

Judge focuses on carp DNA in lawsuit over locks

October 18 2010, By MICHAEL TARM , Associated Press Writer

(AP) -- The reliability of DNA testing suggesting Asian carp may already be in waterways near Lake Michigan was the focus of final arguments Monday in a lawsuit seeking the closure of Chicago-area shipping locks to halt the spread of the invasive fish.

The issue pits five states asking for the emergency measure - Michigan, Minnesota, Ohio, Pennsylvania and Wisconsin - against the city of Chicago, barge companies and others.

The states want two locks closed and barriers installed to prevent the ravenous fish from slipping into the Great Lakes and potentially decimating a \$7 billion-a-year fishing industry.

Opponents counter that shutting the locks would undermine critical flood-control measures in the Chicago region, as well as cost barge, tour-boat and others billions of dollars in lost business.

U.S. District Judge Robert Dow is expected to rule on the matter within several weeks.

His decision could hinge on whether he thinks environmental DNA testing is reliable, an issue he asked both sides about repeatedly during Monday's three-hour hearing.

In three days of witness testimony in September, arguably the most critical witness in the case, biologist David Lodge, said his genetic tests

showed carp were in the Chicago area.

But the test he used looks not for the fish itself, but for traces of carp DNA. And attorneys opposing the closures called Lodge's findings and his scientific methods into doubt.

"It's not reliable," David Rieser told Judge Dow Monday. Rieser represents industry groups opposed to shutting the locks. "It shouldn't inform the court's determination."

An absence of easy-to-find Asian carp populations, Rieser added, only supports the contention that the voracious fish are far from the lake and no imminent threat.

Those fighting the closures argue the carp DNA could have been transported in barges' ballast water or bird droppings - meaning the fish themselves aren't necessarily present.

But Lodge has said that by far the most plausible explanation is that the DNA came from discarded cells of carp living in the waterway. DNA can degrade within hours, he said, so it probably wouldn't have survived transport in a barge or a bird.

Asian carp, which can weigh up to 100 pounds, have been migrating up the Mississippi and Illinois rivers toward the Great Lakes for decades. Biologists fear if the fish get into the lakes, they would gobble plankton and starve out prized species such as salmon and walleye.

"When one looks at the balance of harms . . . the balance falls in favor of the plaintiffs," Michigan assistant attorney general Robert Reichel told the court Monday.

The five states want to temporarily close the O'Brien and Chicago locks.

Their request makes allowances for water releases to prevent flooding and other threats to public safety.

The U.S. Supreme Court has twice rejected state pleas to close the locks, but did not rule on the merits of the legal claims.

On the first day of hearings in September, Reichel argued the threat has reached a "biological tipping point" and the Chicago waterways have become "a carp highway."

Maureen Rudolph, a U.S. Department of Justice attorney, has said Congress gave the Corps discretion in how to deal with the problem and the court should be reluctant to get involved.

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