

OREGON DEPARTMENT OF STATE LANDS

THE PUBLIC'S RIGHTS TO USE OREGON'S WATERWAYS FOR RECREATION

The public has rights to use an Oregon waterway for recreation if the waterway is navigable for title purposes, if the waterway is floatable for purposes of the Public Use Doctrine, or if it is both. A segment of a waterway is navigable for title purposes if that segment is tidally influenced or if that segment is used, or is susceptible of being used, in its ordinary condition, as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. A segment of a waterway is floatable for purposes of the Public Use Doctrine if the segment currently has sufficient capacity in terms of length, width and depth to enable watercraft such as canoes, kayaks or drift boats to make successful progress.

The public rights to use Oregon's waterways for recreation are not unlimited. Unauthorized use is a trespass and may violate criminal law. Please use care in identifying waterways that are navigable for title purposes or floatable for purposes of the Doctrine of Public Use. You will also need to understand what uses are generally allowed. Any use may be restricted in some circumstances so check with the Department of State Lands and other state agencies for information that may help you decide where and how to enjoy Oregon's waterways.

If a waterway is navigable for title purposes:¹

Except as noted below, a person generally may:

- Use the **submerged and submersible land** up to the Line of Ordinary High Water for:
 - Any activity allowed on other public lands, including for instance **hiking, camping, picnics, football, hunting, collecting agates, skipping stones, bird watching, kayaking, canoeing, water skiing, swimming, ATVing, and photographing wildlife.**
 - The "*jus publicum*" rights (pursuant to the Public Trust Doctrine) of **fishing, navigation, recreation and commerce** including for instance **anchoring, fly-fishing, water-skiing, swimming, camping when**

¹ This includes all portions of a waterway that are subject to tidal action and those portions of waterways that are not subject to tidal action but have been determined title navigable, through a declaration of ownership by the Land Board at the conclusion of a navigability study, or through a court opinion, or through both. It also includes waterways that are title navigable, even if they have not yet been determined title navigable.

traveling a long distance, walking while fishing, and waiting on a gravel bar for others to arrive;

- *“Water dependent”* uses (pursuant to the Public Use Doctrine) such as **swimming, boating, fishing, and some forms of hunting;** and
 - *“Uses incidental to a water dependent use”* (pursuant to the Public Use Doctrine) such as **camping when traveling a long distance, walking while fishing, waiting on a gravel bar for others to arrive, repairing a boat damaged on a trip, and recovering supplies dumped in a rapid.**
- Go above the Line of Ordinary High Water if absolutely necessary, not merely for convenience or ease of use of the waterway. For instance, a person likely could **carry a seriously injured boater to a nearby road, portage a boat and its contents around a waterfall, or walk around a cliff and waterfall when angling.**

Exceptions:

- Use of some locations is restricted by state or federal agencies in order to protect the resource. For instance, the Land Board restricts uses in specific locations that have been subject to overuse or frequent misuse.
- Some activities require a license or other authorization from a state or federal agency in order to protect the resource. For instance, fly-fishing requires a license from the Oregon Department of Fish and Wildlife, and camping for more than 14 days requires an authorization from the Department of State Lands.
- If the submersible land has been sold or granted by the state to another person, the public’s rights to use the submersible land are limited to the jus publicum rights, water-dependent uses, and uses that are incidental to a water dependent use. Each user and the landowner must exercise their rights to use the submersible land in recognition of each other rights.
- Uses are not allowed that directly conflict with the rights of a person that is using the submerged and submersible land for a purpose that is stated in an authorization issued by the Department of State Lands. For instance, a person may not fish from a house-boat moorage that is authorized by a lease from the Department of State Lands, but a person may fish from a boat in the water near the moorage.
- Every user must exercise care and not unnecessarily interfere with other users or landowners. For instance, a person may not light a fire in a log jam or block the only point of access for 2 hours while they swim.

If a waterway is currently floatable for public use under the Public Use Doctrine:²

Except as noted below, a person generally may:

- Use the **submerged and submersible land** up to the line of Ordinary High Water for:
 - *“Water dependent”* uses such as **swimming, boating, fishing, and some forms of hunting**; and
 - *“Uses incidental to a water dependent use”* such as **camping when travelling a long distance, walking while fishing, waiting on a gravel bar for others to arrive, repairing a boat damaged on a trip, and recovering supplies dumped in a rapid.**
- Go above the Line of Ordinary High Water if absolutely necessary, not merely for convenience or ease of use of the waterway. For instance, a person likely could carry a **seriously injured boater** across uplands to a nearby road, **portage a boat and its contents around a waterfall, or walk around a cliff and waterfall when angling.**

Exceptions:

- Some activities require a license or other authorization from a state or federal agency in order to protect or manage the resource. For instance, fly-fishing requires a license from the Oregon Department of Fish and Wildlife.
- Use of some locations is restricted by state or federal agencies in order to protect the resource. For instance, the Oregon Department of Fish and Wildlife issues fishing regulations for several zones within the state.
- Uses may not violate any law. For instance, a person may not commit offensive littering, harassment, menacing, disorderly conduct II, minor in possession of alcohol, reckless burning, criminal mischief, depositing trash within 100 yards of water.
- Every user must exercise care and not unnecessarily interfere with other users or landowners. For instance, a person may not light a fire in a log jam or block the only point of access for 2 hours while they swim.

² This includes all waterways that are floatable for purposes of the Public Use Doctrine. Under current law, no state agency declares whether a waterway is floatable.

If the waterway is not navigable for title and is not floatable under the Public Use Doctrine:

A person does not have a right to use the waterway or the underlying submerged and submersible land.

Additional considerations:

- Uses may not violate any criminal law. For instance, a person may not commit offensive littering, harassment, menacing, disorderly conduct II, minor in possession of alcohol, reckless burning, criminal mischief, or deposit trash within 100 yards of water.
- Any person wanting to use **submerged or submersible land** in a proprietary way must obtain prior written authorization from the owner. For instance, if the state owns the submersible land, the person must obtain an authorization from the Department of State Lands to place a dock, drive a piling, build a boat ramp, or remove 100 cubic feet of sand or gravel.