
How is this different from the Workgroups' Work Plans (formerly called Logic and Action Plans) that are developed every 2 years within the SRS process? Also, this new logic model should include specific activities that the States plan to undertake, not just the Workgroups- this speaks to the "Support the GITs".
24. **To ERG: C-2 Reducing the number of medium or long-term outcomes in any changed or future Agreement to better focus the Program at achieving its outcomes.** Some agreed with this, but are disappointed that the report doesn't begin to identify potential modifications – that's the challenging part. One who disagreed said that long-term outcomes are needed, but there must be benchmarks for progress reviews along the way, like reporting on the WIPs with the 2-year milestones.

"This consideration is explicitly suggesting that the Program may need to make some hard decisions on where it should focus." These tough decisions should not be based on timing of restoration. For example, if it is difficult and will take time to restore the scientifically viable amount of SAV, does this suggest that the amount of SAV that could be

restored in a shorter time frame will become the Goal? What are the impacts to other species like crabs on that line of thinking?

25. To ERG: C-4 Placing an emphasis on eliminating a siloed approach to Program design.

Agree, but this is very challenging to accomplish, particularly given the complexity and number of goals and outcomes. The report's only proposed solutions would add more complexity.

26. C-5 Identifying the need for and ways to improve Program transparency to all stakeholders. On page 19, it is suggested that the CBP adopt a practice of providing a 1-2 page "Decision Summary" for specified types of decisions. This recommendation is motivated by the need to improve program transparency. We suggest that PSC responses to annual recommendations submitted by the three advisory committees warrant a detailed and thoughtful Decision Summary.

27. "One approach in relation to Program decisions would be to provide a "Decision Summary" document that succinctly (1-2 pages) describes the issues, the options, relevant background, the Program's decision, and the reasons for the decision." Agreed, for example posting comments received during public feedback periods as well as showing how those comments are used in final versions.

28. To ERG: C-6 Increasing the use of social science in achieving Program outcomes.

Members have a lot of questions and concerns about what this entails and how it will be used. There is a desire for a better understanding of the definition. "Behavioral change" language, especially from a government agency, sounds manipulative and there is a perception that it will impede genuine relationships with communities. While this could be necessary on a number of fronts, believing this is the primary mechanism to close the implementation gap strains credibility.

29. C-8 Allowing for flexibility in the SRS review cycle.

With exception given to the 2-year milestone reporting. That should remain the same.

30. To ERG: C-9 Make recommendations to ensure the Management Board accesses the appropriate expertise and experience during the SRS process. On page 20, it is suggested that the Management Board is "too narrowly focused" and needs to "access...appropriate expertise and experience during the SRS process." This is a serious issue and begs for documentation, more information, and further articulation of specific issues. Inclusion of some sort of MB decision log might help readers to better understand the gravity of the issues that drive this consideration.

31. **C-10 Continue to reach out to Tribal entities in ways that allow consideration and incorporation of their viewpoints.** We welcome the recommendation that the Bay Program consider taking steps to reach out and seek input from Tribal entities within the Bay Watershed.
32. **C-11 Finding ways to ensure those working on GITs (or other teams) feel supported in their work.** The report lacks mention of truly engaging the PSC and the EC. There is no mention of relationship building at the top level. Early success of this program was driven by EC and PSC – and the Program needs to get deep engagement back to that level. It could be considered disrespectful by not including them in this evaluation. In addition, where does that leave all the legislators who drove great progress on fisheries etc...(and how the CBP successes are reliant on them to do so)?

Appendices

33. **Appendix A: Summary Themes from Content Analysis,**
EQ1: Collaboration, page A-3, “The Program’s use of consensus-based decision-making has the benefit of preventing political gaming of the system but has also favored easy changes over more complex or substantial solutions.” Glad to see the issue of consensus-based decision making was raised. However, we think it actually adds to the political gaming with one state agreeing on something to get support for one of their issues which drives decisions to the lowest common denominator. Dissenting views can still be recorded. For example, if a jurisdiction does not plan to pursue new goals for the next Agreement, it shouldn’t prevent other jurisdictions from adopting new goals.

Issue #4: Use and Dissemination of Science, page A-3

“Generally, experts suggest that contemporary scientific findings could be better utilized to strategically target opportunities to pursue ecological outcomes.” Agree

“Experts sometimes mentioned that the Program should strengthen efforts to disseminate new scientific findings, however, most recommendations for improvement focused on strengthening knowledge of current science within the Program. Outside the Program, experts advocated for increased technical assistance resources.” Agree

“Some decisions about using and disseminating science have been influenced by a desire to stay away from “contentious topics” like climate change or other political agendas.”
Agree, the Conowingo Dam is an example.

34. **Issue #5, Functioning as a Partnership, page A-3** does not reference the Bay Program’s continuing struggle to make grant monies accessible, administratively feasible, and more

usable for community-level groups. This issue has been a long-term point of concern and focus for the Stakeholders' Advisory Committee and is well-documented in a report from a 2022 workshop convened by the Committee to explore this problem. We suggest [Report of Findings on Equitable Access to Grants](#) be considered in ERG's content analysis.

“The existing framework does not encourage program change, experimentation, and innovation. It is limited in its ability to systematically address uncertainty.” Agree

35. **To ERG: Appendix B: Group-Level Themes from Group Discussions**, input from the Goal Implementation Teams is summarized only by the group number (e.g., “GIT 1 Group Discussion). One of the main findings of this report is that people view the CBP as overly complicated. It stands to reason that many people haven't memorized the numerical ordering of the GITs. Why not use their actual names? This would help reviewers to contextualize each group's input without having to go online and consult the CBP org chart.