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January 30, 2018

Ms. Brianne McGuffie, Project Manager  
U.S. Army Corps of Engineers  
1520 Royal Palm Square Boulevard, Suite 310  
Fort Myers, Florida 33919

RE: Public Comments on permit SAJ-2005-01586 (SP-BEM), application to permanently remove the Chiquita Lock

Ms. McGuffie or ACOE District Engineer:

I am in opposition to the City of Cape Coral's application to permanently remove the Chiquita Lock. My concerns about removing the Chiquita Lock are as follows:


- Cape Coral's Environmental Resource Permit (ERP) application to permanently remove the Chiquita Lock was considered by the Florida Department of Environmental Protection to be an application of "Heighted Public Concern". Provisions of the National Pollutant Elimination System (NPDES) permit requires that an application for an action of this type cannot cause or contribute to the impairment of a downstream waterbody. The downstream waterbody is the Caloosahatchee Estuary which is currently verified impaired for nutrient pollution (CWA 303d list of verified impaired waters) having a Basin Management Action Plan. The compensatory mitigation that Cape Coral has proposed in their ERP application to offset removal of the Chiquita Lock is controversial and I have provided multiple comments to FDEP in opposition to Cape Coral's proposed mitigation. Thus, the water quality certification required under the Clean Water Act section 404 requires the relevant state agency to certify the water quality verification that the action will not violate relevant water quality regulations pertinent to the downstream waterbody. FDEP has not yet provided notice of their intention to issue the ERP permit with respect to water quality issues and will not until March 5, 2018. It is possible FDEP could deny the ERP permit.
- The ACOE public notice (SAJ-2005-01586 (SP-BEM)) for the Chiquita Lock application indicated that the USFWS had determined that the project would likely cause adverse impacts to the West Indian Manatee (Florida Manatee subspecies). A determination was also made regarding smalltooth sawfish critical habitat and that the project would likely cause adverse impacts to its

critical habitat and that a further assessment by the National Marine Fisheries Service is pending. I have concerns however, that if the smalltooth sawfish habitat can be adversely impacted, how is it that the smalltooth sawfish is not likely to be adversely impacted?

- In 2008 Cape Coral removed the Ceitus Boat lift that represented a containment element of Cape Coral's NPDES treatment system, the same NPDES jurisdiction of which the Chiquita Lock is currently a component of. When the NPDES permit was issued for Cape Coral in 2011, the Environmental Protection Agency (EPA) required that the upstream canals to the point of the marine / freshwater interface (water control structure) be considered Waters of the United States (WOTUS) in response to Cape Coral's removal of the Ceitus Boat Lift. This same requirement should also apply to the nearly 800 acres of canals that will be tidally influenced if the Chiquita Lock is removed. This "status" change to WOTUS will have a significant federal nexus regarding protection of Endangered or Threatened species that may have unrestricted access to the upstream canal system if the Chiquita Lock is removed. Since at least 2008, there has been considerable manatee mortality in the area where the former Ceitus Boat Lift was located. The Florida Fish and Wildlife Conservation Commission and U.S. Fish and Wildlife Service can confirm when and the frequency of manatee mortality in or near the Ceitus Canal, a high boat traffic area.
- If the Chiquita Lock is removed it is quite likely that boat traffic will increase significantly. A smalltooth exclusion zone (Glover Bight Smalltooth Sawfish Exclusion Zone) is located less than three thousand feet from the canal connecting the Chiquita Lock to the Caloosahatchee Estuary and Federally designated critical habitat for smalltooth sawfish (Fig. 1). Increased boat traffic in proximity to the Glover Bight Smalltooth Sawfish Exclusion Zone may affect adult smalltooth sawfish pupping behavior in opposition to elements of the Smalltooth Sawfish Recovery Plan.
- Considering the issues identified above, I am concerned that no mitigation is proposed by the applicant.

Due to these concerns and lingering issues of determination especially, in regard to Section 7 of the Endangered Species Act with respect to the West Indian Manatee (Florida Manatee subspecies) and the smalltooth sawfish, I would request a Public Hearing on the application.

Sincerely,



John Cassani  
Calusa Waterkeeper

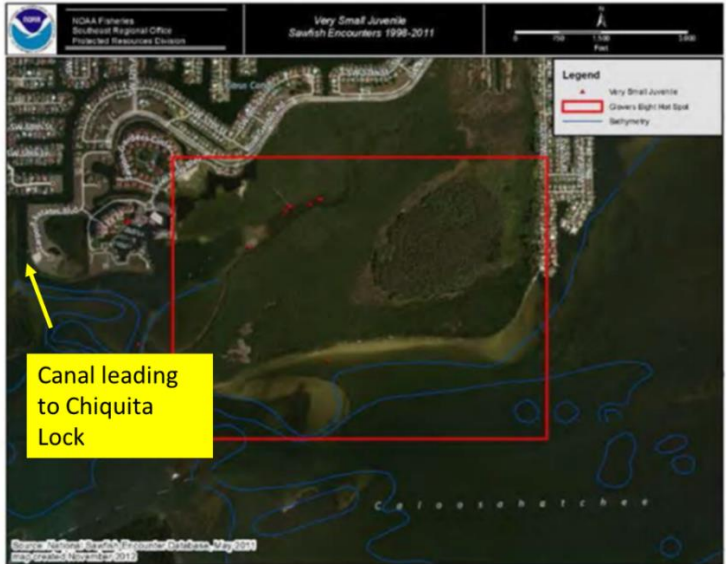


Figure 1. Glover Bight smalltooth sawfish exclusion zone.