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June 12, 2010

Docket Management Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

RE: USCG-2010-0166, Safety Zone,
Brandon Road Lock and Dam to
Lake Michigan, Chicago IL

To Whom It May Concern:

The American Waterways Operators (AWO) is the national trade association for the tugboat, towboat and barge industry. AWO represents 350 member companies in an industry of nearly 4,000 towing vessels, more than 27,000 dry and liquid cargo barges and over 30,000 mariners. Fifteen AWO members have headquarters in Illinois, and many others operate vessels that transit through Chicago-area waterways. We appreciate this opportunity to comment on the U.S. Coast Guard's temporary interim rule (TIR) for the 77-mile area of navigable waterways from Brandon Road Lock and Dam to Lake Michigan.

AWO members have demonstrated their full commitment to collaborating with a variety of government agencies to ensure vessels' operational safety that protects the crew, the public and the environment. AWO's commitment is evident in the award-winning AWO Responsible Carrier Program, and the first-of-its-kind Coast Guard-AWO Safety Partnership. On a regional basis, AWO has worked with the Coast Guard and the U.S. Army Corps of Engineers through the Mid-America Regional Quality Steering Committee to identify ways to improve safety, security and environmental protection. AWO has also worked cooperatively with the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service (FWS), the Council on Environmental Quality and state environmental agencies on a variety of issues, including the recovery of threatened and endangered species and reducing emissions from engines and tank barges. On the issue of protecting the Great Lakes ecosystem from the Asian carp, AWO has worked with the Corps and the Coast Guard over the lifespan of the electric dispersal barrier in the Chicago Sanitary and Ship Canal (CSSC).

Based on the experiences of our members and our review of the TIR, AWO would like to comment on: 1) the safety zone's chilling effect on commerce; 2) the TIR's assessments of how carp have advanced and how the electric barrier functions; 3) the TIR's environmental and safety impacts; and, 4) how the Asian Carp Regional Coordinating Committee (ACRCC) can improve the process to better facilitate commerce.

1. Chilling Impact on Commerce

This lengthy TIR, in both time and geography, has a chilling impact on the towing industry and its customers. The statement in the TIR predicting “the economic impact of this rule to be minimal” is inaccurate. A recent preliminary economic study by DePaul University estimated the net present value of waterborne commerce in the Chicago region to be \$4.7 billion. As significant as that figure is, it understates the economic impact of navigation, as the study did not consider all possible impacts, including job losses. In the future, maritime transportation will have an even greater national economic impact as the recent publication of the Maritime Administration's “Marine Highway” final rule will facilitate increased marine transportation by providing public funding for short sea shipping projects designed to relieve landside congestion.

The TIR grants state and federal agencies the ability to request that the Coast Guard close the waterways “at any time” and “in any segment” along this 77-mile stretch. Given the direct impact of disruptions to operations at any time, the economic impact will be significant. Consumers and businesses not directly involved in the towing industry are also certain to be negatively impacted as countless consumers and businesses in the region rely on shipments of coal, industrial steel, iron ore, petroleum, home heating oil and deicing liquid.

The statement in the TIR that the authority to interrupt commerce will only occur in segments of the waterways for the next year is of little reassurance, as shippers and other entities depend on a stable and reliable **network** of waterways. Closing a small portion of the waterway closes the network. With this TIR, those who ship items by water from as far away as Houston and Pittsburgh cannot be assured that their deliveries will arrive at the contracted time and location, nor will companies that receive shipments from the Chicago area feel confident. In short, the TIR will increase the costs of, and/or decrease investments in, the transportation network and the companies that rely on them. This uncertainty will have a chilling impact on commerce.

The length of time during which this TIR is in effect, almost one year, does not meet the definition of “temporary” by any reasonable standard. Also, the amount of closures that this TIR is likely to cause necessitates contingency plans. It does not appear, however, that contingency plans were considered during this rulemaking process. ***First, a plan is needed to grant vessels the ability to travel through the Chicago Lock and Lake Michigan routes when O'Brien Lock is closed. Second, the reality of travel times requires a 30-day notice to industry prior to any waterway closure to ensure appropriate business planning.***

The federal agencies and industry share the goals of providing environmental protection to our waterways and facilitating the movement of commerce. The publication of the TIR without warning is not consistent with the protection of commerce. The TIR allows actions that will cause significant harm to towing companies and their customers, including many small businesses, as it puts reliability in question and will stifle companies from economic expansion. ***AWO urges the Coast Guard to retract the TIR and issue safety zones on an as-needed basis, with a 30-day notice, so that shippers and carriers both have a greater ability to plan for disruptions to commerce.***

2. Analyses of Carp Movement and Barrier Soundness

Asian carp were introduced to the United States by the FWS. During the 1993 flood, the fish were released en masse into the Mississippi River System. The December 2009 application of rotenone in the CSSC revealed only one carp just above Lockport Lock and Dam, nearly six miles below the electric fish barrier. No actual carp has been located north of that point, despite repeated fishing since November 2009 and another rotenone kill in May 2010 that harvested over 27 dumpsters of fish.

Taking these facts into account, the TIR's statements that barrier circumvention has taken place and that "the inadvertent transport of eggs, gametes or juvenile carp in the non-potable water of vessels transiting the barrier" may explain the circumvention, do not have evidentiary support. One cannot say at this point that the barrier system has been breached, as no carp have been found to have crossed it. Additionally, there has never been any indication that barges have been conveyances for carp. This lack of connection has not been due to lack of investigation. On the contrary, a multi-agency group, in cooperation with industry, has conducted research over the last several months on the role of towboats and barges as potential vectors. Their preliminary conclusions have been that these vessels are not responsible for the transportation of carp. In light of these pieces of information, ***AWO requests that the Coast Guard correct the record on both its assessment of the soundness of the electric barrier, and its analysis that the carp traveled through the barrier via towing vessels.***

Accurate information about the location of Asian carp is obviously very important to the goal of keeping the Great Lakes ecosystem protected. It is unclear as to why the far-reaching provisions contained in this TIR are being done based on eDNA samples. The results of the extensive fishing and rotenone applications bring serious doubt to the reliability of this non-peer reviewed technology. As the Coast Guard knows well, the agencies have been electro-fishing and net-fishing for several months, and the combined total of all these efforts has been the finding of one carp well below the barrier. Given the Asian carp's penchant for jumping in the air, visual observation should be a key monitoring mechanism. Having such a broad safety zone, therefore, does not seem to correspond to the strong possibility that large stretches of the waterways are currently carp-free. The continued reliance on eDNA is of great concern to our members, as the

TIR indicates that agencies may take action in the waterways “upon detection” of the presence of carp. If “detection,” includes positive eDNA samples, as it seems to have included in the past, the waterways could be habitually shut down on the basis of questionable science.

Unfortunately, history would indicate that eDNA results will result in unnecessary closures. The industry believes that relying exclusively on eDNA is unwise until further science is completed on this new, non-peer reviewed technology. As a result, granting its results more importance than physical findings is inappropriate and contrary to the preferred use of valid and proven science to guide public policy decisions. With only one fish found after numerous positive eDNA tests, this lack of accuracy should trigger a thorough evaluation of this technology. Finally, given both the seriousness of this matter and the level of uncertainty we are dealing with, any technology, even one with a greater degree of scientific support than eDNA, should be accompanied by complementary methods of detection. Getting the greatest amount of information possible should be our goal, as opposed to relying almost exclusively on one method. Therefore, *we respectfully request that the Coast Guard and other agencies incorporate identification of Asian carp locations by sound, reliable and proven science, not the exclusive use of eDNA.*

3. Environmental and Safety Impacts

As has been indicated elsewhere in this letter, environmental protection and safety are crucial to our members. We are concerned about the environmental and safety issues that do not appear to be taken into account. With regular waterway closures, it is probable that shippers will transfer products to the roads or railroads due to uncertainty and reliability concerns. This transfer will be harmful to the air Americans breathe. As reported in a study by the Texas Transportation Institute, sponsored by the Maritime Administration of the U.S. Department of Transportation and the National Waterways Foundation, if the annual amount of ton-miles of activity on the nation’s inland waterways were transferred to rail or truck, the former mode would produce 2.1 million additional tons of carbon dioxide, while the latter mode would generate 14.2 million additional tons of the pollutant.

The same study found that a cessation of waterborne commerce in the smaller metropolitan area of St. Louis would increase that region’s traffic delays by almost 500%, and increase the injuries and fatalities on the region’s highways by up to 45%. Notably, the Chicago region has an estimated population of 9.7 million, while the St. Louis region has an estimated population of only 2.8 million. The towing industry also has the lowest fatality rates of any transportation mode. Moving only a small percentage of products to road or rail would likely have serious consequences with an increase in fatalities.

In addition to these air quality and human safety issues, the effect of the state and federal agency’s intended actions with regard to the marine environment appear to require further

consideration. The TIR states that “one of the primary aquatic nuisance species countermeasures will be the application of piscicide.” Unfortunately, the piscicide that was used in the previous efforts to retrieve carp, rotenone, kills most species of fish. According to the February publication of the draft *Asian Carp Control Strategy Framework* by the ACRCC, rotenone applications “harm native fish species,” and are limited in their “ability to achieve maximal control while minimizing risk to native fishes.” The May edition of the *Framework* stated that “with all options, negative effects on established uses, including recreation and aquatic life, should be minimized.” We agree that aquatic life in the Mississippi River System should be of central importance, and ***we urge federal and state agencies to take greater account of both the environmental and safety impacts of this TIR.***

4. Improved ACRCC Process

To minimize the disruptions to commerce, ***AWO respectfully requests that the Coast Guard work with the ACRCC to improve the process leading up to the Coast Guard implementing a safety zone:***

- ***Provide a 30-day notice before closures.*** The average transit from Houston to the Chicago area is 22 to 24 days. This is transit time only and does not include loading, unloading or any unforeseen delays. Without the 30-day notice, companies cannot make sound business decisions. As with any transportation system, customers count on reliability and just-in-time deliveries.
- ***Create an industry stakeholders group that can provide upfront, technical information to the ACRCC as closures are considered.*** This group could be part of the Asian Carp Rapid Response Workgroup and/or a separate industry advisory group.
- ***Increase transparency and improve the decision making process through the establishment of an open procedure that includes public input.*** This process should include outreach to the above mentioned advisory group(s).
- ***Increase security measures to ensure that if an Asian carp is found, it has not been planted.*** The attached May 2010 letter to the Illinois Department of Natural Resources outlines the industry’s concerns.
- ***Improve the methodology for water sampling.*** The attached May 2010 letter to the U.S. Army Corps of Engineers outlines the need for scientifically-sound blind sampling methods. The ACRCC should also use another lab to verify the results.
- ***Subject eDNA to a normal peer-review process to verify its scientific validity.***

Summary

Attached to these comments, please find: an affidavit that AWO submitted in January in the case of *Michigan v. Illinois*; comments AWO provided to the ACRCC in March; two letters AWO sent to the Illinois Department of Natural Resources prior to the most recent

rotenone application in May; and, a letter to the Corps from AWO in May regarding eDNA sampling.

AWO thanks the Coast Guard for the opportunity to comment on this important matter. Our organization and members stand ready to work with the appropriate agencies to try to work toward solutions that protect the Great Lakes while recognizing the economic and environmental benefits our industry brings to the nation. AWO would be pleased to answer any questions or provide further information.

Sincerely,

A handwritten signature in cursive script that reads "Lynn M. Muench". The signature is written in black ink and is positioned above the printed name.

Lynn M. Muench

- Enclosures:
- Affidavit submitted by AWO in January 2010 in the case of *Michigan v. Illinois*;
 - Comments submitted by AWO in March 2010 to the Asian Carp Regional Coordinating Committee;
 - Letter submitted by AWO in May 2010 to the Illinois Department of Natural Resources;
 - Letter submitted by AWO in May 2010 to the Illinois Department of Natural Resources; and,
 - Letter submitted by AWO in May 2010 to the U.S. Army Corps of Engineers