

## Chesapeake Bay Program Agreement Options (Revised 4/5/13)

*The following is a sample agreement that helps illustrate two main options in styles of a possible Chesapeake Bay Agreement:*

### OPTION 1: BIFURCATED AGREEMENT – “Declaration of Commitment” with separate “CBP Statement of Outcomes”

\*\*NOTE: This option includes two separate and independent documents: 2013 Chesapeake Bay Agreement, for EC signature, is a participatory agreement that describes the how the partners would work together including overarching goals; Part B, for either EC or PSC signature, would identify the goal-specific outcomes the Partners would strive to meet.

### OPTION 2: COMPREHENSIVE AGREEMENT

\*Note: This option takes most of the elements contained in the documents that comprise “Option 1” and condense them into a single Partnership agreement. The major difference is that this style would include both the participatory language, goals and outcomes in one document similar to C2K. Governance language could be an appendix or separate document.

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**Both options would have the following sections (example language for each is found on page noted):**

Page 3:	Section 1: Preamble
Page 3:	Section 2: Vision
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Pages 4-5:	Section 4: Goals ( <i>FOR OPTION 2 ONLY: this section would also contain measurable outcomes and potentially jurisdictional responsibilities by outcome</i> ) <ul style="list-style-type: none"><li>- Decision on identification of responsible entities</li></ul>
Page 6:	Section 5: Membership
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Pages 8-9:	<i>FOR OPTION 1 ONLY: Stand-alone document for the Chesapeake Bay Program Statement of Outcomes and potentially jurisdictional responsibilities by outcome)</i> <ul style="list-style-type: none"><li>- <i>Decision on Agreement and outcomes</i></li><li>- <i>Decision on signing on to outcomes</i></li></ul>

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Page 10:	Supplemental Document – Governance Document <ul style="list-style-type: none"><li>- Decisions on governance guidelines</li></ul>
Pages 10-11	Supplemental Document – Management Strategies <ul style="list-style-type: none"><li>- Decision on management strategies</li></ul>
Pages 12	Additional Decision Points <ul style="list-style-type: none"><li>- Treatment of TMDL issues in the partnership</li><li>- PSC Participation and Voting eligibility</li><li>- PSC/MB voting privileges</li></ul>

# 2013 Chesapeake Bay Agreement

**Section 1: Preamble** – history, benefits and accomplishments of the 30-year Chesapeake Bay Program Partnership. **\*\*Note: All sample language is in grey to describe the types of information that would be included in each section.**

In 1983, 1987 and 2000, the states of Virginia, Maryland, Pennsylvania, the District of Columbia, the Chesapeake Bay Commission and the U.S. Environmental Protection Agency, representing the federal government, signed historic agreements that established the Chesapeake Bay Program partnership to protect and restore the Chesapeake Bay's ecosystem.....

For almost two decades, the Chesapeake Bay Program Partners have worked together as stewards to ensure the public's right to clean water and a healthy and productive resource.....

On this 30<sup>th</sup> anniversary of the founding of the Chesapeake Bay Program, we recognize the significant progress made to protect and restore this National treasure and by signing this agreement, we hereby reaffirm our partnership and recommit to fulfilling the public responsibility we undertook three decades ago.

**Section 2: Vision** – The Chesapeake Bay Program Partners envision a Chesapeake watershed with:

- clean water that is swimmable and fishable in streams, rivers and the Bay
- sustainable, healthy populations of blue crabs, oysters, fish and other wildlife
- a broad network of land and water habitats that support life and are resilient to the impacts of development
- abundant forests and thriving farms that benefit both the economy and environment
- extensive areas of conserved lands that protect nature and the region's heritage
- ample access to provide for public enjoyment
- cities, towns and neighborhoods where citizens are stewards of nature

**Section 3: Mission** – The Partners agree to work together to restore and protect the Chesapeake Bay ecosystem and the living resources of the Chesapeake Bay through a coordinated, cooperative approach. We agree to provide for continuity of management efforts and perpetuation of commitments necessary to ensure long-term results.

## Section 4: Goals

**OPTION 1** \*(Note: this document would include only high level goal statements. Outcome statements would be contained in a separate document below “CBP Outcomes.”)

By this Agreement, we commit to work toward achievement of the goals set forth below and such other goals as may be determined from time to time by the Executive Council. We further agree to set measurable outcomes for each goal in a “CBP Statement of Outcomes.”

1. **Sustainable Fisheries Goal:** Restore, enhance, and protect the finfish, shellfish and other living resources, their habitats and ecological relationships to sustain all fisheries and provide for a balanced ecosystem in the watershed and bay.
2. **Vital Habitats Goal:** Restore, enhance, and protect a network of land and water habitats to support priority species and to afford other public benefits, including water quality, recreational uses and scenic value across the watershed.
3. **Water Quality Goal:** Restore water quality to achieve standards for DO, clarity/SAV, and chlorophyll-a in the Bay and its tidal waters as articulated in the Chesapeake Bay Total Maximum Daily Load (TMDL).
4. **Healthy Watersheds Goal:** Maintain local watersheds at optimal health across a range of landscape contexts.
5. **Land Conservation Goal:** Conserve landscapes treasured by citizens to maintain water quality and habitat; sustain working forests, farms and maritime communities; and conserve lands of cultural, indigenous and community value.
6. **Public Access Goal:** Expand public access to the Bay and its tributaries through existing and new local, state and federal parks, refuges, reserves, trails and partner sites.
7. **Environmental Literacy Goal:** Every student in the region graduates environmentally literate having participated in meaningful watershed educational experiences in elementary, middle, and high school that were supported by teachers who have received professional development in environmental education and schools that are models of environmental sustainability.

**\*OPTION 2:** Format for each goal would be: Overview/importance to ecosystem; Goals; Outcomes

By this Agreement, we commit to work toward achievement of the goals set forth below and such other goals as may be determined from time to time by the Executive Council. We further agree to set measurable outcomes for each goal.

### 1. Water Quality Goals

Restore water quality to achieve standards for DO, clarity/SAV, and chlorophyll-a in the Bay and its tidal waters as articulated in the Chesapeake Bay Total Maximum Daily Load (TMDL).

- Investigate existing and emerging opportunities to achieve the most cost-effective pollution reductions and options to finance implementation.
- Develop and promote the best science available to monitor existing water quality and trends and predict the effects of future management decisions.

#### *Outcomes*

- *2025 Watershed Implementation Plans (WIP)*  
*Outcome:* Have all controls installed by 2025 to achieve the Bay’s DO, water clarity/SAV, and chlorophyll a criteria.
- *2017 WIP Outcome:* Have practices in place by 2017 that are expected to achieve 60 percent of the load reductions necessary to achieve applicable water quality standards compared to 2009 levels.

### Toxic Contaminants Goal

Reduce the introduction and impact of toxic contaminants in the watershed, from both existing sources and emerging sources to levels consistent with.....

#### *Outcomes*

- x

(continued . . . )

**(Option 2, continued)**

**2. Sustainable Fisheries Goal**

Restore, enhance, and protect the finfish, shellfish and other living resources, their habitats and ecological relationships to sustain all fisheries and provide for a balanced ecosystem in the watershed and bay.

*Outcomes:*

- *Blue crabs* – maintain sustainable blue crab population based on the current 2012 target of 215 million adult females (1+ years old) and continue to refine population targets between 2013 through 2025 based on best available science
- *Oysters* - . . .
- *Fisheries* - . . .

**3. Vital Habitats Goal**

Restore, enhance, and protect a network of land and water habitats to support priority species and to afford other public benefits, including water quality, recreational uses and scenic value across the watershed.

*Outcomes*

- *Wetlands* – restore 30,000 acres of tidal and non-tidal wetlands . . .
- *Stream* restoration - . . .
- *SAV* - . . .

**4. Healthy Watersheds Goal**

Maintain local watersheds at optimal health across a range of landscape contexts.

*Outcome:*

- x

**5. Land Conservation Goal**

Conserve landscapes treasured by citizens to maintain water quality and habitat; sustain working forests, farms and maritime communities; and conserve lands of cultural, indigenous and community value.

*Outcome:*

- Protect an additional 2 million acres of lands

**6. Public Access Goal**

Expand public access to the Bay and its tributaries through existing and new local, state and federal parks, refuges, reserves, trails and partner sites.

*Outcome:*

- x

**7. Environmental Literacy Goal**

Every student in the region graduates environmentally literate having participated in meaningful watershed educational experiences in elementary, middle, and high school that were supported by teachers who have received professional development in environmental education and schools that are models of environmental sustainability.

*Outcome*

- x

**Decision: Identification of Responsible Entities: Should the signatories sign off on each goal area and outcome they commit to working toward individually?**

## Section 5: Membership

As established by Section 117 of the Clean Water Act, the members of the Chesapeake Executive Council are the signatories to the Chesapeake Bay Agreement identified by signature below. This includes: Maryland; Virginia.....the Chesapeake Bay Commission, a tri-state legislative body; the U.S. Environmental Protection Agency (representing the United States federal agencies)....

The roles and responsibilities of the jurisdictions, the CBC, the EPA and other federal partners are more fully described in the “CBP Governance Guidelines.”

This section would also emphasize that EPA and any other federal signatory are signing on behalf of the entire federal government (via the Federal leadership Committee for the Chesapeake Bay) and that non-signatory federal partners have an important role within the Partnership. (or this could go in the introductory language of Section 6). This section would also address the role of USDA.\*

**\*The 2008 Farm Bill includes the following “sense of Congress”:**

**(g) Sense of Congress Regarding Chesapeake Bay Executive Council.--It is the sense of Congress that the Secretary should be a member of the Chesapeake Bay Executive Council, and is authorized to do so under section 1(3) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a(3)).)**

## Section 6: Principles

The Partners agree to the following Principles:

1. Work together to improve the environment in communities throughout the entire watershed and in its thousands of streams, creeks and rivers.
2. Coordinate and strategically manage water quality and ecosystem restoration efforts across the program in cooperation with the Federal Leadership Committee for the Chesapeake Bay and other non-governmental partners.
3. Use best efforts to accomplish the goals of the partnership outlined in Section 4 of this Agreement.
4. Use science-based decision-making and adaptive management principles
5. Commit to being transparent with the public on progress in meeting goals and outcomes, or any changes or revisions to the goals, outcomes, or strategies of the partnership.

### Operational Commitments

1. Implement an adaptive management system that ensures continual improvement of our ability to achieve goals, outcomes, and strategies including implementation of a tracking and accountability framework.
2. Demonstrate strong, regional leadership by convening an annual public meeting of the Chesapeake Executive Council.
3. Implement a coordinated Bay-wide monitoring system and research program.
4. Develop management strategies for each outcome, approved by the PSC, that would include jurisdictions and federal agencies who commit to supporting the achievement of that outcome. Management Strategies, outcomes and goals will be reevaluated every two years by the Principals’ Staff Committee with recommended changes going to the EC.
5. Develop “governance guidelines” to identify the roles, responsibilities and working relationships of and between all the CBP members.
6. Clearly articulate the roles and responsibilities of the non-member federal agencies.

## Section 7: Effective Date

This Declaration is effective upon signature.

## Section 8: Affirmation and Signatures

By this Agreement, we the undersigned members of the Chesapeake Executive Council, reaffirm our commitment to work together as described herein to protect and restore the Chesapeake Bay ecosystem.

Date: \_\_\_\_\_

For the Commonwealth of ....

For the State of.....

For the...

For the Chesapeake Bay Commission, a tri-state legislative body...

For the U.S. Environmental Protection Agency (on behalf of the federal government and the Federal Leadership Committee for the Chesapeake Bay)...

(Note: additional Federal Agency representatives may also be invited to attend based on issues being addressed at a particular EC meeting. The 2008 Farm Bill includes the following “sense of Congress” (which does not supersede intent of Congress in Section 117 of the CWA:

(g) Sense of Congress Regarding Chesapeake Bay Executive Council.--It is the sense of Congress that the Secretary should be a member of the Chesapeake Bay Executive Council, and is authorized to do so under section 1(3) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a(3)).)

## **Decisions: EC Membership/Signatories**

- Full/Partial Membership – Are there alternatives to full membership? For example, can Partners sign on to only portions of the Agreement (i.e. commit to work only towards certain goals, such as water quality, vital habitats or public access)?
  - If they choose this menu style approach, would they be full members of the EC? Would they be full members of the PSC?
  - Must they abstain from discussion/voting on issues to which they have not agreed to work?
- Additional future partners – if at a future time the FLC or a headwater state desires a place at the EC table, should there be a mechanism for a “late signor” to the agreement to allow for additional members?
- Will current headwater states choose to join as full members?

The undersigned members of the Chesapeake Executive Council reaffirm our commitment to work together under this Agreement to achieve the water quality goals and outcomes only as adopted by the Partnership.

\_\_\_\_\_  
\_\_\_\_\_

*\*The explicit role of these partners is described in greater detail in the CBP Governance Guidelines.*

## Part B: Chesapeake Bay Program Statement of Outcomes

For Option 1 only: \*NOTE: For this style of agreement, the Statement of Outcomes would be a stand-alone document that could be updated periodically (e.g. every 5, 10, 15 years or as determined by the EC). It could be signed by either the EC or the PSC.

### Decisions: Agreement and Outcomes

- Should both Part A and Part B be developed and adopted at the same time or could the CBP Outcomes document be developed at a later time?
- Should the Outcomes document be signed by the EC or PSC?

Pursuant to the mission, vision of this Agreement, we the undersigned members of the Chesapeake Executive Council, reaffirm our commitment to work together to protect and restore the water quality and living resources of the Chesapeake Bay water basin and agree to the following outcomes to help measure progress on the goals identified in the 2013 Chesapeake Bay Agreement. We further agree to meet annually to review Partnership progress, review goals as necessary and set direction for the following years. The Chesapeake Executive Council (direct our principals to oversee on our behalf, using adaptive management principles, the development of management strategies and performance measures for each of the outcomes and recommend to us any changes needed to update or refine the outcomes or overall goals.

1. **Sustainable Fisheries Goal:** Restore, enhance, and protect the finfish, shellfish and other living resources, their habitats and ecological relationships to sustain all fisheries and provide for a balanced ecosystem in the watershed and bay.
  - **Blue Crab Outcome:** Maintain sustainable blue crab population based on the current 2012 target of 215 million adult females (1+ years old) and continue to refine population targets between 2013 through 2025 based on best available science.
  - **Oyster Outcome**
  - **Fisheries Outcome**
2. **Vital Habitats Goal:** Restore, enhance, and protect a network of land and water habitats to support priority species and to afford other public benefits, including water quality, recreational uses and scenic value across the watershed.
  - **Wetlands Outcome: Restore 30,000 acres of tidal and non-tidal wetlands...**
  - **Stream Restoration Outcome**
  - **Fish Passage Outcome**
  - **Submerged Aquatic Vegetation Outcome**
  - **Forests Outcome**
3. **Water Quality Goal:** Restore water quality to achieve standards for DO, clarity/SAV, and chlorophyll-a in the Bay and its tidal waters as articulated in the Chesapeake Bay Total Maximum Daily Load (TMDL).
  - **2025 Watershed Implementation Plans (WIP) Outcome:** Have all controls installed by 2025 to achieve the Bay's DO, water clarity/SAV, and chlorophyll a criteria.
  - **2017 WIP Outcome:** Have practices in place by 2017 that are expected to achieve 60 percent of the load reductions necessary to achieve applicable water quality standards compared to 2009 levels.
4. **Healthy Watersheds Goal:** Maintain local watersheds at optimal health across a range of landscape contexts.



- **Healthy Waters Outcome:** State identified healthy waters remain healthy
- 5. **Land Conservation Goal:** Conserve landscapes treasured by citizens to maintain water quality and habitat; sustain working forests, farms and maritime communities; and conserve lands of cultural, indigenous and community value.
  - **Protected Lands Outcome:** Protect an additional 2 million acres of lands...
- 6. **Public Access Goal:** Expand public access to the Bay and its tributaries through existing and new local, state and federal parks, refuges, reserves, trails and partner sites.
  - **Public Access Site Development Outcome:** Increase public access by adding 300 new public access sites by 2025.
- 7. **Environmental Literacy Goal:** Every student in the region graduates environmentally literate having participated in meaningful watershed educational experiences in elementary, middle, and high school that were supported by teachers who have received professional development in environmental education and schools that are models of environmental sustainability.
  - **Education Outcome:** TBD

### Signatures

#### **Decision: Signing on to Outcomes**

- Should the overarching goals and original outcomes be signed by the EC but any necessary revisions be delegated to the PSC with an annual update to the EC?
- Should partners identify in this document those outcomes they commit to working toward?
- Can partners sign on/commit only to working towards water quality goals and outcomes?

By this Agreement, we the undersigned members of the Chesapeake Bay Program Partnership, commit to work together to achieve the outcomes identified herein to protect and restore the water quality and living resources of the Chesapeake Bay water basin.

Date: \_\_\_\_\_  
           For the Commonwealth of .... \_\_\_\_\_  
           For the State of..... \_\_\_\_\_  
           For the \_\_\_\_\_

Alternative language:

The undersigned members of the Chesapeake Bay Program Partnership commit to work together only on the water quality outcomes of this Agreement:

\_\_\_\_\_

# Supporting Documents

## Supporting Document: Governance Guidelines

Note: [This would not be part of the “Agreement” but a separate document.](#) As recognized in “Section 6: Principles”, the partners would be instructed to develop “governance guidelines” to identify the roles, responsibilities and working relationships of and between all the CBP members, including the non-signatory federal partners. This separate document would provide structure and direction to the partnership.

### Governance Guidelines

1. *Context and Purpose*
2. *Organization Chart*
3. *Adaptive Management Relative to Program Governance*
4. *Organizational Responsibilities for Adaptive Management*
5. *Decision-Making in the Chesapeake Bay Program*
6. *Chesapeake Bay Program Governance*
  - a. *Chesapeake Executive Council*
  - b. *Principals’ Staff Committee*
  - c. *Management Board*
  - d. *Goal Implementation Teams*
  - e. *Action Teams*
  - f. *Advisory Committees.....*

### Decisions: Governance Guidelines

- Should the Governance Guidelines be a completely separate, stand-alone document or should it be linked to the Declaration or part of the “Chesapeake Bay Agreement” package?
- What part of the organization should sign off on the document, the PSC or Management Board?
- How often should the CBP Governance document be renewed/updated?

## Implementation Document: Management Strategies

Note: Management Strategies are called for Under Section 117 of the Clean Water Act:

“(g) CHESAPEAKE BAY PROGRAM. --“

(1) MANAGEMENT STRATEGIES. -- The Administrator, in coordination with other members of the Chesapeake Executive Council, shall ensure that management plans are developed and implementation is begun by signatories to the Chesapeake Bay Agreement to achieve and maintain

“(A) the nutrient goals of the Chesapeake Bay Agreement for the quantity of nitrogen and phosphorus entering the Chesapeake Bay and its watershed; “

(B) the water quality requirements necessary to restore living resources in the Chesapeake Bay ecosystem;

“(C) the Chesapeake Bay Basinwide Toxins Reduction and Prevention Strategy goal of reducing or eliminating the input of chemical contaminants from all controllable sources to levels that result in no toxic or bioaccumulative impact on the living resources of the Chesapeake Bay ecosystem or on human health;

“(D) habitat restoration, protection, creation, and enhancement goals established by Chesapeake Bay Agreement signatories for wetlands, riparian forests, and other types of habitat associated with the Chesapeake Bay ecosystem; and

“(E) the restoration, protection, creation, and enhancement goals established by the Chesapeake Bay Agreement signatories for living resources associated with the Chesapeake Bay ecosystem.

**Note:** This document would also not be part of the Agreement. As recognized in “Section 6: Principles”, the partners would be instructed to develop management strategies as part of the overall management of the program. Developed by the Goal Implementation Teams and Management Board the documents would identify the specific strategies for achieving the goals and outcomes approved by the Partnership. (signed by the PSC or MB)

Management Strategies could include:

- Outcome to be achieved with commitment toward shorter term targets (2 or 3 year targets?)
- Agencies and jurisdictions responsible for achieving the outcomes
- Actions to be taken by partnership to facilitate achievement of those outcomes
- Tracking and accountability system used to measure progress and determine necessary redirection

#### **Decisions: Management Strategies**

- Should the Partnership develop management strategies to implement actions to achieve outcomes identified in Part B of the Bifurcated Agreement (Option 1) or in the Agreement itself (Option 2)?
- What part of the organization should sign off on the document, the PSC or Management Board?

## Additional Decision Points (time permitting)

### TMDL Governance

#### Decision: Treatment of TMDL issues in the Partnership

**Option 1:** Non-TMDL option – Retain the current governing body structure and membership of CBP, but take TMDL out of the “partnership” elements of the program; other water quality issues would be retained by CBP Partnership (monitoring, model, etc.)

**Option 2:** Separate Regulatory Aspects of TMDL -- 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 and have separate EPA/co-regulator discussions with bay jurisdictions as needed. 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.

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#### Decision: PSC Participation and Voting Eligibility

**Option 1:** Status quo – EC designees (member/participating partner; level of state secretaries, DDOE Director, CBC E.D., federal agencies). Multiple members from same delegations at the table, but only one vote allowed per delegation (e.g. EPA votes for all feds who are represented by either FLCD member or Regional Director). STAC, CAC and LGAC chairs invited, but may not vote.

**Option 2:** Retain current membership, however, members may only vote on issues according to what they have signed onto (i.e. if only signed on to water quality, they may only vote on water quality issues).

**Option 3:** Only signatory jurisdictions “at the table”/eligible to vote; other partners serve in an advisory capacity.

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