



The Association of State Wetland Managers, Inc.

“Dedicated to the Protection and Restoration of the Nation’s Wetlands”

October 1, 2021

Benita Best-Wong
Deputy Assistant Administrator
US EPA Office of Water
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Best-Wong.Benita@epa.gov

Subject: Comments of the Association of State Wetland Managers in Response to Early Engagement on EPA’s FY 2023 – 2024 National Water Program Guidance

Dear Ms. Best-Wong:

The Association of State Wetland Managers (ASWM) appreciates this opportunity to provide input in response to the U.S. Environmental Protection Agency’s (EPA) request for comments on the FY 2023 – 2024 National Water Program Guidance (NWPG). We understand this to be a key planning document used by the EPA program offices to set forth strategies and actions and to describe how EPA works with states, tribes, and territories to protect and improve the quality of the Nation’s waters.

ASWM is a national 501(c)(3) professional organization established in 1983, with a mission to build capacity for state and tribal members and foster collaboration among the wetland community of practice by encouraging the application of sound science to wetland management and policy, promoting the protection and restoration of wetlands and related aquatic resources, and providing training and education for members and the general public.

This letter provides recommendations on (I) performance measures, (II) program-specific guidance and priority activity, and (III) grant priorities. Recommendations were crafted with these guiding principles:

1. States and tribes strongly desire to work in partnership with EPA through meaningful involvement.
2. EPA has a long and successful history of working together with states, tribes, and territories on environmental protection and management.
3. Wetlands and other natural infrastructure serve an important role in protecting the environment and human health.

I. PERFORMANCE MEASURES

EPA partners with states, tribes, and territories (herein abbreviated as S/T/T) to protect and improve the quality of the nation’s waters.

Executive Director

Marla J. Stelk
32 Tandberg Trail, Suite 2A
Windham ME 04062
(207) 892-3399

Chair

Mark Biddle
DE Dept. of Natural Resources
and Environmental Control
285 Beiser Boulevard, Suite 102
Dover, DE 19904
(302) 739-9939

Vice Chair

Jill Aspinwall
NJ Dept. of Environmental Protection
401 East State Street, 7th Floor
Trenton, NJ 08625
(609) 984-9736

Secretary

Amy Lounds
MI Dept. of Environment,
Great Lakes, and Energy
525 W. Allegan Street
Lansing, MI 48933
(517) 331-7966

Treasurer

Lauren Driscoll
WA State Dept. of Ecology
PO Box 47600
Olympia, WA 98504
(360) 407-7045

Past Chair

Collis Adams
Adams Environmental Consulting, LLC
110 Pattee Hill Road
Goffstown, NH 03045
(603) 660-9797

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Saint Mary’s Univ. of Minnesota

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OR Dept. of State Lands

Mary Ann Tilton
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- A. **ASWM strongly recommends adding performance measures for wetlands and associated aquatic resources.** The streamlined FY 2020-2021 NWPG removed all wetland performance measures, and likewise EPA's FY 2022 Annual Performance Plan and Congressional Justification¹ has no performance goals specific to wetlands or natural infrastructure.

Without any performance measures, wetland programs are at greater risk of being de-valued and de-funded. Metrics provide a unified and EPA-approved target to articulate the successes and incremental progress of wetland programs. Such an omission reduces programmatic and budgetary accountability at the national and S/T/T levels.

Maintaining wetland program funding is critical. A reduction or removal of federal funding to S/T/T wetland protection programs - primarily through Wetland Program Development Grants (WPDG) - would be devastating. Inclusion of at least one wetland performance measure provides some assurance of continued funding.

There are no current performance measures for state assumed 404 permit programs, in contrast to state authorized 402 permit programs. Now that 3 states have assumed 404 permit programs - and given the interest by a number of others - it would be an appropriate time to begin developing a 404 performance measure. If EPA were to pursue this, we recommend a review of the annual reports submitted by MI, NJ, and FL. The data and information contained in their reports could be used to determine the basis for an appropriate performance measure.

- B. **ASWM supports metrics on nature-based solutions to address water quality and flooding challenges.** EPA has the opportunity to drive an increase in the use of natural infrastructure, such as wetlands and floodplains, as well as other nature-based solutions (NBS) to realize the long-lasting ecosystem services and co-benefits they provide such as wildlife habitat, biodiversity, flood prevention, water quality, and climate resilience.

Given the scientific and economic validity of NBS in watershed management, we recommend that EPA promote the use of NBS by including metrics for tracking their performance over time. Voluntary wetland restoration and mitigation projects are plausible initial avenues for developing and tracking metrics for NBS, and EPA could drive this through projects it funds. Mitigation projects could also be tracked through banks and in-lieu fee programs. An information-gathering measure, such as the number of acres restored, level of functional uplift, or length of stream opened for fish passage (akin to Measure WT-01²), could be helpful to acquire relevant information from other programs, such as the National Estuary Programs. EPA may also consider climate-related measures such as linear feet of increased living shorelines, added buffers along streams or flood prone areas, increased flood capacity for stream crossings, or flood storage wetlands in flood-risk communities. These types of measures serve as a baseline for S/T/T programs that may wish to develop a similar measure for themselves.

¹ U.S. EPA. May 2021. *Fiscal Year 2022 Justification of Appropriation Estimates for the Committee on Appropriations* (EPA-190-R-21-002). Accessed Aug 23, 2021 at <https://www.epa.gov/sites/default/files/2021-05/documents/fy-2022-congressional-justification-all-tabs.pdf>

² "Number of acres restored and improved, under the 5-Star, NEP, 319, and great waterbody programs (cumulative)."

C. ASWM highly recommends direct consultation with S/T/T wetland programs to identify and develop appropriate measures and methods of tracking wetland performance.

We understand that EPA also seeks comments from individual S/T/T, and we strongly urge the agency to meaningfully consult these programs in determining measures that are required to be tracked. Past metrics related to the Enhancing State and Tribal Programs initiative and wetland Core Elements Framework had several challenges, and *we do not recommend a verbatim return to measures used in the past.*

D. Suggested criteria in developing wetland and NBS performance measures:

1. Do not create metrics that require additional data collection.
 - Consult with S/T/T to develop measures based on information they are already tracking and reporting.
 - Be transparent in the tracking method so that S/T/T understand how data is being used and progress measured. Involving S/T/T in a discussion on the data collection and assessment process will result in higher data quality.
 - Ensure any data tracking system developed or used in tracking progress includes options to record common, relevant wetlands data.
 - As S/T/T continue to track and report on progress, take into consideration that some data may not be comparable to previous reporting given the change to the definition of WOTUS.
2. Measures should be based on outcomes—not outputs—and tied to an agency action with a strong causal link to the desired environmental benefit.
 - Measures must be tied to environmental outcomes that demonstrate how S/T/T are working to improve water quality. Outcome-based measures can be challenging (but not impossible) to track due to the time delay between the action and an observed environmental benefit.
 - *Measures should capture quality, not just quantity of actions.* S/T/T programs have different levels of capacity and available (staff and financial) resources, making it challenging to collect meaningful and representative data without use of state/region-specific measures, which should be avoided.
3. Incorporate cultural goals and Traditional Ecological Knowledge in tribal guidance
 - ASWM supports EPA's intent for the FY23-24 National Program Guidance format to include tribal-related items in each program's guide as well as tribal-related sections compiled into a single guide, as described in the FY 2023-2024 OCFO Technical Guidance.³ As we understand it, this will provide tribes with an easy reference to relevant information across programs without stripping tribal information from individual program guidance documents.
 - ASWM encourages integration of Traditional Ecological Knowledge (TEK) and cultural goals into program guidance for tribes. Special consideration should be accommodated, however, to address the sensitivity of TEK and cultural data and any limitations on access to that data required by tribes to protect their cultural resources. Tribes should be consulted on the best approach.

³ OCFO Technical Guidance. FY 2023-2024 National Program Guidance. (June 10, 2021).

<https://www.epa.gov/planandbudget/ocfo-technical-guidance-fy-2023-2024-national-program-guidance-process>

II. PROGRAM-SPECIFIC GUIDANCE & EPA PRIORITY ACTIVITY

As an overarching principle, ASWM encourages transparency and early collaboration with states and tribes as co-regulators. This is especially important while EPA and partner federal agencies update rules, orders, guidance documents, policies, and similar agency actions impacting water protection programs.

Provide sufficient time for meaningful discussions and consultations to receive constructive feedback. We encourage early and continued engagement with states and tribes throughout the process of updating rules and guidance. States and tribes desire to work together with EPA as *co-regulators*, through a process that goes beyond responding to requests for public comment, especially when comprehensive comments are not possible due to short time periods in which to respond.

EPA, states, and tribes have a shared responsibility and capacity to manage. Cooperative federalism between states/tribes and EPA includes shared authority and accountability and requires collaboration, partnership, and trust to manage positive environmental results. We encourage as much communication and transparency as possible, understanding the confidentiality constraints of rule drafts.

Plan rule implementation and rollout conscientiously and in close dialogue with states and tribes. This is especially important when significant changes exist from current or recent practice. While we appreciate the urgency with which EPA is working to update rules to restore protections to our nation's waters, include sufficient time for EPA and/or Corps to develop supporting tools, technical guidance and training to support implementation. States and tribes have limited resources and capacity to learn and adjust to rule and policy implementation changes. This capacity has been stressed by the highly dynamic regulatory environment over the past several years and into the present.

EPA Priority Activity

A. Rulemaking based on sound science, law, and equity.

1. Waters of the United States (WOTUS)

- EPA should conduct a comprehensive and careful review of the impacts and consequences of the WOTUS definition, keeping an eye on how the rule will be implemented. EPA and USACE should provide clear guidance and training to states and tribes on identifying and determining the extent of jurisdictional waters.
- ASWM encourages federal protections grounded in sound science, including the findings from the 2015 Connectivity Report⁴ as well as more recent peer-reviewed literature.⁵ Federal protection must be based on the scientific understanding of the biological, chemical, and physical connections of waters.

⁴ U.S. EPA, Connectivity of Streams & Wetlands to Downstream Waters: A Review & Synthesis of the Scientific Evidence (Jan. 2015), pp. 4-43,4-44.

⁵ References to literature on hydrologic connectivity, as collected by ASWM, available at https://www.aswm.org/pdf/lib/cwa/wotus_connectivity_literature.pdf

2. CWA §401

- Water quality certification has significant implications on the ability of states and tribes to manage their water programs and maintain water quality. Numerous state programs rely on §401 certification either to coordinate permitting and enforcement of state regulatory programs with the federal agencies or to allow for state input to federal decisions. We welcome EPA's intent to revise the rule consistent with the cooperative federalism principles central to CWA §401 and in a manner that respects the tremendous experience states and several tribes have implementing §401 programs.

3. CWA §404

- 404(b) — ASWM supports EPA's review of the Mitigation Rule, including an evaluation of how to achieve its overarching goals. We support coordinated cross-agency actions to avoid, minimize, and compensate for impacts to aquatic resources. This is an important rule that drives financial incentives for final permitting outcomes.
- 404(g) — ASWM appreciates efforts to provide greater clarity on what waters may be assumed. Assumption by additional states will depend upon the extent of jurisdiction conveyed by assumption, the impact of the proposed regulatory change, and a weighing of costs to benefits of assumption.

B. Prioritize mapping, monitoring and assessment of wetlands and related aquatic resources.

This data enables an evaluation of change in wetland status across spatial scales and will provide measured impacts of climate change on wetland ecological integrity. With projected sea level rise, it is important to understand the impacts to coastal adjacent lands and flood risk streams.

- EPA should continue to work with states and tribes to build their capability to monitor and assess trends in wetland condition and function. Rapid technological advancements highlight the need to improve existing data.
- In response to the recognition of climate change and its effects, we further encourage EPA to support integration of floodplain mapping and wetland functional assessment data leading to improved land-use decisions and reduced flood risk in local communities. We encourage the development of mapping and assessment methods to incorporate the science on floodplain, erosion, deposition, hazard mitigation, and habitat into decision support tools.
- EPA additionally should coordinate with other federal agencies overseeing related mapping efforts. For example, USFWS is looking at revising mapping of NWI to better link with NHD. This is important for states and tribes to develop flood risk models that rely on both of these mapping sets.

C. Communicate and coordinate across programs and agencies. We encourage EPA's Office of Water to model program integration to support environmental integrity and human health. ASWM's findings indicate that wetland integration with other programs is essential to

improving economic, organizational, and environmental outcomes.⁶ State wetland programs have most often integrated with stormwater and watershed management activities.

Beyond water programs, we encourage coordinated planning and investments— such as with FEMA, USACE, USDA, and NOAA— to maximize the environmental co-benefits (e.g., reduced flooding and improved water quality) for healthier and more resilient communities and ecosystems. For example, wetlands and other natural infrastructure can be incorporated into community development goals, hazard mitigation plans, conservation/wildlife plans, and climate action plans.

- D. Provide leadership in environmental justice.** Many states are interested in resources and tools to help them address inequities in environmental and public health impacts. Such resources should aid and not substitute having direct engagement with diverse communities to understand their specific needs, risks, and concerns.

There is a strong need for guidance to assist states in understanding practices that better engage tribes. There are almost six hundred different Native American tribal nations in the U.S, each with unique governments, traditions, cultures, languages, values and beliefs. Tribes should be allowed culturally appropriate involvement opportunities, which will require a change in how agencies provide and gather information. This may include receiving verbal comments, active listening, and understanding how stories are used to communicate.

III. GRANT PRIORITIES

Federal funding is an essential resource for advancing wetlands protections and promoting nature-based solutions, climate resilience and environmental justice.

- A. Wetland Program Development Grant (WPDG) funds remain critical.** ASWM research on state and tribal programs and their capacity building efforts has consistently identified WPDGs as the primary driver of capacity changes and innovation across the nation. WPDG-funded projects have served as catalysts for fundamental improvements in the long-term management of state and tribal wetland resources. This holds true across all four core elements of wetland programs (regulatory, monitoring and assessment, wetland water quality standards, and voluntary restoration and protection program elements), with WPDGs funding development of high-quality program elements that would not have been possible otherwise. State and tribal wetland programs continue to look to and rely upon WPDGs to sustain program development.
- B. Implementation funds are greatly needed for state and tribe wetland protection programs.** For over three decades, ASWM has consistently received feedback from states and tribes that implementation funding is critical to increase program capacity. Given the WPDG program's statutory authority as research funds under CWA §104(b)(3), states and tribes are prohibited from using funds from this program to implement a wetlands program. ASWM recommends that EPA look to create a new funding mechanism and work with

⁶ Association of State Wetland Managers. 2015. Status and Trends Report on State Wetland Programs in the United States.

https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_102015.pdf

Congress to increase financial support for implementation program funds similar to CWA §106 or §319.

- C. **Emphasize climate and environmental justice aspects of wetland and aquatic resource protection.** ASWM supports climate-smart projects and capacity-building that acknowledges the disproportionate impact to communities that have historically been denied equal access to environmental health. To plan for and address impacts of climate change, we strongly urge increased use of nature-based solutions to address water quality and flooding challenges. In many instances, high flood risk areas are found to correlate with low-income communities who often lack flood insurance and/or the capacity to develop flood protection measures. Wetlands alleviate flooding and reduce stormwater pollution.⁷ With impacts of climate change already being experienced in flood-prone areas, protecting these wetland functions is of increased importance.

ASWM appreciates the opportunity to provide comment on the development of the FY 2023-2024 National Water Program Guidance, and we additionally support EPA's early and continued engagement with S/T/T throughout the process. While these comments have been prepared with input from the ASWM Board of Directors, they do not necessarily represent the individual views of our members; we therefore encourage your full consideration of the comments of individual S/T/T. Please contact me should you wish to further discuss these comments.

Sincerely,



Marla J. Stelk
Executive Director

Cc: ASWM Board of Directors
Kristie Moore, U.S. EPA
Jared Martin, U.S. EPA

⁷ Acreman, M. and Holden, J. (2013) How Wetlands Affect Floods. Wetlands 33:773–786. DOI 10.1007/s13157-013-0473-2. Also <https://www.iisd.org/articles/wetlands-protecting-us-floods-and-saving-us-money>.