

15 July 2003

Brian Millsap
Chief
Division of Migratory Bird Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive, Mail Stop MBSP-4107
Arlington, VA 22203

Dear Dr. Millsap,

The Ornithological Council, a consortium of eleven scientific ornithological societies in the Western hemisphere, submits these comments on the draft environmental assessment for the management of Mute Swans in the Atlantic flyway.

We support the implementation of the preferred alternative. The damage to submerged aquatic vegetation and the competitive exclusion of other, native bird species is well-documented. The plan contemplates annual take of 2,000 – 3,000 birds. At the higher level, the population would reach the target size of 5,000 birds in about five years; at the lower level, the desired reduction would take 8 years to achieve.

We have concerns about the ability of the USFWS and the States to adjust the annual take upward or downward if Mute Swan surveys are conducted only every three years. Similarly, the USFWS and the States will need to re-adjust the target population size each year, depending not only on the changes in population size from year-to-year, but also upon the condition of the submerged aquatic vegetation and other aspects of the environment in which the Mute Swans occur. Without annual surveys, it may not be possible to set an appropriate goal for population size and appropriate take limits.

Whether the target population size is really sustainable will depend not only on the condition of the natural resources (submerged aquatic vegetation, which is also subject to other threats such as eutrophication), but also on the resources and will of the relevant agencies and their cooperators to undertake control measures every year, and to continue to commit such extensive resources to monitoring and control in perpetuity. While we hope that the current, severe fiscal limitations facing the USFWS, the Department of Agriculture (APHIS), and the various state wildlife agencies are short-lived, it is nonetheless the case that resources are always insufficient to meet all needs and the commitment of these resources to Mute Swan control will inevitably divert resources from the myriad conservation needs of other

species. The discussion of the impacts of Alternative 2 on the natural environment fails to take into account this inevitable impact.

This misallocation of resources is predicated not upon a biological justification for the maintenance of feral birds in the wild, but upon a legal interpretation of the treaties upon which the Migratory Bird Treaty Act is based. Were it not for this court decision, the states could have, if they so desired, eradicated these populations entirely, much as they eradicate, or attempt to eradicate, Asian long-horned beetles and Northern Snakehead fish.

Therefore, we urge the USFWS and the Department of the Interior to pursue a revision of the treaties to specifically exclude non-native invasive species, or to permit signatory nations to control or eradicate such species within their own borders, while also implementing the preferred alternative. Ultimately, that is the best solution for this problem arising from the legal interpretation of treaties, and which may apply to other species, including feral pigeons (*Columbia livia*), or Monk Parrots (*Myiopsitta monachus*) - because the treaty with Mexico identifies protected groups by Family name and includes Columbidae and Psittacidae. That treaty also specifies that “Whereas it is right and proper to protect the said migratory birds, *whatever may be their origin*, in the United States of America and the United Mexican States, in order that the species may not be exterminated...” (emphasis added) which could easily be interpreted by a court to mean that it was intended to include invasive species. There is no biologically valid reason to treat Mute Swans or other non-native invasive bird species differently from the nutria – an aquatic rodent in the Chesapeake Bay watershed on which the federal government and the State of Maryland are spending in excess of \$3 million to eradicate.

We appreciate the opportunity to comment on this Environmental Assessment and hope that our comments prove useful to the USFWS and to the Department of the Interior.

Sincerely,

Ellen Paul
Executive Director