

Salmon Restoration Projects and Civil Liability for Landowners



FACT SHEET

About this Fact Sheet

The Recreation and Conservation Office is providing this fact sheet as a service to help educate our project sponsors and the public about our initial good faith view of how to apply the new law.

This fact sheet is not claimed to be without error or to provide a definitive official interpretation of the RCO.

If any question arises, we recommend you consult an attorney.

RCO will not be involved in determining whether a landowner and sponsor have complied with the conditions of the law.

Salmon Recovery Law

For more legislative context on the salmon recovery law, see [House Bill 1194](http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/Session%20Laws/House/1194.SL.pdf) at <http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/Session%20Laws/House/1194.SL.pdf>

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Making it Easier to Do Salmon Restoration Projects

Landowners and government agencies were concerned about their ability to do habitat restoration projects in rivers and other waterways because of issues about their long-term liability for any property loss or public safety problems that may arise.

In 2013, a new state law exempting landowners from civil liability for property damages resulting from habitat projects on their land became effective. This new law amends the [Revised Code of Washington \(RCW\) 77.85.050](#), which is the salmon recovery law.



The salmon recovery law was amended to include Section 5 as follows:

(5) A landowner whose land is used for a habitat project that is included on a habitat project list, and who has received notice from the project sponsor that the conditions of this section have been met, may not be held civilly liable for any property damages resulting from the habitat project regardless of whether or not the project was funded by the salmon recovery funding board. This subsection is subject to the following conditions:

- (a) The project was designed by a licensed professional engineer (PE) or a licensed geologist (LG, LEG, or LHG) with experience in riverine restoration;
- (b) The project is designed to withstand one hundred year floods;
- (c) The project is not located within one-quarter mile of an established downstream boat launch;
- (d) The project is designed to allow adequate response time for in-river boaters to safely evade in-stream structures; and
- (e) If the project includes large wood placement, each individual root wad and each log larger than ten feet long and one foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.

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Landowners

A landowner may be an individual, corporation, tribe, LLC, or governmental entity whose name is on the title or deed to the property. Landownership is complicated by the fact that many restoration projects occur over, or in, navigable bodies of water. These lands are often state-owned aquatic lands managed by the Washington Department of Natural Resources. If the project is on state-owned aquatic lands, the sponsor must work with the Washington Department of Natural Resources for authorization.

Habitat Projects Affected

The habitat project must either be funded by the Salmon Recovery Funding Board or be a habitat project identified on a habitat project list. As described in Revised Code of Washington 77.85.050(1)(b), a habitat project list is compiled by a committee established by the lead entity. Revised Code of Washington 77.85.050(1)(c) states that, “The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.”

The form of this list is determined by the individual lead entity and may include the lead entity’s [“Habitat Work Schedule”](http://www.hws.ekosystem.us/) (www.hws.ekosystem.us/),” or the lead entity’s 3-year work plan, or other compiled list which meets the criteria of Revised Code of Washington 77.85.050.

Two landowner conditions must be met: 1) The landowner owns land that is used for a habitat project that is included on a habitat project list; and 2) The landowner has received notice from the project sponsor that the conditions of this section have been met.

Five Project Conditions

- 1 The project was designed by a licensed professional engineer (PE) or a licensed geologist (LG, LEG, or LHG) with experience in riverine restoration;
- 2 The project is designed to withstand 100-year floods;
- 3 The project is not located within one-quarter mile of an established downstream boat launch;
- 4 The project is designed to allow adequate response time for in-river boaters to safely evade in-stream structures; and
- 5 If the project includes large wood placement, each individual root wad and each log larger than 10 feet long and 1 foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.

Licensed Professional Engineer

It is the responsibility of the sponsor to complete his/her due diligence and determine if his/her selected licensed professional engineer has experience with riverine restoration.



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100-Year Flood

It is the responsibility of the sponsor to work with his/her licensed professional engineer to design a project which can withstand 100-year floods.

In-River Boaters

It is the responsibility of the sponsor to work with his/her licensed professional engineer to design a project that allows adequate response time for in-river boaters to safely evade the in-stream structures.

Tagging Wood

Each individual log used in a project must be visibly tagged. Each log that is larger than 10 feet long and has a diameter of 12 inches or greater must be visibly tagged. At this time, no guidance exists as to the specifics on how logs should be measured to determine if the diameter of the log is over 12 inches, or if the log is longer than 10 feet. The Recreation and Conservation Office encourages the sponsor to be prudent and tag all logs which are longer than 10 feet and have a diameter of 12 inches or more at any point on the log. Each tag must include a unique numerical identifier and must be able to withstand typical river conditions for at least three years. It is up to the sponsor to conduct due diligence to determine if the selected tags fit this condition.



Recreation and Conservation Office and Salmon Recovery Funding Board Involvement

The Salmon Recovery Funding Board program is not directly affected by the revised statute, and the Recreation and Conservation Office will not develop a Washington Administrative Code related to the revision. *Manual 18, Salmon Recovery Grants* will be updated to include a reference to the revised statute for informational purposes, but the conditions of the statute will not be new requirements for application or project eligibility. As it is the responsibility of the sponsor to provide notice to the landowner that the conditions of the law have been met, the Recreation and Conservation Office and the Salmon Recovery Funding Board will not be involved in that process. The Recreation and Conservation Office and the Salmon Recovery Funding Board will continue to require a landowner agreement for all restoration projects, but the landowner agreement will not be revised to include the conditions of this law.

Stakeholder Input

The statute does not require stakeholder input. However, if the habitat project is funded by the Salmon Recovery Funding Board, the project may go through stakeholder review. The Salmon Recovery Funding Board outlines a detailed design process in [Manual 18, Salmon Recovery Grants](#), Appendix D, which includes a design memo the sponsor prepares that consolidates and responds to stakeholder (landowners, co-managers, lead entity citizen and technical groups, Salmon Recovery Funding Board grant manager, etc.) comments and other considerations during the preliminary design review. See [Manual 18, Salmon Recovery Grants](#), Appendix D (www.rco.wa.gov/documents/manuals&forms/Manual_18.pdf) for more information.

Who is Liable?

By complying with the conditions of this law the landowner (barring some change in law or constitutional issue or other legal complication) may not be held civilly liable for property damages that the project may have caused. Liability may fall on the project sponsor, engineers, designers, contractors, on-site construction inspectors, others, or no one (e.g., acts of nature or no negligence). It is the responsibility of the sponsors, engineers, inspectors, and other contractors to make their own decisions as to whether to hold insurance protecting them from liability related to their work.