

December 13, 2017

Submitted Via Electronic & Certified Mail (wildlife@dec.ny.gov)

New York State Department of Environmental Conservation
Bureau of Wildlife - Mute Swan Plan
625 Broadway
Albany, NY 12233-4754

Re: 2017 New York State Third Draft Mute Swan Management Plan

To Whom It May Concern:

On behalf of the Animal Welfare Institute and our New York constituents, the Pegasus Foundation, and the Pettus Crowe Foundation, please accept the following comments on the above-referenced New York State Third Draft Mute Swan Management Plan (hereinafter “Third Draft Management Plan” or “the Plan”). We urge you to reject this management plan as currently written. While the New York Department of Environmental Conservation (NYDEC) has made some attempt at greater transparency – by scheduling public hearings and providing a longer period of time for public comments – the Third Draft Management Plan still fails to comply with the State Environmental Quality Review Act and New York Chapter Law 457 of 2016.

I. State Environmental Quality Review Act

AWI’s comments to the 2013 New York State Draft Mute Swan Management Plan raised a number of issues related to the New York State Environmental Quality Review Act (“SEQRA”). In New York State, projects or activities proposed by a state agency or unit of local government, and discretionary approvals (permits) from a New York State agency or unit of local government (like the mute swan management plan) require an environmental impact assessment, as set forth in 6 NYCRR Part 617 SEQRA.¹ SEQRA also requires the sponsoring or approving governmental body to identify and mitigate significant environmental impacts of the activity it is proposing or permitting.

As with the 2013 New York State Draft Mute Swan Management Plan, the proposed Third Draft Management Plan still fails to comply with SEQRA’s procedural requirements to prepare an Environmental Assessment Form (EAF) and make a determination of significance. Indeed, the proposed Third Draft Management Plan makes no reference to SEQRA nor does it explain what efforts have been made by the NYDEC to comply with the SEQRA procedural requirements or why the NYDEC believes SEQRA is not applicable.

¹ Under SEQRA, if a project falls under a Type II, there is no environmental review mandated. However, the mute swan management plan does not fall under Type II actions.

II. NY Mute Swan Law

New York Chapter Law 457 of 2016,² (“Avella’s Law”) imposed restrictions on any plan by NYDEC to eradicate the mute swan population. In addition to a number of procedural requirements, such as holding public hearings in areas with mute swan populations, providing adequate notice and opportunity for comment, and responding to all public comments. Avella’s Law also requires NYDEC to:

1. Give priority to non-lethal management techniques;
2. Fully document the scientific basis for future population projections; and
3. Fully document the scientific basis for current and projected environmental damage.

A. Proposed “non-lethal management techniques” may actually be lethal:

While the Third Draft Management Plan mentions favoring non-lethal management techniques, the end result may be extensive lethal control, particularly for upstate mute swans.

NYDEC is to be commended for proposing egg addling as the primary management technique for downstate swans. Other non-lethal management techniques that NYDEC should consider for the management of non-captive mute swans include sterilization of adults, immunocontraceptive vaccines, egg replacement, puncturing eggs, and freezing eggs. As written, the Plan suggests that lethal control of downstate mute swans will only occur when needed to address human health and safety concerns (the Plan at 12). What constitutes human health and safety concerns, however, are not well defined. The NYDEC should make clear which specific human health and safety concerns would warrant the use of lethal control for mute swans. This is important to avoid circumstances where persons try to exploit such concerns to justify removal, including lethal removal, of mute swans when no legitimate health or safety concern exists.

The Third Draft Management Plan proposes “more aggressive” management techniques for upstate swans. Proposed control methods in this region will primarily involve direct removal. NYDEC claims that it will prioritize “live-capture and placement at a DEC-licensed facility,” but it is not clear that any such facilities exist. Indeed, the NYDEC notes that it “will attempt to identify such facilities soon after adoption of this plan,” (the Plan at 12) and “will develop educational materials on care standards for mute swans and undertake outreach efforts to identify facilities that are capable of obtaining the necessary permits to care for mute swans” (the Plan at 13). If live capture is not feasible, if there is no captive facility to accept captured mute swans “in a timely manner” (the Plan at 12) or “immediately” (the Plan at 13), then lethal control will be used.

² Senate Bill S6630, as signed by the governor: <https://www.nysenate.gov/legislation/bills/2015/s6630>.

While the proposal to capture wild mute swans and place them into regulated captive facilities may be preferable to lethal control, as currently drafted the Plan will likely result in the slaughter of potentially hundreds of mute swans with no guarantee that any captive facilities will ever be identified or permitted to possess mute swans. The NYDEC should expedite its efforts to identify captive facilities properly equipped to possess captured mute swans, to issue the relevant permits, and to assist such facilities in ensuring their capacity to humanely care for mute swans before ever contemplating lethal control options for the management of mute swans. In the interim, until such facilities are identified, the NYDEC should only utilize non-lethal techniques to manage upstate mute swans.

The Plan also does not clearly specify how many mute swans may be subject to lethal control each year. The NYDEC, based on recent population estimates, reports that fewer than 100 nests may be treated annually (the Plan at 13), that one to five swans may be placed in approved and licensed facilities each year (the Plan at 11), and that fewer than 100 swans will be removed annually (using lethal or non-lethal methods combined) statewide annually (the Plan at 13), but it doesn't disclose how many of this "fewer than 100" would be killed. The NYDEC must clearly specify the number of mute swans it anticipates will need to be killed each year so that the public is fully informed of the extent of lethal control under the Plan. The number of mute swans that may be killed each year can dramatically influence public support or opposition to the Plan and the NYDEC is obligated to disclose that number instead of attempting to hide the information in an attempt to increase public support for its proposal.

Ultimately, without some assurance that appropriate captive facilities exist, and that NYDEC intends to utilize such facilities fully, the suggestion that the NYDEC will prioritize non-lethal techniques for the management of mute swans in both the downstate and upstate regions of the state (see the Plan at 12) is not consistent with the Plan as drafted.

AWI also has concerns about the lack of specifics for NYDEC's proposed use of "live capture and euthanasia" of mute swans. The Plan states that "lethal control activities (including euthanasia) will be conducted in accordance with established guidelines for humane killing of wildlife (e.g., Julien et al. 2010, AVMA 2013)" (the Plan at 12). The AVMA Guidelines, however, are very general and the NYDEC has not provided any specifics on which lethal control or euthanasia methods it would permit to be used on mute swans. Would it permit the lethal shooting of mute swans in the field? If so, who would be authorized to shoot the birds, under what circumstances, and how will the NYDEC ensure that such killing is done using the most humane methods available as identified by the AVMA? Similarly, for those mute swans captured live and then euthanized, what methods of euthanasia would be permitted, who would be allowed to perform the euthanasia, what training would be required of those persons, and how will the NYDEC ensure that the entire process – from capture to euthanasia – is conducted in a humane manner?

Other concerns include the NYDEC's proposal to consider a sport hunting season for mute swans. Considering the availability of a suite of non-lethal options to manage mute swans, the possibility of incidental take of tundra and/or trumpeter swans, and noting, as the NYDEC concedes even some hunters oppose the creation of a mute swan hunting season (the Plan at 13), this option should be rejected outright.

Finally, the NYDEC proposal to allow government agencies, municipalities, property owners, and others to take mute swans does not include sufficient parameters to ensure that non-lethal management options will be fully exhausted before lethal control options are exercised or that the targeted birds will be treated humanely. While the NYDEC intends to limit such take to adult swans, cygnets, nests, and eggs to those circumstances where immediate removal is necessary to eliminate a site-specific conflict (the Plan at 13), it again relies on placement of captured swans in yet to be identified or designated captive facilities as the sole means of ostensibly providing for the humane treatment of the birds. If such facilities aren't available, then the Plan permits lethal mute swan control. Since, as noted above, it is unclear if such captive facilities exist at present and the NYDEC only intends to engage in efforts to identify such facilities after the Plan is adopted, AWI is very concerned that the option of placement at captive facilities is intended only to placate the welfare concerns of those who oppose the slaughter of mute swans while, in reality, the NYDEC intends to use the lack of facilities to justify lethal control.

While the NYDEC indicates that it intends to primarily use non-lethal strategies to manage New York's mute swan populations, it should commit to only using non-lethal and non-removal strategies to manage the populations. The variety and efficacy of non-lethal tools available to humanely control mute swans populations (e.g., egg addling, egg oiling, replacement eggs) and to address other mute swan-human conflict situations (e.g., targeted hazing, prohibiting supplemental feeding) is sufficient to avoid the need for the use of capture and removal or lethal control of mute swans in New York.

B. Inadequate documentation of the scientific basis for future population projections

The NYDEC fails to provide any analysis of how the number and density of mute swans may change in New York in the future. It cites to one study of mute swans on Lake Erie and Lake Ontario, suggesting that mute swan populations can increase by 10-18 percent per year, but fails to provide any mute swan population data from surveys in New York that document the annual growth rate of mute swans downstate or upstate populations in the state. It also does not identify other anthropogenic (i.e., automobile collisions, predation by domestic animals, pollution, habitat loss/fragmentation) or natural (i.e., predation by wild animals, disease) factors that may affect mute swan population growth rates.

C. Inadequate documentation of the scientific basis for current and projected environmental damage

The Third Draft Management Plan does not provide sufficient evidence to fully document the scientific basis for current and projected environmental damage. While the Plan cites to information about the amount of submerged aquatic vegetation eaten by mute swans and how mute swans allegedly adversely impact habitat conditions and other species, it provides no credible scientific evidence showing direct cause and effect impacts to native fish and other wildlife species. Specifically, no long-term population data is provided for the species that the NYDEC claims are adversely impacted, directly or indirectly, by mute swans nor does the NYDEC disclose or discuss the myriad other factors that may be affecting those species. Without such data, it is impossible to demonstrate that any reported decline in a species (if such declines are occurring) is due to impacts attributable to mute swans. Additionally, not a single one of the studies cited in the plan in regard to adverse mute swan impacts on other species was based on research conducted in New York.

Furthermore, of all of the examples cited in the Plan of mute swans displacing or adversely impacting native species, only one was from New York. In that case, the NYDEC claims that a colony of black terns near Rochester, NY disappeared within a few years after mute swans were first documented as nesting in the area but it provides no actual evidence to prove that mute swans caused the disappearance of this tern colony. Considering the suite of other factors that could have played a part in the disappearance of these terns, it would seem to be premature to blame mute swans for this loss without further investigation of all possible causes.

Finally, the NYDEC claims that it has received complaints about aggressive swans in several New York counties. It does not, however, provide further details of these complaints including where the incident occurred (i.e., public or private lands), whether the mute swan was nesting, whether the mute swan was conditioned to humans (e.g., as a result of supplemental feeding), whether the complainant was attacked or just frightened, whether the complainant's own behavior may have contributed to the alleged mute swan aggression, or whether the alleged aggressive incident was verified. Without collecting and disclosing such detailed information about alleged wildlife-human conflicts involving mute swans or any species, the NYDEC should not assert that there is a mute swan-human conflict problem in the state based solely on unverified reports from citizens.

III. Conclusion

The proposed Third Draft Management Plan is not in compliance with SEQRA, as the NYDEC has failed to conduct the mandated SEQRA analysis. In this case, the NYDEC must prepare an environmental impact assessment under SEQRA to more fully disclose the environmental impacts of its proposed mute swan management program and to provide the public with the opportunity to review and submit informed comment in response to such an analysis as part of a formal decision-making process. Further, the

NYDEC has also not complied with New York Chapter Law 457 of 2016, as detailed above.

Sincerely,

A handwritten signature in cursive script that reads "Tara Zuardo".

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