

SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE  
EMINENT DOMAIN PREVENTION ACT

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MAY 16, 1996.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2909]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2909) to amend the Silvio O. Conte National Fish and Wildlife Refuge Act to provide that the Secretary of the Interior may acquire lands for purposes of that Act only by donation or exchange, or otherwise with the consent of the owner of the lands, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2909 is to provide that the Secretary of the Interior may acquire lands for the Silvio O. Conte National Fish and Wildlife Refuge only by donation or exchange, or otherwise with the consent of the owner of the lands.

BACKGROUND AND NEED FOR LEGISLATION

The National Wildlife Refuge System is comprised of Federal lands that have been acquired for the conservation and enhancement of fish and wildlife. Totaling about 91.7 million acres, the System provides habitat for hundreds of fish and wildlife species and is overseen by the U.S. Fish and Wildlife Service. The first

wildlife refuge was established by President Theodore Roosevelt at Pelican Island, Florida, in 1903. At present, the System is comprised of 508 refuges, located in all 50 States and the five U.S. Territories. These units range in size from the smallest, the Mille Lacs National Wildlife Refuge in Minnesota, which is less than one acre, to the largest, the 19.3-million-acre Arctic National Wildlife Refuge in Alaska. In the last decade, 85 refuges and approximately 3.6 million acres have been added to the System.

On February 5, 1991, Congressman Silvio O. Conte (R-MA) introduced H.R. 794, a bill to establish a Fish and Wildlife Refuge on the Connecticut River. The Congressman (who represented western Massachusetts) was a long-time supporter of the Refuge System, both in his capacity as the Ranking Minority Member of the Appropriations Committee and as a representative on the Migratory Bird Commission.

Congress cleared an amended version of H.R. 794 in November 1991. The final measure not only established the Refuge, but also named it in honor of the Congressman, who had passed away shortly after he introduced the bill. "The Silvio O. Conte National Fish and Wildlife Refuge Act", Public Law 102-212, was signed into law by President George Bush on December 11, 1991. The Act directed the U.S. Fish and Wildlife Service to designate the Refuge's boundaries, and to use its legal authorities to acquire land within those boundaries. The Act also established a Conte Refuge Advisory Committee and authorized construction of up to four Refuge education centers.

The Service approved the Final Environmental Impact Statement (FEIS) on the establishment and operation of the Conte Refuge in December, 1995. The plan adopted in the FEIS proposes that the Service or its partners protect 78,395 acres of habitat in Connecticut, Massachusetts, New Hampshire, and Vermont over the next 15 years. This plan attempts to protect the important habitat areas along the entire length of the Connecticut River.

Due to budgetary constraints, the Service recognizes that it lacks the funds to purchase all this property. Therefore, the agency intends to cost-share acquisitions with State and local conservation agencies and land trusts. The Service plans to accomplish this goal not only through direct acquisition, but also through less expensive means such as conservation easements, the acquisition of development rights, donations, or purchases that generate tax benefits for the seller. The Service also intends to conduct habitat restoration, research and monitoring, and environmental education in the Connecticut River basin.

There are several mechanisms by which lands are placed in the Refuge System: (1) withdrawal from the public domain by Executive Order or public land order; (2) purchase or lease of fees or easements using authorities granted in several statutes (e.g. Migratory Bird Conservation Act, Refuge Recreation Act, Endangered Species Act, Fish and Wildlife Act, North American Wetlands Conservation Act); (3) establishment by Acts of Congress; (4) donations to the Federal Government; (5) cooperative agreement with, or transfer from, other government agencies; and (6) exchanges between private parties, corporate landowners, or other government agencies and the Service. The primary sources of funding for refuge

acquisitions are annual appropriations from the Land and Water Conservation Fund and the Migratory Bird Conservation Fund (which is funded from the purchase of annual duck stamps and refuge entrance fees).

The Fish and Wildlife Service, like other Federal, State and local governments, has the power of eminent domain. Eminent domain is the power of the State to take private property for public use. Federal eminent domain power is derived from the 5th Amendment to the Constitution, which states that "private property may [not] be taken for public use, without just compensation". However, it is the Service's policy to acquire lands only from willing sellers. The Service will use condemnation only to:

Determine the legal owner (clear title);

Settle a difference of opinion on value; and

Prevent uses which would cause irreparable damage to resources which the refuge was established to protect.

In the last ten years, less than 2 percent of the Service's acquisitions nationwide were acquired through the use of eminent domain. Since 1989, all condemnation actions have been to clear title or determine value. These are so called "friendly" condemnations in which the action is taken with the consent of the landowner.

Whatever the means used by the Service to acquire property, the agency is required by law to pay fair market value as determined by an appraisal which conforms to uniform Federal appraisal guidelines for land acquisition.

The Silvio O. Conte National Fish and Wildlife Refuge Eminent Domain Prevention Act of 1996 directs the Secretary to acquire lands for the Refuge only when such an acquisition is accomplished with the consent of the landowner. Under this bill friendly condemnations could be carried out to determine the value of the property or to clear title so long as the landowner consents to the action. These are the two primary situations in which the Service condemns property.

#### COMMITTEE ACTION

H.R. 2909 was introduced on January 31, 1996, by Congressman Charles F. Bass (R-NH). The bill has been cosponsored by Congressmen William H. Zeff, Jr. (R-NH) and Bernard Sanders (I-VT). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans.

On March 27, 1996, the Subcommittee held a hearing on H.R. 2909. Congressman Bass testified in favor of the legislation and indicated in his statement that the measure had been endorsed by the Appalachian Mountain Club, the New Hampshire Farm Bureau, the New Hampshire Timberland Owners Association and the Society for the Protection of New Hampshire Forests. The Administration testified in opposition to the bill. Furthermore, Congressman Sam Gejdenson (D-CT) submitted a letter in strong opposition to H.R. 2909 and he stated that "it is unnecessary to prohibit the Service from exercising eminent domain under any circumstances".

On April 18, 1996, the Subcommittee met to markup H.R. 2909. The bill was ordered favorably reported by voice vote to the Full Committee without amendment. On May 8, 1996, the Committee

on Resources met to consider H.R. 2909. There were no amendments, and the Committee ordered the bill favorably reported to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 1. SHORT TITLE

This Act may be cited as the “Silvio O. Conte National Fish and Wildlife Refuge Eminent Domain Prevention Act.”

##### SECTION 2. RESTRICTION ON METHOD OF ACQUISITION OF LANDS FOR PURPOSES OF THE SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE ACT

This section states that the Secretary of the Interior may acquire lands for the Silvio O. Conte National Fish and Wildlife Refuge only by donation or exchange, or otherwise with the consent of the owner of the lands.

##### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of Rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee on Resources’ oversight findings and recommendations are reflected in the body of this report.

##### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2909 will have no significant inflationary impact on prices and costs in the operation of the national economy.

##### COST OF THE LEGISLATION

Clause 7(a) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2909. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

##### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2909 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2909.

3. With respect to the requirement of clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2909 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 14, 1996.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2909, the Silvio O. Conte National Fish and Wildlife Refuge Eminent Domain Prevention Act, as ordered reported by the House Committee on Resources on May 8, 1996. We estimate that enactment of this bill would have no impact on the federal budget. H.R. 2909 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 2909 would amend Public Law 102-212, the Silvio O. Conte National Fish and Wildlife Refuge Act, to specify that land for the refuge may only be acquired with the consent of the landowner. This provision would have no impact on estimated land acquisition costs for this site.

H.R. 2909 contains no private sector or intergovernmental mandates as defined in Public Law 104-4 and would have no effect on the budgets of state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JUNE E. O'NEILL, *Director.*

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 2909 contains no unfunded mandates.

DEPARTMENTAL REPORTS

The Committee received a unfavorable report on H.R. 2909 from the Department of Interior on April 24, 1996. No other reports have been received on H.R. 2909.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, April 24, 1996.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. YOUNG: This responds to your request for the views of this Department with respect to H.R. 2909, the "Silvio Conte National Fish and Wildlife Refuge Eminent Domain Prevent Act".

The Administration is strongly opposed to enactment of H.R. 2909.

The bill would amend section 106 of the Silvio Conte National Fish and Wildlife Refuge Act (Public Law 102-212; 16 U.S.C. 668dd note) to provide that lands may be acquired for this refuge only by donation or exchange, or otherwise with the consent of the owner.

Since 1989, the Fish and Wildlife Service has not used condemnation without the consent of the owner, and does not intend to use it for this unique refuge. This restriction on our ability to protect the public's resources is not warranted.

The Conte refuge, in the States of Connecticut, Massachusetts, New Hampshire and Vermont, was the concept of the late Congressman Silvio Conte. It was enacted in 1991 by large bipartisan majorities in both Houses, and represents an entirely new kind of national wildlife refuge.

Rather than the traditional acquisition of large tracts of land for a refuge, the intent was to have only small areas come into Federal ownership. The main emphasis was to be on maintaining and improving upon the progress that had been made in restoring the Connecticut River watershed through partnerships, conservation easements, cooperative agreements, and environmental education, with the Fish and Wildlife Service providing technical expertise and serving as the catalyst for the effort.

The plan for the Conte refuge through the year 2010 is found in the final Environmental Impact Statement and Record of Decision, signed December 13, 1995. This plan, developed after extensive public involvement in all four states, is faithful to the intent of the legislation. Out of an area of over 7,000,000 acres in the four States, a total of only 6,500 acres is planned for fee title acquisition by the Fish and Wildlife Service, to protect threatened, endangered and locally rare species and habitats.

In southern New Hampshire and Vermont, a total of only 600 acres are likely to be purchased. In northern New Hampshire and Vermont, an additional 600 acres would likely be acquired. Conservation easements would be sought for an additional 450 acres in the southern parts of the two states, and an additional 310 acres in the northern parts.

1,065 acres would likely be purchased in Connecticut, and 4,265 acres in Massachusetts, with an additional 200 acres and 460 acres, respectively, covered by conservation easements.

The Service would also seek voluntary, cooperative agreements with landowners for an additional 18,300 acres in the four States to help protect fish and wildlife resources. Our Existing Partners for Wildlife program and Challenge Cost-Share grants would contribute to this aspect of the refuge program.

Any effort to expand upon the scope of these elements, or to otherwise alter them significantly, would require a new or supplemental EIS, with extensive opportunities for public involvement. Funds for the Partners for Wildlife and Challenge Cost Share grants, and for land acquisition under the Land and Water Conservation Fund, are available only through the Department of Interior Appropriations Act. In short, there is no means whereby any element of the project can significantly change without public involvement, no proceed without appropriations, and, realistically, with the support of the Members representing the affected area.

No condemnation is planned for any aspect of this project. The Fish and Wildlife Service's policy and history is to rely on willing sellers for land acquisition, reserving condemnation for rare instances of an imminent threat to public resources that cannot be otherwise resolved.

In the last ten years, for example, only 15,773 acres were condemned, from 4 owners, or less than 1/10th of 1% of the 1,473,214 acres we have purchased from 6,038 owners. *Since 1989 we have had no condemnations* except with the consent of the owner, to settle price differences or clear titles. (Those cases are not included in these figures). We have provided the Committee staff with a paper explaining our policy which also contains these numbers in more detail.

In addition, our policy requires that before engaging in a "declaration of taking", which is the usual form of condemnation without the consent of the owner, we consult with the authorizing and Appropriations Committees, and with the Member representing the area in question. It is not an action we undertake lightly.

Despite the rarity of such condemnation, however, the Administration is not willing to forego this authority at the Conte Refuge, as a means of last resort to protect the resources there, nor to agree to the precedent that would be set if H.R. 2909 were enacted. We would then anticipate subsequent efforts to void condemnation authority generally for the National Wildlife Refuge System.

Neither the plans for the Conte Refuge nor the track record of the Fish and Wildlife Service warrant this restriction. We urge the Subcommittee not to take further action on H.R. 2909.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT P. DAVISON,  
*Deputy Assistant Secretary for  
Fish and Wildlife and Parks.*

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### **SECTION 106 OF THE SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE ACT**

#### **SEC. 6. ACQUISITION AND ESTABLISHMENT OF REFUGE.**

(a) \* \* \*

\* \* \* \* \*

(e) *RESTRICTION ON METHOD OF ACQUISITION.—The Secretary may acquire lands for purposes of this title only by donation or exchange, or otherwise with the consent of the owner of the lands.*

DISSENTING VIEWS OF HON. GEORGE MILLER, HON.  
GERRY E. STUDDS, HON. MAURICE HINCHEY, HON. PAT-  
RICK KENNEDY, HON. SAM GEJDENSON, HON. NEIL  
ABERCROMBIE, HON. EDWARD MARKEY, AND HON.  
FRANK PALLONE

The Silvio O. Conte Refuge was the concept of our late friend and colleague Silvio Conte and represents an entirely new kind of national wildlife refuge. It will eventually protect a total of 78,395 acres using a combination of conservation easements, cooperative agreements, and cost-sharing partnerships. Of this total acreage, a maximum of 6,500 acres would be owned by the Federal Government, all of it acquired from willing sellers. This cooperative, innovative, and cost-effective approach to protecting valuable wildlife habitat is in sharp contrast with the punitive nature of H.R. 2909. We believe that if Silvio Conte were alive today, he would join us in opposing this legislation.

H.R. 2909 is unnecessary because, as stated in the Final Environmental Impact Statement and Action Plan for the Conte Refuge, the Fish and Wildlife Service does not plan to acquire refuge lands from non-willing sellers using eminent domain. In addition, the Service has in the past used its eminent domain authority sparingly and responsibly. From 1965 through 1995, the FWS purchased nearly 4 million acres of land for wildlife habitat. During this period, the power of eminent domain was only used to acquire 34,975 acres—less than one percent of land acquisitions. Moreover, the Service has not used involuntary condemnation at all since 1989.

Extensive checks and balances exist to ensure that the Service does not use this authority carelessly on the rare occasions when it is used. Land acquisition funds are appropriated annually from the Land and Water Conservation Fund with full Congressional oversight. Fish and Wildlife Service regulations require consultation with the Appropriations Committee prior to using funds for eminent domain condemnations. Lastly, the Service always consults Members whose districts are affected by land acquisitions. If property is ultimately acquired through eminent domain, the property owner is paid fair market value based on an independent appraisal.

Beyond the parochial concerns driving this legislation, H.R. 2909 has wide reaching implications for future refuges and the entire National Wildlife Refuge System. While it is true that the FWS has occasionally been barred in the past from using eminent domain, these cases involved either refuges within restricted geographic areas or much more massive acquisitions. In the case of the Conte Refuge, the Service plans to acquire only 6,500 acres spread over the States of New Hampshire, Vermont, Massachusetts, and Connecticut.

H.R. 2909 also raises the general issue of effective protection of the public's interest. The Fish and Wildlife Service is entrusted with the power of eminent domain to acquire lands for the greater public good. Although eminent domain authority is a tool of last resort for the Service, without it there is ultimately no way to protect land already purchased with taxpayer dollars from adjacent harmful development or to prevent the destruction of critically important wildlife habitat. If we deny the Service this tool, we make it much more difficult for the Service to effectively protect the public interest in habitat conservation.

Furthermore, this bill exclusively ties the hands of the Federal Government in protecting the public interest in fish, game, and wildlife, habitat. We are not aware of any attempts to restrict eminent domain authority when it is applied to highways, dams, or other public works projects in New England. In establishing a differential standard for application of the power of eminent domain, H.R. 2909 relegates wildlife habitat protection to second-class status. That is wrong.

Given the land acquisition plans for the Conte Refuge, the land acquisition history of the Service, and the provision for public input and Congressional oversight in the rare event of a condemnation, a legislative solution is not warranted. This bill would undoubtedly set contemporary precedent for prohibiting condemnation by the Fish and Wildlife Service or other bureaus of the Department of the Interior. We oppose this bill as does the Department of the Interior.

GEORGE MILLER,  
Senior Democratic Member,  
Committee on Resources.  
GERRY E. STUDDS,  
Senior Democratic Member,  
Subcommittee on Fisheries,  
Wildlife and Oceans.  
MAURICE D. HINCHEY.  
SAM GEJDENSON.  
EDWARD J. MARKEY.  
PATRICK J. KENNEDY.  
NEIL ABERCROMBIE.  
FRANK PALLONE, Jr.