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December 12, 2017

Commissioner Basil Seggos
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-4754

Dear Commissioner Seggos:

While I am pleased that the Department held public hearings on the proposed *"Mute Swans in New York: A Management Plan to Prevent Population Growth and Minimize Impacts of a Non-Native Invasive Species third draft,"* even going so far as to cancel and subsequently re-schedule a hearing when torrential rainfall and wind had been expected, I am very concerned about the contents of the proposed plan. I also recognize the importance of ensuring that the public has ample opportunity to comment, especially in light of the fact that the Department's prior draft received more than 7,000 comments.

On Long Island, the annual courtship of mute swans, their nesting and cygnet rearing are eagerly-awaited events. However, in recent years, the Department has taken a number of steps to eliminate mute swans in the State, including designating mute swans as an invasive species and adopting management plans that prioritize the use of lethal management techniques. The release of the Department's most recent Plan is the latest step in that process.

In 2016, in response to the original Management Plan and out of concern about the seemingly speculative nature of the proposal and an overreliance on lethal management measures, the Legislature passed A.9289, signed into law as Chapter 457. This law required the Department to *"at a minimum:...(b) fully document the scientific basis for future population projections; (c) fully document the scientific basis for current and projected environmental damage..."* The proposed draft falls short of complying with the statutory requirements, failing to sufficiently document the scientific basis for the Department's determinations.

Although the revised draft purports to have less emphasis on lethal management techniques, the use of lethal measures is in fact still permitted. Lethal techniques would be explicitly permitted in situations involving a threat to "human health and safety." However, there are no specific definitions or examples of what constitute "human health and safety" situations. As a result, lethal techniques could potentially be used in a wide variety of situations. For example, the Department's contention that mute swan fecal matter is especially contaminating could lead to a lethal response due to the proliferation of swans on a specific waterbody. This possibility is especially troubling when considering the Department's staffing shortages and the statement in the Draft, "It should be noted; however, that non-lethal removal and placement of adult birds will be more difficult and time-consuming than would lethal removals (p.14)."

The revised draft still leaves open the possibility of a mute swan hunting season, a possibility that has even been criticized by members of the hunting community. As indicated in prior correspondence with the Department from April 24, 2015, "We agree with the hunters who expressed concern about the expansion of waterfowl hunting to include mute swans...and believe that such an expansion is unacceptable. It is also troubling that the Revised Plan fails to reference statutory constraints and instead appears to suggest that such hunting would be governed only by regulation indicating 'Hunting would not occur where local ordinances prohibit the discharge of firearms for public safety such as New York City or urban parks.'"

The absence of a sufficient scientific basis for the draft remains, notwithstanding DEC's "Assessment of Public Comments on the Revised Draft Management Plan for Mute Swans in New York State" comment that "We further disagree with those who claim that the scientific basis for the plan was flawed in several respects." Although it is true that the prior draft's references to "clips seen on the Internet" have been removed, there is a strong reliance, with nine citations, on the work by Bryan L. Swift et al. However, that report, prepared by DEC, "The Status and Ecology of Mute Swans in New York State," does not seem to have been peer reviewed and appears from the Department's website to still be in draft form.

The absence of appropriate scientific information appears most obviously with regard to population estimates and to the issue of fecal coliform. The DEC website states that every three years a mute swan survey is conducted. However, the most recent survey data available on the website is almost ten years old, calling into question the draft's underlying population estimates. With regard to the issue of fecal coliform, the draft states "Additionally, swan feces contain high levels of fecal coliform bacteria (Hussong et al. 1979), so the presence of large flocks at certain times could impair use of waters for swimming or drinking. Mute swans have been associated with high fecal coliform counts in some marine waters on Long Island, which could affect the use of local areas for shellfishing (Swift et al. 2013)." As identified in our prior correspondence, the Hussong study cited relies on a study conducted almost forty years ago that included only 44 birds, some of which were Canada geese. In addition, the purpose of the study was to determine whether waterfowl contributed more fecal coliform than fecal streptococci. The Swift study refers to high fecal counts in marine waters on Long Island; however, the information dates back to 2006. Perhaps more importantly, the study states "There was no clear correlation between individual sample results and number of swans at the sample location (Swift p.29)." Indeed the study did not indicate whether the fecal coliform was from a swan. More recent studies, including those conducted in 2016 by Cornell Cooperative Extension, surveyed Setauket Harbor and used DNA data to determine the source of the fecal coliform. Those studies did not identify any swan fecal material but instead found mostly duck and gull DNA, as well as some human DNA (study attached).

In addition, the specific management goals of the draft, such as the total number of swans to be removed, seem vague at best. This may be the result of the Department's seemingly contradictory statement in its assessment of comments "Second is that mute swan impacts are not absolute; the plan readily acknowledges that impacts vary widely depending on the number of birds, their individual behaviors, and the environmental circumstances where they occur." The draft also seems to purposely ignore the fact that if eggs are added at a sufficiently high rate, then the existing population will not be maintained in the long term as is the Department's stated goal for the downstate region, but would instead ultimately result in the elimination of all mute swans. This would be an unacceptable outcome.

I am troubled that the draft does not seem to reflect either the spirit or intent of Chapter 457 of the Laws of 2016. I remain hopeful that the Department will continue to work with the public and the Legislature to make the requested changes in order to help ensure that future generations can continue to witness the beauty and majesty of mute swans. Thank you in advance for your consideration of these comments.

Very sincerely,

A handwritten signature in cursive script that reads "Steve Englebright". The signature is written in black ink and is centered on the page.

Steve Englebright, Chairman
NYS Assembly Environmental Conservation Committee

cc: NYSDEC, Bureau of Wildlife - Mute Swan Plan, 625 Broadway, Albany, NY 12233-4754