

Ministry of the Environment,
Conservation and Parks

Ministère de l'Environnement,
de la Protection de la nature et des Parcs

Species at Risk Branch

Direction des espèces en péril

40 St. Clair Avenue West
14th Floor
Toronto, ON M4V 1M2

40, avenue St. Clair Ouest
14^e étage
Toronto, ON M4V 1M2



September 17, 2020

Nicole Halasz
The Corporation of the City of Port Colborne
66 Charlotte St.
Port Colborne, Ontario
L3K 3C8

Dear Ms. Halasz,

SUBJECT: Annual Municipal Beach Activities 2020

The Ministry of the Environment, Conservation and Parks (MECP) has received numerous inquiries from local residents regarding the status of maintenance activities on municipal beaches along the north shore of Lake Erie. These properties are known habitat of Fowler's Toad and likely to contain Fowler's Toads, a species at risk listed as Endangered under the Species at Risk in Ontario List (O. Reg. 230/08) under the *Endangered Species Act, 2007* (ESA).

In Ontario, the Fowler's Toad inhabits open beaches, dunes, sandy shorelines, rocky pools, creek and stream mouths, backshore wetlands, and marshes along the northern shore of Lake Erie. Fowler's Toad is restricted to only three localities in Canada, all found in Ontario: Rondeau, Long Point and Niagara. The main threat to Fowler's Toads is habitat loss and degradation. The loss and degradation of dunes, beaches, and wetlands as a result of shoreline development and recreation use reduces areas for breeding, foraging, burrowing, and hibernating. Beach maintenance activities occurring during the active season for Fowler's Toad pose a risk of killing toads that are using these habitats, particularly individuals that are buried in the sand.

MECP does have some knowledge of and information about the nature of the beach maintenance activities carried out annually by the City of Port Colborne (hereinafter referred to as "the City"), and that the Ministry of Natural Resources and Forestry has provided guidance in the past to the City and other area municipalities about species at risk and the ESA requirements. We are also aware that there are circumstances this year where annual beach maintenance activities normally carried out in the spring have been deferred into the summer.

In general, the guidance for Fowler's Toad and its habitat has been that annual maintenance activities initiated and completed before the May 1 active window for Fowler's Toad have a low likelihood of adversely impacting the species and its habitat and therefore contravening the ESA prohibitions.

Maintenance activities proposed to be carried out beyond May 1 of any year do have the potential to adversely impact Fowler's Toad and its habitat, and authorization to proceed would need to be sought under the ESA from the Minister of the Environment, Conservation and Parks in order to avoid contravening the ESA.

The City may assess whether some beach maintenance activities might be carried out in Fowler's Toad habitat without adversely impacting the species or its habitat and therefore avoiding contravening the ESA. The City may consider conducting the following activities, understanding that it is the responsibility of the City to ensure that the ESA is not contravened and that the following list does not encompass all activities allowed or disallowed in Fowler's Toad habitat.

- General beach maintenance activities such as the removal of garbage and debris so long as work or access does not occur in/through any standing water in the active season (e.g. ponds, pools, drain outlets), that sand or rock material are not removed from the beach, and that deposits of soft-sand are not disturbed during the active season.
- General beach maintenance activities completed when toadlets are not present; toadlet emergence varies from year to year but is generally in late June or early July.
- Beach maintenance activities carried out on sunny days between the hours of 7am and 6pm as Fowler's Toads are most active during dusk and dawn and during the day on cloudy days. Care should be taken during all maintenance activities as juvenile toads and toadlets may be out during all times of day.

MECP is committed to providing guidance to the City and other affected stakeholders to explore the necessary requirements for beach maintenance activities.

If municipalities or other stakeholders are considering undertaking beach maintenance activities in a manner that cannot avoid causing adverse impacts to the species and/or its habitat, they are encouraged to reach out to SAROntario@ontario.ca to discuss authorization options under the ESA.

Please note that there may be requirements under other legislation that may be applicable and should be explored by the City.

[3]

If you have any questions, please contact the Species at Risk Branch directly at SAROntario@ontario.ca.

A handwritten signature in black ink, appearing to read "Paul Heeney". The signature is fluid and cursive, with a small horizontal line at the end.

Paul Heeney
Manager, Permissions and Compliance
Species at Risk Branch, Land and Water Division
Ministry of the Environment, Conservation and Parks