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109TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
109–585

# ASIAN CARP PREVENTION AND CONTROL ACT

JULY 20, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

# R E P O R T

[To accompany H.R. 3049]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3049) to amend section 42 of title 18, United States Code, popularly known as the Lacey Act, to add certain species of carp to the list of injurious species that are prohibited from being imported or shipped, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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49–006

## PURPOSE AND SUMMARY

H.R. 3049, the "Asian Carp Prevention and Control Act," addresses the growing problem of non-native species of Asian carp entering the Mississippi River System and the Great Lakes. The bill amends 18 U.S.C. § 42, popularly known as the "Lacey Act," to add four species of Asian carp to the list of injurious species that are prohibited from being imported into or shipped within the United States.

## BACKGROUND AND NEED FOR THE LEGISLATION

Since the 1970s, three species of non-native Asian carp (silver, bighead, and black carp) have been imported into the United States for use in aquaculture facilities as fish food and as a biological control for excessive aquatic plants, algae, nutrients, and snails. These fish consume large amounts of food and grow quickly, reaching up to 50 inches in length and 100 pounds.[1]

All three species have escaped captivity and have entered into the Mississippi River Basin. Because bighead and silver carp first escaped in the 1980s, they have established reproducing populations that have begun to migrate northward to the upper Mississippi and Illinois Rivers. In some areas, they have become the most abundant fish species, out-competing native fish for food, and becoming entangled in and destroying commercial fishing nets. In addition, boaters have been injured by silver carp, which are highly sensitive to noise and frequently jump out of the water in response to nearby outboard motors. Bighead and silver carp are currently limited to the Mississippi River. However, these fish have been reported as close as 40 miles from Lake Michigan.[2]

The initial escape of black carp was first documented in 1994, when approximately 30 black carp (reportedly sterile) escaped into the Missouri River (which feeds into the Mississippi River) during a flood at an aquaculture facility. Since then, four incidents of escaped black carp have been documented in Louisiana, Missouri, and Illinois. Currently, it is not believed that black carp are reproducing in the wild. However, if black carp become established, they threaten to decimate native snail and mussel populations, many of which are threatened or endangered, given their voracious feeding habits. It is estimated that a 4-year-old black carp consumes an average of 3–4 pounds of mussels each day. Also, fish species that rely on these same invertebrate prey may suffer, including endangered and threatened sturgeon.[3]

If Asian carp reach the Great Lakes, they will threaten fisheries in the Great Lakes, an industry that has been valued at between $4–7 billion. This is an ecosystem already de-stabilized by the introduction of over 180 non-native species, including the sea lamprey and zebra mussel. Asian carp could potentially strip the system of prey at the base of the food web, devastating nearly all native fish. To prevent Asian carp from entering the Great Lakes, an electrical barrier has been built in the Chicago Sanitary and Ship-

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[1] Dan Egan, Intruders at the Gate, MILWAUKEE JOURNAL SENTINEL, Dec. 25, 2004, *available at http://www.jsonline.com/story/index.aspx?id=286806.*

[2] *Id.*

[3] Jesse Garza, *Invasive Fish Could Threaten Watershed,* MILWAUKEE JOURNAL SENTINEL, Aug. 23, 2005, *available at http://www.jsonline.com/story/index.aspx?id=350484.*

ping Canal, which is the only water connection between the Mississippi River and Great Lakes Basin. However, as Chicago Mayor Richard M. Daley explained in submitted testimony at a hearing last November before the House Committee on Resources' Subcommittee on Fisheries and Oceans, the electrical barrier is not sufficient and additional steps must be taken to prevent the spread of Asian carp.[4]

## HEARINGS

The Committee on the Judiciary held no hearings on H.R. 3049.

## COMMITTEE CONSIDERATION

On March 29, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 3049 without an amendment by voice vote, a quorum being present.

## VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 3049.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3049, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

[4] *Oversight Hearing on the Growing Problem of Invasive Asian Carp in the Great Lakes and Mississippi River System Before the Subcomm. On Fisheries and Oceans of the H. Comm. on Resources,* 109th Cong. (2005) (submitted testimony of Richard Daley, Mayor, City of Chicago).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, April 21, 2006.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
*Committee on the Judiciary,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3049, the "Asian Carp Prevention and Control Act."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226–2860.

Sincerely,

DONALD B. MARRON.
ACTING DIRECTOR

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

*H.R. 3049—Asian Carp Prevention and Control Act.*

H.R. 3049 would make it a Federal crime to import or ship four species of carp—black, bighead, silver, and largescale silver—unless the importer has obtained permission from the U.S. Fish and Wildlife Service to import the fish for scientific, medical, educational, or zoological reasons. CBO estimates that implementing H.R. 3049 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant. H.R. 3049 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on State, local, or tribal governments.

H.R. 3049 would impose a private-sector mandate, as defined in UMRA, on entities that import or ship certain varieties of Asian carp. Based on information from industry and government sources, CBO estimates that the direct cost of complying with the mandate would be small and fall below the annual threshold for private-sector mandates established in UMRA ($128 million in 2006, adjusted annually for inflation). The bill would add certain species of carp to the list of injurious species that are currently prohibited from being imported or shipped. The cost of the mandate would be the loss of net income from not being able to import or ship those fish. According to government and industry sources, the value of shipments and imports is very small relative to UMRA's threshold.

Because the bill would establish a new offense, the Federal Government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that H.R. 3049 would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 3049 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later

spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

The CBO staff contacts for this estimate are Matthew Pickford (for Federal costs), who can be reached at 226–2860, and Paige Piper/Bach (for the private-sector impact), who can be reached at 226–2940. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R.3049, is intended to reduce the increase in population and the migration of harmful non-native species of Asian carp.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8, of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

*Section 1. Short Title.*

This section provides for the short title of the bill as the "Asian Carp Prevention and Control Act."

*Section 2. Addition of Species of Carp to the List of Injurious Species that are Prohibited from being Imported or Shipped.*

This section amends 18 U.S.C. § 42(a)(1) to include the black carp, the bighead carp, the silver carp, and the largescale silver carp to the list of injurious species. Injurious species are those species (and offspring and eggs) that are injurious to the interests of human beings, agriculture, horticulture, forestry, wildlife, or wildlife resources of the United States. If a species is listed as injurious, importation and interstate transfer of these fish is prohibited unless authorized through a permit from the U.S. Fish and Wildlife Service. Special permits may be granted for scientific, educational, medical, or zoological purposes. Intrastate transport or possession of these species within States is not prohibited unless expressly prohibited by that State. The penalty for violating this provision of the Lacey Act includes fines or imprisonment for not more than six months.

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

In compliance with clause 3(e) 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 and existing law in which no change is proposed is shown in roman):

## TITLE 18, UNITED STATES CODE

* * * * * * *

# PART I—CRIMES

* * * * * * *

## CHAPTER 3—ANIMALS, BIRDS, FISH, AND PLANTS

* * * * * * *

### § 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations

(a)(1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species Herpestes auropunctatus; of the species of so-called "flying foxes" or fruit bats of the genus Pteropus; of the zebra mussel of the species Dreissena polymorpha; *of the black carp of the species Mylopharyngodon piceus; of the bighead carp of the species Hypophthalmichthys nobilis; of the silver carp of the species Hypophthalmichthys molitrix; of the largescale silver carp of the species Hypophthalmichthys harmandi;* and such other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish (including mollusks and crustacea), amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act, insofar as such importation is subject to regulation under that Act.

* * * * * * *

MARKUP TRANSCRIPT

# BUSINESS MEETING

**WEDNESDAY, MARCH 29, 2006**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

Pursuant to notice, I now call up the bill H.R. 3049, the "Asian Carp Prevention and Control Act," for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any time.

[The bill, H.R. 3049, follows:]

I

109TH CONGRESS
1ST SESSION

# H. R. 3049

To amend section 42 of title 18, United States Code, popularly known as the Lacey Act, to add certain species of carp to the list of injurious species that are prohibited from being imported or shipped.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2005

Mr. GREEN of Wisconsin introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To amend section 42 of title 18, United States Code, popularly known as the Lacey Act, to add certain species of carp to the list of injurious species that are prohibited from being imported or shipped.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Asian Carp Prevention and Control Act".

**SEC. 2. ADDITION OF SPECIES OF CARP TO THE LIST OF INJURIOUS SPECIES THAT ARE PROHIBITED FROM BEING IMPORTED OR SHIPPED.**

Section 42(a)(1) of title 18, United States Code, is amended by inserting after "Dreissena polymorpha;" the following: "of the black carp of the species Mylopharyngodon piceus; of the bighead carp of the species Hypophthalmichthys nobilis; of the silver carp of the species Hypophthalmichthys molitrix; of the largescale silver carp of the species Hypophthalmichthys harmandi;".

○

Chairman SENSENBRENNER. The chair recognizes himself for 5 minutes to explain the bill.

Today we are considering H.R. 3049, the "Asian Carp Prevention and Control Act," a bill authored by my colleague from Wisconsin, Mr. Green, to prohibit the importation and interstate shipment of four species of Asian carp.

In the 1980's, several non-native species of Asian carp escaped captivity in Arkansas and made their way into the Mississippi River. Dubbed "the underwater lawn mower," these enormous fish have become a menace to native species and their habitat. Asian carp can grow to over 4 feet long and over 100 pounds, leaving little or no food supply for other fish. Now these pests are moving upstream toward the Great Lakes, threatening the food supply of sport fish, such as the yellow perch, walleye, and smallmouth bass, and threatening fishermen as well.

The Milwaukee Journal Sentinel reports that Asian carp have been known to jump as high as 15 feet, hurtling into fishing boats and, in one instance, breaking a commercial fisherman's nose. In a series of articles, the Journal has chronicled the threat posed to native ecosystems by Asian carp. I ask unanimous consent to include these articles in the Committee report.

Without objection, so ordered.

[The information follows:]

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# Intruders at the gate

## Invader species threaten to further shake Lake Michigan's sensitive ecosystem

By DAN EGAN
degan@journalsentinel.com

*Posted: Dec. 25, 2004*

*Third of three parts*

The more Dan Thomas learns about the bighead carp swimming toward the Great Lakes, the more the avid salmon fisherman fears for the future of Lake Michigan.

The monstrous fish, brought from Asia to North America by Southern fish farmers in the 197 are believed to have escaped on floodwaters into the Mississippi River more than a decade ag They have been migrating north ever since.

Advertisement

Bighead and their cousins, silver carp, are now believed to be within 50 miles of the Chicago shoreline.

The fish may share the same last name with common carp, but that's about it.

Common carp, brought to North

Troubled Waters: The Great Invasion

Photo/Rick Wood

Asian carp leap from the Illinois River after an electric shock during a fish survey near Havana, Ill.

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America in the 1800s by Europeans who valued their firm white flesh, feed mostly on tiny critters that dwell on lake and river bottoms. They have prospered in the Great Lakes, but after more than 100 years they haven't overwhelmed them.

Bighead and the slightly smaller silver carp are entirely different beasts.

Bighead can grow bigger than an Olympic gymnast. They don't have teeth and can't be caught by hook and line, but they've got mouths so big and round they could gobble a softball whole. The biggest can weigh more than 100 pounds and suck up to 40 pounds of plankton per day - food upon which nearly all other fish species in the Great Lakes directly or indirectly depend.

They've been called the 100-pound zebra mussel, and commercial fishermen along stretches of the Illinois River that have been infested by these "Asian carp" have one simple message for Great Lakes lovers: Fear these fish.

In just a decade, bigheads and silver overwhelmed the river to the point that today fishermen can find their nets so thick with thrashing and gasping carp that they sometimes can't even hoist them from the water.

"There is no way they can get rid of them without destroying the river," says Gary Bahl, a part-time commercial fisherman from Havana, Ill., on the Illinois River. "They multiply so fast . . . there's millions and millions of them."

Few doubt these fish would thrive in the bays, harbors and tributaries of the Great Lakes.

What worries salmon anglers such as Thomas most is a map of the Asian carp's native range. Stretch the latitudinal lines across the globe from Asia, says the president of the Great Lakes Sport Fishing Council, and it is apparent the fish are a perfect fit for the Great Lakes,

The carp have taken over sections of the river, which is connected to Lake Michigan via the Chicago Sanitary and Ship Canal. The fish are believed to be within 50 miles of the lake.

*Photo/Rick Wood*

Fishing boats line the riverfront in Two Rivers, which has historically been one of Wisconsin's most important commercial fishing communities. Invasive species have hurt the fish populations on which the fragile industry depends.

Go to more photos from this series

**Related Coverage**

Flying Carp: Invading fish so agitated they go airborne

Editorial: Officials must act to head off invasions

**By the Numbers**

**100 pounds**
How much bighead carp can weigh

**40 pounds**
How much plankton the biggest can eat daily

**Invasive Species**

How overseas ships bring unwelcome visitors (1 MB PDF)

the world's largest freshwater system, and the biggest home these big fish could ever hope to find.

"It just makes you want to cry," he says.

If bighead carp make their way into the lakes, says Dennis Schornack, President Bush's handpicked person for U.S.-Canadian Great Lakes issues, "then it is just a matter of time before we end up with a carp pond."

**Political inertia**
***Sense of urgency doubted over vulnerability of lakes***

The current tally of foreign invaders in the Great Lakes is now at least 180, and that number grows each year. Politicians like to bark about the need to slam the door shut to Great Lakes invasive species, but their efforts so far have been largely toothless.

Bighead and silver carp were proposed for listing as an "injurious species" under the Lacey Act in summer 2003. Such a move would make it illegal to transport live fish across state lines. No decision has been made.

Meanwhile, legislation to require ocean freighters traveling to the upper Great Lakes via the St. Lawrence Seaway's Welland Canal to stop spilling ballast water contaminated with foreign organisms was introduced in Congress in early 2003. It has gotten nowhere.

"We haven't done anything," says Gary Fahnenstiel, a senior ecologist with the National Oceanic and Atmospheric Administration. "It's all been rhetoric by politicians. I'll be among the first scientists to say: Let's close the Welland Canal. Let's start there. This is ridiculous."

Canada has been similarly slow in taking steps to protect the lakes.

Schornack, for example, appeared before the Canadian Parliament's Standing Committee on Fisheries and Oceans in Ottawa last year with a guest of dubious honor - a bighead carp he purchased just a few blocks away at a fish market.

Bighead are a popular food in some Asian cultures, and the worry is someone will buy their favorite fish and drop it in open water instead of a fryer.

"Only my good conscience and knowledge - no rule, no regulation, no ordinance, no anything stops me from putting this . . . fish into the river," Schornack told the committee.

**Quotable**

**“If we spend millions preventing aquatic invasive species from entering our waters, we can avoid spending billions trying to control and manage them once they are here.”**

***- Rep. Vernon J. Ehlers, Michigan Republican***

**Electric Barriers**

Keeping Asian carp out of the Great Lakes

**Quotable**

**“There has been no Cuyahoga River that has caught on fire. There has been no Exxon Valdez oil spill. This is a silent problem. While the Great Lakes have mounted comebacks from toxic pollutants and overfishing, they're really facing their greatest threat yet.”**

***- Jordan Lubetkin, National Wildlife Federation***

Canada finally will adopt a national law early next year that will ban the transport and possession of live bighead carp.

With the U.S. federal government moving even more slowly, the threat of store-bought carp infesting public waters is real. In the summer of 2003 a 38-pound bighead was caught in a man-made pond at a Chicago park just a few miles from the shore of Lake Michigan. A year later, a 45-pounder was pulled from the same landlocked pond.

Great Lakes advocates who had to scramble to find $9 million to build a carp barrier on the Chicago Sanitary and Ship Canal - which links the Illinois River with Lake Michigan - are baffled as to why the government would risk leaving wide open another door to invasions.

**About This Series**

DEC. 12: Lake Michigan is one of the world's wildest bodies of freshwater, but its fish population is constantly manipulated, and it may well be in jeopardy.

DEC. 19: A mounting number of invasive species is wreaking ecological havoc that scientists have a hard time understanding - let alone stopping.

DEC. 26: Politicians talk about shutting the door to Great Lakes invasive species. But so far, it's mostly that - talk.

"It's clear-cut to me. It's clear-cut to all of us working night and day to get the (carp) barrier built," says Marc Gaden, spokesman for the Great Lakes Fishery Commission, which helps coordinate fishery management decisions across the region. "If I sound incredulous, it's because I am."

A likely reason for the holdup is political pressure from the Southern fish-farming industry, which uses one type of Asian carp to control parasite-carrying snails in their fishery operation Fish farmers also raise bighead to sell to Asian fish markets in places such as Illinois and Canada.

Mike Freeze, a fish farmer and vice chairman of the Arkansas Game and Fish Commission, sa the federal government has to share some responsibility for the problem because years ago it encouraged fish farmers to pursue Asian carp as a crop.

"When these fish were brought into the U.S., they were brought in with the full knowledge an assistance of the federal government," he says.

Freeze contends that a federal injurious species listing is unnecessary because states can act o their own to block the importation of any species. But he says any state that makes such a decision should at least give fish farmers time to sell their current crops of carp. Otherwise, Freeze says, a fish farmer may respond by dumping the fish as cheaply as possible - into river and streams.

It's not something he condones, but it is something he understands.

"When you back someone financially up against the wall, sometimes they do things that they shouldn't do, and that may not be legal," he says.

**Clock ticking**
***Governments reluctant to pick up the bill***

Scientists installed a temporary $1.5 million electric barrier on the canal south of Chicago in April 2002 with the hopes that it would buy time before a more permanent fish-zapping devic

could be installed.

Asian carp have been found within 22 miles of the temporary barrier, which itself is about 25 miles southwest of Lake Michigan. The temporary barrier has already lost power once, and th cables that pump the electrical current into the water are starting to disintegrate. Scientists predict it could be useless by spring.

The plan had been to construct a more powerful and durable barrier last spring, but then the U Army Corps of Engineers balked at orders to begin construction, saying it did not have the fu for what was then a $6 million project.

At a congressional hearing in February, Michigan Congressman Vernon J. Ehlers told the Co assistant secretary for civil works that his "head would be on a platter" if his agency didn't act stop the carp migration.

The Corps hopped to it and found the money. A groundbreaking ceremony replete with politicians in hard hats took place this spring. Then the press left. Then . . . nothing.

Construction costs had jumped by more than $2 million, and the governors of the eight Great Lakes states declined to help make up the shortfall.

"It is clearly a federal responsibility," Jessica Erickson, a spokeswoman for Wisconsin Gov. J Doyle, co-chairman of the Council of Great Lakes Governors, said last summer.

Yet the clock was ticking on the construction season and quick federal funding wasn't there. Four months later, in October, Congress came up with $1.8 million and the Great Lakes governors agreed to find the remaining $600,000.

Now, with winter at hand and the temporary barrier steadily disintegrating, construction workers' backs are against the wall to get the job done before the temporary barrier fails.

Cameron Davis, executive director of the Lake Michigan Federation, can only shake his head. The stakes are so high and the issue so clear, he says. The barrier funding should have been a slam-dunk, not a close call.

"If we had a problem with this, it shows we're going to need to get more serious about dealing with protection measures that are even more complex," he says

**How invaders get in**
***Organisms hitch ride in freighter ballast water***

Contaminated ballast water is just such a problem.

The water is carried in the bowels of cargo-less vessels to keep them from bobbing like corks open water.

The problem is ballast water is taken on in foreign freshwater ports whose waters may be

teeming with life. When the ships arrive in the Great Lakes, that water is dumped in exchange for payloads such as coal, grain and ore. This is how zebra mussels are believed to have arrive in the Great Lakes in the late '80s.

In response, the U.S. government in 1990 asked shippers to voluntarily exchange their ballast water in the open ocean for saltwater before arriving in the Great Lakes.

The theory is that the open ocean would contain fewer critters, and those species that do get scooped up would be saltwater organisms that would have trouble surviving in the fresh water of the Great Lakes.

In 1993, the United States passed a law making such exchanges mandatory.

But the ballast-water invasions haven't slowed.

The reason: an Edmund Fitzgerald-sized loophole in the law. About nine out of 10 ships arriv from foreign ports are laden with cargo and don't carry ballast water. They are consequently exempt from the ballast exchange requirements.

However, those "empty" ballast tanks still carry loads of sludge and permanent pools of residu ballast water. Studies have shown that both harbor organisms.

The ships arrive and unload their cargo at their first port of call in the Great Lakes. Then they' likely to take on ballast water before steaming toward another Great Lakes port to pick up mo cargo.

Invasive species can jump when that water gets dumped in exchange for cargo.

"The law as we know it today is not totally protecting the Great Lakes from invaders," says Cornell University biology professor Ed Mills.

"It's good that they're doing it (the ballast exchange requirement), but it's not by any means reliable," says Allegra Cangelosi, senior policy analyst for the Northeast-Midwest Institute, a Washington, D.C.-based research organization that focuses on the Great Lakes region's economic and environmental issues.

Cornell's Mills says, in fact, that new organisms colonize the Great Lakes at a rate of about or every eight months.

Congress is mulling a bill calling for tougher regulations that would close the ballast-water loophole by forcing the sludge to be sterilized. The National Aquatic Invasive Species Act als would provide funding to combat future invasions, but action on it has been stalled for more than a year.

The shipping industry acknowledges there is a ballast-water problem, but some worry about tl cost and effectiveness of emerging technologies to sterilize the sludge.

France's Jean-Claude Sainlos of the United Nations' International Maritime Organization told group of invasive-species experts at a meeting in Ireland earlier this fall that more is at stake than just the environment. The IMO has agreed to stiffen ballast-water regulations, but the ne rules, which must still be ratified by at least 30 nations, won't kick in for existing ships until 2014 at the earliest.

Shipping, Sainlos reminded the group, is the world's business, "carrying more than 90% of global trade."

"As such, it underpins the continued economic development of human society and is a vital force for the delivery of improved living conditions through trade and commerce," he said at t Ireland conference. "This highlights the need to balance environmental concerns with econom considerations of world trade."

**The zebra mussel lesson**
***U.S., Canada now pay for ignoring warnings***

Others contend that in the case of invasive species, environmental and economic concerns are one and the same.

"Are invasive species less dangerous than other pollutants that foul our air or contaminate our water? No." says Ehlers, a sponsor of the invasive species legislation. "If we spend millions preventing aquatic invasive species from entering our waters, we can avoid spending billions trying to control and manage them once they are here."

The zebra mussel illustrates Ehlers' point.

The freighter-borne invasion of the 1980s continues to cost municipalities and industries that draw water from the lakes millions to keep mussel-clogged pipelines clear. The voracious filt feeders are also taking a toll on native fish species in the lakes and have been linked to an increase in dangerous algae blooms across the region and to the noxious sludge buildup on beaches up and down Wisconsin's Lake Michigan shoreline.

The General Accounting Office predicted in 2002 that the cost of the invasion over the next decade could total $3.1 billion.

And it didn't have to happen.

In the early 1980s, the Canadian and U.S. governments had "full and fair warning" that harmf creatures, specifically zebra mussels, had the potential to invade the Great Lakes via ballast water of Great Lakes freighters, says Dave Dempsey, a former member of the Great Lakes Fishery Commission.

A 1981 report, commissioned by the Canadian government to analyze the potential perils of ballast water, stated that research "clearly indicate(s) that non-indigenous and non-endemic aquatic species are being imported into the Great Lakes system," and specifically points to the pipe-clogging zebra mussels - which at the time were plaguing Britain and Russia - as a speci

particularly adept at surviving an ocean journey in a ship's ballast tanks.

Neither the Canadians nor the Americans opted to do anything about the warning, says Dempsey, who documented the governments' botch in his 2004 book "On the Brink - the Grea Lakes in the 21st Century."

"It's pretty apparent that pressure from shipping and import lobbies outweighed any concern about a possible threat," Dempsey says. "The burden is always on the person who wants to protect something to show the need for control, instead of the burden being on industry to sho its practices are safe. That's the whole problem with Great Lakes management . . . . We wait until harm is demonstrated before we act."

Dempsey agrees with the scientists that it likely is only a matter of time until the next zebra mussel arrives.

"It could happen again. I don't see that the government has learned. Eighteen years after the zebra entered the Great Lakes, we still have no effective ballast water control," he says. "Wha does that say? It says we can't even close the barn door after the horse gets out."

Conservationists predict public outrage, but worry that it won't come until the lakes are too fa gone.

"There has been no Cuyahoga River that has caught on fire. There has been no Exxon Valdez spill. This is a silent problem," says Jordan Lubetkin of the National Wildlife Federation. "Wl the Great Lakes have mounted comebacks from toxic pollutants and overfishing, they're reall facing their greatest threat yet."

Some see the stakes as higher than the international controversy over pumping Great Lakes water to parched areas outside the region.

"We're so worried about somebody taking a gallon of water from the Great Lakes, but we'll pollute them to the point that nobody wants that gallon," says Fahnenstiel, the ecologist. "Tha what we're going to do with these invasive species."

From the Dec. 26, 2004, editions of the Milwaukee Journal Sentinel
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# Asian carp threaten to invade Lake Michigan, harm native fish

## Experts hope barrier will keep species out of Great Lakes

**By MEG JONES**
**of the Journal Sentinel staff**

***Last Updated: July 11, 2002***

Asian carp, a humongous plankton-gobbling fish that has been dubbed the underwater lawn mower, is getting so close to Lake Michigan that scientists worry it could wipe out sport fish i the Great Lakes.

Nervous authorities are hoping an electric barrier on a canal near Chicago will prevent the fish from dipping a fin in the Great Lakes.

Invaders

*Graphic*

Giant fish heading this way

The Asian carp, which made its way into the Mississippi River from Arkansas fish farms in the 1970s, steadily has swum upstream for years at a pace of 40 to 50 miles a year. It's now near the Quad Cities on the Mississippi and may be only 25 miles from Lake Michigan on the Illinois River.

It can grow so big - more than 100 pounds and four feet long - that it quickly out-muscles any predators. It can jump as high as 15 feet and has broken the nose of at least one commercial angler. It snacks on plankton - the base of the aquatic food chain - at a pace of two to three times its weight each day. That doesn't leave mu for other creatures to eat.

While scientists have no idea if Asian carp could survive in the Great Lakes, they don't want t find out.

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"The worst case is that they would find it very suitable and very much to their liking, and they would grow to huge population numbers and compete with sport fish like yellow perch, walle and smallmouth bass," said John Rogner, field supervisor of the U.S. Fish and Wildlife Servic office in Chicago.

## Quick action urged

On Thursday, a Canadian-American organization that regulates border waters urged officials i both countries to take action to prevent Asian carp from swimming into the Great Lakes. The International Joint Commission called on authorities to make permanent the electric barrier, which was installed in April to prevent another non-native species from traveling from Lake Michigan into the Illinois River.

The temporary barrier near Romeoville, Ill., on the Chicago Sanitary and Ship Canal, which is scheduled to be removed after 18 months, sends electric signals into the water and produces a tingling sensation that fish find uncomfortable.

To humans, it's similar to the feeling you get when bumping your funny bone, explained Pam Thiel, project leader at the U.S. Fish and Wildlife Service's fishery resource office in La Cros: The hope is that Asian carp that make it as far as the barrier will turn around.

The commission also recommended installing a second barrier of electricity, bubbles or sounc waves on the Illinois River to act as a second fire break to keep out Asian carp. The second barrier could be located near the present one.

"We have a historic opportunity here," said Jim Houston, environmental adviser for the commission.

It's possible people who catch bait in the Mississippi or Illinois rivers could mistakenly introduce Asian carp when they're small by using the bait while fishing in the Great Lakes, Th said.

If Asian carp sneak into the Great Lakes, it could be just as devastating as the zebra mussel, another non-native species, Houston said in a phone interview from Ottawa, Canada.

Millions of dollars have been spent to clean up after billions of quarter-sized zebra mussels th attach themselves to ships, docks and other mussels. Houston said any money spent on preventing Asian carp from invading Lake Michigan will end up being much less than the cos of carp decimating native fish populations.

## Imported from China

With a face only an Asian carp mother could love, the fish was brought from China to Arkans fish farms in the early 1970s to improve water quality and control algae blooms. The fish escaped when aquaculture ponds adjacent to the Mississippi River flooded about a decade agc

Of the four species of Asian carp, two - bighead and silver - are the ones that are the problem

America. They dine on the plankton food supply of paddlefish, gizzard shad, big-mouth buffa and other filter feeders. They also compete with larval and juvenile fish, and mussels.

Even though they're members of the minnow family, bighead and silver carp grow fast, and a: they get bigger, need more to eat.

"Because they are very large, they have to consume large amounts (of plankton), so they're basically swimming around all day with their mouths open," Thiel said.

Between 1988 and 1992, the combined commercial harvest of bighead and silver carp by Illin anglers in the Illinois and Mississippi rivers was less than 1,300 pounds, Thiel said. By 1994, the yearly catch was more than 51/2 tons, and since 1997 the annual catch has exceeded 55 to

Thiel ate Asian carp while visiting China. She said it tastes good, but she had difficulty comparing it to fish commonly consumed in America.

One thing different about the Asian carp here is its leaping ability. Asian carp in Asia aren't known for jumping high in the air like a tarpon.

They seem to be affected by the sound or vibration of motorboats, Rogner said.

Scientists have documented instances, and have the video to prove it, of Asian carp leaping in boats. Thiel heard of a commercial fisherman who got smacked in the face by a carp. A researcher has been hit four times by the carp he was researching, and the last time his injurie: landed him on workman's disability.

Some commercial fishermen use cookie sheets as shields from the big flying fish, she said.

Thiel, who does research on the Mississippi River in La Crosse, figures she'll have to come u with a sturdier shield.

"I think if they get as far as La Crosse, I'll use a garbage can lid because it has handles," she said.

Appeared in the Milwaukee Journal Sentinel on July 12, 2002.

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Chairman SENSENBRENNER. H.R. 3049 amends the Lacey Act to designate four species of Asian carp as injurious fish. This designation prohibits the importation and interstate shipment of Asian carp unless a permit is issued by the U.S. Fish and Wildlife Service. The penalty for illegally importing or shipping Asian carp is a fine or imprisonment of up to 6 months.

This bill is supported by Members on both sides of the aisle, including the Ranking Member from Michigan, Mr. Conyers. It is also supported by over a dozen Great Lakes environmental, angling, and recreational organizations. I hope my colleagues will join me in favorably reporting this bill and recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I am pleased to rise in support of the measure and join yourself and the gentleman from Wisconsin, Mr. Green, in what we think is an important environmental step forward.

The Great Lakes currently holds 90 percent of the Nation's fresh water, making them one of the most important natural resources in our country. The Great Lakes also provide a major source of transportation for many Americans, and economic activity within the region accounts for more than half of the Nation's output. Fishing alone in the Great Lakes generates over $2.5 billion in tackle sales, provides employment for more than 66,000 workers, and creates a total economic output greater than $7.5 billion.

Considering the tremendous role that the Great Lakes provide in this country, it is essential that they be protected from the influx of Asian carp, which have proven to damage aquatic environment and often displace native fish populations through their rapid growth and enormous size, as has been described. If left unchecked, there is no doubt that they will have a huge negative impact on the ecosystem and many valuable fish populations currently now found in the Great Lakes region.

The measure before us today seeks to prevent this problem from becoming a reality by adding Asian carp to the list of prohibited wildlife under the provisions on the Lacey Act. By updating the Lacey Act to include Asian carp, we effectively establish a permanent ban on their importation and transportation across State lines.

I am also pleased that the environmental organizations are all united in support of this measure. I hope it will gain the unanimous support of the Members of the Committee.

I return any unused time.

Chairman SENSENBRENNER. The gentleman's time has expired. Without objection, all Members may introduce opening statements in the record at this point.

[The prepared statement of Mr. Green follows:]

PREPARED STATEMENT OF THE HONORABLE MARK GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

I want to begin by thanking Chairman Sensenbrenner for including my legislation, H.R. 3049, the "Asian Carp Prevention and Control Act," in today's mark-up. I applaud and appreciate your leadership in moving this issue forward. I also want to thank Ranking Member Conyers for his cosponsorship of the legislation. As is evident by this bill's strong bipartisan support, protecting the Great Lakes is absolutely non-partisan.

H.R. 3049 is a straightforward piece of legislation that is critical to protecting the Great Lakes from one of its most significant threats—Asian carp. My legislation ad-

dresses this threat by adding four species of non-native Asian carp as "injurious wildlife" under the Lacey Act. An "injurious wildlife" listing would prohibit the importation and interstate transportation of the carp.

As many of you know, the Great Lakes represent the largest freshwater system on the planet. It boasts a dazzling array of wildlife, supports billions of dollars in industry, and has been a source of pride for the millions of Americans who live along their shores. However, to put it bluntly, the Asian carp is an invasive species that threatens to unravel the Great Lakes' fragile ecosystem.

When I look at the biology of Asian carp, which have been slowly moving up the Mississippi River since their escape from aquaculture facilities in the 1980s, what I see terrifies me. Asian carp have the proven ability to quickly take over and dominate an ecosystem. Asian carp can grow to over 50 inches in length, weigh 110 pounds and produce up to 1.2 million eggs per year. To support their tremendous size, they have a voracious appetite, consuming 6 to 20 percent of their body weight a day.

This obviously spells trouble for the scores of native fish we know and love in the Great Lakes and other parts of the country. The Asian carp could devastate the Great Lakes' multi-billion dollar fishing industry—destroying the fragile ecosystem in the process. We must act swiftly, while there's still some time left.

Like so many concerned observers—from sportsmen and commercial fishermen to conservationists—I have been frustrated with the slow pace of protecting the Great Lakes from invasive species—especially the Asian carp. As you may know, the U.S. Fish & Wildlife Service (Service) is authorized to designate species as "injurious wildlife" under the Lacey Act. Unfortunately, like a number of other species awaiting consideration by the Service, the Asian carp petitions have lingered for years, all while the carp continue to encroach on the Great Lakes.

Last November, I was fortunate enough to participate in a House Resources Subcommittee on Fisheries and Oceans hearing on the threat posed by Asian carp. At this hearing, the Service's expert witness testified that "the conclusion reached by the scientists that conducted the risk assessments is that black, silver and bighead carp pose unacceptable risks to freshwater resources in the U.S. and to the economies they support."

While this conclusion would lead one to believe that the Service would be moving to expeditiously list the Asian carp, when I inquired about the Service's timeline for completing their work, I was told that one did not exist.

I have not found an expert who thinks we will be able to eradicate Asian carp from the Great Lakes once a reproducing population is established in the lakes. Although I appreciate the Service's efforts, these dangerous species won't wait for the petition process to run its course.

The good news is that it is not too late to take preventative action. That is why it is essential that we pass H.R. 3049 and close an avenue to introduction.

Finally, as I mentioned earlier, there is broad support behind this legislation throughout the Great Lakes delegation. I have also heard from Mayor Daley in Chicago, a number of environmental and conservation groups and the Great Lakes Fishery Commission. I also want to once again thank Charlie Henriksen, President of the Wisconsin Commercial Fisheries Association, who last year came out to Washington to give a first hand account of his concerns about Asian carp and how it could impact his livelihood.

Again, thank you Chairman Sensenbrenner for holding this mark-up. I am hopeful today will be an important step in helping reduce the risk of Asian carp from entering the Great Lakes.

Chairman SENSENBRENNER. Are there amendments?

Are there amendments?

If there are no amendments——

A reporting quorum is not present. Without objection, the previous question is ordered on the motion to report the bill favorably.

[Intervening business.]

Chairman SENSENBRENNER. A reporting quorum is present. The chair will take up the motion to report H.R. 3049, the Asian Carp bill, favorably. Those in favor of the motion to report the bill favorably will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to. Without objection, the staff is directed to make any technical and conforming changes and all Members

will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental, or minority views.

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