

# **MTO BEST MANAGEMENT PRACTICES FOR SPECIES AT RISK PROTECTION DURING MAINTENANCE ACTIVITIES**

## **Document Summary**

### **PURPOSE OF MANUAL**

This MTO best management practice (BMP) manual provides guidance for MTO Service Providers to help ensure impacts to species at risk and habitat are avoided or minimized during routine highway maintenance activities.

Following this BMP process will help ensure registration conditions are satisfied for activities registered under the Endangered Species Act, 2007 (section 23.18 - Threats to Health and Safety, not imminent of Ontario Regulation 242/08). It is the responsibility of the Service Provider to ensure all other applicable legislation, regulation, and protection requirements are satisfied when conducting work.

### **BMP FRAMEWORK/PROCESS**

This manual includes two (2) standard BMPs that apply to all maintenance activities and 12 BMPs that are specific to maintenance operations.

#### **How to use the BMPs:**

First, it should be determined whether species at risk and habitat may exist in the work area before work begins and preferably during planning for upcoming work. Methods for determining this are included in the 'Standard BMP for Screening the Work Area for Species at Risk and Habitat'. The results from screening the work area will determine which species are likely to be present.

Next, when conducting work, the BMPs that apply to all maintenance operations should be well understood and applied where applicable. This information is provided in 'Standard BMPs for All Maintenance Activities'.

Then, activity specific BMPs should be applied. Each activity BMP provides a list of the types of species that are likely to be impacted by the activity, how they may be impacted, and measures that, if implemented, can avoid or minimize the potential for impact.

In summary:

1. When planning work for the upcoming maintenance season, the following BMP should be considered by the Service Provider to determine whether species at risk and habitat may be present in the work areas:  
**'Standard BMP for Screening the Work Area for Species at Risk and Habitat'**

This BMP applies to all activities and provides methods for determining if species at risk and/or habitat may be present in the work area.

The following questions should be answered:

- Are species at risk and/or habitat likely present in the work area?
- What species and/or habitat are likely present?
- Are any of the species likely present in the work area identified in subsection 23.18 (8) of Ontario Regulation 242/08 (i.e. ineligible species)?

The presence or absence of species at risk will determine whether the activity-specific BMP should be applied. If a process for screening the work area is not followed, it should be assumed that species at risk are present everywhere, and that work modifications are required in the entire area.

2. When conducting work, two (2) or three (3) BMPs should always be considered: **‘Standard BMP for All Maintenance Activities’**

This BMP applies to all activities and provides best practices for all registered maintenance activities.

It is organized into seven (7) categories that should be applied to all activities including: administration, awareness and training, qualified person(s), timing of work, general protection measures, encounters with species at risk, and BMP recording and reporting.

AND

### **Activity-Specific BMP**

There is a BMP for each registered maintenance activity that provides the best practices specific to that operation.

Each BMP includes a description of the work the BMP applies to, species at risk likely to be impacted and potential impacts from the operation.

The following question should be answered:

- Are the species determined to be present in the work area during screening likely to be impacted by the activity?
  - If the species are likely to be impacted by the activity, implement the activity-specific BMP and the ‘Standard BMP for All Maintenance Activities’;
  - OR
  - If the species are not likely to be impacted by the activity, implement the applicable sections of the ‘Standard BMP for All Maintenance Activities’.

AND WHERE APPLICABLE

### **MTO Best Management Practices Manual for Fisheries**

The MTO Best Management Practices Manual for Fisheries provides the mandatory procedures for undertaking routine activities in a manner that avoids impacts to fish and mussels and their habitat.

## **BACKGROUND INFORMATION – The Endangered Species Act, 2007**

The information below is an interpretation of the Endangered Species Act, 2007 (ESA) for convenience purposes only. It is the responsibility of the Service Provider to ensure all applicable legislation, regulation, and protection requirements are satisfied when conducting work. Refer to [Ontario E-Laws- Endangered Species Act, 2007](#) to access the full text of the act and the applicable regulations.

Administered and enforced by the Ontario Ministry of Natural Resources and Forestry (MNR), the ESA was passed in 2007 to provide protection to species at risk and their habitat with the intention of promoting species protection and recovery.

The ESA prohibits:

- The killing, harming, harassing, capture, or taking of a species listed as endangered, threatened, or extirpated on the Species at Risk in Ontario List (SARO List) (clause 9(1)(a)), and,
- The damage or destruction of the habitat of a species on the SARO List that is endangered or threatened, or is extirpated and prescribed by the regulations (subsection 10 (1)).

**Ontario Regulation 230/08 (O. Reg. 230/08) under the ESA:** O. Reg. 230/08, also known as the SARO List, provides the list of species in Ontario that receive protection under the ESA. This list can be updated one or more times per year. It is the responsibility of the Service Provider to be aware of any changes which may result in the need to rescreen planned activities, update registration information, etc. Refer to [Ontario E-Laws – O. Reg. 242/08: General](#) to access the full text of the regulation.

**Ontario Regulation 242/08 (O. Reg. 242/08) under the ESA:** O. Reg. 242/08 provides exemption clauses from section 9 (1) (a) and subsection 10 (1) ESA prohibitions for eligible activities provided certain conditions are satisfied. Refer to [Ontario E-Laws – O. Reg. 230/08: Species at Risk in Ontario List](#) to access the full text of the regulation.

**O. Reg. 242/08 section 8 Imminent Threats to Health and Safety:** The prohibitions of the ESA do not apply to a person carrying out activities to protect a human being or an animal if there is an imminent risk to the health or safety of the human being or animal. This applies to unplanned, emergency situations such as a road washout where there is an immediate threat to the safety of road users.

**O. Reg. 242/08 section 23.18 Threats to Health and Safety, Not Imminent:** This section applies to activities necessary to avoid or reduce a threat to human health or safety in situations where the threat is not imminent but is likely to have serious consequences in the short or long-term if the activity is not carried out. The majority of MTO's routine highway maintenance activities are reviewed for eligibility in this section. Eligible activities include the maintenance, repair, removal, replacement, or upgrade of a structure or infrastructure that is part of a road system if the work does not result in a temporary or permanent change of location, the area occupied, and use or operation. Specific conditions are set out in the regulation that must be satisfied for the purposes of this registration.

It is the responsibility of the Service Provider to ensure activity registrations satisfy the registration conditions and current records are retained.

The MTO Best Management Practices for Species at Risk Protection during Maintenance Activities can be made available in French upon request.