

Hydro-electric Generating Stations and Endangered or Threatened Species

INTRODUCTION

The Ministry of Natural Resources is streamlining and automating its approvals processes for natural resource-related activities – with the goal of providing individuals and businesses with faster and more efficient service delivery.

This fact sheet provides information about regulatory provisions under the Endangered Species Act (ESA) regarding the ongoing operation of a hydro-electric generating station in Ontario.

The ESA provides protection for endangered and threatened species in Ontario. Some activities that would otherwise contravene the ESA may be eligible to proceed without a permit from the Ministry of Natural Resources provided that regulatory conditions for the ongoing protection of species at risk and their habitats are met.

OPERATION OF A HYDRO-ELECTRIC GENERATING STATION (WATERPOWER FACILITY)

A new waterpower agreement or permit under the ESA is not required for operating waterpower facilities if the operator registers with the Ministry of Natural Resources and follows the rules in regulation for eligible activities.

What activities are eligible?

Activities that are part of the operation of a waterpower facility and are prohibited by the ESA respecting a species listed as endangered or threatened on the Species at Risk in Ontario (SARO) list, or its habitat.

How does eligibility work?

For species that are present on the site and are being adversely affected by the operation of a waterpower facility, the following scenarios explain the eligibility requirements.

Species Listed Prior to January 24, 2013:

For any species listed as endangered or threatened on the SARO list prior to January 24, 2013, and if the waterpower facility began operations before the listing of the species, before doing anything that is prohibited under the ESA the following requirements must be met:

The operator must:

- Register with the Ministry of Natural Resources.
- Immediately take reasonable steps to minimize adverse effects on the species.
- Immediately develop and implement a mitigation plan for the species.

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Species Listed on January 24, 2013:

For any species listed as endangered or threatened on the SARO list on January 24, 2013, where the waterpower facility began operations before January 24, 2013, the following requirements must be met:

The operator must:

- Register with the Ministry of Natural Resources.
- While operating take reasonable steps to minimize adverse effects on the species.
- Within three years of the date the species was listed, develop and implement a mitigation plan for the species.

Example:

A waterpower facility began operating in 2006. A species that inhabits the site is added to the SARO list as an endangered species on January 24, 2013. Before undertaking any activities that may adversely affect the species or its habitat, the operator must register with MNR and immediately begin to minimize adverse effects on the species. The operator would then have until January 24, 2016 to develop and implement a mitigation plan for the species.

Species First Appears in the Area of the Facility:

For any species that was listed as endangered or threatened on the SARO list on, or before January 24, 2013, and appears in the area of the facility for the first time, the following requirements must be met:

The operator must:

- Register with the Ministry of Natural Resources.

- While operating take reasonable steps to minimize adverse effects on the species.
- Within three years of the date the species first appeared in the area of the facility, develop and implement a mitigation plan for the species.

Example:

A waterpower facility began operating in 2006. A species that was listed on the SARO list in 2009 first appeared in the area of the facility on October 1, 2013. Before undertaking any activities that may adversely affect the species or its habitat, the operator must register with MNR and immediately begin to minimize adverse effects on the species. The operator would then have until October 1, 2016 to develop and implement a mitigation plan for the species.

What activity is not eligible?

- The construction of a new waterpower facility.
- An activity that will affect any excluded species listed in the regulation (see the list in the **Legal/Technical Background** section below).

What are the rules in regulation?

Waterpower facility operators undertaking eligible activities must:

- Register with the Ministry of Natural Resources registry called Notice of Activity and Other Notices under the ESA, and select the option [Hydro-Electric Generating Stations – Operations](#).

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- Develop and implement a mitigation plan for affected species.
- While operating, take reasonable steps to minimize impacts on species and habitat.
- Monitor and report on the effectiveness of these actions.
- Continue to monitor the operations to determine if other impacts on species occur.
- Report observations of the species to the Natural Heritage Information Centre using the Rare Species Reporting Form.

The Ministry encourages the use of the Species at Risk online Reference Tool Box. This tool box includes information and best practices the Ministry has identified to assist with minimizing adverse effects on species at risk and preparing mitigation plans.

Existing ESA Waterpower Agreements

When the ESA came into effect in June 2008, the regulation provided an operator of a waterpower facility with an opportunity to enter into an agreement with MNR if the operation of the facility were likely to cause adverse effects on protected species or their habitat.

Operators who entered into an ESA waterpower agreement with MNR must transfer to the new rules in the regulation by July 1, 2018 if they still need an exemption under the ESA. A mitigation plan for the species to which the agreement applies must be developed before the operator may file a notice of activity form to register with the Ministry of Natural Resources. Mitigation plans can build on the information in existing agreements. After July 1, 2018, all ESA waterpower agreements will no longer be valid.

Please contact MNR for more details on transferring from an agreement to the rules in regulation approach.

Please refer to **Legal/Technical Background** below for a summary of the regulation. Refer to [O.Reg. 242/08](#) for the legal document.

LEGAL/TECHNICAL BACKGROUND

Operation of a Hydro-electric Generating Facility

The following is a summary of the conditions in the regulation that must be fulfilled to allow the activity, and is for information purposes only. Please refer to [O.Reg. 242/08 section 23.12](#) at e-laws.gov.on.ca for the full legal text.

Summary of Conditions

Minimizing Adverse Effects:

The person must take reasonable steps to minimize adverse effects on the species by carrying out the following activities:

- install signage and inform employees and others who are conducting the activities at the facility;
- establish and maintain a protective zone around terrestrial habitat features such as a nest or hibernaculum used by the species that may be impacted on by the activity;
- undertake facility maintenance activities in a manner that has minimal effects on or will benefit the species;
- monitor the effects that the operation of the facility has on the species identified in the notice of activity form and the effectiveness of the mitigation plan.

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Mitigation Plan:

A mitigation plan must be prepared by a person with expertise in relation to the species, using the best available information on steps to minimize adverse effects on the species, which includes consideration of information from the Ministry, Aboriginal traditional knowledge and community knowledge, where it is reasonably available.

The plan must:

- include a map indicating the geographic location of the station and any associated structures;
- include a description of the adverse effects that the operation of the station may have on the species;
- include a description of the reasonable steps that will be carried out to minimize adverse effects of the operation of the station including:
 - actions that are necessary to help provide suitable conditions to enable species to carry out life processes including spawning, hibernation, nesting and migration, if feasible;
 - measures to replace or restore habitat that is adversely affected by the operation of the station, in a suitable area for the species;
- be updated every five years;
- retained for at least five years after the activity ends; and,
- made available to the Ministry within two weeks of a request.

Annual Report:

The person must prepare an annual report that includes:

- description and assessment of the steps taken to minimize adverse effects on the species;
- information collected during monitoring under the mitigation plan;
- records of any activities carried out in accordance with the mitigation plan; and,
- details of any encounters with the species.

Not Eligible:

This regulation does not apply to American Eel at the R.H. Saunders Facility on the St. Lawrence River in Cornwall. An agreement with MNR is required for activities that adversely affect this species at this location.

List of Excluded Species:

An activity that will affect one or more of the following species may not proceed under the regulation:

1. Pygmy Snaketail
2. Hungerford's Crawling Water Beetle

While a waterpower operator is not eligible to proceed under this regulation for the species listed above, they may nevertheless be eligible for a permit under the ESA. An operator seeking to undertake an activity that may result in a contravention of the ESA in relation to these species must consult with the Ministry Natural Resources. Together, the operator and the Ministry will explore ways to avoid contravening the ESA. If avoidance is not feasible, a permit under s.17 of the ESA may be required.

species at risk

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IMPORTANT LINKS

If you do not qualify to register your activity, please review permits and other authorizations under the Endangered Species Act at:
www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/244440.html.

For more information about Ontario's species at risk, visit ontario.ca/speciesatrisk.

FOR MORE INFORMATION

1-855-613-4256

Email: mnr.approvals.centre@ontario.ca