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The Political and Economic Implications of the Asian Carp Invasion

Thomas Just

“Asian carp will kill jobs and ruin our way of life.”¹ Such is the sentiment expressed by Michigan Attorney General Mike Cox and many other politicians and interest groups in the Great Lakes Region. The invasion of non-native species into the Great Lakes is a public policy problem that has the ability to severely damage the region’s environment and economy. Alterations to the region’s waterways have led to the threat of invasive species overwhelming, and in fact, destroying the natural ecosystem of the world’s largest body of freshwater. The issue of invasive species has resulted in a clash between numerous industries crucial to the Great Lakes states’ economies. The argument over approaches to combatting the problem of Asian carp displays how the use of a common resource can clash with high economic and political consequences.

The industry feeling the most pressure to change as a result of the problem is the Great Lakes’ shipping industry. The invasion of Asian carp into Lake Michigan has become one of the most politically charged topics. Asian carp have already populated throughout the Mississippi River Basin and they are now only a few miles from Lake Michigan. Their most likely entry point would be the Chicago Sanitary and Ship Canal, which has been a point of concern for environmentalists and property owners since its creation. It will be the purpose of this analysis to examine the concerns of various stakeholders to this crucial environmental and economic problem affecting the American Midwest as well as to explore the various political and legal measures that have been taken to work toward a solution.

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THE CHICAGO SANITARY AND SHIP CANAL

The original purpose of the Chicago Sanitary and Ship Canal was to prevent sewage dumped into Lake Michigan from contaminating the city of Chicago's water supply. Around the end of the nineteenth century, Chicago was one of the nation's prime industrial hubs, but this sort of economic activity resulted in significant pollution of nearby waterways, which many feared would contaminate local water supplies with such diseases as cholera, typhoid fever, and dysentery.² The government of Illinois decided that the best way to combat these sanitation problems was to take on a monumental earth moving project and reverse the flow of the Chicago River. Waste dumped into Lake Michigan would be diverted into the Illinois and Des Plaines Rivers and further into the Mississippi River watershed instead of remaining in Lake Michigan, the primary source of the region's water supply. However, when the project was undertaken no regulations had been established to control the diversions of water that were set to take place.

The canal has since been a contentious issue between Illinois and its neighboring Great Lakes states. An early concern about the diversions of lake water first arose in 1929 when the State of Wisconsin argued that Illinois' sanitation canal was lowering lake levels, and thus damaging Wisconsin's maritime transportation industry. *Wisconsin v. Illinois* went to the United States Supreme Court, questioning whether the federal government has the power to impose positive action on one state in a situation in which non-action would result in damage to the interests of other states. The court decided that the federal government does have such power, establishing a precedent that has since played out.³

THE PRESSING ISSUE OF ASIAN CARP

Today, the most politically charged issue involving the canal is the presence of Asian carp and their proximity to Lake Michigan. Asian carp were originally introduced by the United States Department of Fish and Wildlife into numerous Arkansas lakes in the 1970s to quell the expansion of local algae populations. By various means, the fish have since become widespread throughout the Mississippi River Basin and are now on the

verge of entering the Great Lakes. Such an invasion could have a severely detrimental impact on certain Great Lakes industries, namely fishing and recreation. Asian carp can reach weights of about fifty pounds and consume approximately forty percent of their body weight in plankton per day, which can wreak havoc on the ecosystem.⁴ The carp also tend to muddy the water causing populations of plant life to decrease. This combination of factors has the potential to devastate the region's ecosystem and economy. In addition to these dangers, Asian carp also tend to be frightened by boat motors and are known to jump eight to ten feet in the air when startled. This has led to carp endangering the safety of boaters and might eventually result in widespread beach and marina closures around Lake Michigan and potentially other Great Lakes.⁵ These factors could have a devastating effect on the boating industry in the Great Lakes, where roughly a third (four million out of twelve million) of all US boats are registered, according to the US Coast Guard.⁶

PRIMARY STAKEHOLDERS

The most powerful stakeholders surrounding the issue of Asian carp are the Great Lakes' shipping, recreation and fishing industries. However, the power of each industry varies by state. In Illinois, the shipping industry is an important segment of the economy and tends to have strong political backing. Illinois only possesses sixty-nine miles of Lake Michigan's 1,638 mile shoreline; thus, it does not have the same established fishing and recreation industries on Lake Michigan as do its neighboring states, Michigan and Wisconsin. The Chicago Sanitary and Ship Canal accounts for seven million tons of the cargo that is shipped through Chicago each year, which adds \$1.5 billion and thousands of jobs to the city's economy.⁷ Given the fragile state of the economy since late 2008, it has become increasingly unpopular for Illinois politicians to favor proposals that may result in the loss of shipping and transportation jobs in an attempt to stop the spread of Asian carp.

The shipping industry has further argued that the presence of Asian carp in the canal is not a certainty, so sacrificing the well-being of their industry would be an irresponsible step.⁸ A rallying cry developed among

the shipping industry and others after \$3 million was spent to poison the Chicago canal and only one Asian carp was found. Those who oppose further restrictions on the shipping industry have dubbed this incident that of the ‘\$3 million fish.’ However, DNA testing has shown populations of Asian carp as few as six miles from Lake Michigan.⁹ Opposing interests in the debate over Asian carp cite different examples and scientific findings to arguing how serious and imminent the problem really is.

In the states of Wisconsin and Michigan, the argument of the predominant stakeholders is quite different than in Illinois. Wisconsin and Michigan have extensive shoreline on Lake Michigan, and established fishing and recreation industries rely on the resources that the lake provides. The region’s fishing industry is estimated to account for \$7.09 billion to the local economy. The recreation industry in Michigan alone is estimated at \$16.3 billion.¹⁰ Consequently, these industries tend to have significant political clout in their respective states. Perhaps the most vocal defender of these industries has been the Republican Attorney General of Michigan, Mike Cox. Attorney General Cox has been an outspoken critic of the Chicago Sanitary and Ship Canal and has brought legal action against the State of Illinois.

The correlation between states’ positions on the Asian carp problem and the size of their industries is rather remarkable, and is likely due to the relationship that politicians have with industry in elections. As Robert Duffy writes, “Groups’ financial support of candidates and parties is part of a strategy that seeks to frame issues before elections, and then to support the candidates on those issues.”¹¹ Duffy argues that electioneering by industrial interests has strongly influenced public policy. He writes further that, “A crowded advocacy community creates incentives for groups to find their own unique niche.”¹² Attorney General Cox has clearly found a niche by framing himself as a politician with the purpose of protecting the large fishing and recreation industries in his state. On the other hand, prominent Illinois politicians have framed themselves as candidates working to prevent the loss of shipping jobs in their state in a time of economic uncertainty. Such concerns make the Asian carp issue a prime example of the relationship between industry and electoral politics.

As each state's interests tend to be dominated by the industries most powerful within its borders, the federal government is often looked to as a more impartial arbiter, with greater resources to combat the problem of Asian carp. The federal government, and particularly the Army Corps of Engineers, has taken major steps toward preventing the spread of the invasive species. In 2002, the Army Corps of Engineers began constructing three electric barriers in the Chicago Sanitary and Ship Canal, which have been functioning in conjunction with other efforts to both prevent the spread and reduce populations of Asian carp.¹³ Such efforts have consistently come under criticism by the fishing and recreation industries, as the methods used by the federal government have in many cases involved costly uses of poisons and the effectiveness of the installed electric barriers has been questioned.

Precedent for federal government intervention in the matter of Asian carp is rooted in the 1929 case discussed earlier, *Wisconsin v. Illinois*. Regardless of local interests in the problem, the federal government has the power to overrule the decisions of states that may be harmful to other states. A dynamic within the federal government that cannot be ignored is the current President and his administration's roots in Chicago, considering the effect that this may have on their formation of policy. Presidential powers in environmental policy are tremendously important, as the president has the power to make appointments to environmental agencies, set the federal agenda, and propose agency and program budgets. The administration has significant power in addressing such issues as the Asian carp.

Politicians such as the Democratic governors and Republican attorneys general in both Wisconsin and Michigan have called for the closure of locks in the Chicago Sanitary and Ship Canal. However, the Obama administration's position closely reflect that of Illinois politicians, who tend favor the economic interests of the Chicago shipping industry by attempting to prevent the spread of the carp through the use of poisonings and electric barriers, rather than the physical barrier that could be created by closing the locks in the canal. To be fair, the administration has employed efforts and designated funding for fighting the spread of Asian carp, though it has not supported the proposal of several top politicians in other Great

Lakes' states of closing the Chicago canal.

DISCONTENT AT THE EPA

The disorder present at the EPA since the problem of Asian carp arose has fueled the fire of debate over strategies for its solution. That the EPA has not been clear about its intentions may largely stem from the debate over the control of the organization. As Norman Vig and Michael Kraft write, "In the absence of a clear mission statement, the EPA must create priorities according to whatever programs have the largest budgets, have the most demanding deadlines, attract the largest budgets, attract the most politically potent constituencies, or excite the greatest congressional attention."¹⁴ Many of the EPA's inefficiencies can be ascribed to the tensions between the executive and legislative branches over its control. Vig and Kraft further write that there exists a "chronic tension between Congress and the EPA."¹⁵ Such tensions extend to the EPA's relationships with the states, which tend to push for more collaboration with the EPA rather than the command-and-control type approach that existed in the past. However, the highly political tensions between the states themselves on this issue place the EPA in a difficult situation for definitively addressing the problem of Asian carp, and further extends the argument over the agency's lack of a clear vision and regulatory authority.

THE ROLE OF THE JUDICIARY

The courts have long been involved in shaping American environmental policy in decisive manners in areas where other branches of government have been either vague or conflicted. There are a few ways in which courts can determine environmental policy. The important elements of an environmental law case are: 1) who has standing on the issue, 2) whether or not the case is controversial enough to review, 3) what are the current standards on the issue, 4) what current laws are applicable, and 5) what is the proper remedy to the issue.¹⁶ The courts have taken up these questions relative to the issue of Asian carp on a few occasions, but a decisive judgment has not yet been rendered.

Michigan Attorney General Mike Cox has decided to pursue action

through the courts to force the State of Illinois to close the locks in the Chicago Sanitary and Ship Canal and in so doing to physically divide the Mississippi River Basin from the Great Lakes and arguably assure the prevention of Asian carp from entering Lake Michigan. Cox's first attempt at forcing Illinois to close the canal was taken in December 2009, when he filed a suit with the US Supreme Court for an injunction to close the canal. In turn, Illinois Attorney General Lisa Madigan filed a countersuit against Michigan denying its claims and stating that closure of the canal would substantially damage Illinois' economy. Illinois provided affidavits from the Illinois Chamber of Commerce and American Waterways Operators arguing that closure of the canal would lead to thousands of job losses and would prevent the shipment of vital resources to Illinois' economy.¹⁷ The Supreme Court denied Michigan's request for an injunction, but allowed for other cases regarding the matter to be opened in the future.

Since his motion was denied, Attorney General Cox has continued to pursue efforts through the courts to stop the spread of Asian carp, his most recent being a lawsuit filed in August of 2010 after small numbers of carp had been found beyond the barriers installed by the Army Corps of Engineers. The new case brought by Cox, *State of Michigan v. U.S. Army Corps of Engineers*, has since been joined by the Attorneys General of Wisconsin, Ohio, Minnesota, and Pennsylvania. They argue that since the electric barriers have not been entirely effective against Asian carp, immediate action must be taken to prevent their entry into the Great Lakes and the damage that it may cause to other Great Lakes States. Cox has argued that, "With the discovery of a live Asian carp beyond the so-called barriers in Chicago, there is great urgency to act now because thousands of jobs hang in the balance."¹⁸ Illinois continues to hold that the shipping canal is crucial to its economy and that its closure would damage its economy and is not a guarantee against the movement of Asian carp. Action through the courts has not been the most expedient means of solving the Asian carp problem, but such cases do indeed encompass the many competing environmental and economic interests at stake, and have the potential to render a decisive verdict on the issue.

CURRENT POLITICAL PROPOSALS

Some headway, facilitated by federal intervention, has been made in establishing a compromise between the competing industries and states affected by the Asian carp problem. A major step was taken on February 8, 2010, when the Obama Administration held a summit on the issue of Asian carp to set an agenda on the issue and outline a plan to be implemented immediately to combat the problem. The plan calls for the following: 1) \$10 million to be committed to building a third electrical barrier in the Chicago Sanitary and Ship Canal, 2) \$13 million for an additional barrier in the Des Plaines River, 3) \$5 million to poison areas beyond the barriers with possible Asian carp populations, 4) \$1.5 million to study methods to prevent Asian carp reproduction, and 5) The closure of two locks of the Chicago Sanitary and Ship Canal three days per week.¹⁹ The most controversial part of this plan has been the closure of the canal's locks three days per week. Neither party is satisfied by the compromise, since it is a hit to the shipping industry and still does not physically cut off the Mississippi River Basin from the Great Lakes. Attorney General Cox had perhaps the harshest words for the proposal when he stated,

President Obama proved today that he'll do anything to protect the narrow interests of his home state of Illinois, even if it means destroying Michigan's economy. Officials from his administration unveiled a 25-step plan full of half-measures and gimmicks when keeping Asian carp from devastating the Great Lakes \$7 billion fishery requires only one step - immediately closing the locks.²⁰

Politicians in Illinois, however, continue to voice their opposition to the possibility of a permanent closure of the ship canal. They argue that closing the canal will result in as many as 10,000 jobs being lost, and also hinder Chicago's ability to deal with run-off water after large storms.²¹ There is great controversy in determining the best solution to the problem of invasive species through a mere cost-benefit analysis, since any solution will inevitably put one of the region's industrial interests over the others.

The most recent step by the federal government was President

Obama's decision to appoint John Goss, the former leader of the Indiana Department of Natural Resources and Indiana Wildlife Federation, to the newly created position of Carp Czar. Goss will oversee an \$80 million project to stop the migration of Asian carp. However, this decision also was not met with optimism by Attorney General Cox or others in neighboring states. Cox said of Obama's appointment, "We hope [Goss] shows independence from what is essentially a Chicago-based White House, one which protects Illinois' interests over those of the Great Lakes. Will he even be allowed to advocate for closure of the locks? Time will tell, but the experts say we don't have much time left."²² It is difficult to conceive of a compromise that will solve the Asian carp problem, given the competing interests of the Chicago shipping industry and the other states' fishing and recreation industries, as well as the state governments' support for their respective industries. Nonetheless, it is apparent that legal and political means to addressing the issue have not yet been exhausted.

CONCLUSION

The unresolved and contentious issue of Asian carp and its potential to damage the economy of the Great Lakes region is sure to remain politically divisive for the foreseeable future. Given the powerful industrial interests and their interactions with state governments, the conflict surrounding the Asian carp has become an issue of national concern. The shipping industry is a major player in the Chicago economy and its lobbyists have convinced Illinois politicians that its survival is crucial to Illinois' economic interests. On the other side, the fishing and tourism industries of neighboring states have convinced their governments that not only are their industries of greater importance to their economies than shipping, but also that the environmental effects of invasive species are irreversible and would permanently damage the region's ecosystem. The executive branch of the federal government has attempted to appease the different interests involved, but to this point it has not substantially satisfied either. The compromises reached so far have neither ensured the long-term survival of the Chicago shipping industry nor provided a failsafe barrier preventing the carp from advancing. The courts have not put the issue to rest because

it is apparent that such people as Michigan Attorney General Cox will continue to pursue measures to close the Chicago Sanitary and Ship Canal so long as the threat posed by the carp is imminent. Interestingly, the legislative branch has thus far had little influence in shaping a solution to the problem. The issue of Asian carp remains contentious with the numerous stakeholders attempting to shape future policy on the matter.

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