



Animal Welfare Institute

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April 24, 2015

BY ELECTRONIC MAIL (wildlife@dec.ny.gov)

NYSDEC Bureau of Wildlife
Swan Management Plan
625 Broadway
Albany, NY 12233-4754

Re: Revised Management Plan for Mute Swans in New York

To Whom It May Concern:

On behalf of the Animal Welfare Institute (AWI) and its members and supporters who reside in New York State, I provide the following comments on the revised Management Plan for Mute Swans in New York (management plan).

While this revised management plan has been promoted as a strategy that appears to be more reasonable than the New York State Department of Environmental Conservation's (NYDEC) 2014 mute swan management plan, in many ways, the results of both plans are identical. While the current plan will allow some mute swans to continue to exist in the wild and/or in managed flocks, the plan also continues to treat mute swans as a "bad" species, fails to appropriately acknowledge the aesthetic and economic value of mute swans, does not incorporate any new credible scientific evidence or analysis, and is designed to promote the long-term eradication of the species in New York State. In other words, both the 2014 and 2015 management plans will result in an end goal of eradicating the species. This goal is simply not as explicitly articulated in the 2015 plan, and would be implemented over the long-term (instead of more rapidly, as proposed in the 2014 plan).

AWI does not oppose all of the management objectives contained in the current plan (see below). It does, however, question those objectives that permit the lethal control of wild swans, either through direct management control or hunting, and the objective to establish highly regulated and controlled community flocks of mute swans. The NYDEC has failed to provide adequate justification for the lethal control of wild swans. In addition, there are humane concerns associated with such control actions. As to the community managed flocks of mute swans, the proposed restrictions on those flocks are unreasonable. This may be an intentional

decision by the NYDEC so as to prevent communities/municipalities from taking on such responsibilities (to pave the way for lethal control administered by the NYDEC).

In addition, the tone and tenor of the information and analysis in the management plan clearly reflects an unscientific anti-mute swan bias on the part of the NYDEC. In its accusations against mute swans, the NYDEC does not consider all the available scientific evidence, relies on a misinterpretation of the science, reflects the intentional selection of evidence to support its existing bias, and fails to adequately consider other causes for such impacts. For example, in regard to the alleged impacts of mute swans on submerged aquatic vegetation, while the NYDEC acknowledges that polluted runoff, shoreline development, and rising sea levels can also impact such vegetation, it appears to largely discount the role of these factors in the production, vitality, and health of submerged aquatic vegetation preferring instead to attribute most adverse impacts to mute swans. Such an attitude reflects the anti-mute swan bias of the NYDEC, which is preventing it from developing a rational, objective, and scientifically credible mute swan management plan. Given this clear bias, the current management planning process should be terminated and replaced by a more objective, balanced, and scientifically credible management plan (if a mute swan management plan is even needed).

Fundamentally, regardless of the content of any mute swan management plan, the NYDEC has failed to fully comply with state law by ignoring its responsibilities under the New York State Environmental Quality Review Act (NY SEQR). The NY SEQR is clearly applicable in this case yet there is no evidence or even any explanation in the current management plan that NYDEC has complied with NY SEQR, or why the NYDEC believes that law is not applicable in this case. Before the NYDEC should commit any additional time or resources to this decision-making process, it must clarify the applicability of NY SEQR to this management plan. AWI raised this same issue regarding NY SEQR in its comments submitted on the 2014 Mute Swan Management Plan and, to date, the NYDEC has failed to either respond to the NY SEQR concerns or to comply with the law.¹

The remainder of this comment letter will address the specific objectives contained in the management plan.

¹AWI's 2014 comment letter is hereby incorporated by reference in its entirety and is attached as Exhibit 1. In addition to including concerns about the NYDEC compliance with NY SEQR but it also contains information about the ineffectiveness of lethal control and availability of non-lethal management actions that are also applicable to the current management plan. AWI asks that the NYDEC consider its 2014 comments when completing its decision-making process for the 2015 management plan.

Inform the public about the status and ecological impacts of mute swans:

AWI supports efforts to educate the public about any and all wildlife issues. In this case, the educational outreach effort is intended to convince the public that mute swan are non-native, invasive species that are wreaking havoc on the natural environment and native wildlife species. Not only are many of the accusations against mute swans exaggerated or simply inaccurate, but such a one-sided educational effort is unacceptable. If such an education effort is pursued, it must be balanced and must be based on credible scientific evidence.

While the NYDEC clearly has a bias against mute swans, it must set aside such biases in order to develop objective, balanced, and scientifically credible educational materials about mute swans. Those materials must include the positive attributes of mute swans, discuss the origins of the mute swan, acknowledge that mute swans are not “invasive” in that their populations are not (and cannot) increase exponentially,² and must concede that there are a variety of factors (as indicated in the management plan) that can impact submerged aquatic vegetation. The objective behind any educational effort should be to provide objective and balanced material about the species and not to intentionally promote a particular agenda.

Discourage feeding of mute swans and other wild waterfowl:

AWI supports this objective, although it believes that enforcement of any rules intended to prevent the feeding of mute swans or other wild waterfowl will be difficult and would take time away from more important wildlife law enforcement efforts.

Designate mute swan as a “Prohibited Invasive Species” to prohibit sale, importation, purchase, transport, introduction, or propagation of mute swans in New York:

This objective is poorly worded as the NYDEC has already designated mute swans as a prohibited invasive species. Since this action has already been taken it should not have been presented in the management plan as an objective to pursue. Instead, it should have been identified as an action already taken. AWI does not object to a prohibition on the sale, importation, purchase, transport, introduction, or propagation of mute swans in New York although it does take issue with the label of “Prohibited Invasive Species” as it does not believe

² Invasive species, by definition, invade and demonstrate explosive reproductive characteristics. English sparrows, starlings, and snakehead fish are all invasive. Mute swans simply are not. They mate for life, only nest every year or two, and seldom succeed in bringing more than a couple of young to adulthood per nest.

that mute swans meet the common biological or ecological definition of what constitutes an invasive species.

Regulate the possession of mute swans to prevent reproduction or release of mute swans into the wild in New York:

For those entities licensed by the NYDEC to keep mute swans for scientific research, education, public exhibition or control (management) purposes, AWI does not object to restrictions to prevent the reproduction of those swans or their release into the wild. AWI is concerned that some of the suggested methods for accomplishing this objective, particularly the use of fencing or caging to restrain swans, has the potential to create conditions that are grossly inhumane. To prevent this, AWI supports the development of regulatory standards and so-called “Best Management Practices” to ensure that swans (and other species) maintained by licensed entities are housed and cared for in ways that are not inhumane.

Permit municipalities to develop community-based programs to keep and help manage mute swans within their jurisdictions:

AWI does not object to the concept of community-based wildlife management plans or to cooperative wildlife management programs between, for example, the NYDEC and municipalities or the NYDEC and non-governmental organizations. It does, however, strongly object to the terms of this objective in the management plan. Indeed, those terms are so restrictive that it would appear that they have been designed to discourage such collaborations so that the NYDEC would then have the opportunity to engage in lethal control efforts to eradicate such populations. In particular, the requirements that such community-based mute swan plans must prevent the escape and breeding of all birds and that all birds must be marked are draconian. In addition, the NYDEC fails to indicate how it would enforce such standards and what, if any, penalties would be imposed on a community should it not comply with each requirement.

With the exception of clipping a mute swans wings or the permanent pinioning of a swan which will render the birds more susceptible to predation, it is unclear how a community is supposed to prevent the “escape” of a mute swan from a community lake, pond, or other habitat.

In addition, while limiting the breeding of mute swans may be acceptable to reduce any adverse impacts that may be attributable to the species, preventing all breeding is unacceptable and,

depending on the community-specific circumstances, could be completely unattainable. Indeed, this prevent breeding standard ensures the ultimate eradication of the flock, which is antithetical to creating a community-based wildlife management plan to manage mute swans. This should presumably be based on the communities' interest in maintaining mute swans over the long-term. If this is the objective, then some breeding, even if limited, must be permitted to sustain the mute swan population over time.

Finally, the requirement that all mute swans must be marked is unnecessary. The NYDEC provides no explanation as to why all birds in a community-based management program must be marked. It also fails to consider how marking birds can reduce their aesthetic value. Even if that is not a concern, if the marking implements are small and inconspicuous, the broader implications of marking wildlife must be considered. The public is increasingly concerned about the effort, by wildlife management agencies and scientists, to mark, tag, collar, or chip every animal in the wild for management or monitoring purposes. It is imperative to preserve some of the "wild" in wildlife by leaving them alone and not insisting that every individual animal be subject to marking, regardless of the method, to study them, their habits, behaviors, or for their management.

Conduct mute swan population control activities to meet regional objectives:

The NYDEC has failed to identify what its regional objectives are for mute swans. Those objectives must be explicitly identified for both the upstate and downstate populations of mute swans. If the NYDEC goal is to continue to manage the upstate population to not exceed 200 birds, that must be clearly stated, and it must be justified using the best available scientific evidence and based on public needs and desires. For the downstate population, a numerical management goal is not included in the management plan. If there is such a goal, it must be stated. If there is not a numerical management goal, the NYDEC must provide other information to explain its regional management objectives and any possible discrepancies in the upstate versus downstate plans.

In regard to the identified control options to achieve the unstated management objectives, AWI opposes capture and placement of swans at licensed sanctuaries or other captive settings (unless to aide an injured or diseased mute swan), the shooting of free-ranging swans, and live capture and euthanasia. AWI does not oppose non-lethal strategies such as nest destruction (assuming the nest does not contain any nestlings and is not occupied at the time of destruction) or egg addling or oiling. However, where such non-lethal control activities are

used, there must be a compelling, scientifically credible, or demonstrable public safety reason for taking such actions. In other words, the NYDEC should not employ non-lethal control options simply because it can; there must be some compelling reason (not including an inherent agency bias against mute swans) for engaging in non-lethal control.

Provide clear guidance and humane procedures to other government agencies, municipalities or property owners who wish to conduct mute swan control activities:

AWI supports the development of so-called “Best Management Practices” or BMPs to ensure that government agencies, municipalities, and property owners are utilizing sensible and effective strategies if they choose to engage in mute swan control activities. These BMPs must also promote the most humane control options as the first choice for addressing any mute swan management issue, while making clear that lethal control must only be considered an option of last resort. In addition, as stated previously, these BMPs must be objective and balanced documents that are based on the credible scientific evidence including any evidence that may not support NYDEC beliefs about mute swans or its mute swan management strategies. The BMPs must not, under any circumstances, reflect the anti-mute swan bias that is clearly inherent within the NYDEC.

Allow take of mute swans by waterfowl hunters in certain situations:

AWI strongly opposes this objective because the NYDEC has not provided sufficient evidence to demonstrate that hunting of mute swans is justified. In addition, due to the presence of trumpeter and tundra swans in the state, the NY DEC’s stated goal of promoting the increase in the numbers of those swans, the potential for the unintentional killing of a trumpeter or tundra swan by those hunting mute swans raises concerns about the appropriateness of any mute swan hunt. While mute swans can be relatively easily distinguished from tundra or trumpeter swans through an orange-colored bill and a knob on the head, if a hunter is unable to visually observe the bill due to distance to the bird, the angle from which the bird is observed, or if mute swans are intermixing with tundra or trumpeter swans, mistaken identify kills can occur.

Encourage control of mute swans in neighboring states and provinces:

This objective is unnecessary since, as explained in the management plan, such control efforts are already occurring. If the NYDEC includes this objective in its final mute swan management

plan, any encouragement to neighboring states and provinces should emphasize non-lethal management strategies.

Conclusion:

Before the NYDEC completes this management planning process, it is imperative that it either demonstrate compliance with the NY SEQRA or explain why that law is not applicable in this case. Considering that the mute swan management plan will have environmental impacts, including impacts that may be both positive and negative, to mute swans and their habitat, an analysis of the environmental impacts of the management plan is clearly warranted.

Furthermore, given the clear anti-mute swan bias of the NY DEC, the current management plan must be discarded in favor of a more objective, balanced, and scientifically credible planning effort. Such a new planning effort must explicitly identify regional management objectives, recognize the aesthetic and economic value of the mute swan, emphasize the need to employ humane non-lethal methods, be based on a credible analysis of all relevant scientific evidence (not just that evidence that supports the NYDEC's preferred and predetermined outcome of such a planning process), and should provide management objectives that are sensible and not draconian.

Thank you for the opportunity to provide these comments on the 2015 management plan. Any future correspondence on this issue should be sent to me at dj@awionline.org or, if sent by mail, to 202 Cranberry Court, Egg Harbor Township, NJ 08234.

Sincerely,

A handwritten signature in black ink, appearing to read "D.J. Schubert". The signature is written in a cursive style with a large, looped initial "D".

D.J. Schubert
Wildlife Biologist



Animal Welfare Institute

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February 21, 2014

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

Re: 2013 New York State Draft Mute Swan Management Plan

To Whom It May Concern:

On behalf of the Animal Welfare Institute and our members, please accept the following comments on the above-referenced New York State Draft Mute Swan Management Plan (hereafter Management Plan). AWI and our members and supporters who reside in New York urge you reject this management plan as written. This recommendation is based on legal, practical, and other considerations, as summarized below.

In New York State (NYS), projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a NYS agency or unit of local government, require an environmental impact assessment as prescribed by 6 NYCRR Part 617 State Environmental Quality Review Act (SEQRA).¹ SEQRA requires the sponsoring or approving governmental body to identify and mitigate the significant environmental impacts of the activity it is proposing or permitting.

In its decision to eradicate mute swans in accordance with the Management Plan, the New York Department of Environmental Conservation (NYDEC) has not complied with SEQRA's procedural requirements to prepare an Environmental Assessment Form (EAF) and make a determination of significance.

I. Duty to Comply with SEQRA

The NYDEC, as a local agency, has an obligation to comply with SEQRA. The NYDEC has compiled mute swan surveys and put together a draft Management Plan, but the agency has not conducted the proper and required analysis under SEQRA. A determination to move forward with this Management Plan without conducting proper environmental impact analysis is thus illegal.

¹ Statutory authority: Environmental Conservation Law Sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113.

Implementation of SEQRA is governed by the New York State Department of Environmental Conservation's SEQRA regulations, which are applicable to all agencies. 6 NYCRR § 617.3(a) provides:

No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with. The only exception to this is provided under paragraphs 617.5(c)(18), (21) and (28) of this Part.

SEQRA establishes strict procedural requirements that must be followed by all agencies, including town boards. Upon initial consideration of an action, the agency must review an Environmental Assessment Form, classify the action and then make a determination of significance. The determination of significance is whether the action will not have significant adverse impact upon the environment, in which case a Negative Declaration is issued and the SEQRA review is completed. In the alternative, if the agency finds that the proposed action has the potential to result in a significant adverse environmental impact, then a Positive Declaration is issued and an Environmental Impact Statement (EIS) is prepared.

The SEQRA regulations also divide "actions" which are potentially subject to SEQRA into three types: Type I, Type II and Unlisted Actions. Type I actions are major actions with a legal presumption that they are more likely to have a significant impact on the environment and thus require the preparation of an environmental impact statement. Type II actions are those actions which individually or cumulatively are so small that they have been determined, as a matter of law, as to not have the potential for a significant impact on the environment and are exempt from jurisdiction under SEQRA. Unlisted Actions are all actions that are not classified as Type I or Type II. There is no specified Type II action related to exterminating all mute swans in the state simply because an agency has determined that they are a non-native species.

Indeed, if anything, the prospect of exterminating a species, regardless of the native or non-native status of the species, must be categorized as a Type I action and, therefore, triggers the preparation of an EIS. Alternatively, the proposal to remove over 2,200 mute swans from the wild by hunting, capture and euthanasia, capture and relocation to a "captive" environment similarly must trigger the preparation of an EIS. At an absolute minimum, the NYDEC must prepare an EAF, preferably the extended version, to both evaluate the impacts of its actions and to determine if it qualifies for a more extensive review in the form of an EIS. If an EAF process is pursued, the NYSDEC should, at its discretion, publish its EAF for public comment to permit NY citizens and special interest organizations like AWI to provide input on the assessment and provide comprehensive evidence to support the preparation of an EIS.

None of the existing documents prepared by NYDEC, including the Management Plan which is the subject of these comments, provide the level or type of review required by SEQRA. For example, the Management Plan, though it contains a number of claims as to how mute swans

allegedly impact, adversely, the environment, other species, and humans no credible data documenting such impacts are disclosed. SEQRA, particularly in the form of an EIS, requires the disclosure of all relevant data and evidence to support an agency's proposed action. Similarly, the Management Plan, though it identifies several potential strategies on how NYDEC proposed to eradicate mute swans in NY over the next eleven years, the environmental impact of these strategies or their perceived effectiveness are not disclosed. This would be required if an EIS is prepared pursuant to SEQRA. These are just two of several examples of what is required by SEQRA which is not presently addressed in the current Management Plan.

II. Indiscriminate Killing of Mute Swans is not an Effective or Humane Solution and Other Impacts Attributable to Mute Swans are not Supported with Credible Data or Other Evidence

NYDEC claims that the need to eradicate all mute swans by 2025 stems from a variety of problems, including aggressive behavior towards people, destruction of submerged aquatic vegetation, displacement of native wildlife species, degradation of water quality, and potential hazards to aviation.

The NYDEC, however, has not disclosed data relevant to any of these reported impacts. For example, the Management Plan contains no data on the frequency, type, or severity of mute swans attacks, threatened attacks, or other adverse impacts that mute swans reportedly have on people. Nor has it disclosed any data to document how or to what extent mute swans are adversely impacting submerged aquatic vegetation, where such impacts are occurring, the short or long-term severity of such impacts, other threats to submerged aquatic vegetation not attributable to swans, and the cumulative effects of swan "damage" to submerged aquatic vegetation. Similarly, the Management Plan is devoid of any credible data documenting how mute swans displace native species, which species are displaced, the impact of such displacement on species demographics, the extent and severity of impacts to water quality, other threats to water quality not attributable to mute swans, and where and why mute swans are perceived to be a hazard to aviation. The NYDEC can't simply allege that such impacts exist without providing data to prove such impacts. The public, including NY citizens who are the primary constituents of the NYDEC should be given an opportunity to participate in a decision-making process based on an objective and comprehensive evaluation of all relevant data instead of being expected to simply accept the anti-mute swan rhetoric contained in the Management Plan.

III. Non-Lethal Management Options are Available to Manage Mute Swans to Regulate Population Growth, Eliminate Range Expansion, and to Achieve a Reduction and, if Justified, the Eradication of Mute Swans

Even if the NYDEC has the evidence to justify the proposed eradication of this species from the wild in New York, it has an obligation to justify the methods to be used which, as reflected in the Management Plan, could include hunting and capture and killing including via chemical

euthanasia. While the NYDEC has not justified the proposal to eradicate mute swans in New York, the concept of allowing hunters to gun down such an iconic species that is so popular with the public is highly likely to substantially degrade the public's support for and trust in the NYDEC. Similarly, the notion that mute swans will be captured and killed for their meat or captured and euthanized and then buried or incinerated is not likely to curry favor or support among the millions of New York citizens that observe, photograph, sketch, paint, or otherwise enjoy these beautiful birds.

It is even more difficult to justify such lethal control options when a variety of non-lethal options are available which, if fully and continuously implemented, would result in the cessation of any increase in mute swan populations and, rather rapidly, a decline in the populations of mute swans in New York. These methods include sterilization of adults, immunocontraception, egg oiling, egg addling, egg replacement, puncturing eggs, freezing eggs and other methods many of which are identified in the Management Plan. Indeed, assuming mute swan eradication is justified, a comprehensive campaign to implement these methods for a decade will result in a substantial reduction in the number of swans leading to eradication without a single live swan ever being hunted, captured, relocated, or euthanized. In this case, if it can be proven that mute swans cause such damage to the environment, other species, or humans (which AWI does not believe can be proven), the NYDEC can achieve population reduction if not eradication of the species entirely using non-lethal and humane options that won't physically harm any live bird.

IV. Conclusion

At present, the NYDEC is violating SEQRA by failing to conduct the required SEQRA analysis – preferably an EIS – on its mute swan Management Plan. Furthermore, the NYDEC places too much emphasis on lethal control of swans when an abundance of non-lethal and humane management alternatives exist to regulate live mute swans to prevent population growth, range expansion, and ultimately to reduce the population if the NYDEC can prove with credible scientific evidence that such a reduction is warranted and socially advisable. The NYDEC has the obligation and the public has the right to participate meaningfully in the decisions made by, in this case, the NYDEC that affects a beautiful, beloved, and iconic species. The only way that obligation can be met and whereby the public can provide informed and substantive input as part of the decision-making process is if the NYDEC complies with SEQRA by preparing a scientifically credible, comprehensive, and objective EIS.

Sincerely,

Tara Zuardo

Tara Zuardo