



Using Nonprofit Organizations To Advance Estuary Program Goals

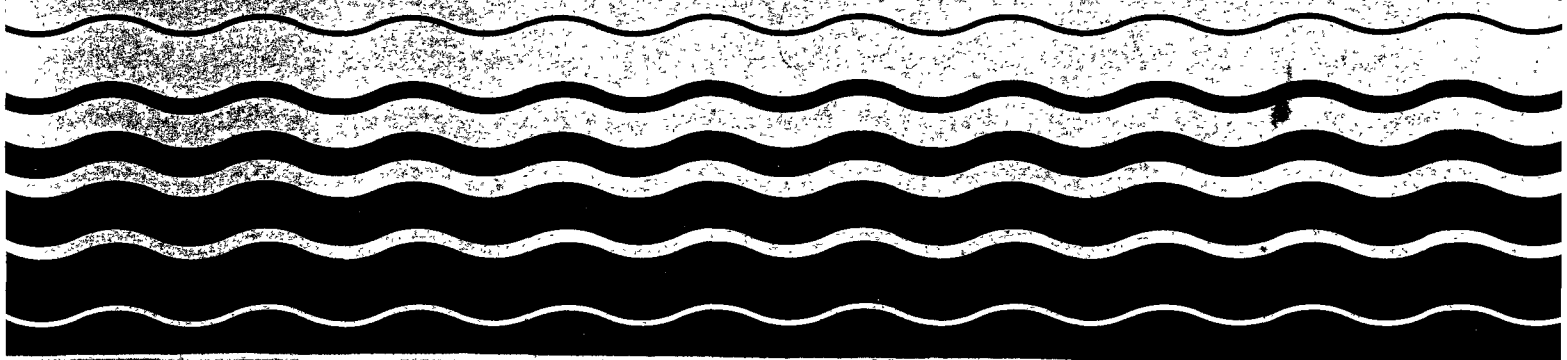


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I. INTRODUCTION

The National Estuary Program (NEP) was established in 1987 to provide for the protection of nationally significant estuaries. Since the program's inception, 21 estuaries have been added to the NEP. Each estuary's management conference, consisting of representatives from federal, state and local agencies, businesses, citizen groups, and universities, is responsible for the development of the Comprehensive Conservation and Management Plan (CCMP) that outlines a strategy for conserving and managing the estuary's resources.

Section 320 of the Clean Water Act authorizes the Administrator of EPA to make grants to state, interstate, and regional water pollution control agencies and entities, state coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals in order to develop CCMPs. Section 320 does not, however, authorize EPA to fund CCMP implementation activities. In fact, section 320 authorizes EPA to fund only a limited number of post-CCMP activities, and this funding must be awarded through contracts, not grants.

Given the restrictions under which the Agency can provide support to estuary programs once their CCMP has been approved, state and local governments will need to find other sources of funding to implement their CCMP. Nonprofit organizations (NPOs) could play a significant role in attracting and receiving funds and in carrying out implementation, as well as oversight and federal consistency activities.

This paper examines how well nonprofit organizations can fulfill this role. It first discusses the ability of NPOs, in general, to attract and disburse funds and describes the direct and indirect implementation activities they can undertake. The paper then examines specific types of NPOs and reviews the case for using a public charity structure, the most commonly used type of NPO to date.¹ The circumstances that would favor the use of some other form of NPO are also reviewed. In some cases, existing institutions, already active in an estuary program, could serve as candidates to fulfill this role. The paper looks at the advantages and disadvantages of using an existing institution instead of, or in conjunction with, a new NPO.

¹ An organization must be considered "publicly-supported" in order to qualify for 501 (c)(3) public charity status under the Internal Revenue Code. IRS regulations specify two ways to qualify as publicly-supported. First, an organization can automatically qualify if at least one-third of its total support comes from governmental units or the general public. If an organization cannot meet this test, it must prove that at least a tenth of its support comes from either governmental units or the general public, and that it is organized and operated in a manner to attract new and additional public or governmental support on a continuous basis.

Finally, the paper raises several issues that must be resolved before an estuary program can establish an NPO, particularly a public charity, and provides a list of references for further information.

II. HOW CAN A NONPROFIT ORGANIZATION SUPPLEMENT CCMP FUNDING AND IMPLEMENTATION EFFORTS?

A nonprofit organization is defined as one that accrues no profit to its individual members, but expends its resources in pursuit of a particular purpose. Nonprofit organizations can assist state and local governments in financing their CCMPs because NPOs can attract donations from both the public and private sectors.² NPOs can also make grants or contract with various parties for implementation activities. Finally, NPOs can facilitate CCMP implementation directly by undertaking activities listed in the CCMP, or by taking on other related activities that help to ensure CCMP goals are met.

NPOs Can Access Funds From Both the Private and Public Sectors

NPOs may attract funds from government sources (federal, state, and local), as well as from private foundations, corporations, and individuals. NPOs may also be able to access any continuing federal funds earmarked for the National Estuary Program. This will be important if Management Conferences are dissolved, as it will provide EPA a vehicle through which it can provide funds to the program. Current EPA regulations require that NEP grants be discontinued after Management Conferences are dissolved, but allow EPA to contract with NPOs for activities such as monitoring and oversight of CCMP implementation.

NPOs Can Disburse Funds for Implementation Activities

NPOs can provide funds to public and private recipients for CCMP implementation.³ Potential recipients include federal, state, and local agencies, private corporations, other NPOs, and individuals. NPOs can elect to disburse these funds in various ways. For example, an NPO might provide funds to other organizations through a competitive grant program or through a

² Clearly, public funds could not be given to an NPO for purposes outside of their designated use. The restrictions associated with public monies would carry over to the NPO recipient.

³ Note that while private foundations are closely scrutinized upon making grants to any organizations other than Internal Revenue Code 501(c)(3) nonprofits, public charities do not face similar restrictions, so long as the grants are in furtherance of the public charity's stated purpose. In order to avoid any IRS scrutiny, a charity might specify in its grant regulations that it will not make a grant to any for-profit entity.

bidding/contracting process. It can also spend the funds itself by carrying out the activity with its own resources.

NPOs Can Perform Activities

NPOs can undertake estuary-related activities as well. An NPO may perform activities directly related to the estuary, such as education, research, planning and oversight, physical implementation of CCMP recommendations (e.g., habitat restoration), and monitoring. An NPO may also perform activities indirectly related to implementation, such as acting as a watchdog over other institutions, providing a forum for stakeholders to discuss estuary-related issues, lobbying, or acting as a vehicle for mobilizing volunteer support.

III. WHAT OPTIONS ARE AVAILABLE AND WILL BEST SERVE THESE NEEDS?

There are several options available for creating an organization that will facilitate CCMP financing and implementation. The options vary considerably in their ability to act as a conduit of funds and in the activities that they can undertake. There are five basic kinds of NPOs, where an NPO is defined as an organization that accrues no profit to its individual members, but expends its resources in pursuit of a particular purpose. The five types include:

- State Agencies and Departments;
- Special Purpose Government Institutions;
- Interstate Trust Funds;
- Private Foundations; and
- Public Charities.

Each type of organization is briefly described below.

State Agencies and Departments

State agencies or departments may help finance and implement environmental programs. State legislation, the state's constitution, and administrative regulations determine the powers and duties of its agencies. As a conduit of funds, agencies can access government appropriations and grant funds more easily than private NPOs, however, government procurement regulations and reluctance on the part of private donors to provide funding to government entities may impede an agency's ability to access and manage funds from the private sector.

Special Purpose Government Institutions

Special purpose NPOs may help implement environmental programs that cross traditional jurisdictional boundaries. Examples include stormwater utilities that raise funds for improving drainage, regional and multistate authorities for transportation, and special districts that tax residents for improvements to infrastructure. These institutions can be structured to have taxing authority, bonding authority, and regulatory authority, and can have fewer procurement restrictions than traditional state agencies. However, these specialized institutions are not very flexible once created, and may not be able to adapt to changing needs. Like other government institutions, special purpose government institutions have difficulty accessing private sector funds. In cases where the institution is multistate, identical legislation must be passed in each of the participating states, an expensive and time-consuming process.

Interstate Trust Fund

An interstate trust fund can facilitate in the financing of environmental programs, as it is designed to provide grants or loans under legislation passed by the member states.⁴ The Great Lakes Protection Fund operates in this capacity; it was established by eight states to provide grants to a host of entities for the protection of the five Great Lakes. The Fund is exempt from government procurement and funds management regulations, and contributions to it are tax-deductible. However, because it is the only existing example of an interstate trust fund, there is some legal uncertainty regarding the applicability of government regulations to the Fund, the binding nature of state participation, and whether its governing structure has to include the governors of each state.

Private Foundations

A fourth option available is a private foundation. Generally set up as a nonprofit corporation, a private foundation is an NPO that has met IRS criteria for a federal tax status that exempts it from federal income taxes and allows donors to deduct their contributions on their federal tax returns. It is created by filing articles of incorporation and applying to the IRS for recognition of private foundation status. Private foundations can access funds from the private sector more easily than government institutions. However, private foundations are required to distribute all of their income annually and pay a two percent investment income tax, and are not permitted to provide funding to entities other than government institutions or public charities.

⁴ The expression "trust fund" is used to mean a variety of entities. In this report it refers specifically to a nonprofit corporation with a tax-exempt status under Internal Revenue Code Section 115.

Public Charities

The fifth option, and that most commonly used in practice, is the public charity. A public charity is a private foundation that has met additional IRS criteria for public financial support, which exempts it from several restrictions that apply to private foundations. Most existing environmental programs use public charities, including the Chesapeake Bay Foundation, the Santa Monica Bay Restoration Foundation, and San Francisco's Aquatic Habitat Institute.

IV. WHY USE THE PUBLIC CHARITY FORM?

While each of the NPO structures described above could facilitate financing and implementation of the CCMP, the public charity form has several distinct advantages that may make it the best candidate to serve in this capacity. These include:

Operational Advantages: It can undertake a wide range of activities, from lobbying for a particular policy or program, to acting as a neutral forum for stakeholders, to educating the public. It can secure private funds more easily than any other type of NPO and distribute them with relative ease. Public charities are also amenable to having a wide and varied membership base.

Administrative Advantages: Public charities can be set up quickly, modified easily to keep pace with the changing needs of the estuary program over time, and have flexibility in their use of full-time, part-time, and voluntary staff.

Operational Advantages

Public Charities Can Act as "Watchdogs" on Government Agencies -- As a public charity does not have to be linked to any government agency, it can monitor the effectiveness of government agencies responsible for carrying out policies and CCMP implementation.

Public Charities Can Lobby for Policies or Programs -- A public charity does not purport to represent the voting public as a government agency does, therefore it can advocate policies and programs different from those supported by government agencies operating under a particular administration.

Public Charities Can Provide Neutral Forums for Stakeholders to Get Together -- A public charity may be structured to allow all existing stakeholders -- industry, government organizations, environmental organizations, and interested individuals -- to participate as equal members. For example, an estuary-related public charity might include membership from federal, state and local agencies, and all other stakeholders, all of whom would participate and make decisions in the organization.

**Providing a Neutral Forum:
The Alliance for the Chesapeake Bay**

The Alliance for the Chesapeake Bay is an organization with representation from all the stakeholders in the Chesapeake Bay. Because the Alliance takes no position on controversial issues, it can provide a neutral forum for discussion in conferences, workshops, and publications. Other organizations in the Bay take on the roles of lobbying and acting as a watchdog, while the Alliance intentionally remains neutral, so that all the stakeholders will continue to participate.

(The purpose of the Alliance is "to act as a neutral forum for discussion and analysis of Bay issues and to promote public involvement in Bay policy-making." The Alliance is intended primarily as an information clearinghouse and resource and therefore would be unlikely to take positions on any issue.)

Public Charities are Free from Cumbersome Restrictions on Funds Management and Distribution -- Public charities have fewer restrictions on funds management and distribution than either private foundations or government institutions. Most government organizations, whether special purpose government institutions or state agencies and departments, are required to follow a public purchasing and procurement process that sometimes mandates public bidding, and acceptance of the lowest bid. This process can be time consuming, and reduces the flexibility of the organization in making purchasing decisions. In addition, if the government institution has to wait on the public appropriations process to acquire program funding, it may be unable to respond to changing needs in a timely fashion. Similarly, IRS restrictions on funds management by private foundations, including the requirement that they distribute all of their income each year and pay a 2 percent tax on investment income, impede a private foundation's ability to act as a conduit of funds.

Public Charities Can Access Private Funds More Easily -- If funds from the private sector are important, then this advantage becomes critical; public charities have significantly more success than either government agencies or private foundations in gaining funds from individuals, corporate donors, and private foundations. Private foundations and corporations are often reluctant to provide funding to government agencies. In some cases, when the government institution has regulatory authority over the potential donor, a conflict of interest can occur. Public charities also have better access to private foundation funds than do private foundations, as any donation from a private foundation to another private foundation requires the donor to

closely monitor the use of that gift. This requirement does not hold if the gift is made to a public charity or government organization.⁵

**Accessing Private Funds:
The Chesapeake Bay Trust**

The Chesapeake Bay Trust was created as a public charity by the Maryland legislature to access private funds for educational and public involvement projects on behalf of the Bay. The public charity form allows donors to receive a tax deduction, and the absence of regulatory authority means that the Trust faces no conflict of interest in accepting funds from the private sector. In its six years of operation, the Trust has received over \$5.3 million in donations from individuals, corporations, and foundations.

Administrative Advantages

Public Charities Can be Established Quickly and Modified as Required -- Unlike government organizations, public charities require no enabling legislation and may be established by interested individuals who file articles of incorporation. A public charity can be changed in the same manner, allowing it to restructure itself in response to the changing needs of an estuary program.

Public Charities Have Greater Flexibility in the Use of Paid or Volunteer Staff than Governmental Organizations -- Public charities are more flexible in staffing practices as they do not depend on an annual appropriations process. They are therefore able to provide funding for volunteer support more quickly. In addition, government organizations have restrictive employment practices that make it difficult to hire temporary employees or contract-based employees.

V. WHEN IS AN ALTERNATIVE FORM A BETTER OPTION?

There will be situations where an alternative form would better meet the needs of an estuary program. Limitations to using the public charity include:

- *Restrictions on Access to Funds:* In some situations, a public charity may be unable or less likely to access the kinds of funding anticipated by the estuary program.

⁵ See Internal Revenue Service Publication Number 557, *Tax-Exempt Status for Your Organization*, for more details.

- *Restrictions on Activities:* Restrictions on the activities a public charity can undertake may prevent it from performing desired functions.

Restrictions on Access to Funds

Public Charities May Not Secure Government Appropriations and Grants as Easily as Government Institutions -- Historically, government appropriations and grants have gone primarily to government institutions rather than to public charities. Some states have legal restrictions on providing public funds to private organizations; others have procedural rules that hamper transfers of funds to private organizations. If an estuary program anticipates substantial funding from public sources, the program should consider using a government institution that would be a more likely recipient of public funds.

Public Charities Cannot Access Public Debt Markets -- A public charity cannot issue tax-exempt debt or secure loans whose interest payments are tax-exempt for the lender. This increases the cost of capital for a public charity. If the primary need is for funding of capital-intensive projects, the estuary program should consider setting up a government agency with bonding authority, or using an existing government agency.

Public Charities Cannot Receive More than 90 Percent of their Income from an Endowment -- Public charities must demonstrate substantial public financial support each year in order to receive tax-exempt status from the IRS. Endowment income, regardless of the original source, does not qualify as public financial support. Therefore, a public charity would be unable to use an endowment as its chief source of income. If an estuary program anticipates interest on an endowment as a primary source of income, it could structure the organization as a Internal Revenue Code Section 115 governmental organization, which does not have to demonstrate public financial support but can retain the benefits of tax-exemption and tax-deductibility of contributions usually accorded to a public charity. The Great Lakes Protection Fund is an example of a Section 115 organization primarily funded by endowment income.

**Managing an Endowment:
The Great Lakes Protection Fund**

The Great Lakes Protection Fund was established by the eight Great Lakes state governors, who pledged several million dollars in state appropriations to create a lasting endowment for environmental protection in the five Great Lakes. Initially, the governors considered establishing the Fund as a public charity, however, the intended reliance on endowment income would make the Fund ineligible for public charity status by the IRS: as a public charity, the Fund would need to demonstrate annual public financial support, and the IRS would not consider endowment income as "public financial support" regardless of the source of the endowment. The governors therefore decided to seek tax-exemption as a governmental entity under Section 115 of the Internal Revenue Code. This status allowed the Fund the same benefits of exemption from federal income and excise taxes and deductibility of contributions as a public charity, without the need to demonstrate annual public financial support. The IRS approved this status in a private ruling.

Restrictions on Activities

Public Charities Can Only Undertake Limited Lobbying Activities -- IRS regulations limit the percentage of budget that a public charity may spend on lobbying activities. Although many public charities engage in lobbying, they cannot exceed these spending limitations. If lobbying is the primary objective, an estuary program can create an Internal Revenue Code Section 501(c)(4) organization, which can lobby without limits.⁶

Public Charities Cannot Exercise Regulatory Authority -- A public charity is unable to wield regulatory authority and is therefore a poor candidate for carrying out any CCMP recommendations that require such authority. An existing state or interstate regulatory agency would be a better option in this case.

⁶ So long as a public charity does not violate IRS regulations, tax contributions are tax deductible, even if the funds are used for lobbying. If the charity intends to engage in substantial lobbying, it can create a subsidiary organization under Internal Revenue Code 501(c)(4). This organization would be exempt from federal taxes, and can lobby without restrictions, but contributions to it would not be tax-deductible to the donor.

VI. COULD AN EXISTING INSTITUTION BE USED?

In some cases an existing institution can fulfill some or all of the financing and implementation functions required by an estuary program. Using an existing institution can have advantages and disadvantages, including the following:

- *Advantages:* Using an existing organization can avoid duplication of effort and the costs of creating a new organization, and capitalize on the existing organization's contacts and experience.
- *Disadvantages:* An existing organization may be unable or unwilling to take on the additional goals, funding obligations, or activities needed by an estuary program.

Advantages

Using an Existing Institution Avoids Start-Up Costs -- Setting up any new organization involves legal, administrative, advertising, and other incidental costs. By using an existing organization, estuary programs can avoid these start-up costs. For example, an estuary program can take advantage of assets already held by an existing organization, such as office space, computers, and copy machines. It can also take advantage of the organization's relationships with existing institutions, the experience of the organization's staff, and funding sources that it has already identified.

Using an Existing Institution Capitalizes on Name Recognition -- If an existing organization is widely known, an estuary program can take advantage of its name recognition to increase the public's awareness of the estuary. In addition, the estuary program can benefit from any press contacts that the existing organization has developed.

Using an Existing Institution Avoids Duplication of Effort -- If an existing institution is already undertaking estuary-related activities, allotting additional tasks to it avoids duplication of effort. It may also be cheaper for one institution to undertake a particular task, instead of splitting it among two organizations.

Disadvantages

An Existing Institution May be Unable or Unwilling to Change its Charter -- In some cases, an existing organization may be unable or unwilling to acquire additional powers or duties. The ability of an existing organization to expand or change its charter depends on state law and the actions of the current governing body. For example, an environmental advocacy organization whose governing body was made up of private citizens may be unwilling to expand it to include wider representation from government agencies, industry associations, and other environmental organizations. Such an organization would be an unsuitable candidate for estuary-related activities that require broad participation.

An Existing Institution's Goals May Compete with Estuary-Related Goals -- If an existing institution is slated to carry out some part of CCMP financing and/or implementation, the estuary program's goals must either be consistent with its current goals, or the goals of the institution must be expanded to include the new tasks. For example, if a nonprofit water quality research organization were allotted the task of conducting public outreach in the estuary, the organization would have to decide which goal would take precedence if funding proved limited.

An Existing Institution May be Hampered by Historical or Personal Rivalries -- Historical conflicts between organizations or personal rivalries between individuals can affect an existing organization's ability to access funds and implement activities. For example, if an existing organization had publicly criticized state environmental agencies in the press, it might have difficulty providing a neutral forum for these agencies to discuss estuary-related issues. If a public charity had been a vocal critic of corporations in the area, it might have difficulty attracting corporate donations.

An Existing Institution's Funding Sources May Not Accept a Change in Focus -- Typically, donors provide funds to institutions for specific purposes. An existing organization's donors may refuse to finance expanded activities, and may even discontinue their current level of funding if they disagree with any of the expanded activities. For example, corporate donors may be willing to provide funding to a public charity to conduct non-controversial environmental education programs, but might discontinue their support if the public charity began to lobby for more stringent pollution control measures.

An Existing Institution May Not be Able to Handle New Functions Given Existing Personnel -- In some cases, new or expanded functions may tax the abilities of an existing organization. For example, an all-volunteer organization may find it necessary to hire full-time paid staff to handle new demands, such as monitoring activities, for example. An existing organization may lack the requisite technical expertise as well.

An Existing Institution is Less Likely to Provide a Focal Point for the Estuary Program -
- An existing institution may have a broad range of concerns and may be less able to focus exclusively on the estuary program. In contrast, a new organization can draw attention to the estuary and could serve as a tangible point of reference to the public. In addition, a new institution can be tailor-made for the estuary program's specific needs (it can be structured to allow the use of volunteers, for example, and thus capture public interest and participation).

VII. WHAT ISSUES MUST BE RESOLVED TO SUCCESSFULLY ESTABLISH AN NPO?

In creating an NPO, there are still several issues that must be resolved. The needs and choices of the estuary program will determine whether one or more institutions are desirable, whether an existing institution should play a role, and the final form the NPO (or NPOs) should

take. Eight areas of potential concern are discussed below, in a framework that should guide further discussion of each issue.

What are the Priority Functions of the Institution?

The NPO may undertake direct implementation activities, such as education or monitoring, and indirect activities such as lobbying. Not all activities can reasonably be undertaken by one organization, and if particular activities are of equally high priority, the estuary program may need to establish more than one organization to fulfill its needs.

One way to identify potentially conflicting activities is to create a matrix of activities undertaken by existing NPOs in various estuary programs. An example is provided below. Each axis represents the same list of activities. Areas where a possible conflict might arise, if one institution were tasked with both activities defining a particular cell, are marked accordingly. This matrix is designed to encourage discussion of whether conflicting activities are on the agenda, and to provide insight as to the types of activities that are at risk of being in conflict. Setting up multiple institutions may get around this problem. The Chesapeake Bay program has followed this strategy, for example.

POTENTIAL AREAS OF CONFLICT WITHIN AN INSTITUTION									
	Information Clearinghouse	Forum for all Interested Parties	Education	Research & Monitoring	Grantmaking	Lobbying	Policy & Planning	Regulatory Activities	Watchdog
Information Clearinghouse						possible conflict			
Forum for all Interested Parties						possible conflict		possible conflict	possible conflict
Education						possible conflict			
Research & Monitoring									
Grantmaking									
Lobbying	possible conflict	possible conflict	possible conflict					possible conflict	
Policy & Planning								possible conflict	
Regulatory Activities		possible conflict				possible conflict	possible conflict		possible conflict
Watchdog		possible conflict						possible conflict	

Varying Roles: The Multiple NPOs in the Chesapeake Bay

Several NPOs are active in the financing and implementation of the Chesapeake Bay estuary. The *Chesapeake Bay Trust* was designed to access funds from private individuals, foundations, and corporations for non-controversial educational and volunteer involvement projects in Maryland. The Trust undertakes activities that have broad public support and avoids projects that might jeopardize the willingness of private corporations to provide funding. As a result, the Trust is able to mobilize widespread financial support. The *Alliance for the Chesapeake Bay* provides a neutral forum for stakeholders to discuss issues of concern in the Bay, sponsoring conferences and providing unbiased information on Bay issues. The *Chesapeake Bay Foundation*, by contrast, gets involved in controversial issues, and pursues litigation against polluters in the Bay. Its sources of revenue -- primarily individuals and foundations -- support this involvement. The Foundation can serve as a watchdog on public agencies and polluters and can lobby, but it is less effective at attracting corporate support than the Trust, and less effective at bringing stakeholders together than is the Alliance. These three organizations are able to pursue their missions effectively because they voluntarily limit their scope of activities.

How will the NPO Interact with Existing Institutions?

Both a formal and informal relationship will exist between the anticipated NPO and current players in the estuary. To ensure that the institutions work together to further the goals of the estuary program, estuary program managers should consider the following questions:

- What will be the legal relationship between the institutions -- will the NPO be formed as part of an existing structure or independently, and what benefits and concerns might be associated with that decision?
- Will the NPO make grants or award contracts to existing players?
- Will the NPO receive monies from existing players?
- Is there any overlap in anticipated activities between the NPO and existing institutions? How will activities be divided between them?
- Will the NPO take the informal lead in directing the estuary program? Does an existing institution currently do this? Can and should this transfer of informal leadership take place?
- Are there operational synergies that could be exploited between the NPO and existing institutions?

How Much Flexibility Should be Built into its Structure?

The public charity is a flexible type of organization whose charter can be amended to meet the changing needs of the estuary program. However, this flexibility can have disadvantages. Estuary programs must investigate whether mechanisms can be designed into the structure of the NPO to ensure that it continues to pursue its original mission (where appropriate). One way to safeguard the mission yet allow the NPO to change with the changing needs of the estuary, is to structure the governing board with positions that reflect the priorities of the program at any one time. This may mean reserving a board position for a particular state or local official, or for an academic from an institution that has been heavily involved in some aspect of the CCMP's development.

What Should the Governing Body Look Like?

The structure of the governing body must reflect current priorities and have the flexibility to reflect potential future priorities. The overall design must be consistent with the desired functions of the NPO. NPOs tend to use three types of governing structures:

Umbrella Organization. An umbrella organization designates members of various stakeholder organizations, including representatives from government agencies, elected officials, environmental organizations, industry associations, and the general public, as the governing body. Due to its broad structure, an umbrella organization may be able to mobilize broad corporate support for noncontroversial projects and provide a forum for bringing stakeholders together, but may have difficulty achieving consensus for action on controversial issues.

Intergovernmental Organization. An intergovernmental organization designates public officials as its governing body and sometimes as its membership as well. This type of organization can be effective as a coordinator of federal, state, and local government activities. However, because of its close connection to government, it has difficulty serving as an objective watchdog on government agencies, and may have more difficulty attracting private sector funds.

Membership Organization -- This type of organization draws a large percentage of its governing body and membership from the general public. Due to its independence from governmental organizations and generally, from industry, this type of organization can take positions on controversial issues and serve as a watchdog on the performance of governmental agencies. However, this type of organization, due to its lack of ties to government and industry, is not conducive to providing a neutral forum for bringing stakeholders together, coordinating federal, state, and local government activities, or for attracting corporate funds. Finally, it may be difficult to secure the technical and regulatory skills and experience that may be required to execute certain portions of the CCMP, if the governing body and membership is drawn primarily from the general public.

Is There Any Conflict of Interest for Board Members Representing Government Agencies?

In some cases, the presence of regulatory agency officials -- whether federal, state, or local -- as board members of private organizations can present a conflict of interest, or at least the appearance of a conflict of interest, between the member's role in the organization and the member's regulatory enforcement role.

Such conflicts of interest can take several forms. For example, if the board includes members of the regulated community, the regulatory official may be perceived as less likely to take enforcement actions against a fellow member of the organization. Similarly, if the organization solicits and accepts donations from the regulated community, the regulatory official's willingness to take enforcement actions against a major donor might be called into question. Finally, if the organization anticipates grant or loan funding from the official's own agency, the impartiality of the grant process could be questioned (e.g., other grant applicants might object to an EPA official serving on the board of an organization that is also seeking grant funding from EPA).

At the federal level, the EPA's Office of the General Counsel recommends that EPA employees send a letter to their Designated Ethics Officer, or to the General Counsel, describing both the employee's EPA responsibilities and the organization that he/she intends to participate in. The Ethics Officer or the General Counsel's Office then makes case-by-case decisions on whether the employee can serve. The policy appears to vary, based on the nature of the organization, the nature of the employee's EPA responsibilities, and the Region in which it occurs.

A number of environmental public charities, for example, -- including the Friends of the San Francisco Estuary, the San Francisco Aquatic Habitat Institute, and the Institute for Cooperation in Environmental Management -- have reported difficulties in having EPA representatives on their boards due to the perceived conflict of interest.

At the state and local level, however, several examples of successful participation by government representatives exist. In the Delaware Estuary, for example, the Delaware State Employees Office, the New Jersey Department of Environmental Protection and Energy, and the Pennsylvania Department of Environmental Resources have stated that state employees are permitted to serve on nonprofit boards. New Jersey employees may serve but must first obtain permission.

The lack of prohibitions against serving does not mean that conflicts of interest will not occur for either state or federal officials. To avoid perceived conflicts of interest, and maintain the organization and member's integrity, policies may be adopted that address such potential conflicts.

Possible measures include:

- Adopting a policy prohibiting regulatory agency officials or employees from soliciting funds from the regulated community on behalf of the organization;
- Ensuring that officers of the organization with fiduciary responsibilities, such as the President or Treasurer, are not regulatory agency officials or employees. (The Santa Monica Bay adopted this policy to avoid the appearance of a conflict of interest); or
- Requiring that regulatory board members abstain from votes that might present a conflict of interest, or making them non-voting representatives.

In addition, before the organization's articles of incorporation are drafted, ethics specialists from each represented regulatory agency should be consulted regarding additional measures that might be taken to avoid conflict of interest.

Can Both Federal and State Laws be Complied with, to Maintain Public Charity Status?

Estuary programs must review federal and state laws to ensure the NPO will comply with all requirements to maintain its tax exempt status. The main laws relating to public charities are outlined below.

Federal laws. To maintain public charity status, which exempts the organization from federal income and excise taxes and tax deductibility of contributions for donors, an NPO must apply to the IRS for a Certificate of Exemption and demonstrate in its application that at least 10 percent of its annual financial support comes from governmental sources or the general public. A public charity must also file annual tax returns and financial reports with the IRS, and may not spend more than an "insubstantial" amount of its resources on lobbying.

State laws. In most cases, public charities are structured as nonprofit corporations and state corporate law will determine how a public charity may be created, its governing structure, and allowable activities. For example, some states will not allow public officials to serve as members of nonprofit corporation boards, fearing potential conflicts of interest. Many states also require any organization that will engage in charitable solicitation to register with a state agency and adhere to certain limitations on solicitation.

What Funding Sources will be Targeted Given the Desired Functions?

It is critical that a secure funding base be established. While public charities can access both public and private sources of funds, they will have more success in attracting funds from the private sector. However, the private sector is made up of a myriad of donors, from individuals, to corporations, to private foundations, and in many cases, donors may attach "strings" to the funds they provide. A realistic look at potential donors must be undertaken, to

understand the types of activities likely to attract funds and the types of activities that may even steer donors away from the NPO. A matrix of potential donors and the potential (or recorded) restrictions they put on their funds would illustrate whether the NPO being considered would be likely to get sufficient funding.

Can NEP Funds Be Used to Establish a Public Charity?

It is not clear whether grant funds under Section 320 of the federal Water Pollution Control Act (Public Law 92-500, as amended by Public Law 95-217) could be used for the establishment of a public charity to help implement a CCMP. Section 320 states that NEP grant funds may be used "to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan." Under regulations developed pursuant to Section 320, the appropriate Regional Administrator would make the final determination as to whether NEP grant funds could be used to finance the creation of a public charity.

In the past, EPA Regional Administrators have allowed funds to be used for demonstration projects that show how some parts of the CCMP might be implemented. The creation of a public charity might qualify as such a demonstration project, showing how some parts of the CCMP could be implemented through a nonprofit entity. For a final determination the appropriate Regional Administrator should be consulted.

In addition, Section 320 requires that least 25 percent of the costs of such research, survey, studies, and work, must come from non-federal sources (although it may be in-kind funding). As a result, even if federal funds can be used to create a public charity, at least 25 percent of the costs must be contributed by the states or other entities. It is possible that the states or other agencies could use the staff time required to establish a public charity as their in-kind contribution towards the costs of this activity.

VIII. ARE NPOS CURRENTLY USED IN OTHER ENVIRONMENTAL PROGRAMS?

Several environmental programs across the country have created NPOs to help implement and finance their estuary and other environmental activities. Appendix A describes eight active NPOs in terms of their operations, structure, advantages, and limitations, in advancing environmental program goals. Appendix B provides case study contact names, addresses and telephone numbers, and Appendix C gives some indication of the time period required to establish a public charity.

IX. WHAT OTHER SOURCES OF INFORMATION ARE AVAILABLE?

This paper provides a starting point for understanding the potential application of NPOs to estuary programs. Estuary programs considering establishing an NPO will need to investigate

the issues raised here in the context of their specific needs and constraints. Further sources of information that may be helpful include:

Annual Register of Grant Support: A Directory of Funding Sources, National Register Publishing Company, Wilmette, IL: 1991.

Bryce, Herrington J., *Financial and Strategic Management for Nonprofit Organizations*, Prentice-Hall, Inc., Englewood Cliffs, NJ: 1987.

Center for Nonprofit Corporations, *Front & Center*, Volume XI, Number 3, Princeton, NJ, 1993.

Freshley, Craig T. *Funding the Gulf of Maine Program: An Exploration of Non-government Funding Options, Tax Implications Regarding Charitable Giving, and a Review of Exemplary Efforts of Coordinated Water Body Protection*, prepared for the Finance Network of the Gulf of Maine Council on the Marine Environment, January, 1991.

The Foundation Center, *The Foundation Directory*, The Foundation Center, New York, NY: 1993.

Hopkins, Bruce R., *The Law of Tax-Exempt Organizations*, John Wiley & Sons, Inc., New York, NY: 1991.

Oleck, Howard Leoner, *Nonprofit Corporations, Organizations, and Associations*, Prentice-Hall, Englewood Cliffs, NJ: 1988.

Olenick, Arnold, and Olenick, Philip, *A Nonprofit Organization Operating Manual*, the Foundation Center, New York, NY: 1991.

United States Environmental Protection Agency, Office of Marine and Estuarine Protection, *Environmental Trusts: Review of Existing Trusts Established as a Result of EPA Enforcement Actions Under the Clean Water Act* (draft), Summer, 1990.

United States Environmental Protection Agency Memorandum, *Policy on the Use of Supplemental Enforcement Projects in EPA Settlements*, February 12, 1991.

United States Environmental Protection Agency, Office of Marine and Estuarine Protection *Federal Financial Assistance Programs: Targeting Programs Applicable to Coastal Management*, Washington, DC: November, 1989 (Draft), EPA/503/8-90-001.

United States Government Printing Office, *1992 Catalog of Federal Domestic Assistance*, Government Printing Office, Washington, DC: 1992.

United States Internal Revenue Service Publication Number 557, *Tax-Exempt Status for Your Organization*, Washington, DC: 1993.

APPENDIX A: CASE STUDIES OF EXISTING NONPROFIT ORGANIZATIONS

Several environmental programs across the country have created nonprofit organizations (NPOs) to help implement and finance their estuary and other environmental activities. Eight NPOs are examined below in order to provide insight as to how they operate in practice, their advantages, and their limitations in advancing environmental program goals. Each NPO is described in terms of its structure (including legislation required, cost, difficulties encountered in creation, current membership, and governing structure), sources of funds, activities, and primary strengths and limitations. The cases also demonstrate how multiple NPOs can play different, but equally important, roles within a single program.

SANTA MONICA BAY RESTORATION FOUNDATION

The Santa Monica Bay Restoration Foundation was created by the Management Committee of the Santa Monica Bay Restoration Project (SMBRP). The SMBRP was formed in 1988 when the Bay was included in the National Estuary Program. The SMBRP's Management Committee is composed of federal, state, and local elected officials, and representatives from federal, state, and local agencies, dischargers, environmental organizations, and local community organizations. In February 1990, the Management Committee decided to establish the Santa Monica Bay Restoration Foundation as a nonprofit corporation. Its primary purpose is to raise funds to meet both short-term and long-term goals of the Project. The Management Committee adopted the following mission statement for the Foundation:

"The purpose of the Santa Monica Bay Restoration Foundation is to provide a funding mechanism for activities that will lead to the restoration and enhancement of the Santa Monica Bay.

The Santa Monica Bay Restoration Foundation will serve as an independent fundraising vehicle that can attract research, planning, and implementation funds from cities, counties, special districts, private foundations, and industry.

The goals of the Santa Monica Bay Restoration Foundation shall be compatible with the goals of the Santa Monica Bay Restoration Project."

Structure

The Foundation is a public charity that was formed by filing articles of incorporation as a public benefit corporation in California, and seeking recognition from the Internal Revenue Service as an Internal Revenue Code 501(c)(3) nonprofit organization. The process cost approximately \$2,500 in legal fees, and took about one year before the Foundation's public charity status was officially recognized by the IRS. Although the Foundation could begin operations as soon as it was incorporated, this recognition was extremely important to Foundation donors who wanted to ensure that their donations were tax-deductible.

The representatives from the various stakeholders that comprise the Project's management committee, including federal, state, and local elected officials, representatives from federal, state, and local agencies, dischargers, and community groups, also comprise the Foundation's Board.

Sources of Funds

Initially, the Foundation was supported by proceeds from the settlement of a suit against the City of Los Angeles for polluting the waters of the Bay. In addition to these settlement funds, the Foundation's fiscal year 1991 budget of over \$300,000 consisted of contributions from the City of Santa Monica, Culver City, Chevron, and GTE. The Foundation plans to solicit more funding from corporations and private foundations in the future.

Activities

The Foundation has no full-time paid staff; its primary activity is purchasing the services of contractors to perform specific activities related to implementation of the CCMP. Essentially, the members of the SMBRP donate staff time to the Foundation when necessary. The Foundation will support projects of any kind related to the CCMP and has funded various activities ranging from public education and research to planning and policy development. While it has not yet funded physical implementation, it has no policy against making grants for that purpose. After the expiration of the Management Conference, the Executive Director expects that the Foundation will play a larger role in outreach and education, but does not anticipate that it will play a significant role in planning and policy development, or other activities related to the CCMP.

Primary Strengths

The Foundation has been rated by the Executive Director as "very successful," in terms of its ability to:

- **Access settlement funds and private funds.** As a public charity, the Foundation has been able to attract funding from the private sector and serve as a mechanism for reserving settlement funds for future implementation activities.
- **Respond quickly to funding needs.** When contracting out work for the Project, the SMBRP had to use the California state contracting process, which can take months or years. As a private entity, the Foundation can use its own bidding process, which allows work to be performed more quickly.
- **Bypass political difficulties in matching funding sources to needs.** By serving as a neutral conduit for funds, the Foundation avoids ethical conflicts for both donors and recipients. For example, the Foundation is partially funded by donations from oil companies and other companies active in the estuary. The

Foundation then gives these funds to different entities to perform projects on behalf of the estuary. Without the Foundation's involvement, some recipients might hesitate to accept funds from particular donors, such as oil companies. At the same time, some donors may be more willing to provide funds to the Foundation than directly to certain types of grant recipients working in the Estuary.

Primary Limitations

The organization has been in operation for over three years and it has been successful in all the activities it has attempted. The only limitation encountered to date stems from the fact that the public charity charter adopted does not provide the Foundation with any paid staff. This has resulted in a significant administrative burden on officers, who have had to learn the financial and technical aspects of managing a nonprofit organization. If it were a public institution, it would be able to draw on public administrative resources, such as a budget office or department of finance, and would not be so dependent on its own staff for such support. The Foundation's volunteer nature required the officers to spend their own time setting up an accounting system, selecting the appropriate insurance policy, and determining what kinds of records it would need to keep.

CHESAPEAKE BAY NONPROFIT ORGANIZATIONS

The Chesapeake Bay drainage basin stretches from Lake Oswego in New York to Hampton Roads, Virginia, and the Bay itself stretches over parts of Pennsylvania, Maryland, and Virginia. Several nonprofit organizations work in various ways to help restore and preserve the resources of the Bay. Major organizations include the Chesapeake Bay Trust, the Alliance for the Chesapeake Bay, and the Chesapeake Bay Foundation. Each of these organizations plays a different role and is examined separately.

THE CHESAPEAKE BAY TRUST

The Chesapeake Bay Trust (CBT) was created by Maryland's General Assembly in 1985 to raise funds to promote public awareness of and participation in the restoration and protection of the Chesapeake Bay.

Structure

The CBT is a public charity. It was created by passing an enabling act in the state legislature, and seeking recognition of public charity status from the IRS.⁷ The 19-member Board of Trustees is composed of five *ex officio* positions occupied by the President of the Maryland Senate, the Speaker of the Maryland House, and the leaders of the Department of Natural Resources, Agriculture, and Environment. The remaining 14 members are appointed by the Governor of Maryland and include representatives from state and local government, private industry, and environmental organizations.

Sources of Funds

The CBT's \$3 million annual budget is funded by an income tax check-off in Maryland, revenues from the sale of affinity license plates in Maryland, and contributions from for-profit organizations and individuals. Although the income tax check-offs and license plate revenues are collected by the state of Maryland, these funds are considered donations by the individuals, and are deductible on federal and state tax returns.

Activities

The CBT is a grantmaking organization with a small staff for evaluation of proposals and administrative activities. The CBT offers grants for qualified activities proposed by nonprofit organizations, community associations, civic groups, schools, and public agencies which contribute to the revitalization of Chesapeake Bay. Priority is given to two principal areas: education projects that promote a behavior change towards the Bay and the performance of restoration activities that utilize volunteers.

Primary Strengths

The CBT reports success in the following areas:

- **Accessing funds from private individuals through a unique public/private partnership.** Under the CBT's license plates and tax check-off programs, the state of Maryland acts as a collector for charity and donors get a tax deduction with minimal administrative difficulty.
- **Accessing funds from private corporations.** The CBT has been more successful than the other two Chesapeake Bay organizations at attracting funds from private corporations. This may be partially because the CBT does not involve itself in

⁷ Although this is a different process from filing articles of incorporation in a particular state, the net effect is the same.

controversial activities such as environmental litigation against polluters of the Bay or lobbying.

- **Raising awareness of the Bay program within the state of Maryland.** The CBT has been successful in fulfilling its charter: funding public involvement and education projects within the Bay. The grant funds it provides encourage existing organizations to expand their Bay-related activities. The fundraising programs of the CBT also serve to increase the Bay's profile. The affinity license plate program, for example, provides advertising for the Bay program as well as funds.

Primary Limitations

The CBT charter is narrow in scope and expressly prohibits it from engaging in particular activities. For example, the charter prohibits the CBT from owning or managing land resources. As a result of these limitations, the CBT has not attempted to expand its activities beyond supporting education and public involvement projects.

THE ALLIANCE FOR THE CHESAPEAKE BAY

The Alliance for the Chesapeake Bay (ACB) is a coalition of citizens' organizations, businesses, and scientists that was created in 1971 to bring together diverse interests on behalf of the Bay. Its purpose is to "act as a neutral forum for discussion and analysis of Bay issues." The Alliance has hosted several major conferences to spotlight and debate complex issues as well as roundtables for citizens, fielded queries from teachers and government staff for information and educational materials, and prepared a number of publications that provide information about the Bay program.

Structure

The Alliance for the Chesapeake Bay is a public charity created by filing articles of incorporation in the state of Maryland. The Board of Directors includes representation from the member organizations that make up the Alliance, including private nonprofit organizations, government agencies, and private companies.

Sources of Funds

ACB's annual budget of approximately \$800,000 comes from a variety of public and private sources, including EPA grants, donations, funds from the states of Virginia, Maryland, and Pennsylvania, and membership dues and contributions.

Activities

ACB has a paid staff of 15 that carries out its activities, such as sponsoring conferences, writing publications, coordinating volunteer monitoring programs, and staffing an informational hotline. It is not a grant-making institution.

Primary Strengths

The Alliance is successful at the following activities:

- **Bringing diverse interests together.** As a neutral player that does not take positions on controversial issues, the ACB has been able to bring different organizations in the Bay together.
- **Serving as a clearinghouse for Bay information.** As a neutral and multistate organization, the ACB is relied upon and has been able to maintain a reputation for providing balanced and accurate information to a variety of parties. Its publications are well-respected for their balanced analysis.

Primary Limitations

To maintain its neutrality, the Alliance typically does not and could not take positions on controversial issues; it could not, for example, engage in high-profile lobbying activities or act as a watchdog, as the Chesapeake Bay Foundation does.

THE CHESAPEAKE BAY FOUNDATION

The Chesapeake Bay Foundation (CBF) is the largest nonprofit conservation organization active in the estuary. Founded in 1967, CBF is supported by contributions from philanthropic foundations, corporations, and over 78,000 members nationwide. CBF has three primary missions:

- (1) *Environmental Education*, providing in-the-field and on-the-water education to over 33,000 students at 17 different education centers Bay-wide;
- (2) *Environmental Defense*, which involves investigation and monitoring of environmental conditions in the Chesapeake Bay, and lobbying and litigation on behalf of the Bay; and
- (3) *The Lands Program*, which advocates growth management and land-use planning in the Bay watershed.

Structure

CBF is a public charity created by filing articles of incorporation in the state of Maryland. The governors of Maryland, Pennsylvania, and Virginia, and the mayor of the District of Columbia, serve as trustees *ex officio*; other trustees are also elected by the membership.

Sources of Funds

The largest share of CBF's \$13 million budget comes from membership contributions and grants and gifts, primarily from private foundations. Additional revenues come from education contracts and tuition from education programs, sales of merchandise, and investment income from an endowment fund.

Activities

CBF has a staff of 120 people who perform environmental education, environmental defense in the form of lobbying and litigation for the Bay, and advocacy of growth management and land-use planning in the Bay watershed.

Primary Strengths

CBF has found success in the following areas:

- **Attracting a large membership.** Because CBF has such a high public profile, and is constantly playing a watchdog/advocacy role, it has higher name recognition than either the ACB or the CBT. This has allowed it to attract over 70,000 members.
- **Lobbying for legislative change.** CBF is constantly in the public eye. Its high profile allows it to lobby publicly for effective change within the Bay. Its lobbying efforts have resulted in legislation for Bay protection in all three of the bordering states, and have probably played a role in the Chesapeake Bay program's ability to access federal appropriations.

Primary Limitations

CBF's role as a watchdog and environmental litigator may limit its ability to solicit funds from corporations directly involved in the estuary. As an advocacy group that often testifies before public hearings and takes positions on political issues, it may have more difficulty bringing public agencies, polluters, and others together in a neutral forum.

SAN FRANCISCO ESTUARY ORGANIZATIONS

The San Francisco Bay-Delta Estuary is the largest estuarine system on the west coast, draining over forty percent of California's land; it includes the waters of San Francisco Bay, San Pablo Bay, Suisun Bay, and the Sacramento-San Joaquin Delta. The San Francisco Estuary Project was established as part of the NEP in 1987, with the final CCMP due in November, 1992. A preliminary draft of the November CCMP outlined plans for the establishment of two NPOs that would help implement the recommendations of the CCMP. The first NPO, the San Francisco Estuarine Institute (SFEI), would undertake research and monitoring in the estuary, and the second NPO, Friends of the San Francisco Estuary ("Friends"), would implement public outreach and education recommendations. This division of activities follows the structure of the San Francisco Estuary Project, with the SFEI roughly analogous to the Project's Technical Advisory Committee, and the Friends resembling the Public Advisory Committee. Each of these organizations is briefly described below.

SAN FRANCISCO ESTUARINE INSTITUTE

As outlined in the preliminary CCMP, the San Francisco Estuarine Institute would be a nonprofit organization responsible for coordinating research and a comprehensive monitoring program for the Estuary. Because the existing Aquatic Habitat Institute (AHI) of the San Francisco Bay-Delta already had a similar mandate and goals, AHI's Board of Directors offered to expand their existing organization and transform it into the San Francisco Estuarine Institute (SFEI). The Board of Directors could accomplish this by amending the bylaws of the AHI to provide for a new Board of Directors that would represent the broader scope of the new organization.

Structure

Like the existing AHI, the SFEI would be a nonprofit public benefit corporation incorporated in California, with public charity status from the IRS. Its Board of Directors would consist of key policy makers from government, academia, business, and public interest groups. The proposed mission statement of the SFEI would read as follows:

"To provide the scientific understanding needed to manage competing uses of the complex and biologically rich San Francisco Bay-Delta Estuary."

Sources of Funds

The SFEI plans to capitalize on the following funding sources:

- New or redirected appropriations for federal, state, and local monitoring efforts

- Fees assessed against those activities that modify the Estuary (discharge of waste from treatment works, stormwater, and agriculture, diversion of water, and dredging and disposal of dredged material) and funds from foundations and industrial associations.

Activities

As designed, the organization will undertake the following activities:

- Providing a forum in which all agencies and organizations with a stake in managing the Estuary can participate;
- Instituting a system for rigorous periodic peer review of the research and monitoring program's design, methods, and results, including ensuring that the program remains focused on management and regulatory information needs;
- Interpreting the scientific data provided by the research and monitoring program and communicating the results to policymakers and the public in a timely fashion.

Primary Strengths

By using an existing organization as the core of the new organization, the creators of the SFEI will be able to capitalize on professional experience, contacts with funding sources, and other relationships developed during the AHI's existence.

Primary Limitations

It may be difficult to reorient an existing organization to a wider focus, or to capture the funding sources required for the wider focus.

FRIENDS OF THE SAN FRANCISCO ESTUARY

As currently envisioned, the Friends of the San Francisco Estuary ("Friends") would implement the public involvement and education recommendations in the CCMP. Its Board of Directors would be composed of public, non-governmental organizations (including representatives from the environmental, recreational, and regulated communities), as well as locally-elected officials. Friends could also serve as an advocate for the CCMP, by ensuring that responsible parties implement their actions, and by evaluating progress of CCMP implementation. However, the exact structure, sources of funding, and activities of Friends have not yet been determined.

CUYAHOGA RIVER COMMUNITY PLANNING ORGANIZATION

In 1988, the Ohio EPA (OEPA) appointed the Cuyahoga Remedial Action Plan Coordinating Committee to prepare a Remedial Action Plan (RAP) for the cleanup of the Cuyahoga River. This activity was undertaken as part of Ohio's participation in the Great Lakes Water Quality Agreement. The Cuyahoga RAP Coordinating Committee was tasked with ensuring broad public involvement in the RAP process. The Committee was an all-volunteer group, with representation from environmental organizations, industry, and state and local governments who would assist in the planning for the RAP. The Committee eventually formed the Cuyahoga River Community Planning Organization (CRCPO) to help raise and distribute funds for the Committee's planning and public education activities.

Structure

The CRCPO is a public charity that was created by filing articles of incorporation in Ohio and seeking recognition by the IRS of public charity status. CRCPO has an 11-member board of directors, with representation from environmental groups, industry, and state and local governments.

Sources of Funds

Two private Ohio foundations, the George Gund Foundation and the Cleveland Foundation, provided initial funding for the CRCPO. The CRCPO's 1991 budget of \$135,000 came from the following sources:

- 33% member contributions;
- 52% private foundation funding;
- 13% EPA Section 319 grant; and
- 2% special corporate contribution.

Activities

The CRCPO has funded several public outreach programs, a study of the potential economic impacts of the RAP, and a study of contaminant levels of fish tissue. It has also provided funding for a staff position on the Cuyahoga River RAP Coordinating Committee.

Primary Strengths

The CRCPO has been successful in achieving its primary objective, which was to raise and distribute both public and private funds to support the work of the RAP's Coordinating Committee.

Primary Limitations

The CRCPO works in close coordination with the RAP committee, and does not really try to function as an independent organization. As a consequence, if the committee were dissolved, it is not clear what would happen to the CRCPO, and whether it would be able to evolve into an independent organization.

GREAT LAKES PROTECTION FUND

The Great Lakes Protection Fund was created by the Council of Great Lakes Governors in 1990 to help the region create a healthy and sustainable lakes ecosystem. The eight states joining the fund, Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin, had recently signed a Toxic Substances Control Agreement that sought to achieve better management of toxic substances across the Great Lakes states and in Canada. The governors decided to create an endowment fund for related projects that would pool appropriations from the various states.

Structure

When the Council of Great Lakes Governors initially considered establishment of the Fund, they sought legal counsel to determine the legal requirements for establishment. Legal opinions differed in terms of whether Congressional approval was necessary. One opinion argued that participation by each state in the Fund was within the executive powers of each governor, and there was no need to have Congress review the interstate agreement. The other opinion argued that the creation of the Fund constituted an interstate compact requiring Congressional approval under Article I, Section 15 of the U.S. Constitution. In the absence of a reconciliation of these two views, the participating states did not seek Congressional approval and drew up an agreement among themselves. To date this strategy has worked, but if the legality of the Fund were to be questioned in court for some reason it might create a problem. Ultimately, the governors pledged to support the Fund and seek enabling legislation in their respective legislatures. Although it is incorporated as a nonprofit corporation in Illinois, the Great Lakes Protection Fund is an interstate trust fund that is regarded by the IRS as a governmental entity under Section 115 of the Internal Revenue Code:

- As a *public* entity, the Fund does not have to meet the reporting requirements of a public charity by filing for recognition of its tax-exempt status with the IRS.
- As a *private* entity, it does not have to meet the same requirements as a public agency, such as going through public procurement procedures. This allows the Fund to operate with the speed of a private organization.

The governors of the respective states, or their designees, constitute the Trustees of the Fund.

Sources of Funds

In 1991, the Endowment Fund had received \$52.4 million in contributions from the member states. In the Fund's articles of incorporation, the governors pledged a total of \$100 million towards a permanent endowment, with each state contributing based on the quantities of lake water used by its residents and industries. Of the eight states, only Indiana has not yet joined the Fund by passing enabling legislation, although several other states have not yet made their full financial contribution to the Fund.

Eventually, the Fund plans to solicit funds from private corporations and foundations. A private opinion from the IRS has confirmed that any donations to the Fund would be tax-deductible for the donor.

Activities

Two-thirds of the Fund's annual income supports projects of basin-wide impact and one-third is returned to the states, in proportion to their contributions, to fund state-specific environmental initiatives. The Fund's eligibility criteria states that "The Fund's priority applicants are non-profit agencies, however, individuals and proprietary entities may apply for funding if a clear public benefit can be demonstrated and if financial benefits stemming from the proposed work accrue to the public good."

Primary Strengths

The Fund's Director rated the Fund successful in the following areas:

- **Getting started quickly.** The Fund was able to begin operations quickly, one of the major objectives of its structure.
- **Administering a multistate endowment.** The Fund has achieved its primary mission of administering a multistate endowment.

Primary Limitations

The Fund has experienced some difficulties over the issue of having member states adhere to the agreement that created it. Indiana has not yet become a full participant in the Fund, and New York nearly did not contribute its required share when voters rejected a bond issue that was to pay for the state's participation. Since the agreement creating the Fund was a pledge by each governor, it is unclear whether the agreement is binding on all the states.

SUMMARY OF EXISTING NONPROFIT ORGANIZATIONS

Each of the eight organizations examined above has its own distinct mission. Nevertheless, most existing environmental NPOs share several primary characteristics:

- are public charities;
- undertake activities or support them, but tend not to do both; and
- bring players together in a neutral forum, or perform advocacy, but do not do both.

Environmental efforts in at least two areas of the country, the Chesapeake Bay and the San Francisco Estuary, are managed through multiple institutions. Several reasons lie behind this strategy and include:

- *Historical context* -- In some cases, the institutions preceded the estuary program;
- *Conflict of Mission or Goals* -- Institutions set up as "watchdogs" over the regulatory agencies, for example, cannot easily act as forums for bringing stakeholders together;
- *Revenue Sources Tied to Specific Uses* -- Private donors sometimes require that their funds be used for particular purposes. The use of separate institutions may maximize the type of donors reached by a program's institutions.
- *Administrative Complexity* -- Some environmental programs have found it easier to administer a grant-making institution separately from one that undertakes implementation activities.

The fact that multiple institutions help implement two estuary programs (Chesapeake Bay and San Francisco) indicates that, while it may appear as though existing institutions alone could be expanded to play larger and more complex roles in their estuary programs, in some cases, it may not be desirable. Estuary program goals may be better achieved by using several narrowly defined organizations, combining a slight increase in scope for an existing institution with the creation of one or more new institutions.

APPENDIX B: CONTACTS FOR CASE STUDIES

SANTA MONICA BAY RESTORATION FOUNDATION

Catherine Tyrell
Executive Director
The Santa Monica Bay Restoration Foundation
101 Centre Plaza Drive
Monterey Park, CA 91754
(213) 266-7515

CHESAPEAKE BAY NONPROFIT ORGANIZATIONS

THE CHESAPEAKE BAY TRUST

Tom Burden
Chesapeake Bay Trust
60 West Street
Suite 200-A
Annapolis, MD 21401
(410) 974-2941

THE ALLIANCE FOR THE CHESAPEAKE BAY

Frances Flanagan
Executive Director
Alliance for the Chesapeake Bay
6600 York Road
Baltimore, MD 21212
(301) 377-6270

THE CHESAPEAKE BAY FOUNDATION

Ann Powers
The Chesapeake Bay Foundation
162 Prince George Street
Annapolis, MD 21401
(301) 268-8816

SAN FRANCISCO ESTUARY ORGANIZATIONS

SAN FRANCISCO ESTUARINE INSTITUTE

Margaret Johnston
San Francisco Bay-Delta
Aquatic Habitat Institute
Building 180
Richmond Field Station
1301 South 46th Street
Richmond, CA 94804
(510) 231-9539

FRIENDS OF THE SAN FRANCISCO ESTUARY

Marsha Brockbank (510) 286-0780
75 Hawthorne Street
San Francisco, CA 94105

GREAT LAKES PROTECTION FUND

Judith Stockdale
35 East Wacker Drive, Suite 1880
Chicago, IL 60601
(312) 201-0660

CUYAHOGA REMEDIAL ACTION PLAN COORDINATING COMMITTEE

John Beeker
Northeast Ohio Areawide Coordinating Agency
The Atrium Office Plaza
668 Euclid Avenue
Cleveland, OH 44114-3000
(216)-241-2414

APPENDIX C: TIME REQUIREMENTS FOR ESTABLISHING A PUBLIC CHARITY

Establishing a public charity requires approximately eight to fifteen months. Two major steps are involved:

- (1) **Incorporating as a nonprofit corporation under state law.** This process requires approximately six weeks to two months for drafting and submission of articles of incorporation and bylaws.
- (2) **Applying for and receiving recognition of tax-exempt status from the federal Internal Revenue Service** This process requires approximately six to thirteen months, depending on the speed of IRS action.

Once the appropriate forms have been submitted, it can take between six months and a year for the IRS to rule on a nonprofit corporation's status as a public charity. The charity may still accept donations during this period, and if the IRS ultimately recognizes its tax-exempt status, the donations would be tax deductible to the donor. However, donors are typically reluctant to give funds to an organization whose status is uncertain. During this transition period, another organization can fill this gap by serving as a banker. If another organization is willing to play this role, the new public charity can begin operations immediately after fulfilling state requirements, in advance of the IRS ruling on its tax-exempt status. This means a charity could effectively begin operations six weeks after its creation, although its legal status would not be certain for several months thereafter.

Summary Timetable for Formation of a Public Charity (All times are approximate. Note that the corporation may begin operations as soon as the state incorporation process is finished; recognition of tax-exempt status is not necessary before beginning activities.)	
Drafting of bylaws and articles of incorporation	1 month
State incorporation process	2 weeks - 1 month
Preparation of tax exemption forms	2 weeks - 1 month
Recognition of Tax-Exempt Status from the IRS	6 - 12 months
Total Legal Process	8 - 15 months