



## MEMORANDUM

**To:** Principals' Staff Committee (PSC)  
**From:** Shana Jones and Rena Steinzor, Center for Progressive Reform<sup>1</sup>  
**Date:** September 3, 2008  
**Re:** Independent Evaluator for the Bay Program – Final

### Introduction

The Chesapeake Bay Program and its state partners (Program) are considering reorganization plans to increase the accountability and effectiveness of Bay restoration efforts. Members of the Program have agreed to create an independent entity that will monitor the performance of the Program and hold the U.S. Environmental Protection Agency (EPA) and the states accountable for their efforts to reduce nutrient loading in the Bay. The purpose of this memorandum is to suggest a series of options for the mission, composition, and operations of this entity.

The focus on accountability is an important milestone in the history of one of the oldest and most respected regional ecosystem programs. Restoring environmental quality throughout the Chesapeake Bay is an exceedingly difficult job. The Program's recognition that it must make hard choices and shift from a tone of mutual celebration to one of enforceable expectations is a landmark in its institutional maturation. Ensuring accountability is a pressing issue for all ecosystem management programs – the Bay Program is far from alone in this quest. In fact, our review of similar programs reveals that, while some of their approaches to accountability should inform this effort, none of their approaches squarely address institutional accountability or the cross-jurisdictional issues inherent in the Bay Program's makeup. Given its stature, whatever accountability mechanism is developed for the Program is likely to be emulated by other programs for many years to come.

Most participants in the discussions thus far are understandably focused on the practical aspects of how this accountability mechanism should be structured: Who will be accountable? Who will serve? Who will pay, both for the accountability mechanism itself and the expensive cleanup that will be necessary to respond to such criticisms? Although we understand the strong temptation to take a nuts and bolts approach to this challenge, we urge all participants to focus first on the mission of the accountability mechanism because a clear and deliberate definition of that mission is a *quid pro quo* for an effective institutional design.

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<sup>1</sup> The Center for Reform (CPR) is a 501(c)(3) organization founded in 2002 to provide policy advice in the arena of efforts to protect public health, worker safety, and the environment to decision-makers at the federal, state, and local level. CPR is comprised of 53 tenured professors from universities across the country who are supported by a small staff of policy analysts as they write books, reports, white papers and opinion pieces, testify before Congress, file regulatory comments, and attend symposia, conferences, and meetings. For more information, see [www.progressivereform.org](http://www.progressivereform.org). Rena Steinzor is the President of CPR and a professor of law at the University of Maryland in Baltimore. Shana Jones is a graduate of the law school and a senior CPR policy analyst. Professor Steinzor and Ms. Jones were retained by John Griffin in his capacity as Chair of the PSC. Their work on this project is supported by the Keith Campbell Foundation.

That mission has three discrete components:

1. **Diagnosis.** At the threshold, any accountability mechanism cannot succeed without establishing criteria – or, more accurately, “metrics” (literally, a system of measurement) -- for judging progress toward the overall goal of restoring the Bay. The Program has made enormous progress in defining and measuring progress in the context of ambient environmental conditions in the Bay and has established numerical goals for reducing various types of pollution within a set period of time. See, for example, its *2007 Health and Ecosystem Assessment*, which was released in March 2008.

But an accountability mechanism needs a different kind of metric, or measurement, of progress. To succeed, any oversight process needs to go one crucial step beyond defining environmental conditions to the point of identifying what actions are needed to improve those conditions and which entities will be held responsible for undertaking that work. Once again, the Program has made significant progress toward producing this crucial information. The “dashboards” system that was described in its July 2008 *Report to Congress: Strengthening the Management, Coordination, and Accountability of the Chesapeake Bay Program* has the potential to provide essential information about Program and partner activity. For the “dashboard” concept to be truly useful, however, it must utilize metrics that invite a concise diagnosis of the real problems that prevent the Program from achieving its statutory mission and it must not flinch in identifying which of the Program’s partners has failed to make adequate progress in either undertaking or compelling the performance of remedial actions.

The cultural changes that will be necessary to shift from a supportive climate to the targeting of responsibility without sacrificing the cooperation that is essential to the Program’s survival are profound, and represent perhaps the greatest challenge the Program has ever confronted. The only outcome more difficult and less inviting is to continue to set targets only to confess defeat, which is the situation that now faces Program partners.

Although agreeing on a set of “accountability metrics” will require approval at the highest levels of the Program, the crafting of those metrics is primarily a job for experts, informed by public comment. Once again, the Program is ahead of the game in accomplishing this task. It has the scientific, technical, and programmatic experts to derive a workably concise set of accountability metrics for carefully prioritized problems that confront the Bay, as we explain further below.

2. **Allocating Responsibility.** Once “accountability metrics” are crafted by experts informed by public comment, the Program must establish a mechanism for reporting on progress in meeting those goals. If, for example, the planting of cover crops in a specific area of the Bay is the responsibility of two state governments, the Program must establish a system for reporting on their progress in meeting these commitments. Again, the “dashboards” concept appears to be heading in this direction, although the illustrative examples given in the CAP do not clearly identify which partners are responsible for taking what action in either the “performance” section or the “strategic analysis” section.

Establishing the credibility of this phase of the process is likely to prove even more difficult than writing the accountability metrics. Partners will often be “guilty with an explanation” and those explanations must be heard. If the metrics themselves are too numerous, and the periodic reporting becomes convoluted and unduly complex, the public will soon lose interest

and the process will become another bureaucratic paper-shuffling exercise. Last but not least, reporting must be implemented in a way that is perceived as scrupulously fair by everyone involved. If the person put in charge of the accountability mechanism is perceived as playing favorites, choosing scapegoats, or having a political or hidden substantive agenda, it will quickly collapse.

The Program does not have a comparable process in place at the moment and at the staff level, the federal and state officials who have labored together for so long to achieve the impossible task of restoring the Bay with inadequate resources are both beleaguered and distrustful.

3. **Corrective Action and Enforcement.** Once responsibility is attributed and failure established, corrective action must be taken and consequences must be imposed. The partners could agree to monetary fines or other negative incentives (e.g., moratoria on future development). Or they could rely on the public exposure of failure to inspire flagging parties. We have a strong sense that it would be premature to ask the partners to craft monetary or other penalties before an accountability mechanism has been established and begun an intensive effort to craft accountability metrics, and that it might be better to leave this aspect of the decisionmaking to another day. We urge you to consider, however, whether any entity other than the Executive Council itself, sitting as a full body, has the power and credibility to serve the enforcement function.

This memo opens with a proposed set of principles that should guide participants in the design of an accountability mechanism. We hope to spend the first 20 minutes of the meeting on August 18 reviewing this list. The memo then examines each of the three components of the mechanism, identifying the institutional qualities that will enable each function to be executed successfully. We end each section with a series of options for establishing the institutions to be charged with undertaking each function. We hope to spend approximate 30-40 minutes at the meeting discussing each component.

The Committee asked us to research how other comparable entities (e.g., organizations similar to the Bay Program in the Great Lakes, the Everglades, and the California Delta in the hope that we would discover some ready-made model that could be adapted for use relatively easily. The results of that study are presented in **Appendix A**. Unfortunately, our research revealed that while other entities are equally aware of the important of accountability, none are as far along as we are in designing aspects of such mechanisms. Therefore, while it is important to continue to track developments in those programs, none offer the tested models we need.

## Accountability Principles

Ten principles should guide the design of an accountability mechanism for the Chesapeake Bay:

- **Overall Goals.** The purpose of any accountability mechanism should be to revive Chesapeake Bay restoration efforts by establishing short-, mid-, and long-term targets that will allow partners to gauge whether they are likely to meet overall goals (e.g., reducing nitrogen by 54% by 2010).
- **Statutory Mission.** The goals of the new accountability mechanism must be aligned with the Program and its partners' statutory mission and, if available, the partners' more detailed statutory mandates. If additional legal authority is needed to make accountability work better, the Program's partners should work together to achieve its enactment.

- ***Robust Political Support.*** High-level political support for robust accountability is critical.
- ***Efficient Administration.*** The Program has committed considerable human and financial resources to arrive at its current level of understanding of the Chesapeake Bay and its problems. To the maximum extent practicable, these resources shall be continue to be used, and existing institutional structures respected, in designing the accountability mechanism that will allow such efforts to become significantly more effective. Reinventing institutional structures that work well is pointless, and will only serve to delay and disrupt progress toward a more accountable Program.
- ***Independence and Objectivity.*** Independence and objectivity are the hallmarks of credible evaluation. At all stages of its development, the accountability mechanism should remain independent of existing chains of command, reporting directly to the Executive Committee or other entity that is ultimately responsible for holding partners accountable for missed goals and milestones.
- ***Transparency.*** The work of the accountability mechanism should be as transparent as possible, making use of the worldwide web to the maximum extent practicable. Accountability mechanisms must be aligned with the Bay Program’s mandate and historical track record.
- ***Consequences.*** Accountability necessarily requires consequences for non-performance. Accountability mechanisms, however, should consist of measureable performance goals that are not used to punish civil servants but are rather used to provide the resources and strategies needed to improve program effectiveness.
- ***Accountability Metrics.*** Accountability mechanisms should focus on key indicators that are easily communicated to state and federal legislative bodies, state and federal agencies, Bay advocates, the media, and the public.
- ***Tough Questions.*** Accountability mechanisms must push the Bay Program and its partners to address difficult decisions instead of avoid them.
- ***Stable Funding.*** Accountability mechanisms must be administered in an efficient and timely manner and must be supported with stable funding.

## **The Independent Entity: Diagnosis, Allocating Responsibility, and Enforcement.**

The threshold question for stakeholders is the scope of the independent entity’s mission – whether it is a person, office, or coalition – to promote Bay Program accountability. One way to begin defining this scope is to distinguish between a **diagnostic role that assesses the specific problems that prevent the Bay Program from achieving its mission, an accountability role that allocates responsibility, and a corrective action and enforcement role that ensures identified problems are addressed, adjustments are made, and consequences are imposed.**

Diagnostic	Accountability	Corrective Action & Enforcement
<i>Assesses the specific problems that prevent the Bay Program from achieving its mission.</i>	<i>Reports on the problems and allocates responsibility.</i>	<i>Ensures identified problems are addressed, adjustments are made, and consequences are imposed.</i>

### Diagnostic

The Bay Program’s performance must be measured on the basis of accountability metrics **that invite a diagnosis of the real problems that prevent the Program from achieving its statutory mission.**<sup>1</sup> While the Program has improved its reporting in many respects, basic and vital information about **why progress isn’t happening and what entities are responsible** is nevertheless still unclear. The Program has clearly worked to ensure the scientific credibility of its data, an essential task. But any accountability mechanism must establish metrics for judging institutional progress toward the overall goal of restoring the Bay. Put simply, accountability metrics marry science and policy, measuring the extent to which the Program and its partners’ efforts result in improved environmental quality.

In its July 2008 *Report to Congress: Strengthening the Management, Coordination, and Accountability of the Chesapeake Bay Program* (known as “The CAP”), the Program indicates that it recognizes that developing a means to diagnose and communicate the real problems that prevent it from achieving its statutory mission is crucial to improving accountability. For example, the Program has said it will develop an “activity integration plan,” a “comprehensive catalogue of the activities in which CBP partners are engaged to protect and restore the Chesapeake Bay.”<sup>2</sup> The CAP goes on to say that the activity integration plan will provide information on the following:

- The actual activities being implemented by the CBP partners;
- The lead partner for each activity and any cooperating partners;
- The amount and source of funding dedicated to accomplishing each activity by all cooperating partners;
- The location of each activity; and
- Progress toward the established realistic targets.

The activity integration plan will be generated by a database by which Program partners provide information about their activities and budgets. In addition, utilizing the information gathered from Program partners, the Program has committed to creating “dashboards,” summaries of essential information about Program partner activity. According to the CAP, the dashboards will provide:

- Measures of progress toward the program’s realistic annual targets
- The resources dedicated to specific activities within topic areas
- Analyses of what needs to be done to improve implementation and
- Ideally, in the future, the total resources CBP partners have dedicated to the topic area over several years.<sup>3</sup>

Pulling together and reporting on partner activity is a tremendous and important effort, and the Program should be commended for moving in this direction. For this effort to be as useful as possible in promoting accountability, key issues must be addressed. First, the dashboards must be based on metrics that diagnose the most important institutional challenges that prevent the Program from achieving its statutory mission. Second, it is unclear from the CAP how these dashboards will be reported to the Executive Council and the public. Third, while providing summaries of partner activity and performance will be essential, unless an independent entity oversees the process, the dashboards may become yet another exercise in agencies reporting data in such a way as to protect themselves.

**An independent entity could ensure that the dashboards result in a helpful and robust accountability tool by overseeing the development of accountability metrics and ensuring that local, state, and federal agencies provide the Program with timely and credible information.** More specifically, the independent entity would:

- **Oversee the development of accountability metrics.** “Accountability metrics” that get at the specific problems that prevent the Program from achieving its mission is essential. In the example dashboards given in the CAP, the information communicated remains generally descriptive instead of specifically diagnostic. The information about the Program partner performance in implementing pollution reduction strategies, for example, does not reveal the extent to which each program partner has contributed to meeting the realistic annual target or the Program goal. Instead, the progress is averaged. Likewise, in the strategic analysis section, “actions” are recommended but responsibility for ensuring that these actions occur is left undefined. Is it EPA’s role? The states? Accountability metrics would define who is responsible to take action. If no entity has direct legal or regulatory responsibility for an action identified as necessary to clean up the Bay, accountability metrics would point out that fact as a problem, revealing to decision-makers the limits within the Program and its partners operate.
- **The metrics must be concise (no more than thirty-five) and connect institutional activities with environmental conditions, so that even when commitments are honored, the independent entity will be able to report any gap between Program and partner activity and environmental progress.** While the dashboards begin to point out this gap by illustrating the difference between expected progress and the Program goal, the gap is still indicated generally. For genuine accountability, more specificity about partners as well as sources of pollution is needed. This is the only way Congress and state legislators will be able to know that more or targeted resources may be needed if continued progress is to be made.

The design of an accountability metrics program should be informed by these principles:

- 1) **Short and concise.** Elaborate metrics involving hundreds of vague, qualitative measures have limited utility.
- 2) **Information forcing.** Metrics should not depend—or be circumscribed by—the availability of information needed to determine if they are met. If metrics were designed based only on whether information was currently available, there would be no incentive for federal and state partners to produce new information that might be important to the Program’s mission to restore the Bay.

- 3) **Outcomes versus Outputs.** Positive metrics should emphasize outcome, rather than output, measurements wherever possible. The Program must not count simply what it and its partners do (bean counting), but also count what they cause to happen.
  - 4) **Constant Change.** Metrics should be changed as often as possible to reflect progress and spur further advances.
  - 5) **Prioritization.** Metrics should be prioritized to allow the Program and its partners to focus on the most important problems.
  - 6) **Diagnostic.** Metrics should have the potential to help diagnose the causes of institutional and regulatory failure—including funding gaps, technical complexity, lack of political will, inadequate statutory design, and agency capture.
- **The crafting of these metrics is primarily a job for an independent group of experts, both scientific and policy experts, informed by an advisory group and/or public comment.** The experts could be drawn from a variety of sources, including the Bay Program’s current Science and Technical Advisory Committee (STAC). To work properly, accountability metrics must be accessible to outsiders who are not steeped in the highly technical details of an agency’s work. While the Program’s complexity and opacity could also plague an independent selection committee, lack of involvement in an agency’s daily work is likely to make it far easier for those outsiders to achieve the goal of establishing accessible accountability metrics.

While independent selection of metrics is crucial, the Program should have a substantial role in advising the independent group that develops the metrics. The Program’s advice will give the independent group the advantage of the Program’s expertise, while still protecting against the selection of self-protective measurements. Indeed, it may be efficient to have an agency propose metrics as the starting point of the entity’s process. It may also be efficient to have the entity or individual responsible for ultimately reporting on metrics results (see below) to the Program’s leadership to oversee the independent group.

Given the status of the dashboards, the groundwork has been laid to develop a strong set of accountability metrics. A timeline of no more than six months should be given for the complete development, including public comment and/or a public hearing, of the accountability metrics. Given the importance of the task, the independent entity should be responsible for overseeing and managing their development and working with Program and partner staff and Program committees, possibly assisted by contracted experts and/or consultants hired by means of an RFP.

### **Accountability**

Once “accountability metrics” are established, the Program must establish a mechanism for ensuring the information gathered is timely and accurate, reporting the results, and allocating responsibility. We discuss each of these in turn.

- **Ensure that local, state, and federal agencies provide the Program with timely and accurate information.** Gathering information from the Program and its partners will be an enormous task. An independent entity with institutional credibility responsible for managing this process is essential. Unless the independent entity is empowered by the Executive Council and the Program to get the information from partners it needs, the development of much-needed information will be unnecessarily delayed. Accordingly, while an independent

group of experts may have functioned well fulfilling the diagnostic mission, an independent officer with high-level credibility should be tasked with ensuring that the metrics are informed by quality information.

- **Monitor Performance.** As noted, the Program’s dashboards concept has great potential to be the primary way the independent entity can spotlight and monitor Program and partner progress. As noted, however, the dashboards remain too general and do not specifically allocate responsibility when goals are not met and actions must be taken. The independent entity should therefore ensure that the dashboards result in a concise and helpful tool that spotlights partner performance. Again, an independent officer with high-level credibility should be tasked with ensuring that the metrics are informed by quality information.
- **Report Performance and Allocate Responsibility.** The independent entity should report the results of the accountability metrics to the Executive Council, the PSC, and to the Program’s website. Part of this report, which could happen by means of the dashboards, must allocate responsibility for failure. Nitrogen does not pollute the Bay; parking lots in Maryland; CAFOs in Virginia, and sewage treatment plants in Pennsylvania do – and the dashboards must reveal what sources in specific areas need to be prioritized. Partners will often be “guilty with an explanation” and those explanations must be heard so that the independent entity is able to explain the policy, political, and resource constraints to decision-makers. In addition, if the metrics themselves are too numerous, and the periodic reporting becomes convoluted and unduly complex, the public will soon lose interest and the process will become another bureaucratic paper-shuffling exercise. Last but not least, reporting must be implemented in a way that is perceived as scrupulously fair by everyone involved. If the independent officer put in charge of the accountability mechanism is perceived as playing favorites, choosing scapegoats, or having a political or hidden substantive agenda, it will quickly collapse.

### **Corrective Action & Enforcement**

Once responsibility is attributed and failure established, corrective actions must be taken and consequences must be imposed. We believe that the Executive Council itself, sitting as a full body, has the power and credibility to serve this function. In our view, the independent entity’s job is to tell the Executive Council what’s being done and what needs to be done. At that point, the Executive Council has the ability to take action, directing and empowering the independent entity to direct that adjustments be made and impose specific consequences if needed. For example, the partners could agree to monetary fines or other negative incentives (e.g., moratoria on future development). Or they could rely on the public exposure of failure to inspire flagging parties. We have a strong sense that it would be premature to ask the partners to craft monetary or other penalties before an accountability mechanism has been established and begun an intensive effort to craft accountability metrics, and that it might be better to leave this aspect of the decisionmaking to another day. We urge you to consider, however, whether any entity other than the Executive Council itself, sitting as a full body, has the power and credibility to serve the enforcement function.

## **Recommendations and Next Steps**

Ultimately, given that the Program’s success ultimately rests on the efforts of its state and federal partners, only leadership at the highest levels will be able to move the issue of protecting the Bay forward. The Program is tasked with coordinating the work of independent state partners, but it lacks the statutory



authority to compel action or impose consequences. An independent entity will not change this critical fact. An independent entity, however, can accomplish the following:

- Foster a culture of accountability in the Program and with partners;
- Play the crucial role of giving high-level decision-makers the information necessary to make smart decisions about the direction of the Program and state and federal-directed Bay protection and restoration efforts;
- Explain to Congress, the media, and the public what is being done and what needs to be done to clean up the Bay and why any gap between the two exists;
- Impose enforcement measures at the direction of the Executive Council.

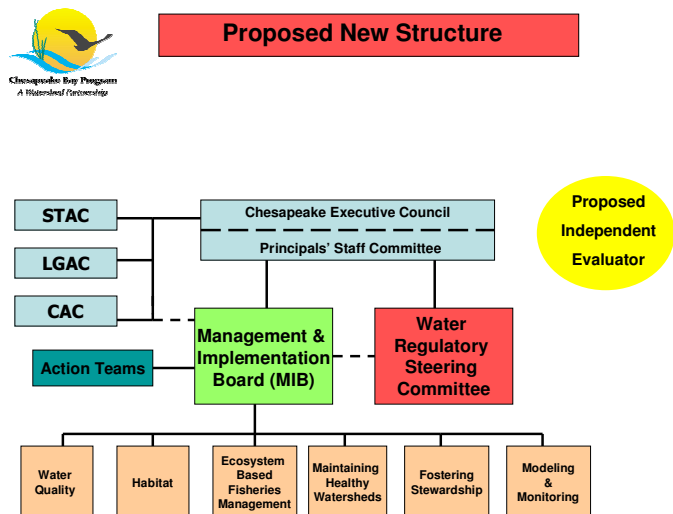
At this point, we recommend the following next steps to be completed in September:

- Interview 10-15 high-level stakeholders about their ideas about what an accountability mechanism should look like;
- Memorialize the interview responses in a memorandum; and
- Flesh out the initial organizational details of the independent entity (i.e., a group of experts for developing the accountability metrics, and an independent officer (staffed by program employees or by consultants) for monitoring and reporting.

## Appendix A

### *The Independent Entity: Organizational Choices*

The Program's Principals' Staff Committee (PSC) officially acknowledged the need for an independent entity to ensure Program and partner accountability, after a presentation on Program reorganization was made on June 19, 2008. As the chart indicates, the proposed reorganization includes an "independent evaluator" that is outside of the Program. This section of the memo therefore broadly describes organizational possibilities for the independent entity. All of these possibilities must retain, at their core, independence from the Program. Internal management of the Program should continue to provide internal oversight, of course, but the Executive Council and the PSC need expert and independent input to maintain progress and ensure that the Program and its partners keep their commitments and deliver results. Because the Program is more sophisticated than most ecosystem programs that involve more than one jurisdiction, it is likely that the Program could formulate an independent entity that, while informed by current accountability mechanisms, is uniquely suited to the Program's needs. In order to do this, a brief understanding of how correlative government accountability mechanisms could inform the independent entity should be helpful.



- Inspector General.** By federal statute, Inspector Generals ("IGs") are empowered to conduct independent and objective audits, investigations, and inspections, with the primary objective of preventing and detecting waste, fraud and abuse.<sup>4</sup> Most are nominated by the President and confirmed by the Senate, although some federal agencies can appoint and remove IGs if they notify Congress. IGs report to Congress biannually. The Executive Council could agree to appoint an "Environmental Inspector" for the Program, modeled on the IG approach. Because allegations of fraud or waste are not at the crux of the Program's problems, the Environmental Inspector would differ from the IGs in that its primary objective would be to ensure program environmental accountability based on the mission we have described. The Environmental Inspector would report directly to the Executive Council.
- Office of Accountability.** Offices of Accountability are independent offices within an institution's organizational structure. They may assess and respond to internal and/or external complaints; conduct compliance reviews; and/or conduct or oversee audits.<sup>5</sup> They may report to the organization's director or governing board. Here, an Office of Accountability would fall within the Program's organization, but would be independent from the structure to some extent. The head of the office could report directly to the Executive Council or to the Program Executive Director.
- Inspection Panel.** Inspection panels carry out independent investigations of organizations. For example, to provide an independent forum to private citizens who believe that they or their interests have been or could be directly harmed by a project financed by the World Bank, the World Bank established an Inspection Panel, a three-member body appointed by the bank's board

for five-year terms. One Inspector, the Chairperson, works on a full-time basis; the other two work part-time. The panel investigates based on citizen requests and makes recommendations to the Board of Executive Directors, who consider the actions, if any, to be taken.<sup>6</sup> Here, an Inspection Panel could be appointed by the Executive Council, with the chairmanship of the Panel rotating on an annual basis. Instead of responding to citizen complaints, the Inspection Panel would be empowered to develop the accountability mechanisms described above.

- ***Compliance Advisor/Ombudsman.*** An Office of the Compliance Advisor/Ombudsman is another way to foster accountability. For example, the International Finance Corporation (IFC) established such an office to respond to complaints by communities affected by the IFC and to “improve the social and environmental outcomes of their work.”<sup>7</sup> The Compliance Advisor has three roles: 1) compliance -- to oversee compliance reviews of the IFC, overall environmental and social performance, and specific projects; advisor -- to provide independent advice to the President and management on specific projects as well as broader environmental and social policies, guidelines, procedures and resources; and ombudsman – to advise and assist the IFC in addressing complaints. Here, as there is little evidence that the Program needs to improve how it responds to citizen complaints, the Compliance Advisor role is more appropriate than the Ombudsman role. The Compliance Advisor could report directly to the Executive Council or to the Program Executive Director.
- ***Blue Ribbon Commission.*** Blue Ribbon Commissions are comprised of highly respected individuals who generally focus on a specific problem. For example, in 1997, Governor Glendening appointed such a commission to address the problem of *Pfiesteria* in the Bay. The commission was chaired by former Maryland Governor Hughes. Here, such a commission could be established to focus on Program accountability, with members appointed by the Executive Council.
- ***Accountability Partnership.*** An accountability partnership is best characterized as a community-driven effort to achieve a common goal. For example, charged by the Washington Governor and Legislature to create an “Action Agenda” to protect the Puget Sound, the Puget Sound Partnership “consists of citizens, governments, tribes, scientists and businesses,” although it is essentially a state agency with governance mechanisms including these groups. The Action Agenda will be released in December 2008; after that, the Partnership “will hold its partners accountable for delivering results.” One way the Partnership plans to promote accountability is by signing performance agreements with its partner state agencies.
- ***National Academy of Sciences.*** National Academy of Sciences issue reports designed to provide independent and objective advice with a high standard of scientific quality. Although several NAS reports have been conducted on the Bay and the Bay Program, a report that addresses metrics merging both scientific and policy accountability mechanisms could be requested. *Downstream: Adaptive Management of Glen Canyon Dam and the Colorado River Ecosystem* (1999), for example, discussed how to integrate science into policy decisions to increase accountability.

**Appendix B**  
**Comparable Regional Ecosystem Management Programs**

<b>CALFED Bay-Delta Program</b> www.calwater.ca.gov	
<b>Program Mission</b>	Improve California’s water supply and the ecological health of the San Francisco Bay/Sacramento-San Joaquin River Delta. The Program’s objectives are: 1) Water Quality; 2) Levee System Integrity; 3) Water Supply Reliability; and 4) Ecosystem Restoration.
<b>Program History</b>	In 1995, persistent drought and collapsing fisheries escalated a dispute among state and federal officials over water in the Sacramento-San Joaquin River Delta. CALFED was crafted for addressing water supplies and Delta levees, improving water quality and restoring the ecosystem.
<b>Program Participants</b>	25 state (California only) and federal agencies
<b>Program Authorization</b>	<p>In 1994, four federal agencies (EPA, Bureau of Reclamation, National Marine Fisheries Service, and Fish and Wildlife Service) and California signed an agreement to coordinate activities in the Delta. This led to the Bay-Delta Accord, which began a long-term planning process that resulted in, among other things, a “Framework” that formalized cooperation among state and federal agencies managing and regulating the Bay-Delta.</p> <p>In 2000, the CALFED Record of Decision and an accompanying memorandum of understanding executed by the then 13 state and federal implementing agencies was finalized. It was an agreement that all parties would work collaboratively toward achieving balanced improvements in the Delta. Later, 12 more state and federal agencies signed onto the ROD for a total of 25 state and federal implementing agencies. The California Bay-Delta Act of 2003 established the Bay-Delta Authority as CALFED’s governance structure. The Authority is described below.</p>
<b>Program Governance</b>	The California Bay-Delta Authority oversees the implementation of the CALFED Bay-Delta Program. The Authority is comprised of state and federal agency representatives, public members, a member of the Bay-Delta Public Advisory Board, ex-officio legislative members and members at large.
<b>Program Accountability Mechanisms</b>	<p>As CALFED’s oversight body, the Authority is responsible for accountability, ensuring balanced program implementation, tracking and assessing of progress, ensuring the use of sound science to guide decision making, encouraging public involvement and outreach and coordinating and integrating related government programs.</p> <p><b>In 2005, the Little Hoover Commission called for a modification of CALFED’s governance structure, finding that “[b]ecause of faulty design,” CALFED “cannot effectively coordinate activities, push agencies to perform, or perform rigorous oversight. It is unable to control or cajole.”</b><sup>8</sup> In essence, the Hoover Commission pointed out two fundamental problems related to oversight:</p> <ol style="list-style-type: none"> <li>1. The Authority faced conflict because it included both public and agency members, creating the possible perception that it could not adequately provide independent third-party review.</li> <li>2. In addition, while intended to provide independent oversight, <b>“a board comprised mostly of government officials cannot oversee itself.”</b><sup>9</sup> <b>“Management can provide internal oversight, but the public and policy-makers need a mechanism that can provide expert and independent review of the Program to maintain progress and ensure the program stays faithful to all shared goals.”</b><sup>10</sup></li> </ol> <p>Following this criticism, the Authority released a “10-year action plan” in December 2005 to provide direction and adopted many of the Hoover Commission’s recommendations, including the <b>establishment of a new executive council and new state advisory committee.</b><sup>11</sup> Instead of creating a new entity to provide independent review, the Plan proposed using the same type of review it had undergone, namely that the Hoover Commission, the state Department on Finance, and independent consultant KPMG on management issues. <b>The independent review may be called for by either the Governor or the Legislature on behalf of the state, and the President or Congress on behalf of the federal government. The independent reviews should be conducted every seven years, or as requested, to allow for Program adjustments to be fully implemented between reviews.</b></p>

<b>The Great Lakes National Program Office</b> www.epa.gov/grtlakes/	
<b>Program Mission</b>	The Great Lakes National Program Office oversees and helps all Great Lakes stakeholders work together in an integrated, ecosystem approach to protect, maintain, and restore the chemical, biological, and physical integrity of the Great Lakes.
<b>Program History</b>	<p>In 1909, to manage lake levels and resolve disputes, the U.S. and Canada entered into the Boundary Waters Treaty, creating the International Joint Commission (“IJC”), which still exists today. The IJC does not address water quality, although it has been “sounding the alarm” about Great Lakes water quality for years.<sup>12</sup> In 1978, the U.S. and Canada entered into the first Great Lakes Water Quality Agreement (“GLWQA”). The GLWQA has been amended twice since, with the 1987 Protocol calling for the development of ecosystem objectives and indicators.<sup>13</sup> In 1992, the Great Lakes 5-Year Strategy, developed jointly by EPA and its multi-state, multi-agency partners, provides the agenda for Great Lakes ecosystem management: reducing toxic substances; protecting and restoring important habitats; and protecting human/ecosystem species health.</p> <p>In 2004, a Great Lakes Federal Interagency Task Force was created to “improve coordination” among the program partners. Additionally, the Council of Great Lakes Governors was created to develop “binding agreements” for the Great Lake partners. On July 23, 2008, the Council “introduced a joint resolution providing consent to the Great Lakes-St. Lawrence River Basin Water Resources Compact.” Congress must give its consent for the compact to become law.</p>
<b>Program Participants</b>	Ten U.S. agencies administer more than 140 programs in funding and managing restoration and protection of the Great Lakes Basin. Governance of the Great Lakes system is shared with eight U.S. states, nearly 40 Tribal Nations, more than half a dozen major metropolitan areas, and numerous county and local governments. Internationally, governance of the Great Lakes system is shared with Canada. <sup>14</sup>
<b>Program Authorization</b>	The Boundary Waters Treaty of 1909 and the 1987 Great Lakes Water Quality Agreement (GLWQA) with Canada provide the basis for the office’s international efforts to manage the Great Lakes. Additional responsibilities are defined in Section 118 of the Clean Water Act, Section 112 of the Clean Air Act Amendments, and the Great Lakes Critical Programs Act of 1990.
<b>Program Governance</b>	EPA describes the United States Great Lakes Program as “a nested structure of activities, managed and implemented by an alliance of Federal, State, Tribal, and nongovernmental agencies.” The ICJ, Interagency Task Force, the Council of Great Lakes Governors, and the Great Lakes Commission, “a binational agency” including the Great Lake States and Canadian provinces work with the Great Lakes Program.
<b>Program Accountability Mechanisms</b>	<p>The 1987 Protocol has little to say about the institutional mechanisms that are needed to carry out the ecosystem approach it envisioned, and the parties have not advanced much beyond this vision.</p> <p><b>Article VII of the Canada-US Great Lakes Water Quality Agreement requires that the International Joint Commission issue biennial reports on governments’ progress toward achieving the Agreement’s objectives. In 2006, the IJC’s report focused on one theme: accountability.<sup>15</sup> Some of the problems the ICJ report found with the GLWQA include:</b></p> <ul style="list-style-type: none"> <li>• <b>The Agreement does not go beyond committing the Parties to make best efforts to achieve particular objectives.</b></li> <li>• <b>Precise roles and responsibilities for meeting objectives are unspecified, referring broadly to the “parties” to the Agreement.</b></li> <li>• <b>The current system for jointly monitoring the Great Lakes with indicators to assess progress toward achieving commitment is inadequate. Put another way, the environmental indicators that are currently used do not indicate how well the Agreement is working; Agreement goals have no corresponding indicators; and timelines or milestones are not included.</b></li> <li>• <b>Reporting has not been consistent with what is called for by the Agreement – there is no collective sense of the progress made or not made.</b></li> </ul> <p>The report then recommends that the parties establish a rigorous plan to establish a “framework for accountability.” As part of this plan, to promote political accountability, the report recommends the creation of a Great Lakes Water Quality Agreement Steering Committee, with members drawn from the cabinets of both federal governments, should be convened to oversee implementation of the Agreement. It does not appear these recommendations have been acted upon.</p>

<b>Northwest Power and Conservation Council's Fish and Wildlife Program (Columbia River Basin)</b> <a href="http://www.nwppc.org/">http://www.nwppc.org/</a>	
<b>Program Mission</b>	The Council develops and maintains a regional power plan and a fish and wildlife program to balance the Northwest's environment and energy needs.
<b>Program History</b>	In 1980, Congress enacted the Northwest Power Act, mandating management of the Columbia hydropower system (31 dams) for both energy production and wildlife protection.
<b>Program Participants</b>	<p>The states of Idaho, Montana, Oregon and Washington participate in the Council. The Bonneville Power Administration funds the Council. The Council is funded by wholesale power revenues from the Bonneville Power Administration, the federal agency that markets the electricity generated at federal dams on the Columbia River.</p> <p>The Council reviews and proposals from state, local, and tribal governments, as well as universities and environmental groups, for fish and wildlife recovery projects. In 2000, the Council required a "sub-basin planning process" for the basin's 62 tributaries. Local water agencies, users and community groups that developed the plans will implement the plans. (Evaluating the implementation is discussed below.)</p>
<b>Program Authorization</b>	The Northwest Power Act, 16 U.S.C. § 839.
<b>Program Governance</b>	The Governors of Idaho, Montana, Oregon and Washington appoint two members to the Council.
<b>Program Accountability Mechanisms</b>	<p>The Council originally sought to ensure project-level monitoring by requiring that the projects include provisions for monitoring and evaluation that they would conduct themselves. The Council's Independent Scientific Review Panel would ensure the projects' monitoring provisions were adequate.<sup>16</sup> In addition, the Council engages in periodic programmatic review.</p> <p>For the 2008-2009 time period, the Council has begun reviewing its programs and considering amendment recommendations.<sup>17</sup> In November 2007, the Council released a "discussion draft" on monitoring and evaluation, noting that "the program provisions specifically related to monitoring and evaluation are not yet sufficient and explicit to guide the program's monitoring and evaluation activities" and asked for recommendations to "address that deficiency." The paper then goes on to describe a possible monitoring and evaluation framework.<sup>18</sup> The rest of this paper describes a possible monitoring and evaluation framework for the program based on the overarching program framework. The Council asked for recommendations in the program amendment process to address monitoring and evaluation. The recommendations were received in April 2008 and more comments were received in June 2008. The draft amendment is scheduled to be released in August 2008.</p> <p>In 2004, the Pacific Northwest Aquatic Monitoring Partnership (PNAMP) was created, to provide a forum for coordinating state, federal, and tribal aquatic habitat and salmonid monitoring programs.<sup>19</sup> The purpose of the partnership is "[i]mproved communication, shared resources and data, and compatible monitoring efforts provide increased scientific credibility, cost-effective use of limited funds and greater accountability to stakeholders." The partnership's recommendations are reviewed by the Council's scientific advisory bodies.</p>

<b>Comprehensive Everglades Restoration Plan-RECOVER</b> www.evergladesplan.org	
<b>Program Mission</b>	The Comprehensive Everglades Restoration Plan (CERP) provides a framework and guide to restore, protect and preserve the water resources of central and southern Florida, including the Everglades. It covers 16 counties over an 18,000-square-mile area and centers on an update of the <u>Central &amp; Southern Florida (C&amp;SF) Project</u> also known as the Restudy.
<b>Program History</b>	The Plan was approved in the Water Resources Development Act (WRDA) of 2000.
<b>Program Participants</b>	The US Army Corps of Engineers; Florida Department of Environmental Protection; Lee County; Miami-Dade County; Miccosukee Tribe; Palm Beach County; the South Florida Water Management District; EPA; NOAA, US Fish and Wildlife, US Geological Survey; National Park Service; Seminole Tribe; Florida Department of Agriculture and Consumer Services; and Florida Fish and Wildlife Conservation Commission.
<b>Program Authorization</b>	The Plan was approved in the Water Resources Development Act (WRDA) of 2000.
<b>Program Governance</b>	The Corps of Engineers has the primary responsibility to restore the Everglades. The following entities have been designated as sponsors or potential sponsors with the US Army Corps of Engineers toward the execution of the Comprehensive Everglades Restoration Plan: Florida Department of Environmental Protection; Lee County; Miami-Dade County; Miccosukee Tribe; Palm Beach County; and the South Florida Water Management District.
<b>Program Accountability Mechanisms</b>	<p>The REstoration COordination and VERification Team (RECOVER) is an arm of the Comprehensive Plan (CERP) responsible for linking science and the tools of science to a set of system-wide planning, evaluation and assessment tasks. RECOVER's three missions are as follows:</p> <ul style="list-style-type: none"> <li>• <b>Assessment</b> - to physically measure (through monitoring) and interpret actual responses in the natural and human systems as the CERP projects are implemented</li> <li>• <b>Evaluation</b> - to work with the project delivery teams to evaluate (through predictive modeling) and maximize the contribution made by each project to the system-wide performance of the CERP</li> <li>• <b>Planning and Integration</b> - to identify potential improvements in the design and operation of the CERP, consistent with the CERP objectives, and to strive for consensus regarding scientific and technical aspects of the CERP</li> </ul> <p>RECOVER is co-chaired by representatives from the South Florida Water Management District and the Corps of Engineers, and is coordinated by a Leadership Group.</p> <p>In addition, the federal government and the state of Florida signed an agreement in 2004 to create an independent scientific review panel following publication of the final programmatic regulations.<sup>20</sup> According to a 2006 article in <i>Natural Resources Journal</i>, “[e]fforts to establish a National Academy of Sciences peer review panel under the auspices of the South Florida Ecosystem Restoration Task Force have been rocky. In particular, there is the contentious question of what issues the panel would look at and who would determine the panel's work agenda. Recently, provisional committee members were chosen for the new Independent Scientific Review Panel.”<sup>21</sup></p>

<sup>1</sup> Sidney A. Shapiro & Rena Steinzor, Capture, Accountability, and Regulatory Metrics, \_\_\_ Texas L. Rev. \_\_\_, \_\_\_ (2008)(forthcoming)(document on file with CPR).

<sup>2</sup> CHESAPEAKE BAY PROGRAM OFFICE, ENVIRONMENTAL PROTECTION AGENCY, *Strengthening the Management, Coordination and Accountability of the Chesapeake Bay Program* (2008), at 13-14 [hereinafter “CAP”].

<sup>3</sup>*Id.* at 31-32.

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<sup>4</sup> For more information about the Office of Inspector Generals, *see* IG Net, *available at* [www.ignet.gov/index.html](http://www.ignet.gov/index.html).

<sup>5</sup> For an example Office of Accountability, *see* Office of Accountability, Overseas Private Investment Corporation, *available at* [www.opic.gov/doingbusiness/accountability/index.asp](http://www.opic.gov/doingbusiness/accountability/index.asp).

<sup>6</sup> For more information about the World Bank's inspection panel, *see* <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64132057~pagePK:64130364~piPK:64132056~theSitePK:380794,00.html>.

<sup>7</sup> For more information about the IFC's Compliance Advisor/Ombudsman, *see* <http://www.cao-ombudsman.org/>.

<sup>8</sup> LITTLE HOOVER COMM'N, STILL IMPERILED, STILL IMPORTANT: A REVIEW OF THE CALFED BAY-DELTA PROGRAM 1 (2005). CALFED reports addressing the Hoover Commission's recommendation are available at [http://www.calwater.ca.gov/calfed/about/History/10\\_Year\\_Plan.html](http://www.calwater.ca.gov/calfed/about/History/10_Year_Plan.html).

<sup>9</sup> CALFED 10-Year Action Plan at 16.

<sup>10</sup> *Id.*

<sup>11</sup> Andrea K. Gerlak & Tanya Heikkila, *Comparing Collaborative Mechanisms in Large-Scale Ecosystem Governance*, 46 NAT. RESOURCES J. 657, 678 (2008).

<sup>12</sup> Bradley C. Karkkainen, *Managing Transboundary Aquatic Ecosystems: Lessons from the Great Lakes*, 19 Pac. McGeorge Global Bus. & Dev. L.J. 209 (2006).

<sup>13</sup> *Id.*

<sup>14</sup> <http://www.epa.gov/greatlakes/parties/index.html>.

<sup>15</sup> A copy of the report is available at [www.ijc.org/en/publications/pdf/13br\\_e.pdf](http://www.ijc.org/en/publications/pdf/13br_e.pdf).

<sup>16</sup> Andrea K. Gerlak, *Comparing Collaborative Mechanisms in Large-Scale Ecosystem Governance*, 46 Nat. Resources J. 657, 697 (2006).

<sup>17</sup> <http://www.nwcouncil.org/fw/program/2008amend/>.

<sup>18</sup> The paper is available at [www.nwcouncil.org/fw/program/2008amend/](http://www.nwcouncil.org/fw/program/2008amend/).

<sup>19</sup> <http://www.pnamp.org/>.

<sup>20</sup> Gerlak, *supra* note 16 at 686 (citing Establishment of an Independent Scientific Review Panel Pursuant to Section 601 of the Water Resources Development Act of 2000, U.S. Dep't of the Army-U.S. Dep't of the Interior-Fla., June 14, 2004, available at [www.sfrestore.org/tf/minutes/2004\\_meetings/feb04tfmtg/021604\\_Independent\\_Science\\_Review\\_Panel\\_MOA1.pdf](http://www.sfrestore.org/tf/minutes/2004_meetings/feb04tfmtg/021604_Independent_Science_Review_Panel_MOA1.pdf)).

<sup>21</sup> *Id.*