

113TH CONGRESS  
1ST SESSION

# S. 365

To authorize the Secretary of the Army to carry out activities to manage the threat of Asian carp traveling up the Mississippi River in the State of Minnesota, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2013

Ms. KLOBUCHAR (for herself and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To authorize the Secretary of the Army to carry out activities to manage the threat of Asian carp traveling up the Mississippi River in the State of Minnesota, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Upper Mississippi Con-  
5 servation and River Protection Act of 2013” or the  
6 “Upper Mississippi CARP Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) ALTERNATIVE TECHNOLOGY BARRIER.—

2 The term “alternative technology barrier” means—

3 (A) an electric barrier;

4 (B) an acoustic barrier;

5 (C) a bubble barrier; and

6 (D) any other barrier the Secretary deter-  
7 mines to be appropriate.

8 (2) ASIAN CARP.—The term “Asian carp”  
9 means—

10 (A) grass carp (*Ctenopharyngodon idella*);

11 (B) silver carp (*Hypophthalmichthys*  
12 *molitrix*);

13 (C) bighead carp (*Hypophthalmichthys*  
14 *nobilis*); and

15 (D) black carp (*Mylopharyngodon piceus*).

16 (3) LOCK AND DAM 1.—The term “Lock and  
17 Dam 1” means the lock and dam located on Mis-  
18 sissippi River mile 847.8 in Minneapolis, Minnesota.

19 (4) LOCK AND DAM 2.—The term “Lock and  
20 Dam 2” means the lock and dam located on Mis-  
21 sissippi River mile 815.2 upstream of Hastings,  
22 Minnesota.

23 (5) LOCK AND DAM 4.—The term “Lock and  
24 Dam 4” means the lock and dam located on Mis-  
25 sissippi River mile 752.8 in Alma, Wisconsin.

1           (6) SECRETARY.—The term “Secretary” means  
2           the Secretary of the Army, acting through the Chief  
3           of Engineers.

4           (7) UPPER ST. ANTHONY FALLS LOCK AND  
5           DAM.—The term “Upper St. Anthony Falls Lock  
6           and Dam” means the lock and dam located on Mis-  
7           sissippi River mile 853.9 in Minneapolis, Minnesota.

8   **SEC. 3. FEASIBILITY STUDY ON TEMPORARY CLOSURE OF**  
9                                   **UPPER ST. ANTHONY FALLS LOCK.**

10          (a) STUDY.—The Secretary shall conduct a study on  
11          the feasibility of temporarily closing the lock at the Upper  
12          St. Anthony Falls Lock and Dam to manage the threat  
13          of Asian carp traveling up the Mississippi River in the  
14          State of Minnesota.

15          (b) POTENTIAL IMPACTS.—In conducting the study,  
16          the Secretary shall assess the potential impacts, including  
17          environmental and economic impacts of—

18                  (1) temporary closure of the lock; and

19                  (2) continuing to operate the lock.

20          (c) CONSULTATION.—The Secretary shall carry out  
21          the study in consultation with the Secretary of the Interior  
22          and appropriate Federal, State, and local entities.

23          (d) PUBLIC COMMENT.—In conducting the study, the  
24          Secretary shall provide an opportunity for, and take into  
25          consideration, public comments.

1 (e) REPORT.—Not later than 180 days after the date  
2 of enactment of this Act, the Secretary shall submit to  
3 Congress a report on the results of the study.

4 **SEC. 4. FEASIBILITY STUDY ON USE OF OTHER ASIAN CARP**  
5 **CONTROL MEASURES.**

6 (a) STUDY.—The Secretary shall conduct a study on  
7 the feasibility of implementing control measures at the  
8 Upper St. Anthony Falls Lock and Dam and at Lock and  
9 Dam 1 to manage the threat of Asian carp traveling up  
10 the Mississippi River in the State of Minnesota.

11 (b) TYPES OF CONTROL MEASURES.—The study  
12 shall include an examination of—

13 (1) permanent closure of the lock;

14 (2) modified lock operations;

15 (3) the use of an alternative technology barrier;

16 and

17 (4) any other control measures the Secretary  
18 determines to be appropriate.

19 (c) POTENTIAL IMPACTS.—In conducting the study,  
20 the Secretary shall assess the potential impacts, including  
21 environmental and economic impacts of—

22 (1) implementing each of the control measures  
23 described in subsection (b); and

24 (2) not implementing any control measures.

1 (d) CONSULTATION.—The Secretary shall carry out  
 2 the study in consultation with the Secretary of the Interior  
 3 and appropriate Federal, State, and local entities.

4 (e) PUBLIC COMMENT.—In conducting the study, the  
 5 Secretary shall provide an opportunity for, and take into  
 6 consideration, public comments.

7 (f) REPORT.—Not later than 1 year after the date  
 8 of enactment of this Act, the Secretary shall submit to  
 9 Congress a report on the results of the study.

10 **SEC. 5. CLOSURE OF LOCKS TO PREVENT SPREAD OF**  
 11 **ASIAN CARP.**

12 (a) DISCRETIONARY CLOSURE.—The Secretary may  
 13 close the lock at the Upper St. Anthony Falls Lock and  
 14 Dam if the Secretary determines in writing, based on the  
 15 assessment of potential impacts under section 3(b), that  
 16 closure of the lock is justified as a method to manage the  
 17 threat of Asian carp traveling up the Mississippi River in  
 18 the State of Minnesota.

19 (b) MANDATORY CLOSURE.—The Secretary shall  
 20 close the lock at the Upper St. Anthony Falls Lock and  
 21 Dam if the Secretary determines that—

22 (1) 1 or more live adult Asian carp has been  
 23 captured above Lock and Dam 2; or

24 (2) 1 or more juvenile Asian carp has been cap-  
 25 tured above Lock and Dam 4.

1       (c) DETERMINATIONS BY SECRETARY OF THE INTE-  
2 RIOR.—

3           (1) PETITIONS.—If the Secretary of the Inte-  
4 rior determines that an Asian carp has been cap-  
5 tured that meets the criteria described in paragraph  
6 (1) or (2) of subsection (b), the Secretary of the In-  
7 terior may submit to the Secretary a petition for clo-  
8 sure of the lock at the Upper St. Anthony Falls  
9 Lock and Dam.

10          (2) CONSIDERATIONS.—After receiving a peti-  
11 tion under paragraph (1), the Secretary shall—

12           (A) consider the recommendation con-  
13 tained in the petition and prepare a written re-  
14 sponse to the recommendation;

15           (B) submit a copy of the petition and writ-  
16 ten response to the Committee on Transpor-  
17 tation and Infrastructure of the House of Rep-  
18 resentatives and the Committee on Environ-  
19 ment and Public Works of the Senate; and

20           (C) make a copy of the petition and writ-  
21 ten response available to the public by elec-  
22 tronic means, including the Internet.

23       (d) PERIOD OF CLOSURE.—If the Secretary closes  
24 the lock under this section, the Secretary may reopen the  
25 lock after the Secretary determines in writing that ade-

1 quate measures are in place to manage the threat of Asian  
2 carp moving upstream of the Upper St. Anthony Falls  
3 Lock and Dam.

4 (e) EMERGENCY OPERATIONS.—Nothing in this sec-  
5 tion prevents the Secretary from carrying out emergency  
6 lock operations necessary to mitigate flood damage.

7 **SEC. 6. ASIAN CARP CONTROL STRATEGY FRAMEWORK.**

8 The Council on Environmental Quality shall incor-  
9 porate the Upper Mississippi River and tributaries, the  
10 Minnesota River, and the St. Croix River into the Asian  
11 Carp Control Strategy Framework of the Council.

12 **SEC. 7. SENSE OF CONGRESS.**

13 It is the sense of Congress that, to the maximum ex-  
14 tent practicable, Federal agencies researching Asian carp  
15 control technologies should partner with State and local  
16 shareholders, giving priority to those collaborative part-  
17 nerships in which the State and local shareholders con-  
18 tribute to the cost of the research.

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