



Oregon Administrative Rules Oregon Department of Fish and Wildlife

DIVISION 425

IN-WATER BLASTING PERMITS

635-425-0000

Purpose

The purpose of these rules is to further the State of Oregon's Wildlife Policy contained in ORS 496.012 and 496.138 and the Food Fish Management Policy contained in ORS 506.109 by applying consistent standards for reviewing and issuing in-water blasting permits as required by ORS 509.140. These rules establish procedures that the Department will use to review and make decisions on applications for in-water blasting activities, including any permit conditions necessary to prevent injury to fish, wildlife, and their habitat.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0005

Applicability

OAR 635-425-0000 through 635-425-0050 apply whenever the use of explosives is desired in the course of removing any obstruction in any waters of this state, in constructing any foundations for dams, bridges or other structures, or in carrying on any trade or business.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0010

Definitions

For the purposes of OAR 635-425-0000 through 635-425-0050 only:

- (1) "Applicant" means any person, partnership, corporation, association, public interest organization, political subdivision, governmental board, agency or commission who files an application pursuant to ORS 590.140 for a permit to use explosives.
- (2) "Department" means the Oregon Department of Fish and Wildlife.
- (3) "District" means the smallest geographic administrative unit of the Department of Fish and Wildlife for the purposes of managing fish and wildlife resources.
- (4) "Endangered Species" means:
 - (a) Any native fish or wildlife species determined by the Fish and Wildlife Commission to be in danger of extinction throughout any significant portion of its range within the state; or
 - (b) Any native fish or wildlife species listed as an endangered species pursuant to the federal Endangered Species Act of 1973 (PL 93-205, 16 USC § 1531), as amended.
- (5) "Explosives" means any explosive substances, including but not limited to powder, detonating cord, binaries, gels, slurries, dynamites and nitroglycerine.
- (6) "Fish and Wildlife" means fish, shellfish, intertidal animals, wild birds, amphibians, reptiles, and wild mammals.
- (7) "In-Water Blasting" means the use of explosives on, under, or in waters of this state, or in any location adjacent to the waters of this state where blasting would have an impact on fish and wildlife or their habitat.
- (8) "Injury" means any harm to fish or wildlife or their habitat due to in-water blasting activities.
- (9) "Major Project" means an in-water blasting project that requires multiple detonations or multiple days, or crosses two or more Department regions or districts. Major projects may include but are not limited to bridge removal, pipeline crossings, or channel deepening.
- (10) "Minor Project" means an in-water blasting project that has, in the judgement of the Department, minimal effects and requires a single detonation or single-day blasting, and occurs within a single district. Minor projects may include but are not limited to boulder removal to improve fish passage.
- (11) "Practicable" means capable of being done within existing knowledge and technical constraints.
- (12) "Region" means one of the four major geographic administrative units of the Department of Fish and Wildlife for the purpose of managing fish and wildlife resources.



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(13) "Sensitive Species" refers to fish or wildlife species, subspecies, or populations that are subject to a decline in number of sufficient magnitude to qualify their listing as threatened due to loss in quantity or quality of habitat or other factors.

(14) "Threatened Species" means:

(a) Any native fish or wildlife species the Fish and Wildlife Commission has determined is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state; or

(b) Any native fish or wildlife species listed as a threatened species pursuant to the federal Endangered Species Act of 1973 (PL 93-205, 16 USC § 1531), as amended.

(15) "Waters of This State" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers, and streams within or forming the boundaries of this state.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0015

Fish and Wildlife In-Water Blasting Permit Policy

It is the policy of the Oregon Fish and Wildlife Commission to discourage in-water blasting unless it is the only practicable method to accomplish the project goals. The Department may issue in-water blasting permits only if they contain conditions for preventing injury to fish and wildlife and their habitat.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0020

Application Requirements

(1) Timing of Application: An application for an in-water blasting permit must be submitted no less than 90 days before the anticipated in-water blasting for a major project, and no less than 30 days before the anticipated in-water blasting for a minor project. The Department may waive these deadlines in emergency situations where the blasting is necessary to prevent irreparable harm, injury or damage to persons or property.

(2) Submittal of Application: The applicant must submit an application on a form prepared by the Department. The application process is as follows:

(a) An application for a minor project must be submitted to the Department's district office for the area in which the blasting will occur;

(b) An application for a major project within a single region must be submitted to the Department's regional office for the region in which the blasting will occur;

(c) An application for a major project affecting two or more Department regions must be submitted to the Oregon Department of Fish and Wildlife.

(3) Content of Application: The application must include the following information:

(a) The applicant's name, home and business addresses, and telephone numbers;

(b) The State Fire Marshal's Certificate of Possession number and the expiration date of the certificate of the person(s) conducting the blasting (see ORS Chapter 480);

(c) The landowner's name (if applicant is not the owner of the property), home and business addresses, telephone numbers, and written consent to the proposed in-water blasting described in the application;

(d) The geographical location of the property that will be affected by the proposed in-water blasting, including a map and description of the site and waterway(s) affected;

(e) Purpose and description of the proposed in-water blasting;

(f) A map indicating where the explosives will be placed;

(g) The estimated distance of impact and area affected by the proposed blasting;

(h) Names, addresses, and telephone numbers of property owners within the area affected by the proposed blasting;



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- (i) The estimated amount of explosives required;
 - (j) The date or dates during which blasting is planned;
 - (k) Where debris from the blasting will be placed;
 - (l) The type of explosives to be used;
 - (m) The approximate size and number of charges to be detonated and the detonation delays between each charge;
 - (n) The conditions under which the blasting will be done, including water depth;
 - (o) Blasting medium (water column or adjacent rock or soil);
 - (p) The alternatives, if any, to the proposed in-water blasting, including an analysis of their practicability;
 - (q) Information on fish and wildlife habitat within the area that would be affected by the proposed blasting and the predicted effects of the proposed blasting on these habitats. The information must include predicted effects of the proposed blasting on beds and banks of the waters of the state, adjacent areas of the riparian vegetation and wetlands, and the potential for dewatering waters of the state as a result of substrate disturbance;
 - (r) Information on fish and wildlife species in the area that would be affected by the proposed blasting (including age class) and the predicted effects of the proposed blasting on these species;
 - (s) Any existing environmental assessments, environmental impact statements, or other environmental data pertaining to the project must be submitted to the Department. Such documents may be used to satisfy the requirements of subsections (3)(q)-(r) of this rule if the Department determines they adequately address the requirements of those sections;
 - (t) Proposed measures for preventing injury to fish, wildlife and their habitat, including an analysis of the effectiveness of these measures under the environmental conditions at the blasting site;
 - (u) Information documenting the project's compliance with the Statewide Planning Goals and compatibility with the applicable acknowledged comprehensive plan(s) and land use regulations as required in OAR 635-425-0025.
- (4) The information required by section (3) of this rule satisfies the requirements of OAR 635-415-0020(9) for preparation of a mitigation plan for activities authorized by the blasting permit.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: Adopted 4-16-04, f. 4-22-04, ef. 5-1-04

635-425-0025

Compliance with Statewide Planning Goals and Compatibility with Acknowledged Comprehensive Plans

(1) Pursuant to the Department's State Agency Coordination Program, OAR 635 Division 405, the applicant must provide information documenting the project's compliance with the Statewide Planning Goals and compatibility with the applicable acknowledged comprehensive plan(s) and land use regulations. Such documentation must include one of the following:

- (a) Information affirming that the project has received specific land use approval from the affected city or county;
- (b) Information demonstrating that the project does not require specific land use approval by the jurisdiction; or
- (c) Findings or information to assure compliance with the statewide planning goals in accordance with OAR 635-405-0020(1)-(3).

(2) If more than one unit of local government has land use approval authority over the site of the proposed project, the applicant must submit documentation in the manner described in section (1) of this rule demonstrating land use compatibility with each of the affected jurisdictions' comprehensive plans.

(3) The meaning of the land use terms used in this division are the same as those contained in OAR 635-405-0005.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0030

Application Review Procedures

(1) The Department will provide a copy of the In-Water Blasting Permit Rules and an application form to all applicants for an in-water blasting permit.



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- (2) The Department will review an application to determine if it is complete and notify the applicant in writing within 15 days after receipt of the application if additional information is required. The notice will specify any additional required information and the deadline for submitting the information.
- (3) The Department will begin its review when it receives a complete application. Within 45 days of receiving a complete application for a major project, or 20 days for a minor project, the Department will either deny the application in writing or issue a permit with appropriate conditions for preventing injury to fish, wildlife, and their habitat. The Department may extend its review period for up to 30 days to determine appropriate conditions to prevent injury to fish and wildlife and their habitat.
- (4) In deciding whether to approve or deny the application, the Department will consider:
- (a) Whether blasting is the only practicable method of accomplishing the proposed activity;
 - (b) Whether injury to fish, wildlife, and their habitat can be prevented by adequately conditioning the permit; and
 - (c) Whether proposed blasting for fish passage improvement projects is consistent with the Commission's Wild Fish Management Policy.
- (5) For major projects within a single region, the applicable regional office will review the application and will either deny it or issue a permit.
- (6) For major projects that affect two or more Department regions, the Habitat Division will review the application and either deny it or issue a permit.
- (7) For minor projects, the applicable district will review the application and either deny it or issue a permit.
- (8) Projects in estuarine and marine waters will be coordinated with Marine Program staff.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0035

Permit Conditions

The Department will condition each in-water blasting permit as necessary to prevent injury to fish, wildlife, and their habitat. Protective permit conditions include but are not limited to the following:

- (1) The applicant must clean up all debris associated with in-water blasting, including blasting wire, dynamite, boxes, etc. The Department may require the applicant to clean up debris such as fly rock.
- (2) If necessary to prevent injury to fish and wildlife, the permittee must divert or remove them from the site immediately before blasting, using methods approved by the Department.
- (3) If marine mammals are present at the blasting site, the permittee must contact the National Marine Fisheries Service to determine any steps necessary to comply with the federal Marine Mammal Protection Act, and may ask for the Department's assistance in carrying out such steps. The Department may require the permittee to pay in advance for assistance provided.
- (4) If the Department determines it is necessary, the permittee must conduct a pre and post blasting survey of fish and wildlife using methods approved by the Department.
- (5) Measures to reduce shock waves from explosives will be required if necessary to prevent injury to fish or wildlife. Examples of appropriate methods include using bubble curtains and detonation delays between charges.
- (6) Timing of in-water blasting must be restricted to prevent injury to fish, wildlife, and their habitat, fish eggs or other aquatic life, and commercial and recreational fisheries consistent with the Department's "Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Exhibit 1). Timing for all blasting permits must follow the Timing Guidelines unless modified by the appropriate local district fishery biologist due to the absence of fish or wildlife species or the presence of a species not adequately protected by the timing guidelines.
- (7) Potential pollutants incidental to the blasting work, including but not limited to fuel and other petroleum product, must be stored in such a manner and location that prevent these pollutants from entering waters of this state.
- (8) The permittee must minimize disturbance to streambanks and riparian vegetation. The permittee must recontour and revegetate disturbed soils to the standard set by the Department in consultation with other state or local agencies with regulatory authority over reclamation.
- (9) The Department may place special restrictions on blasting permits for projects that may adversely affect state threatened, endangered, or sensitive species, or federal threatened, endangered, or candidate species.
- (10) The Department may place special restrictions on blasting permits for projects that may adversely affect special aquatic sites, such as federal estuarine research reserves.



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(11) All activities initiated under an in-water blasting permit issued pursuant to OAR 635-425-0000 through 635-425-0050 must be completed within the time period specified in the permit. The Department may extend the time period specified in a permit if the permittee provides a written request stating a valid reason for such an extension. Any extension must be in writing and may include additional conditions to prevent injury to fish, wildlife, and their habitat as provided by these rules.

(12) The applicant must comply with the notification requirements contained in OAR 635-425-0040.

(13) The issuance of a permit does not relieve the permittee from any liability, including but not limited to liability for injury to persons, property, or fish and wildlife or their habitat.

[ED. NOTE: Exhibits referenced in this rule are available from the agency]

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0040

Notification Requirements

(1) Applicants must notify the district fishery or habitat biologist at least 48 hours before actual blasting, and the Department must have the opportunity to have an observer present during and after the blasting. The Department may conduct a pre-blasting site inspection.

(2) Applicants must notify the local law enforcement agencies before blasting activities.

(3) Applicants must notify all adjacent landowners of record on the most recent property tax assessment roll, renters or lessees, and recreational users within the area affected by the proposed blasting of the schedule for planned in-water blasting. This notice must be by:

(a) Registered letters to adjacent landowners with return receipt;

(b) Publication in the local newspaper;

(c) Postings in the vicinity of the project; and

(d) Auditory warnings before blasting.

(4) The applicant must provide to the Department satisfactory evidence of compliance with subsections (3)(a)-(c) of this rule at least three days before the blasting occurs.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0045

Compensation for Injury to Fish and Wildlife

The applicant must compensate the State of Oregon for any injury to fish, wildlife, or their habitat resulting from failure to comply with the conditions of the in-water blasting permit, or from failure to obtain an in-water blasting permit. Compensation for such injury or damage will be determined as provided for in ORS 496.705 and 496.992, and OAR 635-001-0025 and 635-410-0030. A permit does not relieve the permittee from liability for the injury to persons, property, or fish and wildlife or their habitat resulting from acts conducted pursuant to the conditions of the permit.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140

Hist.: FWC 134-1991, f. & cert. ef. 11-20-91; DFW 31-2002, f. & cert. ef. 4-16-02

635-425-0050

Applicability of Existing Laws

An in-water blasting permit is designed to prevent injury to fish and wildlife and their habitat. An in-water blasting permit does not authorize violation of any other applicable state, federal or local laws or regulations. An in-water blasting permit does not supersede any requirements to obtain other applicable permits or authorizations, including but not limited to those permits or authorizations designed to protect human health, safety, welfare, navigation, or fish and wildlife.



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Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, ORS 506.109, ORS 506.119 & ORS 509.140
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