



May 25, 2023

U.S. Fish and Wildlife Service
Attn: Andrew French, Project Leader; Steve Agius, Refuge Manager
300 Westgate Center Drive
Hadley, MA 01035-9587

Re: Silvio O. Conte National Fish and Wildlife Refuge Recreational Hunting and Fishing Plan for New Hampshire and Vermont,

Position: Support for Alternative B, with Further Recommendations

Mr. Andrew French and Mr. Steve Agius,

My name is Fred Bird, and I am the New England States Assistant Manager for the Congressional Sportsmen's Foundation (CSF). As a New Hampshire resident and avid sportsman who regularly hunts in both New Hampshire and Vermont, I write to you in support of Alternative B for the Silvio O. Conte National Fish and Wildlife Refuge (Refuge) Recreational Hunting and Fishing Plan for New Hampshire and Vermont (2023 Plan). Alternative B would "expand the dog training season to follow the Vermont State dog training season" and align the use of dogs "with State regulations for hunting and training on the Putney Mountain Unit," thereby affording sportsmen and women the opportunities that they once enjoyed prior to the implementation of the restrictive 2021 Final Plan. CSF also offers two recommendations: a removal of the Special Use Permit requirement when hunting over two dogs and the reauthorization of night hunting across the Refuge. Our nation's sportsmen and women have a tenured history of supporting the conservation efforts of the U.S. Fish and Wildlife Service (FWS), and Alternative B would fully return the sporting opportunities on the Refuge to the baseline that was in place prior to the adoption of the 2021 Final Plan.

Founded in 1989, CSF is the informed authority across outdoor issues and serves as the primary conduit for influencing public policy. Working with the Congressional Sportsmen's Caucus (CSC), the Governors Sportsmen's Caucus (GSC), and the National Assembly of Sportsmen's Caucuses (NASC), CSF gives a voice to hunters, anglers, recreational shooters, and trappers on Capitol Hill and throughout state capitols advocating on vital outdoor issues that are the backbone of our nation's conservation legacy.

In July 2021, CSF submitted a letter of support with recommendations (Addendum I) to the FWS relative to the 2021 Original Plan. Several months later, the FWS released a Final Refuge Plan that caught the entire sporting industry by surprise, as it included three significant changes that were not initially

proposed which the community was unable to provide comment on prior to the rule going into effect. Those changes included: requiring a Special Use Permit when hunting with more than two dogs; restricting the use of dogs only for their use when hunting ruffed grouse at the Putney Mountain Unit; and limiting the length of the dog training season and only allowing dog training if the trainer possesses a Special Use Permit. In addition to this, the Final Refuge Plan prohibited night hunting, except by Special Use Permit at the Nulhegan Basin Division – something that CSF had addressed in its July letter. In response to these limitations, CSF sent the FWS a letter of opposition (Addendum II) in March 2022 that highlighted concerns with both the substance and the process by which the FWS released the Final Refuge Plan. In April 2022, CSF received a response letter from FWS (Addendum III) that spoke to the concerns raised by CSF but concluded that “The changes that were made to the Plan were minor.” CSF thanks the FWS for now reopening the rule making process for this Plan and submits the following comments for consideration as a matter of public record.

Support for Alternative B: Expansion of the Dog Training Season

The most recent proposal states that “Alternative B would expand the dog training season to follow the Vermont State dog training season which occurs in the months of June, July, August, and September.” In Addendum III, the FWS claimed that the dog training season was restricted in the 2021 Plan to “limit disturbance to wildlife, specifically ground/shrub nesting migratory birds during the breeding season as a way for the activity to be compatible as required by the National Wildlife Refuge System Improvement Act.” While the stated purpose of this provision may be to prevent potential nest degradation to ground nesting fowl, there has been no information presented as to the effects of disturbance by domesticated dogs on ground nesting fowl within the Refuge. Common furbearing predators such as raccoon, opossum, fox species, as well as nongame species of egg eating reptiles and avian predators are all present within the Refuge. Instead of restricting the time dogs may be trained, we recommend that the FWS implement proven trapping programs, such as “hotspot trapping,” within the Refuge to mitigate such nest degradation as well as improve the health and population balance of game species.¹ Additionally, existing trapping methods are well proven to manage populations of predators keeping the health and size of the population consistent with state species targets and management plans. As such, CSF is recommending a trapping program be implemented within the Refuge.

Support for Alternative B: Expansion of Dog Use at Putney Mountain Unit

In Addendum III, the FWS stated that “records for the property (Putney Mountain Unit) do not indicate the consistent presence of waterfowl or upland birds (excluding ruffed grouse).” Our issue with this restriction is that opportunities to take other game species with the use of dogs in the Unit have been entirely removed. Upland hunters in pursuit of ruffed grouse will typically also take the opportunity to harvest Woodcock migrating throughout the region to southern wintering grounds. It is well established that the two species occupy, and frequent similar habitats. It is perplexing why the taking of woodcock with dogs in the Putney Mountain Unit is prohibited based purely on “USFWS records” when there would be no measurable change in potential impacts since the hunters and their dogs are already on the landscape in pursuit of ruffed grouse.

Additionally, other small game species legal to take in Vermont are not accounted for in the Putney Mountain Unit but should be included in keeping with Vermont Fish and Wildlife Department (VFWD)

¹ “New Trapping Technique Revolutionizing Delta’s Predator Management.” Delta Waterfowl. Accessed on May 23, 2023. Available at: <https://deltawaterfowl.org/giving-ducks-a-fighting-chance/>.

regulations are raccoon, rabbit or hare, grey squirrel, and eastern coyote. All four game species, managed by VFWD for population health and carrying capacity, may be pursued with the aid of trained dogs on state and private lands in Vermont, and opportunities to do so should be available at this Unit.

Finally, given the presence of wetlands in the northeastern corner of the Unit, regardless of whether the Unit has a “consistent presence of waterfowl,” sportsmen and women should be allowed to pursue them within the Putney Mountain Unit. Greater efforts should be made to remain consistent with the state regulations and not limiting opportunities for sportsmen and women within the Refuge.

Further Recommendation: Removal of Special Use Permit Requirement When Hunting Over More Than Two Dogs

In Addendum III, the FWS stated that “across the State of Vermont between State and Federal wildlife agencies, both agencies require permits for training hunting dogs on public lands.” However, the Special Use Requirement that the FWS introduced in the 2021 Final Plan did not relate to *training* – it is required while *hunting* over more than two dogs; to compare the two is a mistake. Vermont’s state hunting regulations require a permit for hunting over dogs in one case – while hunting bear – a move ushered in after years of state-level negotiations between the sporting and non-consumptive communities. CSF’s recommendation to the FWS is that it remove the Special Use Permit requirement when hunting over more than two dogs in order to better align itself with Vermont hunting regulations.

Further Recommendation: Reauthorizing Night Hunting

As CSF first recommended in Addendum I, in the pursuit of certain furbearing species, such as coyotes and raccoons, a hunter’s success often hinges on the ability to head afield at night. Both New Hampshire and Vermont permit sportsmen and women to hunt certain species in the post-dusk hours, and we suggest the U.S. Fish and Wildlife Service to revise the proposed plan to remain consistent with the practices that are currently in place in both states. State fish and wildlife agencies, such as the New Hampshire Fish and Game Department and the VFWD, recognize the importance of allowing night hunting for certain furbearing species – from both a sporting perspective and the management of the state’s wildlife. These departments are experts at balancing the interests of the sporting community and other recreational consumers, and they continue to permit night hunting; therefore, we encourage the FWS to do the same. Additionally, in Addendum III, the FWS states that “For over twenty years, night hunting has been an allowed use at the Nulhegan Basin Division. Based on existing records, no requests have been made in over a decade for a permit to hunt at night.” The purpose for this permit requirement was to allow “refuge staff to communicate with hunters about the occupied dwellings on the refuge and safety concerns pertaining to the discharge of firearms at night on public land.” However, if the FWS has no records of hunters applying for this permit, then there currently is no impact. Prohibiting night hunting is removing potential opportunities for other sportsmen and women who may choose to exercise that option in the future – an action that is unwarranted.

In light of the reasons above, I am submitting this testimony in support of Alternative B with additional recommendations. CSF thanks the FWS’ for its historic role in conservation and greatly appreciates the decision to reopen the public comment period. Should you require additional information on this, or other sportsmen-related topics, please feel free to contact me at any time.

Sincerely,



Fred Bird

Assistant Manager, New England States | Congressional Sportsmen's Foundation

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Attachments

- Addendum I: CSF testimony in support of the Silvio O. Conte NWR Recreational Hunting and Fishing Plan from July 2021.
- Addendum II: CSF Letter of opposition for the Silvio O. Conte National Fish and Wildlife Refuge Final Plan from March 2022.
- Addendum III: FWS response letter to CSF.



To: **U.S. Fish & Wildlife Service**
Silvio O. Conte National Fish and Wildlife Refuge
5396 VT Route 105
Brunswick, VT 05905

Re: **Silvio O. Conte National Fish and Wildlife Refuge Recreational
Hunting and Fishing Plan for New Hampshire and Vermont**

Position: **Support**

Date: **July 6, 2021**

To Whom It May Concern:

My name is Joseph Mullin, and I am the Assistant Manager, Northeastern States for the Congressional Sportsmen's Foundation (CSF). As an avid sportsman, and a non-resident license holder who enjoys participating in the many outdoor opportunities that New Hampshire and Vermont have to offer, I submit this letter to express our general support while providing additional recommendations on the Silvio O. Conte National Fish and Wildlife Refuge Recreational Hunting and Fishing Plan for New Hampshire and Vermont (Hunting and Fishing Plan). It is my earnest hope that the U.S. Fish and Wildlife Service takes these recommendations into account when producing a final plan for this National Fish and Wildlife Refuge.

Since 1989, CSF has dedicated itself to the mission of working with Congress, governors, and state legislatures to protect and advance hunting, angling, recreational shooting and trapping. The unique and collective force of the Congressional Sportsmen's Caucus, the Governors Sportsmen's Caucus, and the National Assembly of Sportsmen's Caucuses, working closely with CSF, and with the support of major hunting, recreational fishing and shooting, and trapping organizations, serves as an unprecedented network of pro-sportsmen elected officials that advance the conservation interests of America's hunters and anglers. It is from this voice – with more than three decades of organizational history and a staff with more than a century of combined policy experience on sportsmen's issues – that we strongly support the proposed Hunting and Fishing Plan and offer additional recommendations.

Hunting is one of six priority elements of public use under the National Wildlife Refuge System, as supported by: Executive Order 12996 (March 25, 1996); legislatively mandated by the Refuge

The Sportsmen's Voice in the Nation's Capitols

System Administration Act of 1966, as amended by the Refuge System Improvement Act of 1997 (Public Law 105-57); and reinforced as a priority use by Department of the Interior Secretarial Order 3356 (September 15, 2017). As the Hunting and Fishing Plan highlights, the Refuge System Improvement Act established the mission of administering “a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” (Refuge System Improvement Act of 1997). The Hunting and Fishing Plan goes on to state that “Regulated sport hunting and fishing has been an important management tool and recreational activity at Silvio O. Conte NFWR for over a decade.” Therefore, proposing additional hunting and angling opportunities at Silvio O. Conte NFWR highlights the essence of why we set our nation’s lands aside as refuges.

As all sportsmen and women understand, access and opportunity are at the core of keeping our country’s time-honored sporting traditions alive and well. The Hunting and Fishing Plan’s proposal to keep open “all refuge lands that are found to be compatible with hunting and fishing” is an extraordinary step towards providing sportsmen and women with an influx of real estate – over 36,800 acres – in which they may pursue game and introduce the next generation of conservationists to the great outdoors. Access has a significant and empirically-proven relationship towards hunter participation, resulting in immediate effects on conservation funding through the sale of hunting licenses and excise taxes on hunting gear through the American System of Conservation Funding. Increasing hunting and fishing on lands that previously had not held such opportunities has the absolute potential to benefit sportsmen and women participating in sporting activities that have been woven into our nation’s cultural fabric. It is through this lens that CSF is grateful to see the access that hunters and anglers may acquire through the Hunting and Fishing Plan.

Though we support the Plan generally, CSF has identified certain sections that, from a sportsmen’s perspective, could be improved upon. For this reason, CSF is providing the following recommendations for the U.S. Fish and Wildlife Service’s consideration.

Recommendation I: Expanding the Proposed Hunting Hours

The Hunting and Fishing Plan explicitly states that “Hunters are allowed on refuge lands 30 minutes before sunrise and 30 minutes after sunset.” The overwhelming majority of sportsmen and women would immediately recognize how inconsistent this rule is with practical hunting methods. Upon parking one’s vehicle on the refuge, much time is spent trekking out to identified hunting area (in many cases, this accounts for miles of walking/hiking), setting up a tree stand, and then sitting in silence and allowing the land to return to its calm ambiance. Similarly, after the established sunset has occurred, sportsmen and women must replicate the process in reverse, taking down their tree stands and then walking any variable of distances back to their vehicles.

Only allowing hunters onto the refuge land 30 minutes before sunrise and 30 minutes after sunset (i.e., dawn to dusk) is requiring them to forfeit valuable moments in the woods during the times when many game species are the most active. CSF recommends that the U.S. Fish and Wildlife Service revises the Hunting and Fishing Plan to account for a greater amount of time during which hunters are permitted to remain on refuge lands to allow for hunters to be set up prior to first light and to remain hunting until the light of day has faded, rather than sacrificing the most productive times of the day to ensure they are not in the woods prior to first light or past last light. Speaking from experience, I will typically be sitting in my tree stand at least one hour before sunrise, as the

pre-dawn hours tend to be when the game species are out foraging for food. Additionally, should I harvest an animal near the final moments of available daylight, I would be hard-pressed to track, process, and carry the meat out before I would be in violation of the Hunting and Fishing Plan. The prohibition on hunters being “on refuge lands 30 minutes before sunrise and 30 minutes after sunset” is not only burdensome – it’s unrealistic.

Recommendation II: Permitting Night Hunting

In accordance with the Hunting and Fishing Plan, “Hunting on refuge lands will follow the New Hampshire Department of Fish and Game’s (NHDFG) hunting regulations with some additional restrictions to protect wildlife and habitat, and to reduce potential public use conflicts.” Additionally, the plan proposes to open hunting opportunities for furbearer species, such as coyotes and raccoons, and remain consistent with the hunting regulations in New Hampshire and Vermont. However, the Hunting and Fishing Plan continues to state that “Night hunting is prohibited except by special use permit at the Nulhegan Basin Division.” In the pursuit of certain furbearing species, such as coyotes and raccoons, a hunter’s success often hinges on the ability to head afield at night. Both New Hampshire and Vermont permit sportsmen and women to hunt certain species in the post-dusk hours, and we suggest the U.S. Fish and Wildlife Service to revise the proposed plan to remain consistent with the practices that are currently in place in both states.

CSF is unaware of any conflicts between hunters pursuing furbearers at night and non-consumptive users. The proposed Hunting and Fishing Plan emphasizes that it intends to reduce conflicts between national wildlife refuge stakeholders, though we are unsure how a prohibition on night hunting would accomplish this task. State fish and wildlife agencies, such as the New Hampshire Fish and Game Department and the Vermont Fish and Wildlife Department, recognize the importance of allowing night hunting for certain furbearing species – from both a sporting perspective and the management of the state’s wildlife. These departments are experts at balancing the interests of the sporting community and other recreational consumers, and they continue to permit night hunting; therefore, we encourage the U.S. Fish and Wildlife Service to do the same.

Recommendation III: Permitting the Use of Recorded and Electronic Calls

The Hunting and Fishing Plan also prohibits the use of recorded and electronic calls by hunters on the refuge. As was mentioned above, the Hunting and Fishing Plan calls for hunting on refuge lands to comply with state fish and wildlife regulations. In the case of barring the use of electronic game calls, the Plan would actually conflict with what’s allowed by the New Hampshire Fish and Game Department and the Vermont Fish and Wildlife Department. Both state agencies allow the use of these calls while hunting numerous species, including fox and coyote. For sportsmen and women across the nation, the use of electronic calls has become relatively commonplace, allowing them to utilize newer technology in the harvesting of species such as coyotes and crows.

Understanding the general applicability of electronic and recorded calls on certain species, such as coyotes (which are most certainly prevalent in New Hampshire and Vermont) CSF encourages the U.S. Fish and Wildlife Service to remain consistent with what is allowed under both New Hampshire and Vermont’s regulations and permit their use.

Recommendation IV: Authorizing Baiting

Per the Hunting and Fishing Plan, “No baiting is allowed on refuge lands.” The practice of baiting serves as an invaluable management tool for state fish and wildlife agencies in relying on hunting to control certain species populations and reduce human-wildlife conflicts. The use of bait allows

sportsmen and women to be more selective in their harvest, as they are afforded the opportunity to better judge the animal's size and age than they would otherwise be able to. Additionally, empirical studies within the region have shown that the use of bait is directly correlated to success rates for hunters.¹ As such, eliminating the use of bait has the absolute possibility of lowering success rates, which in turn may result in lost business – a crippling outcome for the state and local economies.

Baiting is a crucial ingredient to several forms of hunting. New Hampshire recognizes this and has a separate season for hunting bears over bait. Therefore, CSF encourages the U.S. Fish and Wildlife Service to permit the use of bait on the portions of the Silvio O. Conte National Fish and Wildlife Refuge that lie within New Hampshire, where it would be consistent with state law to do so.

CSF is entirely grateful for the proposed plan's intentions to increase hunting and fishing opportunities throughout the Silvio O. Conte National Fish and Wildlife Refuge. Having said that, I respectfully urge the U.S. Fish and Wildlife Service to consider implementing the recommendations mentioned above. Thank you for the opportunity to provide comments on this issue. Should you require any additional information on this, or any other sportsmen-related topic, please feel free to contact me at any time.

Sincerely,



Joseph Mullin
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¹ 2019 Maine Black Bear Harvest. Accessed on June 23, 2021. <https://www.maine.gov/ifw/docs/2019-Bear-Harvest.pdf>.

Noah Kahn
Chief of Hunting and Sport Fishing
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035-9587

**Re: Opposition to the August 2021 Silvio O. Conte National Fish and Wildlife Refuge
Recreational Hunting and Fishing Plan for New Hampshire and Vermont**

Mr. Noah Kahn,

My name is Joseph Mullin and I am the Northeastern States Manager for the Congressional Sportsmen's Foundation (CSF). As a New England resident and avid sportsman, I write to you opposing the anti-sporting provisions included within the August 2021 Silvio O. Conte National Fish and Wildlife Refuge (Refuge) Recreational Hunting and Fishing Plan for New Hampshire and Vermont (Final Plan) and the process by which these provisions were included within the Final Plan. Sportsmen and women have a tenured history of supporting the conservation efforts of the U.S. Fish and Wildlife Service (FWS), but the manner in which they were treated regarding this matter, wherein anti-hunting provisions were included within the Final Plan and not mentioned in the original version, is inexplicable. **For that reason, I request the FWS re-open the comment period and provide all relevant information and justifications for proposed management alternatives in a truly clear and transparent manner.**

Since 1989, CSF has dedicated itself to the mission of working with Congress, governors, and state legislatures to protect and advance hunting, angling, recreational shooting and trapping. The unique and collective force of the Congressional Sportsmen's Caucus, the Governors Sportsmen's Caucus, and the National Assembly of Sportsmen's Caucuses, working closely with CSF, and with the support of major hunting, recreational fishing and shooting, and trapping organizations, serves as an unprecedented network of pro-sportsmen elected officials that advance the conservation interests of America's hunters and anglers.

My concerns rest not only with the restrictions that were included within the Final Plan, but also with the process that was taken to incorporate several anti-hunting limitations within this framework. Sportsmen and women in New Hampshire and Vermont, as well as those who frequent the Refuge, deserve a full accounting of why certain decisions were made that detract from the ability to pursue our nation's time-honored hunting traditions, and how these limitations are inconsistent with the six priority elements of public use under the National Wildlife Refuge System (NWRS).

The restrictions that I oppose are as follows:

1. Hunters using more than two dogs must possess a Special Use Permit issued by the refuge manager;
2. Restricting the use of dogs only for their use when hunting ruffed grouse at the Putney Mountain Unit;

3. Limiting the training of dogs to August 1 through the last Saturday in September during daylight hours, and only if the trainer possesses a Special Use Permit issued by the refuge manager; and
4. Prohibiting night hunting, except by Special Use Permit at the Nulhegan Basin Division.

Hunting is statutorily designated as one of six priority public uses of the NWRS by the NWRS Administration Act of 1966 (as amended by the NWRS Improvement Act of 1997) and Department of the Interior Secretarial Order 3356 (September 15, 2017). The language of both is written to ensure that these priority uses receive enhanced consideration in planning and management over other uses. The Final Plan recognizes that “Regulated sport hunting and fishing has been an important management tool and recreational activity at Silvio O. Conte NFWR for over a decade,” so it is perplexing as to why it proceeds to then eliminate previously available opportunities that sportsmen and women have historically been afforded within the Refuge. If there were concerns with certain practices, such as the training and use of dogs and night hunting, then they should have been included in the initial plan so that the hunting community would have had ample opportunity to provide public comment.

In late September, I took part in a virtual meeting that included members of the FWS who helped develop the Final Plan. During this meeting, representatives from the FWS stated that it received over 600 comments on the initial plan that called for an end to hounding on the Refuge. I was told that the FWS did not agree with a ban on hounding, but FWS members did read several pieces of testimony that raised concerns with the effects that dogs have on nesting birds. I was then told that the FWS performed its own research into the matter and found peer-reviewed scientific studies and reports showcasing the referenced detrimental impacts.

In the Office of the Federal Register’s *A Guide to the Rulemaking Process*, which outlines the normal processes for the Administrative Procedures Act, it states:

If the rulemaking record contains persuasive new data or policy arguments, or poses difficult questions or criticism, the agency may decide to terminate the rulemaking. Or, the agency may decide to continue the rulemaking but change aspects of the rule to reflect these new issues. **If the changes are major, the agency may publish a supplemental proposed rule** (*Emphasis added*). If the changes are minor, or a logical outgrowth of the issues and solutions discussed in the proposed rules, the agency may proceed with the final rule.¹

Understanding that hunting is one of the six priority public uses of the NWRS, altering the plan to include four restrictive provisions is undoubtedly a major change. With the FWS’ research having been performed after the comment period closed, coupled with the fact that the FWS heavily relied on independent studies that were not made available for public review and comment in preparing the Final Plan, the FWS should have terminated the original rulemaking and reopened it to include these concerns or published a supplemental proposed rule. Either approach would have afforded the sportsmen and women affected by these changes ample opportunity to review the research and provide comment. These restrictions were also not logical outgrowths of the plan as introduced,

¹ *A Guide to the Rulemaking Process*. Office of the Federal Register. Accessed on December 15, 2021. Available at: https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.

nor should they have been of concern to our community, as I was told in the September conversation with the FWS that it did not initially agree with the anti-hunting provisions, intimating they would not be included in the final plan. The utter lack of transparency calls into question the integrity of the FWS, as it sets a precedent by which sportsmen and women may read future rulemaking proposals and expect that they are not receiving accurate and complete information and transparency during the public process. This precedent creates distrust among a historically strong and trusted supporter of the FWS.

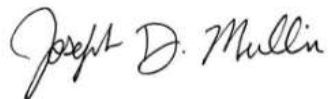
The guidelines produced by the Office of the Federal Register continue to state that:

An agency may extend or re-open a comment period when it is not satisfied that it has enough high quality comments or when the public comments make a good case for adding more time. Similarly, an agency may find that people have raised new issues in their comments that were not discussed in the initial proposed rule. **As new issues or additional complexity arises, the agency may publish a series of proposed rules in the *Federal Register* (Emphasis added).**²

If the FWS was willing to state in the September conversation that new issues came to light, such as the effects that dogs may have on nesting birds, then there is no doubt that it should have come forward with a series of proposed rules for public comment. Understanding the significance of the relationship that it has with in-state and national conservation and sportsmen's organizations, it is puzzling why the FWS did not follow the guidelines of the Administrative Procedures Act.

CSF enjoys a strong working relationship with the FWS towards enhanced access and opportunities for many recreational purposes, but the restrictions put forth in the Final Plan and the process by which these restrictions were included are deeply troubling. **Therefore, I request the Service re-open the comment period and provide all relevant information and justifications for proposed management alternatives in a clear and transparent manner.**

Sincerely,

A handwritten signature in cursive script that reads "Joseph D. Mullin". The ink is dark and the signature is fluid, with a large initial 'J' and a clear 'M'.

Joseph Mullin

² IBID.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

5396 VT Rt. 105, Brunswick VT 05905



April 25, 2022

Joseph Mullin
Congressional Sportsmen's Foundation
110 North Carolina Avenue, SE
Washington, DC 20003

Dear Mr. Mullin,

Thank you for your recent letter concerning the 2021 Silvio O. Conte National Fish and Wildlife Refuge (Conte Refuge, refuge) Recreational Hunting and Fishing Plan (Plan). I understand that you and Scott Kahan recently spoke about the Conte Refuge's Plan, and I am glad that the two of you could discuss wildlife management on National Wildlife Refuges. I agree that preserving the hunting and fishing heritage on National Wildlife Refuge System lands in New England and elsewhere is important. The Conte Refuge's previous recreational hunting and fishing plans were fragmented between the refuge's separate divisions across the northern part of the Connecticut River watershed. The current recreational hunting and fishing plan (Plan) is the assemblage of those documents into a single document for the states of New Hampshire and Vermont. As part of the development of the draft Plan, the U.S. Fish and Wildlife Service (USFWS) communicated with both states' fish and wildlife staff regarding efforts to align the refuge's Plan with the state's regulations.

On May 4th, 2021 the USFWS released draft recreational hunting and fishing plans for 90 National Wildlife Refuges. The Conte Refuge's Plan was released for public comment as part of the national effort to increase recreational hunting and fishing opportunities on refuges nationwide. The Conte Refuge's Plan was open for public comment for a total of 86 days. The specific purpose of the Plan was to expand hunting and fishing opportunities on the Refuge by increasing the number of species that could be legally harvested and to allow for the use of pistols for harvesting game.

The USFWS sought comments from the public to elicit feedback on the proposed plan. It should be noted that the plan's Environmental Assessment states "This proposed action is often iterative and evolves over time during the process as the agency refines its proposal and learns more from the public, Tribes, and other agencies. Therefore, the final proposed action may be different from the original" (Conte Refuge Hunting and Fishing Plan, Environmental Assessment- Appendix C, page 1). Accordingly, the USFWS clearly informed the public that the draft Plan was subject to change.

The USFWS received more than 700 comments on the Conte Refuge's Plan. The comments were submitted from conservation organizations, hunters, non-hunters, camp lease holders and local citizens regarding recreational uses on the refuge. The comments can be grouped into three categories: A) opposition to the use of pursuit dogs, B) opposition to the use of lead ammunition, and C) consistency with state regulations. Of great concern to many commenters was the use of dogs to pursue wildlife (and potential negative impacts to wildlife) on the refuge. Based on these public comments, the USFWS spent time reviewing additional literature regarding recreational impacts on wildlife during the breeding season. Recreational uses that occur on the refuge during the breeding season were identified as being angling, bike riding, dog training, driving automobiles, hiking, hunting, paddling, photography, and wildlife viewing. Recreational uses that occur primarily on existing infrastructure were recognized as having less of an overall impact on wildlife than those activities that occur in habitats used by wildlife. Of the recreational activities that occur away from the existing infrastructure, the frequency and duration of dog training across the various habitats of the refuge were identified as having the greatest impact on breeding wildlife.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

5396 VT Rt. 105, Brunswick VT 05905



In the Conte Refuge's Plan, hunting and fishing seasons were further aligned with that of the New Hampshire Fish and Game Department (NHFG) and the Vermont Fish and Wildlife Department (VFWD). Hunting opportunities were expanded to harvest new species, allow the use of dogs for hunting, and continue dog training outside the migratory bird nesting season. I acknowledge a minor difference between State regulations and those on the refuge with respect to dog training (beginning the training season on the refuge on August 1st vs July 1st in NH, and June 1st in VT); however, I want to reiterate that dog training has been found to be a compatible activity for outdoor enthusiasts, when allowed outside the migratory bird nesting season.

USFWS personnel work closely with our counterparts in NHFG and VFWD, and while we each have different laws and policies that govern our management, the differences are few, and there is no separation between our shared commitment to continue to provide opportunities for hunting and fishing in a manner consistent with State regulations, with minimal exceptions.

In your March letter, you request the USFWS to reopen the comment period noted above and require the USFWS to explain certain decisions. You specifically note your objections to four aspects of the Conte Refuge's Recreational Hunting and Fishing Plan: 1. The requirement that hunters obtain a free Special Use Permit when hunting with three or more dogs; 2. Restricting the use of dogs only for their use when hunting ruffed grouse at the Putney Mountain Unit; 3. Limiting training of hunting dogs to August 1 through the last Saturday in September (and to only daylight hours); 4. Prohibiting night hunting, except by Special Use Permit. The U.S. Fish and Wildlife declines to reopen the comment period for the following reasons.

1. Prior to the current plan, the refuge did not have a formal mechanism in place for tracking the number of people using pursuit dogs on the refuge. Hunting dog training and multiple pursuit dog permit requirements were enacted as an administrative means to better understand the amount of use occurring on the refuge and the number of individuals that are using pursuit dogs on the refuge. This no-cost permit requirement allows the USFWS the opportunity to share information with prospective permittees. It should be noted, that, as a matter of consistency across the State of Vermont between State and Federal wildlife agencies, both agencies require permits for training hunting dogs on public lands. The VFWD requires a permit for training bear dogs throughout the state. In addition, the Missisquoi National Wildlife Refuge requires a permit for training hunting dogs and for hunting with three or more dogs. Dog training and hunting with dogs has been and continues to be allowed on the Conte Refuge in Vermont.
2. The Putney Mountain Unit (Putney) of the Conte Refuge is 283 acres with much of its boundary posted by private landowners. The USFWS strives to provide the public with quality wildlife recreational opportunities where appropriate and compatible. The USFWS limited the use of pursuit dogs at Putney, as it is well understood that pursuit dogs have ranges much greater than 283 acres. By encouraging the use of pursuit dogs at Putney, the USFWS would not be able to provide hunters with a quality hunt and would be creating a conflict with abutting landowners that have posted their property. The USFWS records for the property do not indicate the consistent presence of waterfowl or upland birds (excluding ruffed grouse), hence the allowance of grouse hunting with dogs.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

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3. The USFWS shortened the dog training season to limit disturbance to wildlife, specifically ground/shrub nesting migratory birds during the breeding season as a way for the activity to be compatible as required by the National Wildlife Refuge System Improvement Act. Further, the modification to the dog training season better aligned the activity with the Conte Refuge legislated purposes and diminished the potential for actions that are prohibited by the Migratory Bird Treaty Act. The USFWS's policy on Compatibility (USFWS 603 FW 2 Compatibility) places the burden of proof on the proponent of a use to show that a proposed use does not materially interfere with or detract from the legislated purpose of the Refuge. A determination was made there was insufficient evidence to adequately state that nesting migratory birds would not be negatively impacted by the use of dogs on the refuge during the breeding season.
4. The majority of the National Wildlife Refuges across the country are closed at night, and the Nulhegan Basin Division is one of the few that allow public access at night. For over twenty years night hunting has been an allowed use at the Nulhegan Basin Division. Based on existing records, no requests have been made in over a decade for a permit to hunt at night. The night hunting permit requirement was put in place when the Division was established as a mechanism for the refuge staff to communicate with hunters about the occupied dwellings on the refuge and safety concerns pertaining to the discharge of firearms at night on public land.

The changes that were made to the Plan were minor, as they were incorporated into the Plan to allow dog training to be a compatible activity on the refuge. The USFWS will not be re-opening the public comment period, as the changes that were made to the Plan do not constitute a major change. The USFWS adjusted the dog training season on the refuge to reduce disturbances to wildlife during the breeding season. An example of a major change to the Plan would be the termination of dog training on the refuge. We did not eliminate dog training on the refuge, we shortened the season so that the use would not materially interfere or detract from the legislated purposes of the refuge.

More than 99 percent of the land administered as a part of the Conte Refuge is open to traditional and compatible priority public uses such as hunting, fishing, photography, environmental education, interpretation, and hiking. From habitat loss and fragmentation, to the global decline in biodiversity, we are faced with major challenges that require tolerance of our minor differences and a focus on all we have in common. I appreciate your engagement on this issue and have used several questions that you and others have asked to develop the attached Question and Answer document.

Sincerely,

Steve Agius
Wildlife Refuge Manager
Silvio O. Conte National Fish and Wildlife Refuge



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

5396 VT Rt. 105, Brunswick VT 05905



Questions and Answers

"Why does the U.S. Fish and Wildlife Service create refuge-specific regulations?"

The mission of the National Wildlife Refuge System (Refuge System) is to administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The Refuge System Improvement Act of 1997 (Improvement Act) provides that, *"it is the policy of the United States that each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established."* Additionally, the substantive refuge management criteria that are used to administer refuge lands require that the U.S. Fish and Wildlife Service (USFWS, Service, FWS) "(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System; and (B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans." A use must also be compatible and not materially interfere with or detract from the mission of the Refuge System, applicable Federal laws, or the legislated purposes of the refuge. (See USFWS 603 FW 2 Compatibility). Refuge-specific regulations are sometimes required to protect the biological integrity of the refuge as required by the refuge's specific statutory obligations or legislated purposes, the mission of the Refuge System and the Refuge System Improvement Act.

The Silvio O. Conte National Fish and Wildlife Refuge (Conte Refuge, refuge) was established in 1997 to conserve, protect and enhance the abundance and diversity of native plant, fish and wildlife species and the ecosystems on which they depend throughout the 7.2 million-acre Connecticut River watershed. Currently, the refuge is comprised of nearly 40,000 acres within parts of the four watershed states of New Hampshire, Vermont, Massachusetts, and Connecticut.

The legislated purposes of the Conte Refuge are:

- 1) to conserve, protect, and enhance the Connecticut River valley populations of Atlantic Salmon, American shad, river herring, shortnose sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and native species of plants, fish, and wildlife;*
- 2) to conserve, protect, and enhance the natural diversity and abundance of plant, fish, and wildlife species and the ecosystems upon which these species depend within the refuge;*
- 3) to protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.);*



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

5396 VT Rt. 105, Brunswick VT 05905



4) to restore and maintain the chemical, physical, and biological integrity of wetlands and other waters within the refuge;

5) to fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands; and

6) to provide opportunities for scientific research, environmental education, and fish and wildlife-orientated recreation and access to the extent compatible with other purposes stated in this section.

"Why did the Conte Refuge develop a new hunt plan?"

A new refuge hunting and fishing plan is required by Service policy any time there is a change in species or huntable acres. Additionally, the refuge's previous recreational hunting and fishing plans were fragmented between the refuge's separate divisions across the northern part of the Connecticut River watershed. The current recreational hunting and fishing plan (Plan) is the assemblage of those documents into a single document for the states of New Hampshire and Vermont. As part of the development of the draft Plan, the Service communicated with both states' fish and wildlife agencies regarding efforts to align the Conte Refuge's Plan with state's regulations. The current Plan includes additional species that were not part of the previous recreational hunting and fishing plans.

"What federal trust ground nesting bird species could be impacted by training pursuit dogs on the refuge?"

The USFWS is the principal federal agency responsible for protection of migratory birds as a trust resource under the Migratory Bird Treaty Act. The Service's Migratory Bird Program publicly released the Birds of Conservation Concern 2021 report (Report) this past summer. This report is developed by the USFWS and its partners to identify species, subspecies and populations of all migratory birds that without additional conservation action are likely to become candidates for listing under the Endangered Species Act. The Report represents the highest migratory bird conservation priorities for the USFWS. In 2021, 11 species of birds that occur in the northern part of the Connecticut River watershed and nest on the refuge were on the Birds of Conservation Concern list. This represents a 37 percent increase since 2008 in the number of bird species that are of conservation concern on the refuge, which is alarming, as it indicates populations of additional species are declining within the region. Of particular interest at the Nulhegan Basin Division are Canada warbler, rusty blackbird, and veery, as these three ground/shrub nesting birds occur in areas that are frequently used for training dogs.

As part of the development of the Conte Refuge's 2018 Habitat Management Plan for the Nulhegan Basin Division, the refuge identified focal conservation species (American woodcock, blackburnian warbler, black-throated blue warbler, Canada warbler and rusty blackbird). All but the blackburnian warbler are ground/shrub nesting species that are protected by the USFWS as trust resources and likely to be impacted by repeated disturbances associated with dog training during the nesting season. Recognizing that the Nulhegan Basin is one of the largest remaining intact lowland softwood



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

5396 VT Rt. 105, Brunswick VT 05905



habitats in New England (outside of Maine), the refuge provides critical habitat to forest nesting migratory birds. Based on the observations of USFWS personnel, lowland softwood sections of the refuge receive daily visitation throughout the breeding season from individuals that train their dogs in the same areas where listed Birds of Conservation Concern and focal conservation species are known to nest.

Spruce grouse are listed as endangered in the State of Vermont and are protected by the Vermont Endangered Species Act. Based on the Vermont Fish and Wildlife Department's (VFWD) spruce grouse recovery plan, roughly three quarters of the population of spruce grouse in Vermont nest on the Refuge. Spruce grouse are also known to nest on the Wenlock Wildlife Management Area, and Victory Basin Wildlife Management Area in Vermont. The VFWD prohibits dogs from being off leash in spruce grouse nesting areas and advises hunters not to hunt ruffed grouse in areas where spruce grouse are known to nest.

"What rationale was used to restrict dog use and require a permit?"

Prior to the current plan, the refuge did not have a formal mechanism in place for tracking the number of people using pursuit dogs on the refuge. Hunting dog training and multiple pursuit dog permit requirements were enacted as an administrative means to better understand the amount of use occurring on the refuge and the number of individuals that are using pursuit dogs on the refuge. This no-cost permit requirement allows the USFWS the opportunity to share information with prospective permittees. It should be noted, that, as a matter of consistency across the State of Vermont between State and Federal wildlife agencies, both agencies require permits for training hunting dogs on public lands. The VFWD requires a permit for training bear dogs throughout the state. In addition, the Missisquoi National Wildlife Refuge requires a permit for training hunting dogs and for hunting with three or more dogs. Dog training and hunting with dogs has been and continues to be allowed on the Conte Refuge in Vermont.

"Has the Refuge denied any permits for dog training/hunting? Does this permit extend to all hunters hunting together?"

The refuge has issued special use permits for dog training and hunting with three or more dogs since the hunt plan was finalized on September 1, 2021. Permits are issued to individuals that provide their contact information and a current state fish and wildlife hunting license number. In 2021, 23 individuals were issued a dog training/pursuit dog permit as requested. Thus far, in 2022, two individuals have requested, and received a permit. No permits have been denied.

The current regulation (Code of Federal Regulations 50 §32.64) relating to the permit requirement for hunting with more than two dogs states *"We allow the use of dogs consistent with State regulations, except hunters using more than two dogs must possess a Special Use Permit(FWS Form 3-1383-G) issued by the refuge manager."*

Regardless of the number of people in a hunting party, all individuals that are training or hunting on the refuge with three or more of their own dogs are required to have a special use permit issued by the refuge.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

5396 VT Rt. 105, Brunswick VT 05905



"To what degree did outside animal rights groups influence the final huntplan?"

On May 4, 2021, the USFWS released draft recreational hunting and fishing plans for 90 national wildlife refuges nationwide. The Conte Refuge's Plan was released for public comment as part of this national effort to increase recreational hunting and fishing opportunities on refuges. The Conte Refuge's Plan was open for public comment for a total of 86 days. The specific purpose of the Plan was to expand hunting and fishing opportunities on the refuge by increasing the number of species that could be legally harvested and to allow for the use of pistols for harvesting game.

The USFWS received more than 700 comments on the Conte Refuge's Plan. The comments were submitted from conservation organizations, hunters, non-hunters, camp leaseholders and local citizens regarding recreational uses on the refuge. All comments were grouped into three categories: A) opposition to the use of pursuit dogs and potential negative impacts to wildlife, B) opposition to the use of lead ammunition, and C) consistency with state regulations. As part of the comment review process, the comments provided by any one individual, entity, or organization received the same level of consideration and were addressed individually or in groups as an attachment to the Environmental Assessment.

"Are populations of migratory birds on the refuge increasing, decreasing or stable?"

Based on more than ten breeding bird surveys that have been conducted throughout the Nulhegan Basin Division since its establishment in 1999, it is well established that the spruce-fir habitat on the refuge is utilized by neotropical migratory birds.

As mentioned previously, migratory bird populations continue to decline throughout New England. It is unfortunate, but there are a growing number of species of birds that nest on the refuge that are of conservation concern. The most recent 2021 Breeding Birds of Conservation Concern lists Canada warblers, rusty blackbirds and veery as species that are showing population declines. USFWS personnel are aware that these three species are ground/shrub nesting birds that utilize softwood habitats on the refuge. Breeding bird data that has been correlated with vegetation data shows that Canada warblers, rusty blackbirds and veery all utilize the spruce-fir softwood habitat on the refuge where dog training has taken place during the breeding season. It should also be noted that Canada warblers and rusty blackbirds are identified in the VFWD's Wildlife Action Plan as being high priority Species of Greatest Conservation Need.

It is well established that spruce grouse nest and utilize the spruce-fir stands on the refuge. The VFWD's Spruce Grouse Recovery Plan identifies the refuge as providing approximately three-fourths of Vermont's current spruce grouse habitat. Data from the VFWD indicate a decline in the spruce grouse population, with pets accompanying their owners on excursions through grouse habitat being recognized as disruptive to breeding activities of the species (VT Spruce Grouse Recovery Plan).



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Silvio O. Conte National Fish and Wildlife Refuge

5396 VT Rt. 105, Brunswick VT 05905



"In what percentage of the overall spruce and fir habitat on the refuge are dogs being trained?"

Based on observations made by USFWS personnel, observations made by academic researchers, trail camera data, and public use visitation data, it is known that June and July are the periods of the year when the refuge is most frequented by individuals training pursuit dogs. Individuals that train pursuit dogs are known to utilize multiple areas of the refuge on a given day. The same individuals are known to utilize the refuge daily and consistently throughout the breeding bird season. There is concern that the daily disturbance by numerous individuals' training dogs in the same areas on the refuge will negatively impact ground and shrub nesting birds.

"Does a one-time disturbance by hounds (or any other disturbances factors) rise to a level that negatively influences overall bird populations in the basin?"

It is widely recognized in scientific literature that domestic dogs can negatively impact the distribution, abundance, ability to provision young, and overall productivity of nesting birds. The associated impacts from domestic dogs are based on the type of species, time of year, location, type of use, frequency, and duration. Within the hunt plan, the USFWS adjusted the dog training season on the refuge to reduce disturbances to wildlife during the breeding season. As noted above, the refuge is legislatively mandated to target the conservation of native species, which includes the protection of migratory birds during the breeding season (May, June, and July).