

Docks or no docks: What do you think?

By Barbara Joy Cooley, President, Committee of the Islands

The Sanibel Code currently does not allow for docks to be constructed on the bay side of the island from Woodring Point to the western edge of the Lighthouse Park. Recently, some property owners in that area have hired an attorney to challenge this ban on docks. As a result, many questions have been raised – all to be considered by the Sanibel Planning Commission and then City Council.

The existing ban on docks in this sensitive area was instituted in 1993, in order to protect sea grass beds, according to Dr. Rob Loflin, the city of Sanibel's Natural Resources Director. How many of the dock applicants bought their property after 1993, when the ban was already in place?

This area where docks are banned is also in the endangered smalltooth sawfish's critical habitat as designated in October 2009 by the National Marine Fisheries Service.

The attorney for the approximately seven property owners who wish to build docks in the area is stating that his clients have riparian rights and wharfage rights.

How do we weigh these property rights against those of others? How do we consider the rights of those who purchased property on Sanibel because of this and other restrictions that protect wildlife and the environment? How do we consider the aesthetic impacts of potentially 55 or 60 more docks in this area? And the impact on the sea life that depend on sea grass beds?

If this restriction on property rights is struck down, how many others might follow? Would this lead Sanibel down a path of becoming just like so many other places in Florida?

There certainly is case law that would argue for the rights of these property owners to have docks, just as property owners do on the bay side of many barrier islands in Florida. But what else should be considered in addition to case law?

Impact On Critical Habitat

In addition to case law, we have the Endangered Species Act (ESA) and National Environmental Protection Act (NEPA). As mentioned above, our bay is within an area that has been designated as critical habitat for the smalltooth sawfish. The law requires the assessment of environmental impacts upon such protected areas. Has the impact of installing docks in the area, with regard to its status as federally protected habitat, been considered?

And here's a big question for all of us, involving lots of dollars in fishing and tourism: How could rescinding the ban on docks in this area adversely affect Sanibel's argument that the Army Corps should have conducted ESA and NEPA assessments once the critical habitat was designated – and that they should have revised the Lake Okeechobee release schedule accordingly?

The City of Sanibel has asked its law firm to take steps to press this assessment in order to protect our waters from the damaging Lake Okeechobee releases. If docks are built and they harm the habitat, isn't it more difficult for Sanibel to argue against Lake Okeechobee releases that harm the habitat?

Generally, docks require permits, including a federal Clean Water Act section 404 permit. That permit likely requires a "consultation" with NOAA (the National Oceanographic and Atmospheric Administration) to determine whether the permit adversely modifies the smalltooth sawfish areas designated as critical habitat. A case-by-case site-specific review is needed. Was the appropriate consideration of the critical habitat made when federal permits were issued for the docks currently proposed?

Has the city of Sanibel yet considered the existence of the critical habitat as it prepares to consider rescinding the ban on new docks in this area?

The Committee of the Islands would like to know what you think about these property rights issues. Please tell us by emailing coti@coti.org or writing to PO Box 88, Sanibel 33957. You can also find more information about the Lake Okeechobee releases, the smalltooth sawfish, and other island issues on our web site at www.coti.org