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Via U.S. Mail and Submitted Electronically
USDA APHIS Wildlife Services
Attn: Mr. Martin Lowney
1930 Route 9
Castleton, NY 12033-9653

Re: Supplement to the Environmental Impact Statement
Bird Hazard Reduction Program: John F. Kennedy International Airport
(Docket No. APHIS-2013-0063)

Dear Mr. Lowney:

The Committee on Animal Law of the New York City Bar Association (the "Committee") respectfully submits the following comments concerning the proposed Supplement to the Environmental Impact Statement ("SEIS") to be prepared for the Bird Hazard Reduction Program for John F. Kennedy International Airport (the "Program"),[1] to assess alternatives for addressing putative "damage threats from Mute Swans to human and aviation safety."

The New York City Bar Association is an independent non-governmental organization of more than 23,000 lawyers, law professors and government officials, predominantly from New York City and also from throughout the United States and fifty other countries. The Committee is the first committee of its kind in the country and has a history of supporting federal, state and local anti-cruelty legislation.

[1] *See* Notice re: Supplemental Environmental Impact Statement for the Bird Hazard Reduction Program at John F. Kennedy International Airport, Federal Register No. 2013-23184, ID. No. APHIS-2013-0063-0001 (the "Notice"), available at http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0063-0001 (last visited October 14, 2013); *see also* Bird Hazard Reduction Program: John F. Kennedy International Airport, Supplement to the Environmental Impact Statement: Gull Hazard Reduction Program: John F. Kennedy International Airport, April 2012 (the "2012 SEIS"), available at http://www.aphis.usda.gov/regulations/ws/ws_new_york_jfk_2.shtml (last visited October 14, 2013).

The Committee urges the cooperating agencies to properly consider the purported benefits versus adverse impacts of using lethal methods to reduce Mute Swan populations, as further described below. Furthermore, the Committee suggests that the cooperating agencies consider alternatives that eliminate or reduce lethal measures to control bird populations, given that such measures may not be effective in an actual reduction of bird-aircraft collisions. Finally, the Committee urges transparency with the public in the implementation of wildlife management measures as well as use of more accurate terminology in the SEIS so that the agencies and the public can make an appropriate assessment of the available options.

A. Assessment of benefits versus adverse impacts of lethal means of population management

First, the Committee urges the cooperating agencies to assess, rather than presume, the actual hazards posed by Mute Swans to safety. The Notice soliciting comment notes that Mute Swans are passing through airport airspace, and that a total of four aircraft collisions have involved Mute Swans, three of which occurred in 2010 and 2011.[2] While the number of Mute Swans on Gateway National Recreation Area ("NRA") has fluctuated, the estimated total population is not reported to have increased in recent years.[3]

The Committee believes that the SEIS should analyze the possibility that adding to lethal population control methods of Mute Swans will worsen rather than reduce the total risks posed by aircraft collisions with birds. Furthermore, the SEIS should address the possibility that the "increase" in collisions with Mute Swans has coincided with the (temporary) reductions of the Canada geese population in the vicinity of John F. Kennedy International Airport ("JFK").

New York City has been pursuing an aggressive geese-killing program since 2009, subsequent to the collision of Flight 1549. Effectuating this program, the U.S. Department of Agriculture ("USDA") Wildlife Services has lethally removed more than 5,000 geese in Gateway NRA and New York City parks.[4] According to aviation experts and avian specialists,

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[2] Notice at 1.

[3] *Id*.

[4] In 2009, 1,235 geese located in NYC parks were exterminated by the USDA. *See Summary: New York City Canada Goose Removals* (Table 2), USDA, Summer 2009, available at http://www.scribd.com/doc/62987551/NYC-Geese-Removal-Contract-Renewal-6-9-2010 (last visited October 14, 2013). In 2010, 1,676 geese located in NYC parks were exterminated by the USDA. *See Summary: New York City Canada Goose Removals* (Table 2), USDA, Summer 2010, available at http://www.scribd.com/doc/81878583/new-york-city-canada-goose-removals-in-2010 (last visited October 14, 2013). In 2011, 575 geese located in NYC parks were exterminated by the USDA. *See Summary: New York City Canada Goose Removals* (Table 2), USDA, August 17, 2011, available at http://www.scribd.com/doc/81877732/New-York-City-Canada-Goose-Management-Report-2011 (last visited October 14, 2013). In 2012, 290 geese located in NYC parks were exterminated by the USDA. *See Summary: New York City Canada Goose Removals in 2012* (Table 2), available at http://www.scribd.com/doc/116380706/13-00259-WS-Records-Review (last visited October 14, 2013). Additionally, 751 geese were exterminated by the USDA at Jamaica Bay Wildlife Refuge in 2012. *See* Carly Baldwin, *Photo released of 751 geese being removed at Jamaica Bay Wildlife Refuge*, Metro New York, July 10, 2012, available at http://www.metro.us/newyork/news/local/2012/07/10/photo-released-of-751-geese-being-removed-at-jamaica-bay-wildlife-refuge/ (last visited October 14, 2013). This year, approximately 500 geese located at Jamaica Bay Wildlife Refuge were exterminated by the USDA. *See* Andy Newman, *Annual Goose Roundup Under Way in Jamaica Bay*, New York Times, July 2, 2013,

killing individuals of one species opens the habitat to other wildlife or even ultimately increases the population of the targeted species. Experience has shown that removing geese from parks, wetlands, and other desirable habitat creates a vacuum which can become quickly repopulated.[5] This effect could exacerbate the risk of plane-bird collisions. Notably, the 2012 SEIS indicates that the existing gull shooting program coincided with a reduction in the rate of gull-aircraft collisions between 1991 and 2009, but that the rate of collisions with other birds has apparently increased during the same period, as have total collisions.[6] Moreover, biologists have determined that the killing of one species can even result in increases in population of the targeted species due to reproductive overcompensation and population cycling.[7] Consequently, aviation experts have concluded that culling does not achieve long-term mitigation of the risks posed by bird collisions to air safety and that it is necessary to address environmental factors and other issues.[8]

The 2012 SEIS itself recognizes and rejects as impractical and unrealistic the chance that any particular bird hazard management program could result in a reduction of aviation risk to zero at JFK:

> The FAA described the difficulties in defining an acceptable level of risk, 'since by doing so we would be saying that any occurrence below the stated level is safe. Example: one might say that 2 bird strikes a year at JFK is acceptable. Does that mean that a single bird strike that brings down a fully loaded passenger aircraft with multiple fatalities is safe? As you can see this is a very difficult if not impossible issue.' ... The alternatives in the SEIS are compared based on their relative reductions in

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available at http://cityroom.blogs.nytimes.com/2013/07/02/annual-goose-roundup-under-way-in-jamaica-bay/ (last visited October 14, 2013). *See also* GooseWatch NYC website citing USDA New York City Canada Goose Removals summary reports, available at http://www.goosewatchnyc.com/fact-sheet/ (last visited October 11, 2013).

[5] *See, e.g.*, Cate Doty, *Where Geese Were Thinned, Their Population Thickens*, New York Times, Aug. 17, 2010, available at http://cityroom.blogs.nytimes.com/2010/08/17/where-geese-were-thinned-their-population-thickens/ (last visited October 14, 2013).

[6] *See* 2012 SEIS at Figure 1-2 and Table 1-1.

[7] Elise F. Zipkin, Clifford E. Kraft, Evan G. Cooch, and Patrick J. Sullivan, *When can efforts to control nuisance and invasive species backfire?,* Ecological Applications 19:1585–1595, available at http://www.esajournals.org/doi/abs/10.1890/08-1467.1 (last visited October 14, 2013) ("Population control through harvest has the potential to reduce the abundance of nuisance and invasive species. However, demographic structure and density-dependent processes can confound removal efforts and lead to undesirable consequences, such as overcompensation (an increase in abundance in response to harvest) and instability (population cycling or chaos).").

[8] *See* Perry Chiaramonte, *Airport Experts Flock to Find Solution to Bird, Plane Collisions,* Fox News (Aug. 5, 2012), http://www.foxnews.com/us/2012/08/05/bird-strike-summit-as-planes-hit-by-fowl-on-rise/#ixzz2GB34bcnz (last visited October 11, 2013) (noting that Jim Hall, former Chairman of the National Transportation Safety Board has stated that "I have not seen where [culling] has been effective as a long-term solution . . . What should happen is an effort to eliminate causes for the hazards" and that Ron Merritt, biologist and former chief for the Air Force's Bird Aircraft Strike Hazard team has recommended the use of non-lethal alternatives); *see also* New York City Audubon, *Encouraging Better Management of Canada Geese in New York City,* http://www.nycaudubon.org/issues-of-concern/canada-goose-extripation (last visited October 11, 2013) (noting that the New York City Audubon also opined that "[t]he blanket approach of lethal control will not significantly reduce the risk birds pose to aviation safety" and that other measures are necessary).

bird collisions and their ability to achieve the established management objectives.[9]

In light of the questionable benefits of lethal population control methods, the Committee urges the cooperating agencies to conduct a more robust assessment of the relative adverse versus beneficial impacts of such methods, particularly the targeting of particular species that may simply be replaced by other types of birds, or new individuals of the same species.

B. Consideration of non-lethal alternatives to deter Mute Swans from JFK, including the possible relocation of Mute Swans

We recommend that the SEIS consider alternative non-lethal program elements that have been successful elsewhere and urge that methods which do not include removing or killing wildlife should be preferred, developed where necessary, and pursued.

The Notice states that Mute Swans have been observed flying through aircraft flight paths to feeding sites in freshwater ponds and rivers near the airport. It is likely that these feeding locations will continue to attract Mute Swans and other birds regardless of the total population at any given point in time. Therefore, the SEIS should consider alternatives that would modify these desirable habitat locations which attract Mute Swans and other birds.

The SEIS should also consider alternative management techniques, such as radar detection and dissuasive tactics, that encourage relocation that have not yet been employed at JFK but have had success at other airports to keep birds out of the pathways of aircraft. For example, Transport Canada recognizes that lethal removal of Canada geese and other birds will not provide a long term solution, and reserves killing as a last resort.[10] Similarly, in Israel, Tel Aviv Ben-Gurion International Airport has instituted an avian radar detection program that has received worldwide recognition for its impact on reducing bird strikes.[11] Avian radar technologies have the ability to "simultaneously track extensive information about more than 100 targets from around six miles away and up to 3,000 feet."[12] Indeed avian radar technologies have been recognized by the U.S. Department of Defense as "valuable tools…in monitoring the location and behavior of avian species of interest" which "are cost-effective and provide information that is not available from other sources or with techniques" and are ready for more widespread employment.[13]

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[9] *See* 2012 SEIS, Appendix H, p. 407.

[10] Wildlife Control Procedures Manual (TP 11500) - Transport Canada, http://www.tc.gc.ca/eng/civilaviation/publications/tp11500-menu-1630.htm (last visited Oct. 13, 2013).

[11] Dr. Yossi Leshem, Maj. Oded Ovadia, Dr. Leonid Dinevich, Oded Raz, *A National Network of Bird and Weather Radaras in Israel – From Vision to Reality*, International Bird Strike Committee, May 2005, available at http://www.int-birdstrike.org/Athens_Papers/IBSC27%20WPX-2.pdf.

[12] Eric Uhlfelder, *Those Hazardous Flying Birds*, N.Y. Times, Oct. 18, 2013, *available at* http://www.nytimes.com/2013/10/18/opinion/those-hazardous-flying-birds.html (last visited October 21, 2013).

[13] Marissa Brand; Gerald Key; Dr. Ed Herricks; Ryan King; Dr. J. Timothy Nohara; Dr. Sidney Gauthreaux, Jr.; Mike Begier; Christopher Bowser; Dr. Robert Beason; James Swift; Matt Klope; Hermann Griese; MAJ Christopher Dotur, *Integration and Validation of Avian Radars (IVAR)*, Department of Defense Environmental Security Technology Certification Program (ESTCP) Project RC-200723, July 2011, Executive Summary, at xxviii (available at www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA555979) (last visited Oct. 18, 2013).

The Committee urges the cooperating agencies to consider the implementation of non-lethal measures in order to adequately respond to long term threats to air safety, and notes that additional detailed information regarding the extent to which these measures have been pursued should be included in the SEIS to allow the cooperating agencies and the public an opportunity to fully assess the need for additional lethal management measures to address Mute Swans.

C. Transparency and public comment

The Committee urges that any lethal or non-lethal alternatives considered by the cooperating agencies should include public notice prior to the execution of any particular removal operation on public lands. As recognized in the 2012 SEIS, "public perceptions and desires pertaining to wildlife hazard management (e.g., nonlethal or lethal methods)" are important factors in the adoption of any wildlife management plan.[14] Given that lethal methods of bird control are opposed by many New Yorkers who are concerned about wildlife and the environment,[15] it is critical that the public be adequately informed of any proposals for lethal methods of removal as well as any non-lethal alternatives and have the opportunity to submit comments regarding their preferences in wildlife management methods.[16] Additionally, such public concerns and comment should be given significant consideration by the cooperating agencies in any determination regarding methods of wildlife hazard management.

We also note that the term "euthanasia" as used in the SEIS[17] may inaccurately describe the lethal methods employed by the USDA to reduce Mute Swan populations, which includes the use of live traps and carbon dioxide asphyxiation, or shooting. Such treatment has been recognized as inhumane by a number of avian experts."[18] Certain lethal methods of bird control

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[14] *See* 2012 SEIS, Executive Summary, p. vi.

[15] *See, e.g.,* Natalie O'Neill, *Goose lovers to Bloomy: Don't you dare come for our birds*, Brooklyn Paper, March 27, 2011, available at http://www.brooklynpaper.com/stories/34/13/all_goosevigil_2011_4_1_bk.html (last visited October 11, 2013) (reporting on an event in Prospect Park to oppose the killing of geese and including comments from New York State Senator Eric Adams, New York City Council Member Letitia James, representatives from the Humane Society of the United States and Friends of Animals, and other community members in opposition to lethal methods of geese control.).

[16] *See, e.g.,* Catherine Yang, *New Yorkers Protest Gillibrand's Goose Removal*, Epoch Times, July 17, 2012, available at http://www.theepochtimes.com/n2/united-states/gilibrand-s-geese-removal-ruffles-feathers-266569.html (last visited October 14, 2013).

[17] *See* SEIS at p. 3.

[18] According to wildlife biologist Stephanie Boyles, such "[r]oundups cause immeasurable stress—separating lifetime mates from each other and from their young goslings." *See* Geoff Shackleford, *PETA Leader Speaks Out*, GOLFDOM 49, February 2006, *available at* http://archive.lib.msu.edu/tic/golfd/article/2006feb48.pdf (last visited October 11, 2013). Similarly veterinarian John G. Hynes has recognized that "[c]arbon dioxide asphyxiation used by the USDA is an especially cruel process that slowly strangles [the birds] as they struggle to breathe and compete for oxygen." *See 700 Geese From Jamaica Bay Wildlife Refuge To Be Euthanized*, CBSNewYork, July 10, 2012, available at http://newyork.cbslocal.com/2012/07/10/700-geese-from-jamaica-bay-wildlife-refuge-to-be-euthanized (last visited October 11, 2013); *See also* AVMA Guidelines for the Euthanasia of Animals: 2013 Edition, American Veterinary Medical Association, 2013, *available at* https://www.avma.org/KB/Policies/Documents/euthanasia.pdf (last visited October 11, 2013) (noting that "diving birds have a great capacity for holding their breath and anaerobic metabolism. Therefore, induction of anesthesia and time to loss of consciousness when using inhalants may be greatly prolonged.

may not meet the definition of euthanasia set forth by the American Veterinary Medical Association ("AVMA").[19] For this reason, we recommend that the SEIS discontinue the use of the term "euthanasia" to describe such inhumane lethal methods of bird control, and use the term only to describe means that at a minimum conform to the AVMA Guidelines.

Sincerely,

Christine Mott
Chair, Committee on Animal Law

Noninhaled methods of euthanasia should be considered for these species and a secondary method is required to kill the unconscious animal.").

[19] *Id.* at 2013 AVMA Guidelines.