Policy Issues Raised by Partners and Stakeholders as the Chesapeake Bay Program Partnership's Oyster BMP Expert Panel Carries Out its Charge

Revised for the May 19, 2016 Management Board Meeting

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 that are outside the scope of the Panel's charge. 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 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) reflecting responses to comments were than shared with the WQGIT members on May 8th in preparation for the May 9th conference call. 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/.

Policy Issues Raised by Oyster BMP Expert Panel Members[1]

- 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 for nitrogen (N) and possibly phosphorus (P) assimilation in oyster shell.

[1] These policy issues were summarized by the Oyster BMP Expert Panel coordinators from the Oyster Recovery Partnership based on Panel discussions over the course of the past eight panel meetings held since September 2015.

        - 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 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 improvement from filtration includes particulate organic matter.

Policy Issues Raised by Chesapeake Bay Program Partners and Stakeholders[2]

- 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)

[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, the February 8, 2016 WQGIT meeting, and during the WQGIT and other partners and stakeholders review of the April 21, 2016 draft issue briefing paper entitled: "Reaching Partnership Agreement on How to Address the Policy Issues Raised As the Oyster BMP Expert Panel Carries Out its Charge." CBC: Chesapeake Bay Commission; CBF: Chesapeake Bay Foundation; CBP CAC: Chesapeake Bay Program's Citizen Advisory Committee; DE DNREC: Delaware Department of Natural Resources and Environmental Control; and SELC: Southern Environmental Law Clinic.

- 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 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)

- Crediting for Sediment Load Reductions
    - Allow credit for sediment reduction for the shell making up a reef or as part of an aquaculture operation. Reefs are really good at removing suspended sediment, both from the feeding/pseudofeces generation process and by slowing down flow. (DE DNREC)

- Crediting and Accounting for Pollutant Load Reductions
    - "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),[3] 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." (CBF)

- Oyster BMP Verification and Crediting by Source Sector or New Category
    - "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." (SELC)

[3] April 15, 2015 letter from Ann Jennings, CBF, to David McGuigan, U.S. EPA Region III.

- Small Nutrient Reductions in the Face of Greatly Expanded User Conflicts
    - "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." (SELC)

Request for Decision to Proceed Forward

REQUESTED DECISION: The Management Board's acceptance of this documented list of policy issues related to the work of Oyster BMP Expert Panel as the starting point for resolution of these policy issues following the procedures recommended by the Water Quality Goal Implementation Team.