

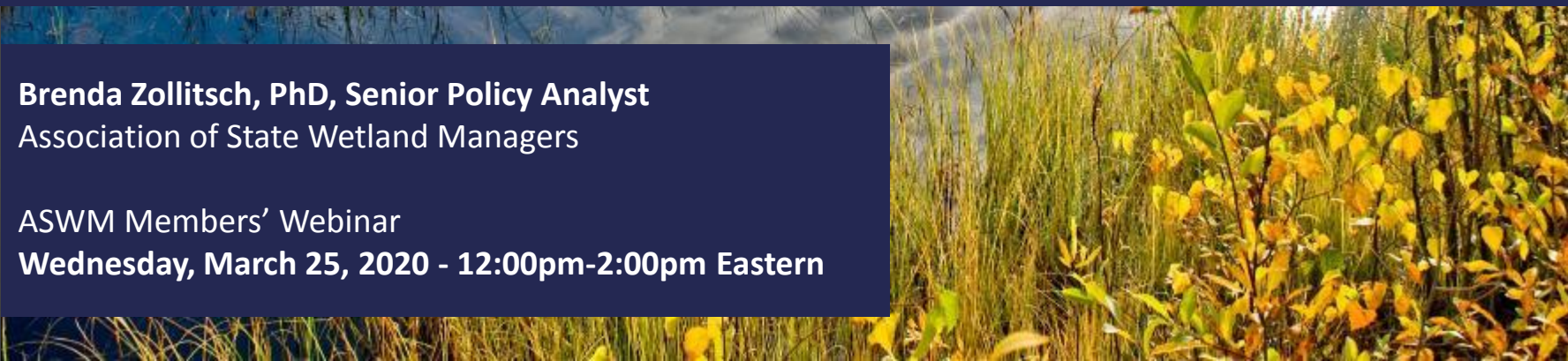


# **The Navigable Waters Protection Rule: Highlights & Initial Take-Aways**

## **Needs and Gaps Identified by State and Tribal Wetland Programs**

**Brenda Zollitsch, PhD, Senior Policy Analyst**  
Association of State Wetland Managers

ASWM Members' Webinar  
**Wednesday, March 25, 2020 - 12:00pm-2:00pm Eastern**



# Potential Impacts to States and Tribes

Approximately half the remaining wetlands in the US will no longer be covered under federal jurisdiction

- Will open up new areas to development
- Reduce the number of waters requiring certain types of permits
- Range of impacts to states
- Especially hard hit will be Western States which have:
  - Mostly ephemeral waters
  - Minimal wetland programs and staffing capacity



# Potential Impacts to States and Tribes

Rule builds on the assumption that states and tribes that want to protect these waters will be in the position to do so

- Require state/tribal protections to fill the regulatory gap
- In some states, legislation does not allow states to regulate “more than federal.”
- If a state wanted to change these laws, it would take time.
- Major new concerns with economic challenges and staffing shortages; may not be a priority

# Wetland Regulatory Staffing

## Full-time Equivalent Staffing

Source: ASWM Status and Trends Report on State Wetland Programs in the United States (2015)



### Key challenges:

- Economic trends/ budget cuts
- Political barriers
- Retirements and job changes
- Restructuring
- Junior staffing
- Need for training

No FTE

<1 FTE

1-4 FTE

5-9 FTE

10-19 FTE

20+ FTE

No Data

# Potential Impacts to States and Tribes

## Implementation before Guidance Available

Despite EPA statements that guidance is being developed...

States and tribes will be required to begin implementation of the rule before clear guidance is available

- How to interpret implementation on the ground
- Of *specific concern* are the implementation of:
  - Definition of flow
  - Typical year .... And What if it *isn't* a typical year? what then?
  - What is adjacent (touching) and what is not?

Regardless of opinion on the rule, they are concerned about how to be in compliance with it.

# Potential Impacts to States and Tribes

## Implementation Considerations

Despite “simplifications,” implementation of the final rule will still require:

- Technical knowledge to support determinations of flow, adjacency etc. beyond layman capacity
- The use of technical experts to provide these services and analysis
- Use of advanced tools
  - Mapping
  - Models
  - Datasets
  - Other technologies to support this work

# Potential Impacts to States and Tribes Adopting/Adapting Wetland Programs

Even strong state/tribal program will require time to adapt their programs.

- Incorporate new language and definitions where they are connected to state/tribal regulations
- Adopt new methods into state/tribal approaches
- Need to take over jurisdictional determinations from the Corps for any newly non-federally jurisdictional waters they will take over regulating





# Potential Impacts to States and Tribes

## Impacts on § 404 Assumption Activities

ASWM is hearing at least two sides of the coin from those with working on §404 assumption:

- Fewer waters that are assumable (is it still worth it?)
- Create more regulatory certainty if run by the state/tribe

# Potential Impacts to States and Tribes: Interstate Controls and Conflict Management

Loss of interstate management of waters by federal agencies

- May lead to more complex interstate issues
- Have always had federal oversight as an equalizer
- Concerns about what will come from upstream
  - Not just about taking care of own waters by creating state/tribal protections
- May have to resolve some new conflicts without federal assistance
  - Do not currently have tools or resources for this

# What ASWM is Doing to Help States and Tribes

## Webinars on emerging WOTUS issues

## Analysis of status and emerging trends

- Track where states and tribes are (decisions, progress, lessons learned)
- Hosting a National Dialogue (Process)

## Capacity Building Project

- Identifying definitions, guidance and implementation tools/techniques
- Mapping and data management approaches and examples
- Work on education/outreach
  - Value of wetlands,
  - Value of wetland programs
  - What changes to WOTUS mean to landowners (wetlands still regulated?; still have value?)

## Assumption Project

- How changes in WOTUS impacts assumption planning and implementation

# ASWM National Dialogue (Process) on the new Navigable Waters Protection Act

Help ASWM understand the technical assistance needs, opportunities or challenges you seek to address.

**SHARE YOUR NEEDS WITH US TODAY!**

***\*STATES AND TRIBES ONLY\****

To get added to the invitation list:

[brenda@aswm.org](mailto:brenda@aswm.org)

Call 207-892-3399

**ASWM National Dialogue: Final WOTUS Rule**

TOPIC: State and tribal implementation of the new Navigable Waters Protection Rule (2020)

ASWM is currently exploring ways to provide resources that states and tribes will find useful in building their wetland program regulatory capacity. This specific dialogue focuses on the topic of implementation of the new Navigable Waters Protection Rule (2020).

Please share with us your questions, needs and suggestions for resources around state/tribal implementation of the new Navigable Waters Protection Rule (2020).

Note: QUESTIONS AND COMMENTS entered into this form should be for consideration by ASWM, not EPA. If you want to ask EPA a question, go to: <https://www.epa.gov/wotus-rule/forms/contact-us-about-waters-united-states-rulemaking>. This dialogue is not an EPA dialogue.

All responses will be de-identified prior to sharing beyond ASWM internal staff members. Information gathered will be used by ASWM's Capacity Building Project Workgroup to help plan the development of support resources for states and tribes.

Responses will be accepted on this topic on an ongoing basis; however, prior to ASWM webinars on this topic, questions submitted will be compiled and shared with webinar presenters to help guide their presentation development. Any additional questions submitted after this point will be answered as time allows.

Questions about this form or your submission should be addressed to: Brenda Zollnisch at (207) 892-3399 or [brenda@aswm.org](mailto:brenda@aswm.org).

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First Name \*

Short answer text

# Promoting Participation in ASWM's WOTUS Dialogue Process



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