



CHESAPEAKE BAY COMMISSION

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SEPTEMBER 7-8, 2023 QUARTERLY MEETING

The Chesapeake Bay Commission held its third quarterly meeting of 2023 on Thursday and Friday, September 7-8, 2023. The meeting was held in Harrisburg, PA.

Commission members in attendance:

Representative Kerry Benninghoff
Delegate David Bulova
Senator Sarah Elfreth
Warren Elliott, PA Citizen Member
Senator Emmett Hanger
Representative Carol Hill-Evans
Delegate Julian Ivey
Secretary Josh Kurtz
Delegate Sara Love
Senator Scott Martin
RDML Wes McCall
Secretary Richard Negrin
Delegate Dana Stein
Representative Mike Sturla
Delegate Tony Wilt
Director Andrew Wheeler
Senator Gene Yaw

Not in attendance:

Delegate Robert Bloxom
Missy Cotter Smasal, VA Citizen Member
Senator Lynwood Lewis
Senator Guy Guzzone

Staff:

MD – David Goshorn
PA – Bevin Buchheister/Jill Whitcomb
VA – Secretary Travis Voyles
Navy – Kevin Du Bois

CBC Staff:

Jen Dieux
Mark Hoffman
Anna Killius
Marel King
Adrienne Kotula

THURSDAY, September 7, 2023

CALL TO ORDER AND WELCOME

Commission Chair Martin called the meeting to order at 1:10 pm and welcomed Commission members to the state capitol and more specifically, to the Senate Majority Caucus Room, where the afternoon's meeting was held.

He recognized new members of the Commission from Maryland, Delegate Julian Ivey and Secretary Josh Kurtz, who introduced Maryland Secretary of Agriculture Kevin Atticks who was a guest in the audience. He also introduced the new DoD Liaison, Rear Admiral Wes McCall, Commander of Navy Region Mid-Atlantic. Each of the new members made brief comments about their membership on the Commission.

ROLL CALL

Chair Martin then asked Executive Director Anna Killius to call the roll. A quorum was present.

ADOPTION OF MINUTES

Chair Martin called for approval of the minutes from the May meeting. The motion was adopted and the minutes were approved unanimously.

ADOPTION/MODIFICATION OF AGENDA

Chair Martin asked for comments or questions on the agenda from the members. Hearing none, the agenda was approved unanimously.

FOLLOW-UP FROM MAY MEETING

Chair Martin asked Executive Director Killius to present the group with follow-ups from the May Meeting. Anna provided updates as follows:

- Chesapeake Bay Commission Workgroup on Crediting NFWF-Administered Grant projects.
 - Since the last meeting, CBC staff held meetings with each of the member jurisdictions to discuss how each state submits practices for credit and what concerns they may have regarding practices implemented through NFWF-administered grants. Commission staff then convened a joint meeting with technical staff from EPA, NFWF, Chesapeake Commons, and each of the member jurisdictions to discuss common areas of concern and potential solutions.
 - Based on the concerns raised by the jurisdictions, NFWF and Chesapeake Commons have committed to a series of important improvements. First, where preferred, Chesapeake Commons will formally submit NFWF best management practice (BMP) data directly into a jurisdiction's reporting systems. NFWF will also be responsible for answering any questions that EPA may have regarding this data. Second, by the end of this calendar year, NFWF will work with EPA to formalize a Quality Assurance Project Plan for data collection and reporting. Finally, NFWF will work with the jurisdictions to establish ongoing adaptive management by collecting feedback from the jurisdictions on BMP reporting, maintenance, and verifications.

- There are still some very important challenges that need to be addressed, including plans for reverifying BMPs when they reach the end of their lifespan so that they can continue to receive credit, and plans for ensuring long-term operation and maintenance of BMPs after the initial grant contract ends. The Commission staff has identified these as topics for further discussion by all the parties involved.
 - Additionally, the contracts to administer the INSR and Small Watershed Grants on behalf of the EPA for the next four years is now up for renewal. Both solicitations require the successful applicant to ensure that “specific information about the BMPs implemented are tracked and reported to each jurisdiction so that project data becomes part of the overall accounting for the Chesapeake Bay TMDL. BMPS information must be communicated to the relevant state agency that annually reports to the CBPO. In addition, the successful applicant should work with subawards to verify that BMPs are completed as planned and the subaward has a plan in place to ensure proper function of the implemented practices into the future. Requirements for what BMP information to report are established by the relevant state agency, typically through formatted templates and BMP tracking databases.”
 - Director Wheeler thanked Executive Director Killius and all those involved for their work on this effort and recognized the progress made to date, but noted there was still work to be done.
- Blue Crab Benchmark Stock Assessment
 - The 2023 Winter Dredge Survey for Blue Crabs found that population estimates for female, male, and juvenile crabs had all improved from the record lows experienced in 2022. However, juvenile population numbers over the last three years continue to remain among the lowest since the survey began, suggesting a disconnect between the actions being taken to protect the spawning stock of female crabs and recruitment of new juveniles.
 - This disconnect is among the issues on which the new Blue Crab Benchmark Stock Assessment may shed light. The benchmark assessment will use newly available data to improve the model structure and revise the reference points used in blue crab management. During the May meeting, the Commission discussed the timeline of the assessment, which is due to be completed by the end of 2025, and determined that interim updates would be helpful to ensure decision makers are prepared to respond to any needs identified during the process.
 - Based on conversations with key participants, the staff expects periodic updates throughout the model development process. Staff will invite the Stock Assessment Committee to provide an update at one or more of the Commission’s future quarterly meetings.
- Invasive Blue Catfish
 - In May, as part of the Farm Bill discussion with staff from the House and Senate Agriculture Committees, the Commission highlighted the challenges that the invasive blue catfish population poses to the health and stability of iconic and commercially important fisheries like blue crabs and striped bass. Opportunities for targeted, bipartisan solutions for invasive blue catfish in the Farm Bill were discussed. As a follow up, Commission staff worked with members of the Chesapeake Bay’s Congressional

Delegation to draft targeted language for both the Farm Bill and the Agriculture Appropriations bill. This language would allow processors of invasive, wild-caught, domestic blue catfish in the Chesapeake Bay to follow the FDA process used for all other seafood products, rather than the USDA inspection process. That language is included in the House Agriculture Appropriations bill and in the Chesapeake Bay marker bills introduced in both the House and Senate. Staff also organized a letter on behalf of the Governors of Virginia and Maryland urging consideration by leaders of the House and Senate Agriculture Committees.

- These efforts have gotten the attention of the farmed catfish industry in the Southeast, prompting report language from the Senate Agriculture Appropriations Subcommittee that claims there are international trade implications and public health concerns with any proposal to waive USDA inspection requirements for domestic wild-caught catfish. However, the Senate Subcommittee also put something new on the table – an offer of financial support for equipment and infrastructure to help Bay-region processors comply with USDA requirements. The Commission is continuing to support the waiver proposal but remains open to exploring any opportunity to boost catfish processing in the Bay region.
 - Delegate Bulova suggested the Commission continue to push for the waiver from USDA inspection, and Senator Elfreth concurred with this approach. Delegate Sturla asked what the requirements are related to the labelling of catfish as “wild” versus “farm-raised”. Commission staff will research this question.
- 2024 Commission Meeting Dates
 - Executive Director Killius noted the calendar for the Commission’s 2024 meeting dates was in everyone’s folder for addition to their calendars.

COUNTDOWN TO 2025: WHAT’S NEXT, WHAT COMES AFTER?

Chair Martin then introduced the first set of speakers, to present to the members on the ongoing efforts by the Chesapeake Bay Partnership (CBP) related to “reaching 2025” and “beyond 2025”. This effort is a result of a directive signed by the CBP’s Executive Council in 2022.

First up was David Campbell, Acting Director, EPA Chesapeake Bay Program Office. Mr. Campbell gave the members a progress report on the “Reaching 2025” effort. The goal of the work has been to address: 1) an assessment of progress towards achieving the 2014 outcomes by 2025; 2) providing additional focus on water quality, wetlands and forest buffers; and 3) identifying “lessons learned” and other considerations for the “Beyond 2025” workgroup.

Mr. Campbell reviewed each of these items and summarized the current recommendations of the work group: 1) target and increase investments to accelerate programs; 2) identify champions to provide additional leadership and to catalyze change; and 3) strengthen networking systems to incentivize communities to address current Bay challenges.

The Deputy Director of EPA’s Chesapeake Bay Program Office, Martha Shimkin, then addressed the members on the “Beyond 2025” work. She reviewed the charge from the Executive Council and the approach being taken to address it. Key elements are defining: 1)

where we are; 2) where do we want to be; 3) the path forward; 4) what we do; and 5) how we work. The workgroup is in the formulative stages of this effort, and the final report is due to the EC in 2025.

Then Kristin Reilly, Director, and Mariah Davis, Deputy Director, of the Choose Clean Water Coalition (CCWC) spoke to provide a bay advocate's view of these efforts. CCWC represents more than 290 NGOs involved in watershed restoration throughout the region. They noted that stakeholders want to see: 1) strong leadership and collaboration; 2) NGO and stakeholder engagement; 3) an innovative vision for the Bay restoration effort; and 4) a sense of urgency. They also noted that the Bay of the future will not look like the Bay of the past, and stakeholders need a holistic approach to conservation and restoration that is people centered, creative, focused on outcomes and addresses climate change.

Commission members asked the panelists a number of questions related to their presentations, work and the restoration effort. Senator Elfreth noted the occasionally long lag times between the passage of legislation, implementation, and then the ultimate achievement of results. She requested staff develop an assessment of legislative achievements championed by Commission members and how they related to each of the goals and outcomes in the 2014 Watershed Agreement.

RUNNING THE NUMBERS

The next panel and discussion was focused on the economics of agriculture in the Bay watershed. Chair Martin welcomed Amy Jacobs, Chesapeake Bay Agriculture Program Director, The Nature Conservancy, to moderate the panel. Ms. Jacobs introduced each of the panel members: Dean Collamer, Field Sales Agronomist, Growmark FS, LLC; Kurt Fuchs, Senior Vice-President, External Affairs, Horizon Farm Credit; Dave McLaughlin, Little Germany Farms, Ellittsburg, Perry County, PA; and Jim Shortle, Ph.D., Distinguished Professor Emeritus of Agricultural & Environmental Economics, Penn State College of Agricultural Sciences.

Ms. Jacobs proceeded to ask all the panel members a series of questions related to the economics of agriculture in the watershed, such as what issues are producers facing, what are the pathways for greater adoption of conservation practices, and how does your business interact with the farm community. Important themes included the importance of cash flow to maintain operations, exposure to commodity price/markets, how conditions/opportunities are farm-specific, rewarding producers that are doing everything right, and using new approaches (e.g., pay for performance) to drive improved results. Also noted was the importance of thinking about these issues from a broader perspective, for example, considering consumers, who ultimately drive the demand for farm products.

Commission members asked the moderator and panelists several questions related to the topics and Chair Martin thanked each of the participants for their time and travel.

ADJOURNMENT

Commission adjourned for the day at 3:50 P.M.

FRIDAY, SEPTEMBER 8, 2023

WELCOME & ROLL CALL

Chair Martin called the meeting to order at 9:18 A.M. and asked Executive Director Killius to call the roll. A quorum was present.

EXECUTIVE DIRECTOR'S LIGHTNING ROUND UPDATES

Chair Martin asked Executive Director Killius to update the Commission on important and timely issues impacting the Chesapeake Bay watershed.

- 2023 Federal Farm Bill
 - The goal is now a bipartisan bill enacted by the end of the year. If a deal remains unlikely, Congress may pass a one-year extension to give farmers more certainty before the start of the next growing season.
 - CBC staff has been busy working to gain support for the Chesapeake Bay Watershed Task Force's marker bill for Farm Bill priorities, entitled the Chesapeake Bay Conservation Acceleration Act, which is currently being carried by Senator Cardin and Congressman Wittman. This marker bill encapsulates all the Commission's Farm Bill priorities including the Chesapeake States' Partnership Initiative, workforce development, Conservation Reserve Enhancement Program, Environmental Quality Incentives Program and invasive blue catfish. The staff is encouraging all members of the Bay's Congressional delegation to consider cosponsoring this marker bill. Delegate Bulova asked who the cosponsors on the marker bill were, and Ms. Killius said staff would share that information as a meeting follow-up.
- FY 2024 Federal Budget
 - It is widely expected that September 30th will pass without a new budget deal in place. However, FY 2024 budget proposals from the Senate and House have been released. A chart detailing their budget proposals as they relate to the Commission's requests was provided to the members, along with the committee narrative adopted.
 - Many of the programs the Commission tracks are proposed to maintain level funding or receive a slight increase, particularly by the Senate. For example, the EPA Chesapeake Bay Program Office is proposed to stay at \$92m in the House but received \$93m in the Senate.
 - Notably, both proposed budgets have language urging NRCS to continue the Chesapeake Bay States' Partnership Initiative and encourages continued leveraging of conservation resources for agricultural producers in the Chesapeake Bay watershed.
 - Staff will continue to work with the Bay delegation to achieve the maximum investment in CBC priorities throughout the fall and reach out to members as necessary for assistance.
- Chesapeake National Recreation Area Legislation:
 - Senator Van Hollen and Congressman Sarbanes officially introduced the bill to designate a Chesapeake National Recreation Area on July 27th. Under the proposed legislation, the

Chesapeake unit would, despite its estuarine name, center on land-based sites in Maryland and Virginia. The Park Service is only permitted to enter partner site agreements or to acquire lands or property with willing, eligible entities.

- Based on the public comments received on the draft bill, a few things were changed in the final version. For example, the bill now includes language requiring the Park Service to conduct transportation planning assistance on the initial sites included in the national recreation area. This is intended to reduce the potential burdens of traffic on surrounding communities.
 - The bill lists four initial sites: a former waterman's cottage and a 1700s-era manor, both in Annapolis; the distinctive Thomas Point Shoal Lighthouse near the mouth of Maryland's South River; and the North Beach of Fort Monroe in Virginia.
 - The bill also directs the Park Service to prioritize water and trail access as it develops programming. Along with this, the bill proposes increasing the permanent allocation for the Chesapeake Gateways program from \$3 million to \$6 million annually but doesn't specify other costs.
 - Staff will continue to work with the sponsors to ensure the success of this effort. It is expected to be a long process for the legislation to move forward.
 - Director Wheeler asked for some clarification related to the bill's location description for Fort Monroe.
- 2023 Executive Council Meeting:
 - The 2023 Executive Council meeting will be held at the National Arboretum in Washington, D.C. on October 19th.
 - The meeting will focus on the 40th Anniversary of the Chesapeake Bay Program as well as recommendations included in the Reaching 2025 report. The Executive Council will also receive recommendations from the three advisory committees, including the newly renamed Stakeholders Advisory Committee. Additionally, the EC will be voting on the new Chair for 2024.
 - Senator Martin and Executive Director Killius will be in attendance to represent the Commission.
- EPA Office of the Inspector General Report:
 - On July 18th, the EPA Office of Inspector General (OIG) released an evaluation of EPA's leadership and oversight in achieving the pollution reduction goals of the Chesapeake Bay Total Maximum Daily Load (TMDL). The report's findings are encapsulated in the title: The EPA Should Update Its Strategy, Goals, Deadlines, and Accountability Framework to Better Lead Chesapeake Bay Restoration Efforts.
 - The OIG determined that "without EPA assistance to address the remaining nonpoint source pollution, Agency leadership to develop new goals and deadlines, and implementation of a process to hold jurisdictions accountable for achieving nonpoint source pollution reductions, the EPA and Chesapeake Bay jurisdictions will not meet TMDL pollutant-reductions goals." As such, OIG listed three recommendations:
 - Lead the Chesapeake Bay Program in developing a new approach to specifically address nonpoint source pollution.

- Work with the Chesapeake Bay Program partners to set new jurisdictional goals and a new deadline to have all pollution controls and practices in place to meet TMDL pollutant-reduction goals.
- Work with Chesapeake Bay Program partners to develop an assurance mechanism to hold jurisdictions accountable for achieving nonpoint source pollution reductions.
- Multiple processes are taking shape to guide the development of new goals and deadlines, including the creation of a "Beyond 2025 Steering Committee" to fulfill the Executive Council's 2022 Charge. Consequently, Recommendation #2 is resolved pending corrective actions. However, in response to Recommendations 1 and 3, EPA noted that primary authority over nonpoint sources remains with the states under the Clean Water Act and the Chesapeake Bay Program relies on a voluntary, consensus-based partnership. The OIG maintains that these recommendations are consistent with EPA's leadership role under Executive Order 13508, and they remain unresolved.
- EPA must formally respond to the OIG within 60 days on the report's recommendations and staff will update the Commission on the response at the November meeting.

STATE BUDGET UPDATES

Given the recent legislative action, Chair Martin asked for updates on recent state budget actions in Pennsylvania and Virginia. Senator Hanger updated the members on the recent budget deliberations and actions in his state, including a record-breaking transfer into the Water Quality Fund, and Senator Martin noted that a \$150 million transfer into the Clean Streams Fund is pending in HB 1300. Delegate Stein noted that due to legislation he sponsored in 2020, Marylanders were now giving voluntary donations to a tree-planting fund when they renew their vehicle registration.

PFAS: RISKS AND RESPONSE

The Commission then turned its attention to the prolific use and persistence of per- and polyfluoroalkyl substances (PFAS) in the environment. This has led to widespread concern about the level of contamination and the associated impacts to human and ecological health.

To help Commission members understand and address these concerns, Chair Martin introduced John Lucey, Special Assistant to the Administrator and Deputy Associate Administrator for the Office of Intergovernmental Affairs, EPA, and Melanie Benesh, Vice President, Government Affairs, Environmental Working Group,

Mr. Lucey started by providing background on the chemical nature of these substances, why we are concerned, and their lifecycle as they travel through the environment. He then detailed EPA's PFAS Strategic Roadmap: Commitments to Action 2021-2024, outlining its goals and key accomplishments thus far. He then reviewed the actions pending and where the agency was headed to address concerns.

Ms. Benesh then reviewed state and federal PFAS policy. She provided information on the location of PFAS contaminated sites and suspected industrial discharges. She reviewed the federal plan and the large number of actions taken individually by states (including efforts led by

Commission members). She then provided a schematic of how we might evaluate the use of PFAS-containing materials from a policy perspective.

Commission members asked the panelist a number of questions, such as on source control, disposal, pesticide contamination, and manufacturer liability. Chair Martin thanked both Mr. Lucey and Ms. Benesh for their excellent presentations.

FROM POLLUTION TO POWER?

Modern technology relies on the use of 50 minerals deemed “critical” to economic and national security. Most of the current supply of these minerals comes from foreign sources, but they exist in the byproducts of coal mining, including waste coal and acid mine drainage, which have historically been a source of water pollution.

To provide further information on this topic to the Commission members, Chair Martin introduced Dr. Sarma V. Pisupati, Director, Center for Critical Minerals, Penn State College of Earth & Mineral Sciences.

Dr. Pisupati reviewed for the members what critical minerals are, why this is a topic relevant for Penn State, and the challenges being addressed by the Center for Critical Minerals. He then reviewed the results of the efforts to date, which indicate Pennsylvania’s unique geological characteristics and location in the Appalachian basin make the Commonwealth an integral part of the national strategy to accelerate production from unconventional and secondary sources. He noted the challenges in developing at-scale extraction and production capacity. They are also actively researching sediment from behind dams (both large and small) as source areas.

Senator Yaw thanked Dr. Pisupati and noted the interest of his Senate Environmental Resources & Energy Committee in this work. Chair Martin thanked him as well.

COMMISSION DISCUSSION

Chair Martin opened the floor for discussion or comments by the members. He started by noting he had been recently asked if the CBC provides internships. The members discussed this topic, and decided to ask Executive Director Killius and her team to consider it and come back to the membership with some recommendations.

Senator Elfreth noted that three of the four sites listed in the Chesapeake NRA bill are in her district, and she made an open invitation for the members to visit, particularly the historic Thomas Point Shoal Lighthouse.

Delegate Love wanted to thank the CBC members because the Commission’s visit to Lancaster County and the recommendations from the Lancaster Clean Water Partnership has resulted in her and Senator Elfreth working on legislation in Maryland to develop a parallel rapid stream delisting program.

Secretary Negrin noted the letter from the watershed's Secretaries of Agriculture concerning the creation of an agricultural advisory committee to the Bay Program. He thought it was a good idea. Executive Director Killius said this will be taken up by the Beyond 2025 workgroup.

Senator Martin noted the recently announced partnership between the Hershey Company and Pennsylvania related to improving water quality. Representative Sturla suggested that greater corporate engagement would be a good topic for a future Commission meeting.

Senator Elfreth reported that the Maryland Department of Agriculture was prompted by the previous day's agricultural panel to consider how to structure a reward for agricultural conservation outcomes. She will provide an update in November.

INTERIM ACTIONS

Chair Martin asked Executive Director Killius to share any interim actions identified by Commission members during the meeting. She noted six items: 1) blue catfish labelling requirements; 2) analysis of CBC supported legislation vs. Watershed Agreement goals and outcomes; 3) list of cosponsors for Bay marker Farm Bill; 4) check language on Fort Monroe in CNRA bill; 5) potential use of interns by the Commission; and 6) information on corporate engagement in Chesapeake Bay conservation efforts.

NEW BUSINESS

Chair Martin asked if there was any new business to come before the Commission.

Secretary Negrin used this opportunity to introduce Bevin Buchheister, the new Deputy Secretary of Water Programs, at the Department of Environmental Protection. Ms. Buchheister provided some details to the Commission about her duties and background, including past employment as the Maryland Director of the CBC.

PUBLIC COMMENT

Chair Martin asked if there was anyone signed up for public comment. There were no speakers signed up for public comment.

ADJOURNMENT

The Commission adjourned at 11:59 am.