
In the
Supreme Court of the United States

STATE OF FLORIDA,
Plaintiff,
v.
STATE OF GEORGIA,
Defendant.

Before the Special Master
Hon. Ralph I. Lancaster

**PRE-FILED DIRECT TESTIMONY OF FLORIDA WITNESS SHANNON
HARTSFIELD**

PAMELA JO BONDI
ATTORNEY GENERAL, STATE OF FLORIDA

JONATHAN L. WILLIAMS
DEPUTY SOLICITOR GENERAL
JONATHAN GLOGAU
SPECIAL COUNSEL
OFFICE OF THE ATTORNEY GENERAL

FREDERICK L. ASCHAUER, JR.
GENERAL COUNSEL
FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

CHRISTOPHER M. KISE
JAMES A. MCKEE
ADAM C. LOSEY
FOLEY & LARDNER LLP

GREGORY G. GARRE
Counsel of Record
PHILIP J. PERRY
ABID R. QURESHI
JAMIE L. WINE
CLAUDIA M. O'BRIEN
PAUL N. SINGARELLA
LATHAM & WATKINS LLP

MATTHEW Z. LEOPOLD
CARLTON FIELDS JORDEN BURT P.A.

ATTORNEYS FOR THE STATE OF FLORIDA

October 14, 2016

A. Background

1. My name is Shannon Aber Hartsfield, and I am a fourth-generation oysterman who has lived and worked in Apalachicola Bay my entire life. I also am the President of the Franklin County Seafood Workers Association, a local trade association formed in 1981 for seafood workers in Franklin County. More recently, I started the Seafood Management Assistance Resource Recovery Team (“SMARRT”), a local group of industry members that raises issues affecting the oyster population and health of the Bay. As a native of the Apalachicola area, I have seen with my own eyes the drastic changes that have taken place in the Bay in recent years. Those changes continue to this day and affect the lives of many people like myself, who live and work in the area and depend upon the health of Apalachicola Bay. I want to emphasize the great importance that this case has to folks like me.

2. Since I was little, I have wanted to be an oysterman in Apalachicola. I grew up oystering in the Bay, and have been doing it most of my adult life. For many in the community like me, oystering is our way of life. The Bay used to plentiful. We called it a bank, because you could always depend on the Bay if you needed to earn a livelihood. It is hard work, but I’ve seen it with my daddy all these years. If you were willing to put in the time and the effort, you could count on the Bay to help you provide a life for your family. That’s not the case anymore.

3. I’ve never seen the Bay like it is right now. The collapse of the oyster population around 2012 has devastated the livelihood of oystermen like myself – people have lost their homes, their businesses, and are close to losing our way of life. I myself stopped oystering almost entirely since 2012 because it no longer can earn me enough money to get by. The Bay has faced hardships over the years, and I have seen it recover every time. But the most recent

collapse in 2012 seems different. The Bay isn't recovering because the nature of the bay itself is being changed. The salinity level is high, and salt water predators are there now in numbers like never before. We have always dealt with a few predators, whether it's a king conch or oyster drills. But oystermen the past few years are bringing in bucket after bucket of conchs.

4. Apalachicola Bay needs freshwater in order for the oyster population to come back. Nothing else we try to do, including the reshelling I have worked on the past several years, will bring back the oyster population without more fresh water. I believe that if we do not get enough water from upstream in the coming years, the Bay and oyster population may never recover. If that happens, I don't know what will happen to families like mine or our community as a whole.

B. Role of Oystering in My Life and the Community

5. Before I talk about my own experiences in Apalachicola, it's important to understand just how long oystering has been the core of what people do in this area. Oystering has been a way of life for residents in and around Apalachicola Bay for more than a century. Since the Civil War, people have made an honest living harvesting oysters, passing down tools and skills to the next generation. Children are brought up in the industry and spend their entire lives working on the Bay. Apalachicola is known as the "Oyster Capital of the World" and has developed a unique identity built around our way of life. Thousands of livelihoods depend on the oyster industry, from the oystermen and dealers to the local restaurants, grocery stores, and other businesses. Each year, thousands of tourists visit our community to try Apalachicola Bay oysters and experience our community.

6. Like many others from Apalachicola, I come from a long line of oystermen. My daddy, my granddaddy, and my great granddaddy all made their living from fishing and

harvesting oysters in Apalachicola Bay. My brother was an oysterman until the collapse in 2012, and my son was following in my footsteps – he had his oyster license and was oystering with me on weekends - but I steered him in a different direction when I saw what was happening to the Bay.

7. Some of my earliest memories are going oystering with my daddy and brother. My dad primarily worked on the public oyster bars, but sometimes the leaseholders in the Bay let him work their leases too. Oystering always provided a decent income and he worked every day of the week so that we never did without anything.

8. I started oystering with him when I was a young child. I started culling oysters (which just means separating the oysters based on size) when I was ten years old. I was always a neat kid and hated culling because it was such a dirty job. So when I was 13, I convinced my daddy that I was big enough to start tonging. It took me a couple of weeks, but once I got the hang of it, I could tong all day. I didn't have to cull anymore until I got my own boat when I was 16. My brother and I would go oystering on weekends while we were in high school, just to make some extra money.

9. After I graduated from high school in 1989, I spent one year in college, but my dyslexia made it difficult for me, and I needed to find something different to do. I decided to go back to oystering – I could make a good living out of it, and it was something that I loved doing. I did other things too – shrimping and fishing – but beginning in 2000, I focused more on oystering because it was easier to make a living. While I occasionally found odd jobs during hard times, I always oystered on the side and on weekends to make ends meet. I have always felt like I was a part of the oystering community.

10. Let me make something clear: oystering is hard work. The day begins at dawn and stretches to late in the evening and we are out on the Bay no matter how hot or cold it is. Oystering also usually is a solitary line of work, with most oystermen operating their boats alone or with one or two other people.

11. The most difficult part of it is probably tonging the oysters. Unlike everywhere else in the country, we use hand tongs to harvest our oysters, which is physically demanding and takes a lot longer to get enough to sell than mechanical dredges and other harvesting methods. This is the same way we've been harvesting oysters in Apalachicola Bay for centuries. Hand tongs have long wooden handles, which are between 12 and 16 feet long, with two steel heads at the bottom that look like two large rakes.



This a picture of oystermen using hand tongs to harvest oysters in Apalachicola Bay. I am familiar with oyster harvesting and this is an accurate depiction of what we do when we harvest oysters with hand tongs.



This is a picture of an oysterman using hand tongs to harvest oysters in Apalachicola Bay. I am familiar with oyster harvesting and this is an accurate depiction of what we do when we harvest oysters with hand tongs.

12. As you can see, we use these steel heads at the end of the hand tongs to pick up oysters from the Bay's bottom – we call that a “lick” of oysters - that we dump on a culling board on our boats. It's not easy to tong – it takes a lot of experience to know where the oysters are and how to tong them up. Plus, the tongs are really heavy, as a good “lick” of oysters can weigh as much as 100 pounds.

13. After we've tonged enough that we've got a pile about three feet high, we use a culling iron to knock apart clumps of oysters and separate out the oysters.



This is a picture of an oysterman culling oysters on his boat in Apalachicola Bay. I am familiar with culling oysters and this is an accurate depiction of what we do when we cull oysters.

14. Oysters that are smaller than three inches – the legal size for harvest in Apalachicola Bay – are thrown back into the Bay to keep growing. Oysters that are three inches or larger go into sacks, which when full holds about 300 oysters (around 60 pounds). The law allows us to have a small number of undersized oysters (oysters less than three inches) in our bags given how the oysters clump together, but if you are caught with more than what is allowed, you get fined. There have always been a few rogue oystermen who will harvest undersized oysters no matter the punishment, but it's never been a problem for the Bay. Most oystermen follow the law, if for no other reason than we know those little oysters will be our harvest in a few months.

15. Once we're done for the day, we take our bags to certified oyster dealers (who have to be licensed by the state), who pay us by the pound for our harvest. In the late 1980s, FWC set up bag limits, which stated that oystermen could harvest no more than 20 bags a day. These have changed in the last few years, with the collapse of the oyster population. The bag

limits gradually decreased, and now oystermen are limited to no more than three bags a day. In addition to bag limits, oystermen also have to follow other regulations put out by FWC and FDACS that are geared towards public health. Oyster bars are classified as summer and winter bars, meaning they can only be harvested during those times of the year and are closed to harvesting for the rest of the year. We also have to harvest during certain times of the day and get our catch to an oyster dealer within a certain amount of time.

C. Resilience of Apalachicola Bay and its Community

16. Our way of life has really brought the people of this area together. We help each other, by fixing each other's boats or looking out for one another. But we also work hard as a community to protect the Bay, and we do that by working with local officials to protect it and by engaging in reshelling efforts to keep it productive.

17. Like the oystermen who work it, the Bay itself has always been resilient. We've experienced hard times, from hurricanes and droughts, but the Bay has always bounced back and recovered. Hurricane Elena is a good example. In 1985, Hurricane Elena wiped out the oyster reefs and shut down the Bay for two years. My dad packed up and moved to Horseshoe Beach to oyster and make ends meet during this time, but I stayed behind with some friends in Carrabelle. Many of the oystermen in Apalachicola Bay banded together and helped reshell the bay during this time – twice a week, every week - earning maybe \$400 or 500 per week. And the Bay recovered and was just as productive as it was before.

18. The Bay has overcome droughts too. In 2007-2008, there was not a lot of freshwater and for the first time in my life, I saw sea urchins and scallops on our oyster bars. At the end of 2008, I remember that there was a particularly rainy season, and we ended up getting a lot more water, with the River maintaining about eight or nine feet. That helped reverse the

effects of the drought, and it seemed like the Bay was on its way to recovering until the collapse in 2012.

19. When the Deepwater Horizon rig exploded in April 2010, we were fearful that oil would enter the Bay and destroy the oysters. FWC opened the Bay two weeks early that summer but a lot of oystermen didn't even oyster that season. Later, a number got settlements from BP and decided to quit oystering altogether. A large number of oystermen also went to work for BP and the Vessels of Opportunity (VOO) program. However, as I look back, I can see that the oyster industry was already suffering from lack of freshwater flow with a lot of oyster dealers complaining that oystermen weren't harvesting enough oysters to keep the dealers in business.

D. The Collapse and Its Lasting Impacts on the Apalachicola Bay Community

20. The collapse of the oyster population in 2012 has devastated our community and threatens to wipe out our way of life entirely.

21. In the early 1980s, I remember my daddy would average 35-40 bushels/day – oysters were about \$5/bushel back then. There was even a time I remember my brother and I caught 80 bushels in one day when we were 13 or 14 years old. Even after FWC implemented bag limits in the late 1980s, oystermen were still able to harvest 20 bags/day. We saw some decline in the late 2000s as a result of drought, but oystermen were still getting 15 bags or so in a day. Now, my daddy, who is out there every day of the week at 69 years old, can barely tong up three bags in a day.

22. That's not enough to make a living, even with the higher prices that have come as a result of the increased demand due to the lack of oysters. As a result, people are losing their homes or having to live with their parents in order to have a roof over their head. And a lot of people have left the industry and our community altogether.

23. For oystermen like me who have spent our entire lives harvesting oysters in Apalachicola Bay, alternative employment is hard to come by. Most oystermen followed in their dad's footsteps – they didn't graduate from high school and a lot of them never earned their GED. While the State of Florida has offered some educational and job training programs, most of us don't have the reading or math skills to qualify. There are not a lot of job opportunities in Franklin County, and what few there might have been when the collapse began are long gone.

24. The collapse of the oyster population in 2012 forced me to give up oystering almost entirely. I might go out and help my daddy every now and then, but my main source of income these days is a part-time job taking water quality measurements as part of a research project with the University of Florida. Given the current situation, I've encouraged my son – who would be the fifth generation of our family to be an oysterman - to pursue a career in welding in Georgia so that he has better economic opportunities. I hate to end the line of oystermen in our family, but unless the Bay starts to recover, I don't know if he'll be able to make a living on the Bay the way the generations before him did.

25. Although I'm not oystering much anymore, I'm still actively involved with the community and trying to help do what I can to help the Bay and ensure our way of life survives. I'm the President of the Franklin County Seafood Workers Association, which represents local oystermen, shrimpers and crabbers. We try to work with local officials and meet with our state and Congressional representatives to see if we can do anything to help our Bay. When I became president in 2011, the Association had more than 500 members, but now, we're down to less than 140 members. These are all oystermen, although most of them are like me – they're not really oystering anymore for their job, but they're still members because being an oysterman is who they are.

26. I also started the Seafood Management Assistance Resource Recovery Team (“SMARRT”) in January 2013, which is a local group of industry members that provides a voice for issues affecting people that are dependent on Apalachicola Bay for their livelihoods. Our group is made up of oystermen, crabbers, shrimpers, guides, dealers, local association representatives, fishermen and clammers. We focus on programs that impact the health of the Apalachicola Bay and production of seafood, and we work with local and state government officials to develop whatever management actions we can to help our Bay recover.

27. As part of my participation in these groups and along with other members of the community, I’ve supported anything and everything that might save our Bay - harvesting restrictions, area closures, enforcement checkpoints, reshelling efforts and the like. I’ve also helped reshell parts of the Bay with federal funds the State received after Tropical Storm Debby and the collapse in 2012, doing anything we can to hang on.

28. But nothing seems to be working, and it’s because we aren’t getting enough fresh water in our Bay. The water in our Bay should normally look like chocolate milk, because of the fresh water coming in from the Apalachicola River. But if you look at our Bay these days, it’s crystal clear, and that’s not healthy. Even though we are reshelling parts of the Bay, especially areas near where the mouth of the Apalachicola River feeds into the Bay, reshelling has not worked like it did in the past. In the reshelling efforts I’ve been involved in in recent years, we’ve planted shell on bars closest to the mouth of the River, with the hope that any little bit of fresh water we might get will help these oysters survive and seed the Bay with their spat. It shouldn’t take many oysters to seed the entire Bay. When we had better fresh water flows in 2013 and 2014, the reshelling seemed to be working and we were able to harvest some oysters from those bars. But as the river has dried up, these planted areas have died off again.

29. At the same time, with the lack of freshwater, we see more and more predators in our Bay. Predators like conchs drill into oysters and prevent Bay oysters from reseeding. As I mentioned, for years I have seen the number of predators increase as the Bay salinity level rose above normal levels. Now, the Bay remains above those levels. The water is clear, which means high salinity. Conchs and other predators are everywhere, which means the Bay is more and more like the ocean. All of that means we need fresh water flows to balance out the Bay and permit our oyster population to recover.

E. Conclusion

30. The people of Apalachicola Bay have been oystering for more than a 100 years, passing down our traditions and resilience to each new generation. Although oystermen and the Bay have experienced many hardships in the past, this collapse and slow recovery is unlike anything we have ever faced. Right now, it feels like the Bay doesn't have a future. Oystermen are leaving our community and encouraging the next generation to do the same. If the Bay doesn't receive additional freshwater flows that will allow it to recover, I don't know what the future will bring for our community or our way of life or even Apalachicola Bay.