

BUTTERNUT AND THE ENDANGERED SPECIES ACT, 2007 Information for landowners

Butternut (*Juglans cinerea*) is a member of the walnut family (Juglandaceae), and its nuts are an important source of food for animals. It is listed under the *Endangered Species Act, 2007* (ESA) as an endangered species. The primary threat to Butternut is a fungal disease called Butternut Canker. Butternut trees that are growing vigorously even though they may be infected with the canker are essential to recovery efforts.

Generally, it is an offence under the ESA to kill, harm, or take a live Butternut tree. It is also an offence to possess, transport, collect, buy or sell Butternut, or products made from a Butternut tree. However the general regulation under the ESA provides *exemptions* for many activities pertaining to Butternut. The conditions of the exemptions are indicated throughout the text below. For exact wording of the regulation, please see website information at the bottom of this document.

Naturally-occurring non-retainable Butternut trees can **only** be removed after the tree has been identified as such by a designated Butternut Health Assessor (**BHA**).

A non-retainable Butternut tree is one whose health has been severely affected by Butternut canker to the degree that it is not of value to the recovery effort.

**If you have any questions about the following information please contact your Ontario Ministry of Natural Resources (OMNR) District Office – call 1-800-667-1940
Or visit the Species at Risk website: www.ontario.ca/speciesatrisk**

WHAT IS PROTECTED?

- **Planted** Butternut trees are not protected unless they were planted as a condition under an ESA permit.
- Butternut trees hybridize with other *Juglans* species, e.g. Japanese Walnut. **Hybrid** trees are not protected under the Act. Visual characteristics can often be used to determine if your tree is a hybrid, but any Butternut-like tree that is proposed for removal should be assessed by an expert to ensure you are not removing a pure Butternut.
- **Naturally-occurring** Butternut trees of **any size and age** are protected under the ESA. If you wish to remove a naturally-occurring Butternut, it must first be assessed by a qualified **Butternut Health Assessor** to determine if it is retainable or non-retainable.

CAN I REMOVE THE BUTTERNUT TREE ON MY PROPERTY?

- Naturally-occurring Butternut trees that have been assessed as “**non-retainable**” may be removed. Non-retainable means that the tree is dead or its health is so severely affected by Butternut Canker that the tree is not of value to the recovery effort and therefore may be removed.
- If you have a naturally occurring Butternut that has been assessed as “**retainable**” you will have to apply for a permit under the ESA to determine if it can be removed and under what conditions. A retainable Butternut tree is a Butternut whose health has not been severely affected by Butternut Canker.

Contact your local OMNR Species at Risk (SAR) Biologist who can supply you with a list of local, qualified **BHAs**.

WHAT IF I HAVE A “RETAINABLE TREE”?

- If you have a naturally-occurring, ‘**retainable**’ butternut tree as confirmed by a **BHA**, and you wish to remove the tree or engage in an activity that may result in harm to it, you must first apply for and obtain a permit from the OMNR. There are 4 permit types:
 - 1) Health and Safety
 - 2) Protection or Recovery of the Species
 - 3) Overall Benefit to the Species
 - 4) Significant Social or Economic Benefit to Ontario.
- Permit conditions will vary. For example, a permit may require the planting of seedlings in suitable habitat.
- You must obtain a permit to **transplant** seedlings that occur naturally.

WHAT DO I NEED TO DO?

- If considering removal of a Butternut, it is the landowner's responsibility to contact a qualified **BHA** to determine if their Butternut tree is retainable or not.
- Even if the tree appears to be dead or dying, it requires an assessment by a **BHA** before removal.
- If a Butternut tree is removed **without** conducting a Butternut Health Assessment to determine if the tree non-retainable, or **without** a permit if the tree is determined to be retainable, the landowner may be at risk of prosecution under the ESA.
- In any prosecution under the ESA a person has the opportunity to raise a defence of due diligence - this means that the person exercised all due diligence to prevent the commission of the offence, or the person honestly and reasonably believed in the existence of facts which, if true, would render the person's conduct innocent.

CAN I PRUNE OR DIG AROUND THE BUTTERNUT ON MY PROPERTY?

- Pruning the crown or root disturbance of retainable Butternut trees can occur without an ESA permit provided an expert has determined that the proposed work will not cause harm to the Butternut tree. In these cases, landowners should obtain expert advice so that the work will not result in a contravention of the ESA.

CAN I HAVE BUTTERNUT WOOD OR PRODUCTS MADE FROM BUTTERNUT?

- A person is entitled to possess any items made from Butternut wood that were legally possessed before the Endangered Species Act came into force on June 30 2008, regardless of the health of the Butternut tree the items came from.
- Any Butternut wood from a non-retainable tree can be used, bought or sold.
- If you are planning to log your woodlot, an OMNR-certified tree marker can help you to select the trees to be removed to ensure the continued health of your forest. The OMNR is helping certified tree markers to become **BHAs** so that they can also determine which of your Butternut are retainable or non-retainable.

CAN I PLANT BUTTERNUT ON MY PROPERTY?

- Planting Butternut is encouraged to help keep butternut on the landscape to give us time to develop recovery options.
- Butternut seeds can be collected, bought, sold and planted anywhere.
- When you buy Butternut nuts, ensure that it is from pure Butternut that is adapted to your local climate. Ideally the seed will have been collected from vigorously growing trees.
- We suggest you keep records of the location of planted Butternuts since they are not protected under the ESA and you may remove/prune/transplant them as you wish (unless, of course, they were planted as a condition under an ESA permit.)
- Please contact the Forest Gene Conservation Association (FGCA) for a list of Butternut growers.

WHAT CAN I DO TO HELP?

- OMNR encourages private landowners to report any Butternut they might have on their property. The Ontario Recovery Team is interested in learning under what conditions Butternut are surviving the disease, as well as looking for vigorous trees that can supply seed for planting programs or cloning material for a disease-resistance breeding program.

SOME USEFUL WEBSITES:

Endangered Species Act, 2007:

<http://www.e-laws.gov.on.ca/index.html> -- Click on **search**, type in **Endangered Species** and check the **consolidated statutes** box.

ESA Regulations:

<http://www.e-laws.gov.on.ca/index.html> -- Click on **search**, type in **Endangered Species** and check the **consolidated regulations** box

To find your local OMNR District SAR Biologist

Ministry of Natural Resources (MNR) site: www.mnr.gov.on.ca

To report Butternut trees, or for help finding seed and seedlings; Forest Gene Conservation Association (FGCA) site: www.fgca.net