April 17, 2009

Recovery Planning C/O
Anita Imrie
Species at Risk Biologist
Species at Risk Section
300 Water Street
Peterborough, ON
K9J 8M5

Re: EBR Registry Number: **010-5788**

Dear Ms. Imrie,

Thank you for the opportunity to comment on the draft recovery strategies for eight fast tracked species under Ontario's new Endangered Species Act. Below are our comments, based on a series of review questions, the rationale for why each subject area under review is important, and our recommendations.

1. Are the recovery objectives sound?

The ESA states that the Minister shall ensure that a strategy is prepared for the *recovery* of each species listed as endangered or threatened. While the SOS coalition recognizes that recovery to historical ranges might not be feasible in many instances, for a species that is already listed as at risk, merely maintaining their current population size may provide little assurance of continued survival, much less recovery. A more biologically meaningful interpretation of *recovery* would include the restoration of well-distributed populations and the attainment of natural ecological functionality.

Generally, the eight recovery strategies posted for consultation have recovery objectives that meet the above definition, though some are more clearly and firmly expressed than others. For example, the recovery objective for the Peregrine Falcon is to ensure a viable and self-sustaining Peregrine population in Ontario, occupying the full extent of current and historical range, as long as the data on historical range is robust. In contrast, the objectives for the Barn Owl are weaker (nothing specific about restoring a "viable" and "self-sustaining" population)

Recommendation:

- Recovery objectives should include the restoration of well-distributed populations and the attainment of natural ecological functionality.

2. Are strategies sufficiently science-based? Do strategies include timelines for recovery measures and/or further research needs?

SOS recognizes that, for the most part, the recovery strategies are based on the best available science, and do a good job of incorporating this science into the strategies. That being said, a review of the strategies reveals significant knowledge gaps for almost every species. To address these gaps and implement the strategies, MNR will need to allocate adequate funding (which is currently lacking).

Each of the plans contains approaches to meet recovery objectives and/or a schedule of studies for further research. However, although some of the recovery strategies prioritize recovery measures (i.e., Barn Owl, American Badger, Jefferson Salamander, Peregrine Falcon), most of the plans lack timelines to complete these measures and studies.

Ironically, the only draft recovery strategies that include a timeline are the Engelmann's Quillwort and the Few-flowered Club-rush, which include dates that have already passed. The fact that the MNR did not take the time to update the federal recovery strategy is discouraging.

Recommendation:

- The MNR must commit to adequately resourcing the appropriate research needed to fill in the knowledge gaps to better plan for and monitor species recovery, based on the priorities and objectives identified by the recovery teams.
- All recovery strategies should include timelines to ensure that a transparent research and monitoring program can be developed and implemented

3. Do strategies identify and address major threats?

Recovery strategies are mandated to include a description of threats to the survival and recovery of the species, and approaches to achieve the protection and recovery of the species. The SOS coalition believes that all of the draft recovery strategies do a good job of identifying the major threats (which, with the exception of the peregrine are habitat loss and fragmentation).

The recovery strategies also, for the most part, do a good job of identifying approaches to achieve recovery. However, there are some exceptions: areas where it appears that socio-economic interests have influenced the extent/range of approaches identified.

For example, for the American Badger, the recovery strategy states that Groundhogs and Eastern Cottontails are the major prey sources. The strategy identifies that some incidentally trapped badgers are still reported, sometimes in traps set for groundhogs. It states that it might be possible to reduce mortality of Badgers through development and promotion of alternative rodent control methods. Yet the strategy does not go so far as to address this issue (willful eradication of major prey species) with recommendations regarding rodent control and potential alternatives.

Further, in some of the strategies, such as Wood Turtle, recovery measures are weakened by lack of specificity: approaches to address threats are catalogued, such as reduced speed signs, seasonal road closures, re-routing of trails, etc., but there are no references to where these

should apply. This decreases the likelihood that these recovery measures *will be* effectively applied. Similarly, the Wood Turtle recovery strategy mentions that recovery approaches include use of the Stand and site guides for forestry, but does not include these protection measures.

Recommendations:

- Socio-economic values should not limit the range of recovery measures considered and put forward in recovery strategies; recovery measures should be based on science.
- Recovery measures should be specific to help ensure that they are effectively employed/implemented.

4. Are the recommended habitat regulations identified in the recovery strategies adequate for the survival of the species?

The SOS coalition strongly believes that habitat regulations must capture the habitat needed by a species to recover, including, where feasible, habitat where the species historically occurred and where it is believed to be capable of living, as provided for in the ESA. Yet a review of the recovery strategies reveals there is often a discrepancy between the recovery habitat identified in the recovery strategy and the habitat regulation recommendation, wherein the habitat recommended for the regulation is smaller than the species needs to survive.

For example, for the badger and the barn owl, although broad habitat needs were detailed in the recovery strategy, the recommendations for the habitat regulations include only denning/nesting/roosting sites and identified foraging habitats (of which few, if any, have been identified) .

In addition, the SOS coalition is of the opinion that the recovery strategy for Engelmann's Quillwort (which again is just a repackaging of the federal recovery strategy) fails to identify sufficient habitat to ensure the Quillwort's recovery. Specifically, while the recovery strategy recognizes that docks and boathouses, shoreline alteration, nutrient loading and herbicide use threaten the Quillwort, the strategy recommends a buffer of the high water mark along the Severn and Gull rivers that would enable such habitat destruction to continue. Instead, the SOS coalition believes that a precautionary 30 metre buffer should be included in the habitat regulation.

It is worth noting that the SOS coalition is pleased to see many of the strategies (Peregrine Falcon, American Badger, Jefferson Salamander, Eastern Prairie Fringed-orchid) state that any new, known habitat should be included within the habitat regulation. This approach should be incorporated into all habitat regulations to immediately protect threatened and endangered species and their habitats once they have been discovered.

Recommendations:

- The habitat regulations should not prescribe an area that is smaller than that which would be protected under the general definition of habitat. Even though the ESA and the habitat policy allow for habitat regulations to prescribe less than the area protected under the general definition of habitat, such an approach is clearly inappropriate for the vast majority of species at risk in Ontario, most of which are threatened by habitat loss and degradation.

- For Engelmann's Quillwort: The SOS coalition recommends that a minimum 30 metre buffer be included in the regulation to ensure the survival/recovery of these plants.

5. Is the area recommended for regulation in the habitat regulations specifically mapped or described?

With the exception of the wood turtle, which faces poaching threats, it makes sense to assume that the more specific a habitat regulation is, the easier it will be to protect it and oversee the permitting process within its boundaries. To this end, maps should be provided, where feasible and appropriate.

This level of detail does not occur to the extent possible in all of the draft recovery strategies posted for review. For example, for the Eastern Prairie Fringed-orchid, the 2003 COSEWIC report provides an extensive listing of existing populations, with detailed descriptions of areas of occurrence as well as areas where populations could occur, including a map of both extant and extirpated populations. This map is included in the recovery section of the recovery strategy, but is not included in the habitat recommendation.

Similarly, for the Jefferson Salamander, a high level map is included in the strategy detailing areas of occurrence, but it is too broad to be used for planning or legislative purposes.

Recommendations:

- Habitat regulations should be as specific as feasible and appropriate, based on the best available information. (Except for instances where poaching or wilful harm is a threat).
- For the Eastern Prairie Fringed-orchid: The SOS coalition recommends that the habitat regulation include specific boundaries for existing populations based on COSEWIC's defined populations.
- For the Jefferson Salamander: The SOS coalition recommends that both a range map and a map of documented locations of the species be included in the habitat regulation to provide clarity about where the regulation would apply.

6. Was precautionary principle appropriately applied?

The need for a precautionary approach to protecting species at risk is written in both the Preamble of the ESA and the provisions on recovery strategies. It was thus intended to guide both the implementation and interpretation of the Act and the development of recovery strategies.

The recovery strategy for the badger notes that it is estimated that less than 5% of the province's pre-settlement tallgrass prairie and savannah remain.

Both the American Badger and the Barn Owl are associated with tallgrass habitat. For both of these species, habitat loss is a primary threat. The failure of the recovery strategies to recommend that remnant grassland and other suitable habitat be included in the habitat regulation is in violation of the precautionary principle, especially in light of the fact that knowledge of where these secretive and nocturnal species live is extremely limited.

For the Badger, for example, the recovery strategy identifies that small pockets of habitat suitable to support populations are present. It also states that the impacts of habitat loss can be

reduced through grassland restoration and management initiatives, and that there is forest edge habitat where badger dens have been occasionally observed in southwestern Ontario. Further, through conversations with the recovery team members, the SOS coalition is aware that there is a database of Badger sightings and multiple sightings. The radius around areas of multiple sightings is referred to as a hotspot, and these hotspots could and should be used to capture suitable habitat.

Yet as the recommendation for the habitat regulation for the Badger is presently written, none of these areas—forest edge, remaining suitable habitat pockets or areas suitable for grassland restoration--are suggested for inclusion. Instead, the recovery strategy recommends that only known denning sites and adjacent foraging areas be captured. To highlight the inadequacy of this habitat regulation in sufficiently capturing suitable habitat for the Badger's recovery in a precautionary way, the SOS coalition would like to highlight the fact that present, there are no known denning sites. Thus, at present, the proposed habitat regulation for the Badger would capture no habitat at all.

Recommendation:

- Regulating habitat must be based on a precautionary approach. A precautionary approach would mean ensuring that, among other things, all the habitat upon which a species depends to carry out its life processes, whether natural or human-made, is regulated as habitat under the Act. As contemplated in both the ESA and the habitat policy, it should also include, where feasible, historically occupied habitat or areas identified as potential habitat.

We would like to thank you again for the opportunity to comment on these draft recovery strategies, and hope that this helps to ensure the best possible protection and chances for recovery for these species.

Yours truly,

Anne Bell, Senior Director of Conservation and Education, Ontario Nature

Liat Podolsky, Science Researcher, Ecojustice

Catharine Grant, Boreal Campaigner, ForestEthics

Rachel Plotkin, Biodiversity Policy Analyst, David Suzuki Foundation

Janet Sumner, Executive Director, CPAWS-Wildlands League