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## Submission regarding the Proposed removal of Mute Swans from the *Migratory Birds Convention Act* March 2023

### Background

We are aware that the Ontario Federation of Anglers and Hunters (OFAH) has long been lobbying for the removal of Mute Swans from the *Migratory Birds Convention Act* (MBCA or the *Act*). The government is now considering that recommendation and is consulting provinces and territories on the proposal.<sup>1</sup>

The Mute Swan Society, other animal protection organizations, and thousands of Canadians who enjoy and appreciate Mute Swans are vehemently opposed to Mute Swans' removal from the MBCA.

### About Mute Swans

#### Iconic waterbirds

Mute Swans are the intelligent, majestic, orange-beaked waterbirds that have been the subject of myth and art and a symbol of beauty and love for centuries. They are admired for their lasting pair bonds and the care both parents give to raising their young.

#### Longstanding wetland residents

Swans have been on earth for 11 million years – about twice as long as humans. Mute Swans are a naturalized species that have nested in Ontario for over 65 years, or more than 18 generations. They are a treasured part of our avian fauna, a welcome addition to the natural biodiversity, and coexist with a wide range of other waterfowl.

#### Accessible wildlife

Mute Swans have adapted to urban environments degraded by human activity. They are comfortable around people, and they keep other Mute Swans out of their territories. They are naturally thinly distributed so people come to recognize and know individual birds, and vice versa. We have bonds with swans that are hard to form with any other wild animal.

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<sup>1</sup> <https://www.canada.ca/en/environment-climate-change/services/migratory-birds-legal-protection/convention-act.html#fn1act.html#fn1>

## An Appropriate Safeguard

Mute Swans' listing in the MBCA is an appropriate safeguard.

Because they are listed in the MBCA, Danger and Damage permits are required and issued by Canadian Wildlife Service (CWS) to destroy Mute Swan eggs and nests and to kill adults. Maintaining the Danger and Damage Permit regime provides very limited but appropriate assessment of need before lethal action is taken. It is not impeding the population management desired by CWS. Indeed, CWS readily grants these Permits and in the decade between 2012 and 2022 more than 1,569 eggs were destroyed and over 1,209 birds were killed in Ontario alone.<sup>2</sup>

There is no requirement to remove Mute Swans from MBCA protection simply because the U.S. has removed them from the *U.S. Migratory Bird Treaty Act*. The Canadian *Act* itself says “the list of bird species protected by each country can be different.” One notable difference is that the U.S. *Act* covers all native species whereas our *Act* does not protect “grouse, quail..., ptarmigan, hawks, owls, eagles, falcons, cormorants, pelicans, crows, jays, kingfishers, and some species of blackbirds,”<sup>3</sup> all native. In this regard, if we followed suit, our *Act* would become more, not less, protective. That said, our ecosystems, species populations, and public values are different and there is no imperative to follow American-style policy.

While they are a small exception in being a naturalized<sup>4</sup> species rather than a “native” one, that exception has existed for 106 years of the *Act*. There is no reason to change it now, especially as the impacts of Mute Swans' removal from the MBCA would be devastating, as described below.

## The Dire Impacts of the Proposed Change

To understand the implications of removing Mute Swans from the MBCA, that *Act* must be read with related provincial/territorial statutes. In Ontario, the relevant statute is the *Fish and Wildlife Conservation Act, 1997*. Mute Swans are classified as Game Birds in both the MBCA and the Ontario *Fish and Wildlife Conservation Act*, and the provincial legislation only protects from hunting those birds who are in the MBCA.<sup>5</sup> If Mute Swans were removed from the federal protection provided in the MBCA:

- It could pave the way to widespread Mute Swan culls. This has happened in some U.S. states, where Mute Swans are captured and killed when they are flightless during their annual molt.

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<sup>2</sup> Freedom of Information response

<sup>3</sup> <https://www.canada.ca/en/environment-climate-change/services/migratory-birds-legal-protection/convention-act.html#fn1>

<sup>4</sup> Mute Swans have reproduced in the wild for well over 50 years – 65, in fact, and more than 18 generations.

<sup>5</sup> **Fish and Wildlife Conservation Act, 1997, Part 2, No hunting or trapping of certain species 5** (1) A person shall not hunt or trap specially protected wildlife or any bird that belongs to a species that is wild by nature and is not a game bird. 2009, c. 33, Sched. 22, s. 2 (5).

- They could be hunted in Ontario, OFAH's interest being further evidence of that as a desired outcome. While it is possible that provinces and territories would decide to prohibit hunting, even if that was enabled with the swans' removal from the MBCA, the federal government would have no control over those jurisdictions' decisions. This is not a risk worth taking.
- Farmers could kill Mute Swans without a permit or a hunting license.<sup>6</sup>
- Mute Swan nests and eggs to be taken or destroyed on no authority and with no oversight.<sup>7</sup>

All these outcomes would be abhorrent to most Canadians and they would have been enabled by the federal government.

Their removal from the *Act* would also compromise biological and ecological research and decision-making. The Midsummer Mute Swan Survey was last flown in 2017. This used to be flown every three years and provided CWS with an official count of these birds. With the end of that Survey it appears that no national population data is being collected federally, leaving only anecdotal reports and ad hoc regional counts to fill the gap. Mute Swans are also not banded, tagged, or tracked so there is no ability to identify individuals to collect family, life expectancy, and mortality information, for instance, or to understand their movements. If Danger and Damage Permits are also eliminated, no records would be kept of the number of eggs or birds destroyed. Without any credible, broad-scale records on everything from clutch sizes to population data, it would be hard to determine when their numbers start to decline and research and decision-making would be irreparably compromised.

Add to that the possibility of Mute Swans being culled or hunted and their removal from the MBCA could set the stage for severe reduction or elimination of the species. This has been a stated objective of conservation authorities in the past<sup>8</sup> and the risk is real.

## The Need for Consultation

If serious consideration is being given to removing Mute Swans from the MBCA, the government must make the changes and implications very clear and consult not only with the

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<sup>6</sup> **Fish and Wildlife Conservation Act, 1997, Part 2, Requirement for hunting trapping licence, 6 (3) Farmers** Despite subsection (1)'s requirement for a licence, a farmer or a member of a farmer's family who resides with the farmer may, during the open season and without a licence, on the farmer's land,

(c) hunt game birds, other than wild turkey;

<sup>7</sup> **Fish and Wildlife Conservation Act, 1997, Part 2, Nests and eggs 7 (1)** A person shall not destroy, take or possess the nest or eggs of a bird that belongs to a species that is wild by nature. 1997, c. 41, s. 7 (1).

### Exceptions

**Migratory birds**(4) This section does not apply to nests or eggs that are subject to the [Migratory Birds Convention Act, 1994 \(Canada\)](#). 1997, c. 41, s. 7 (4).

<sup>8</sup> <https://www.npr.org/2014/03/11/288751372/a-plan-to-eliminate-wild-mute-swans-draws-vocal-opposition> Note the link to the New York State plan has been removed.

provinces and territories and with the hunting lobby, but also expressly invite animal protection organizations and the Canadian public, including Indigenous communities, into the discussion.

Life and death decisions about the wildlife we live among must be incorporate public values.

## **The Rationale for No Change**

The current state is appropriate, responsible, and aligned with most Canadians' values.

Mute Swans do well in the degraded ecosystems left by human activity. As a result, they are largely urban animals, accessible to and enjoyed by city dwellers. There is no public desire for more Mute Swans to be shot or hunted and removing them from the *Act* would open that door.

The Danger and Damage Permit regime that is in place does not prevent and indeed allows the population management measures that authorities wish to carry out, with safeguards proportionate to lethal measures.

Birds are a national resource and can move freely across provincial borders. Protection should exist at the national level, not at the whims of varied provincial governments.

Canada already fares poorly in global rankings on animal protection<sup>9</sup> and while some recent strides have been made, the growing number of animal lovers in the country remain distraught that the government's promise to end the sushi horse shipments is still unfulfilled. We hope the government won't take further actions that would appear anti-animal.

**We urge you to leave Mute Swans in the MBCA.**

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<sup>9</sup> <https://www.thestar.com/opinion/contributors/2021/08/20/the-sorry-state-of-animal-protection-in-canada.html>

## **About the Mute Swan Society**

The Mute Swan Society is an all-volunteer community of Ontarians, Canadians, and others around the world who enjoy, admire, and value Mute Swans. We recognize and celebrate their long-standing presence in our wetlands and waterways and are dedicated to their welfare.

Our mission is to ensure the wellbeing of wild Mute Swans in Canada.

To that end, we are committed to fact-based decisions about their lives and to dispelling misinformation and myths. Based on the science and the ethics of compassionate conservation, we also advocate for Mute Swans' welfare and for their right to live wild lives, which include having and raising their young. We oppose the killing and hunting of Mute Swans and the destruction of their eggs.