



Permitting

SALMONID HABITAT RESTORATION How-To-Guide for Washington State

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PERMITTING

Before stream or habitat work can begin on a salmonid restoration project, the appropriate state and federal agencies must be petitioned for permits. Agency oversight overlaps in many cases. Most projects of this nature will require multiple permits.

This is one in a series of Salmonid Habitat Restoration How-To-Guides for projects in Washington State. It was written to help groups and individuals undertaking similar projects and presumes some knowledge of salmon, habitats and project planning. Other guides in the series:

- Rearing Pens
- Culvert Replacement
- Nutrient Enhancement
- Live Plants
- Habitat Restoration
- Permitting
- Project Funding
- Streamside Incubation

Proceeding on projects without the appropriate permitting can result in fines or jail time. However, it can also affect other groups planning similar work by souring relationships with the agencies whose cooperation is critical to success.

This permitting guide is meant to be an overview to the permitting process for salmonid restoration projects in Washington State. More detailed information on individual permits is available through the respective permitting agencies. Permitting requirements for similar projects in other states will vary.

AN OVERVIEW

Essentially, the permitting process can be boiled down to three steps.

- **Show what you're planning to do.**
- **Seek and obtain approval to do it.**
- **Prove that you did what you said you would.**

Applying for a permit is time-consuming, but largely a paperwork hurdle. For restoration groups planning multiple projects, the initial project is the most difficult. Much of the information required by applications repeats, which means that with each successful restoration project under your belt it gets easier to apply for and receive permits.

No special expertise or legal background is required for permit applications, although you will need to draw on materials prepared by hydrologists and other experts when designing and planning your project. For this reason, permit applications should be completed only after a project is designed and planned.

That said, consulting with agencies early in the design process can help mold the project to make it more attractive to the agencies and speed the permit approval process.

PERMIT REQUIREMENTS

The majority of habitat restoration projects in Washington State require permits from a range of agencies. The state defines habitat restoration projects by statute (RCW 77.55.181) as those that:

- Eliminate manmade barriers that block fish passage, including culvert repair and replacement.
- Place woody debris or similar in-stream structures that benefit naturally reproducing fish stocks.
- Restore eroded or unstable stream banks using bioengineering. (Bioengineering mainly uses native vegetation to control the erosive forces of flowing water, and includes the limited use of rock to stabilize the bank.)

Project work outside the scope of habitat restoration as defined in RCW 77.55.181 requires a variety of permits from municipal governments in addition to state and federal agencies. Such permits have significant application fees and are not covered by this document.

Permits are required for any project that requires dredging, fill, water diversion or introduction of materials within the **Ordinary High-Water Mark (OHWM)** in a stream of **statewide significance**, or in a **wetland**.

The **OHWM** is a line usually identified by examining the bed and banks of the water along the shore to determine where action of the water has created a distinct mark upon the soil with respect to upland vegetation. When in question, contact the Washington *Department of Fish and Wildlife (WDFW)* for assistance.

Water of Statewide Significance is a legal term from the state Shoreline Management Act, which recognizes particular bodies of water and sets criteria and standards for their protection. Contact the *WDFW* for a list of designated streams.

Wetlands are federally designated by the Clean Water Act as “lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface.” Basically, this means swamps, bogs, marshes and similar areas.

Note that riparian planting of *native* species does not require permitting approval. Planting of non-native species and restoration work replacing spawning gravel or woody debris does, and in most cases from multiple agencies.

RELEVANT PERMITS & AGENCIES

This section covers the majority of permits required for salmonid restoration in Washington State.

Washington Department of Fish & Wildlife

WDFW requires **Hydraulic Project Approval** (HPA) for “any construction activity that uses, diverts, changes, or obstructs the bed or flow of state waters.”

Typical freshwater activities that require HPA include stream bank protection, construction of bridges, piers, and docks, pile driving, channel change or realignment, pipeline crossing, culvert installation, dredging, gravel removal, pond construction, placement of outfall structures, log, log jam, or debris removal, and installation or maintenance of water diversions.

The HPA is issued by the regional habitat biologist independently of other WDFW permits for habitat projects. If the project does not meet the habitat restoration criteria defined by RCW 77.55.181, WDFW will require a State Environmental Protection Act determination of non-significance before issuing a permit.

There is no fee for this permit. Statute provides for a 45-day turnaround time on permit applications, but most are processed within 30 days. Failure to secure an HPA prior to beginning restoration work can result in significant fines and prosecution.

For more information, visit the WDFW Web site at wdfw.wa.gov/hab/hpapage.htm.

U.S. Army Corps of Engineers

The USACE jurisdiction on non-tidal waters extends to the Ordinary High Water Mark, as well as within any wetlands. USACE issues permits for riparian projects based on **Section 404 of the Clean Water Act** and **Section 10 of the Rivers and Harbors Act**.

SECTION 404

Section 404 of the Clean Water Act requires USACE authorization for “work involving intentional or unintentional placement of fill or discharge of dredged materials into any ‘waters of the United States.’” This applies even if there is a chance winter rain may lead to sediment discharges.

SECTION 10

Section 10 of the Rivers and Harbors Act requires USACE authorization for work or structures in or affecting “navigable waters.”

In some cases, USACE will issue an individual permit for a particular project, but most restoration projects fall under the scope of one of several existing **Nationwide Permits (NWP)** created to streamline the permitting process across the country.

NWP27

NWP27 covers Stream and Wetland Restoration Activities within all U.S. waters. It does not authorize “stream channelization, conversion of streams to another aquatic use, net conversion of wetlands to other aquatic uses, or relocation of tidal waters.”

NWP13

NWP13 covers bank stabilization, and allows introduction of the minimum amount of material necessary. It does not include work done in wetlands or special aquatic sites as defined by the USACE.

If endangered species are present in the project area, the USACE will consult with the appropriate federal agencies to ensure Endangered Species Act requirements are met. This can be a lengthy process. However, this process can be avoided if a **10a1A** permit is obtained from the National Marine Fisheries Service/National Oceanic and Atmospheric Administration. For information on 10a1A permits, see No. 4 below.

There's no fee for these permits. Because of the sheer size of the agency and the number of applications submitted, USACE permitting can be a slow process.

For more information, visit the USACE Web site at www.usace.army.mil.

Washington Department of Ecology

All USACE permits issued in Washington State under Section 404 of the Clean Water act also require Washington DOE approval under **Section 401** of the state water quality code.

However, the DOE has already approved activities covered by specific NWPs. If approved, no further DOE certification is required. If this waiver has not been granted, however, a DOE Section 404 permit is necessary.

There's no fee for this permit, and a decision usually is granted within three months.

For more information, visit the DOE Web site at www.ecy.wa.gov.

National Marine Fisheries Service/ National Oceanic & Atmospheric Administration

NMFS/NOAA does not issue permits for specific projects.

NMFS and the U.S. Fish and Wildlife Service (USFWS) share responsibility for implementing the Endangered Species Act. Generally, USFWS manages land and freshwater species, while NMFS manages marine and “anadromous” species, including salmon. The USACE will not issue a 404 permit without approval from NMFS/NOAA.

NMFS grants a **Section 10(a)(1)(A) permit** for scientific research or to enhance the propagation and survival of the species. This permit is required for activities that would directly “take” a species listed in the ESA, including fish surveys, genetic research, hatchery operations, relocations, capture and marking, and telemetric monitoring. The 10a1A gives generic approval for treatments listed in the permit for a specific geographic region or watershed.

NMFS/NOAA determines if the permit applies on a project-by-project basis and waives its ESA consultation with USACE if appropriate. Having a 10a1A permit does not eliminate the requirement to notify NMFS/NOAA of the project in the permitting process. There may also be post-project reporting requirements.

There is no fee for either ESA consultation or 10a1A permitting.

For more information, visit the NMFS/NOAA Web site at www.nmfs.noaa.gov.

PERMITTING SUMMARY

| AGENCY | PERMITS ISSUED |
|---|---|
| <i>Washington Department of Fish and Wildlife</i> | HPA |
| <i>Washington Department of Ecology</i> | Section 401 |
| <i>U.S. Army Corps of Engineers</i> | Sections 404, 10; Nationwide Permits 13, 27 |
| <i>Natl. Marine Fisheries Service/National Oceanic and Atmospheric Administration</i> | 10a1A; Endangered Species Act consultation |

The following simple rules can help you determine which permits a particular project needs.

If the work...

- ...falls within the OHWM in a stream of statewide significance, you need a WDFW permit.
- ...falls with a wetland, or within the OHWM, you need a USACE permit.
- ...does not meet all water quality requirements, you need a Washington DOE permit.

Most salmonid restoration projects in Washington State require permits from all three agencies.

APPLYING FOR PERMITS

The same application can be used for all permits covered in this document. Called the Joint Aquatic Resources Permit Application (JARPA), the form includes detailed directions to help ensure successful completion of required information.

The JARPA is available online at www.ecy.wa.gov/biblio/ecy07015.html.

Projects meeting certain qualifications are entitled to a streamlined Hydraulic Project Approval process, exemption from the State Environmental Policy Act, and exemption from all local government permits and fees. Fish habitat enhancement projects often qualify. A cover sheet detailing these qualifications is available online at www.ecy.wa.gov/biblio/ecy07015.html.

To apply for the exemption process, attach this cover sheet to your completed JARPA form and deliver it to WDFW and any applicable local government permitting or planning departments.

PROJECT SPONSORSHIP

To avoid separate local permitting requirements (which often include steep application fees), it helps to secure sponsorship from WDFW or the local Conservation District. Sponsorship allows a project to move more quickly.

To qualify for sponsorship, a project must:

- Be limited to either removal of human-made fish passage barrier, restoration of eroded or unstable stream bank using bio-engineering, or placement of large woody material or other in-stream structure that benefit naturally reproducing fish stocks.
- Be in freshwater or estuary.
- Be primarily designed for fish habitat enhancement.
- Not be compensatory mitigation for a development or other project impact.
- Have no public health, safety or other environmental issues, including significant wildlife issues.

Work directly with local WDFW or Conservation District personnel when seeking sponsorship.

OTHER CONSIDERATIONS

- A large portion of permit applications require duplicate information. After you've completed one or more, cut and paste information from prior applications into new applications to save time and effort.
- Make sure the scope of work detailed on your application is broad enough to include everything you plan and then some. Leave yourself flexibility, as real world applications don't always go as smoothly as paper plans.

- Follow up on calls and applications. Be proactive, and check on applications when the process seems to have stalled.
- Cultivate good relationships with contacts in permitting agencies. Keep them up-to-date on your longterm plans. Not only will it help future project approval, but you'll find experienced personnel with a lot of knowledge that can make or break your project and save you time, money and work.
- When your project is completed, invite agency personnel to see it. They'll get confidence that you can do what you say you're going to do, and that you do it well. This will help green-light future permit applications.

ADDITIONAL INFORMATION & RESOURCES

Copies of this document are available through Fish First, and can be found on the Web at www.fishfirst.org. You'll also find a library of how-to guides and fact sheets as well as other resources and information to help with salmon restoration projects.

In addition, here's a list of links to help you find information on permits for salmon restoration projects.

- U.S. Army Corps of Engineers
www.usace.army.mil
- National Marine Fisheries Service/National Oceanic and Atmospheric Administration
www.nmfs.noaa.gov
- Washington State Department of Ecology
www.ecy.wa.gov
- Washington State Department of Fish and Wildlife
www.wdfw.wa.gov
- Washington State Office of Regulatory Assistance
www.ora.wa.gov/

Additional information in this document came from the "Guide for the Acquisition of Permits Commonly Needed for Salmon Habitat Restoration or Enhancement Projects in the State of Washington," prepared by EcoLine Fisheries Habitat Consulting, LTD, for PEOPLE FOR SALMON. Copies of this guide are available at www.fishfirst.org.

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