Endangered Species Act & Drainage

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Overview

• Species At Risk
• Endangered Species Act Protection
• Definitions
• The MNRF Registry
• Mitigation Plan
• Logistics and FAQs
Species At Risk

• Ontario is home to over 30,000 species, about 200 of which are considered at risk provincially
• Species at risk are part of Ontario’s diversity - protecting diversity helps to ensure resilience, healthy, functioning ecosystems for future generations
• Many species are found on private land, therefore Ontario's farmers and landowners play a key role in the future of our provinces’ natural heritage

Why do Species Become At Risk?

• Natural Causes (Dinosaurs)
• Disease (Butternut tree)
• Invasive species (Fawnsfoot mussel)
• Over harvesting (American ginseng)
• Climate change (Polar bear)
• Poaching and the pet trade (Wood turtle)
• Environmental Contaminates
  • (Peregrine Falcon - DDT)
• Habitat loss, alteration
  • or fragmentation (majority of species)
Why do Species Become At Risk?

Piping Plover (Endangered)
- <10 breeding pairs in the province
- Found in 3 small Ontario locations
- Very specific habitat requirements
- Limited habitat availability

Blanding’s Turtle (Threatened)
- Widespread distribution, people still see them all the time, but...
- Long lived 80+ years
- 20+ years to maturity
- Low reproductive success
- Low juvenile success
- High road mortality

ONTARIO’S ENDANGERED SPECIES ACT: OVERVIEW

- Came into effect in June 2008
- Provides legal protection for both species and their habitats
- Offers flexibility in order to balance social and economic considerations
- Uses permits and regulation provisions (with stringent conditions) to allow activities that might otherwise be prohibited
- Promotes stewardship activities to help protect and recover species at risk and habitat
- Recognizes Aboriginal interests & knowledge
Endangered Species Act 2007

• Section 9
  – No person shall, kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;

• Section 10
  – No person shall damage or destroy the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species.

Definitions

• Killing a Protected Species
  – An activity that kills a living member of a protected species is one that results in the death of the member.

• Harming a Protected Species
  – An activity that harms a living member of a protected species is one that results in a physical injury, or change to one or more of its physiological processes, and adversely affects the ability of the member to carry out one or more of its life processes.

• Harassing a Protected Species
  – An activity that harasses a living member of a protected species is one that disrupts its normal behaviour in a manner that adversely affects the ability of the member to carry out one or more of its life processes.
Definitions

• Habitat
  – an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding,

• Damaging Habitat
  – An activity that damages the habitat of a species is one that alters the habitat in ways that impair the function (usefulness) of the habitat for supporting one or more of the species’ life processes.

• Destroying Habitat
  – An activity that destroys the habitat of a species is one that alters the habitat in ways that eliminate the function (usefulness) of the habitat for supporting one or more of the species’ life processes.

What SAR are in my area?

• Land Information Ontario
  – http://www.ontario.ca/page/make-natural-heritage-area-map

• See expired Drainage Agreement (not necessarily a complete list)

• MNRF District may provide information to identify species in the project areas (as required)
Authorization Options

- **Avoidance**
- Registry
  - Minimize Harm
  - Mitigation Plan
  - Annual Report
- C-Permit
  - Section 17(2)c of the ESA 2007
  - Overall Benefit

Avoidance Options

- Preferred option is Avoidance
- Most effective a protection
- Often most cost effective option
Avoidance Options

• Preferred option is Avoidance

The MNRF Registry

• The MNRF understands that many infrastructure activities may impact endangered and threatened species, but are imperative to the functionality of Ontario communities

• Requirements of the Registry
  • Minimize Harm
  • Mitigation Plan
  • Annual Report
Registry (cont’d)

APPLIES TO
• Existing drains
  – Improving, maintaining, repairing (see O.Reg 242/08)
• All listed SAR species except excluded species

DOES NOT APPLY TO
• New drains
• Excluded species identified in O.Reg 242/08 23.9(2)
• Species listed AFTER June 27, 2014

Excluded Species
O.Reg 242/08 23.9(2)

• Cherry Birch
• False Hop Sedge
• False Rue-anemone
• Heart-leaved Plantain
• Scarlet Ammennia
• Toothcup
• Bogbean Buckmoth
• Pugnose Minnow
• Small-mouthed Salamander
• Grey Fox
• Any species listed after June 27, 2014
  – Gypsy Cuckoo Bumble Bee

The MNRF Registry

Logistics and FAQs
How is the new mitigation plan different from the old agreement?

- Expired Drainage Agreement as a source of information
- Letters to Proponents / emails can also be utilized as a source of information.
  - Note, these may require updating to incorporate new information
- Expired Agreements did not address habitat protection (section 10 of the ESA)
- The MNRF also encourages you to mine past issued

ESA C-Permits

- Section 17(2)c of the ESA 2007
- ‘Overall Benefit’ Permit
  - the project must create an overall benefit to the species
- Usually more involved than Avoidance or Registry options
  - Habitat creation
  - Increased mitigation
  - Monitoring
  - Etc.
Developing Engineering Reports

• Need to be aware of species that may be impacted by proposed activities and plan to avoid/ minimize

• Need to be aware the preferred option to avoid contravening the ESA
  – Avoid, Register, or Permit

Think outside the box
Think outside the box

A parabolic (saucer-shaped) waterway allows water to spread out and not erode the channel bottom. (OMAFRA)

Think outside the box

Two-stage Ditch Design

From Nature.org
Think outside the box

Bird’s-eye view of an agricultural landscape with grass filter strips and other types of conservation buffers. Photo courtesy USDA NRCS.

Contact MNRF

- New drains, specific project or species questions, etc.
  - Contact your local MNRF District Office

- All Registry related questions should be directed to the Registry Approval Service Centre (RASC)
  - 1-855-613-4256 or mnr.rasc@ontario.ca

Logistics and FAQ
Links

How and where to register for ditch and drainage work
• https://www.ontario.ca/page/ditch-and-drainage-work-and-endangered-or-threatened-species


Species at Risk
• http://www.ontario.ca/environment-and-energy/species-risk

O.Reg 242/08
• http://www.ontario.ca/laws/regulation/080242

Endangered Species Act 2007
• http://www.ontario.ca/laws/statute/07e06