

Chesapeake Bay Program: Governance and Goals Options for Principals' Staff Committee Consideration

OVERVIEW

The Goal Implementation Team of Partnering and Leadership (GIT6) held a one day workshop to explore four areas of inquiry related to governance and goals of the Chesapeake Bay Program. These areas were selected based on their relationship to improve functioning of the Bay Partnership, and subsequently have a successful impact on the protection and restoration of Chesapeake Bay. These areas include:

- 1/ Adopting partnership goals and outcomes
- 2/ Chesapeake Bay Program (CBP) governing bodies/membership/voting privileges
- 3/ Changes to Rules and Procedures
- 4/ Protocols for Decision Making and Voting Responsibilities

The objective of the meeting was to articulate the problems and important considerations associated with these four areas of inquiry. The group then offered options for solutions to the problems that might be discussed and prioritized per their relative utility and preference among jurisdictions and stakeholders, including at a meeting of the Management Board.

The format for the options began with the current status of the framework of operation for governance and goal setting or “status quo,” and then subsequent additional options were shared, discussed and elaborated upon by participants, including consideration of the pros and cons of each option. The role of the hierarchical entities (i.e. EC, PSC, MB, GITs) and their responsibilities to contribute to Program governance, goal setting, and assistance with decision making, among the jurisdictions and stakeholders was also addressed where significant.

The Management Board reviewed and weighed the options proposed by GIT 6 and offered clarifications, alternatives and/or deletion of some options. The options identified below represent the outcome of the Management Board Meeting and their acknowledgement that many of the options are not mutually exclusive and that a choice on one drives the choices on others.

**** NOTE: All of the options identified by the breakout groups are represented below (with the exception of options for Management Board Participation, GIT Participation and Options for Scheduling Adaptive Management Reviews which will be reviewed by the MB at its next meeting). All options for PSC consideration have been re-ordered for flow following the Management Board meeting on February 27, 2013 and therefore, are no longer grouped by GIT6 breakout group.**

OPTIONS for a CBP Participatory Document

Current problems/considerations: The general perception is that the current Agreement and associated commitments are outdated, and some of the commitments are not measureable. The Agreement seems unnecessarily long and complicated, and not all of the issues impact each jurisdiction nor do they have the same magnitude/importance (and possibly because of this, Governor's signatures may mean different things for different jurisdictions. In addition, not all the commitments are measurable (or SMART). With the *Chesapeake 2000* Agreement, all signatories signed on to all goals and commitments.

- **Status Quo:** No new Agreement (rejected by MB)

— *Pros: Overarching Chesapeake 2000 Agreement goals are still considered relevant and critical. The Partnership can move forward without time and attention being spent to develop a new Agreement.*

— *Cons: Commitments with deadlines are outdated, which leads to confusion about what the CBP partnership is committed to. There is a question on whether CWA Section 117 funds can continue to be used with outdated commitments.*

- **Option 1a: New “Participatory Agreement”**— a declaration of intention that describes how the partners would function/work together and reconfirms the benefits of the Program. It would be tied to, but separate from, a document that articulates the goals and outcomes of mutual interest that can be updated more frequently. These documents would be signed by the EC.
 - *Pros* – Promotes the idea of everyone “Being all in”. The primary focus is on the partnership/relationship, it is more simple and efficient, and there is improved transparency at the federal level.
 - *Cons* – The Agreement and goals are in separate documents; might lose esprit de corps, consistency, and uniformity. (option 1 changed to 1a and 1b by MB)
- **Option 1b:** New “Participatory Agreement” (similar to Option 1a and signed by the EC), but the secondary document articulating goals and outcomes would be signed by the PSC. The goals and outcomes document could be updated more frequently, be more flexible, and better incorporate SMART goals.
- **Option 2: New/renewed comprehensive agreement** [participatory + goals/outcomes]. This type of agreement would--like C2K--describe how the partners agree to work together and the goals and outcomes they agree to pursue. Unlike C2K, it would be much simpler/shorter and have far fewer outcomes identified).
 - *Pros:* Clearly articulated goals and outcomes are signed by the highest level of the partnership, leading to a higher likelihood of commitment. More direct relationship with the authorization language under CWA Section 117.
 - *Cons:* Doesn't provide for flexibility with goals and outcomes and will take time to develop and get consensus. Confusion with the distinction between what we do and how we work.

OPTIONS for Executive Council Membership

Current Problems/Considerations: Section 117 requires an executive council; historically though not specified in Section 117, members have been at the most senior level for each member organization. There is a lack of clarity in the relationship between the roles of members on the MB and the PSC.

For example, the level at which an issue should be decided is currently unclear. Within these groups it is also unclear who decides on the issues and how. There is sometimes a lack of understanding who the members are and who is participating as a non-voting member (Jurisdictions, federal agencies, local orgs, NGOs). Questions that often arise related to decision-making include:

- Original signatories only?
- Who is a partner vs. stakeholder?
- What does partnership confer and what are the expectations/responsibilities?
- What are the unique responsibilities and obligations of a partner/participant on these committees?

GIT6 looked at possible changes to the Program structure and membership in order to better define and differentiate the role of Goal Implementation Teams (GITs), the Management Board (MB), the Principal's Staff Committee (PSC) and the Executive Council (EC), and to better define appropriate partner representation of these entities. The purpose of the options developed below is to provide clarity in appropriate roles for each governing body, appropriate membership levels and levels of consideration of issues.

- **Status quo:** “full members” include: MD, VA, PA, DC, CBC, EPA (EPA as a lead federal agency); “participating partners” include DE, WV, NY (headwaters), USDA, and other federal agencies on specific issues as appropriate; top level of all signatory members: Governors and DC Mayor, EPA Administrator, CBP chair
 - *Pros* – high visibility for issues, ensures issues are a priority for implementation
 - *Cons* – meets only once annually; role of “participating partners” is confusing and representation is often delegated to a lower level.
- **Option 1:** Current members plus full membership for any headwater states who sign on to agreement
 - *Pros* – Greater participation and cooperation throughout watershed
 - *Cons* – Greater staffing needs for headwaters, should they choose to sign agreement;
- **Option 2:** Current members plus additional member from other federal agency(ies) who sign onto agreement
 - *Pros* – Federal partners more engaged in full range of issues
 - *Cons* – Somewhat dilutes voting rights of jurisdictions
- **Option 3:** Current members [including EPA] plus one additional member representing the Federal Leadership Committee [may need to create FLC vice-chair to serve on EC so that EPA is not represented twice on the EC]
 - *Pros* – Links additional federal agencies to partnership

- Cons – *Dilutes somewhat voting rights of jurisdictions*
- **Option 5a:** Non-TMDL option. Retain the current governing body structure and membership of EC/PSC/MB/GITs but take TMDL out of the “partnership” elements of the program; EPA would handle TMDL directly with jurisdictions; other water quality issues would be retained by CBP Partnership (monitoring, model, etc)
 - Pros – *takes divisive TMDL issue out of the CBP Partnership*
 - Cons – *There could be too little attention paid to water quality issues, including some of the key ecosystem outcomes that will benefit from TMDL implementation.*
- **Option 5b:** Distinguish the nature of TMDLs as a regulatory requirement of section 303(d) of the Clean Water Act, distinct and apart from section 117 of the CWA, that establishes a fundamentally different relationship between EPA and the state jurisdictions (regulating federal agency and states vs. federal agency leader with broad partnership of other federal agencies, NGOs, academic institutions, etc). Ensure that the TMDL aspects of the program are addressed as one of the tools to achieve clean water goals under the Water Quality Goal Implementation Team.

(option 5b added by MB)

 - Pros – *places TMDL discussions and operational considerations at the appropriate place for debate and resolution.*
 - Cons – *could diminish interest on the part of jurisdictions if their primary focus is TMDL implementation – they might want this narrow focus to be the program focus at all levels.*

OPTIONS for Principals’ Staff Committee Participation

- **Status Quo:** EC member and participating partner designees (state secretaries from all states, Director of D.C. DOE, CBC Executive Director, and federal agencies. When a vote is called only one vote is allowed per delegation (all federal members are a single delegation), but there are multiple members from the same jurisdictions and multiple federal agencies at the table. STAC, CAC and LGAC chairs are all invited to the table but do not have voting privileges.
 - Pros – *greater expertise and higher level decision makers from all partners*
 - Cons – *if a vote is not sought there is an appearance of dilution of jurisdiction’s perspectives.*
- **Option 1:** Retain current membership, however, members may only vote on issues according to what they have signed onto (i.e. if only signed onto water quality, they may only vote on water quality issues).
 - Pros – *Members can pick and choose issue on which they will work*
 - Cons – *Complicates voting.*
- **Option 2:** Only signatory jurisdictions “at the table” other partners serve in an advisory capacity.
 - Pros – *Only those that have decision-making responsibilities are at the table, therefore eliminating the confusion of who “votes”*

- Cons – *With the option that different partners sign off on different goals/outcomes, this option may not eliminate the confusion of who “votes”*

OPTIONS for MB/PSC Voting Approaches (range of decision making + who votes on options)

- **Option 1:** Only the signatories get one vote each. If there is an option that allows for signatories to sign on to specific goals and outcomes (those that didn't sign on to the related goal would not be the decision-makers.
 - Pros – *Only those that have committed to achieve goals make decisions. Decision-making not diluted by others.*
 - Cons – *Complicates decision-making process. Has potential for disenfranchising other members.*
- **Option 2:** Delegation style vote (for program wide implications). 9 total votes, 1 vote per jurisdiction and CBC plus 1 vote for federal agencies (EPA will always be that vote and communication with others would happen through the FOD or FLC/D)
 - Pros – *Equal voice for each jurisdiction, regardless of the number of members in that jurisdiction. EPA, who represents the federal government on the EC, is responsible for coordinating the federal voice.*
 - Cons – *For the federal vote, EPA is not always the primary federal agency for meeting all of the goals under the CBP partnership.*
- **Option 3:** Delegation style vote (for program wide implications). 9 total votes, 1 vote per jurisdiction plus 1 vote for feds. The federal agency to place vote is the lead agency for the EO 13508 Strategy. EPA will defer to the other agencies as needed; communication through the FOD.
 - Pros – *Same as above for jurisdictions. For federal agencies, it ensures that the appropriate federal agency is responsible for leading the vote on behalf of the federal government*
 - Cons – *Complicates federal decision-making*

OPTIONS for MB/PSC/EC Decision Making

Current problems/considerations: Lack of clarity about who gets to vote on which issues and how the vote will be conducted. Particular confusion includes the role of federal agencies and headwater states in decision making. Clear decision-making rules need to be established or clarified (e.g. Must the group reach consensus? Are there situations where a vote can be called and where majority rules? In the case where majority rules, would dissenting members record their objections? What are the rules for conflict resolution?)

- **Option 1:** Full participation: All partners sign on to all goals and fully participate in decision-making.

- *Pros – ensures the greatest possible involvement toward all Chesapeake Bay restoration goals and outcomes*
- *Cons – less jurisdictional flexibility, may strain budgets and resources, doesn't encourage consensus*
- **Option 2:** Menu style approach towards goal involvement: Partners sign on to a specific subset of goals and outcomes
 - *Pros – Allows partners and stakeholders to sign on to the goals and outcomes they are interested in. Doesn't bog down jurisdictions with extra monitoring.*
 - *Cons – May weaken bay restoration effort, may be too heavily impacted by ever changing political forces*
- **Option 3:** Champion approach: Allows for one or more members to explore an emerging issue on behalf of the partnership. Others may sign on at a later date or not at all.
 - *Pros – Allows partners and stakeholders to put an emphasis on the goals and outcomes most important to them. Allows jurisdictions to monitor effectively, without imposing extra monitoring. Allows other jurisdictions to sign on at a later date.*
 - *Cons – May weaken bay restoration effort, may be too heavily impacted by ever changing political forces*

OPTIONS for Updating Goals:

- **Option 1:** Have appropriate federal/state/partners sign on to the goals
 - *Pros – More entities signing on to meet goals*
 - *Cons – There is a perception that increased federal involvement would dilute the jurisdictional voice.*
- **Option 2:** Have EPA serve as the federal representative. EPA works with the individual federal partners via a MOU
 - *Pros – Keeps work moving forward; limits dilution of the jurisdictional voice*
 - *Cons – Limits participation of other federal agencies.*