

Major Victory for Citizen Coalition in Coastal Fisheries Lawsuit Against the State of North Carolina

A lawsuit seeking to hold the State accountable for mismanaging North Carolina's coastal fisheries resources is moving ahead after a Court rejected the State's motion to dismiss "in its entirety," a decisive victory for the group of 86 citizen plaintiffs and the Coastal Conservation Association of North Carolina who brought the lawsuit in November 2020.

In their 113-page complaint, the plaintiffs chronicle how North Carolina's coastal fisheries have suffered and declined under the State's decades-old management approach of allowing maximal, commercial exploitation of the resource. The complaint details how the State has for decades tolerated overfishing of flounder and other species of coastal fish that are valued by the fishing public. The complaint also chronicles the staggering bycatch resulting from the State allowing the use of unattended gillnets and trawling in North Carolina estuarine waters heavily populated with juvenile fish—two practices that all other southeastern states have banned or severely curtailed because of the extraordinary amount of waste they generate. The plaintiffs contend that as a result of these and other failures to properly manage coastal fisheries, the State has violated the North Carolina Constitution and the public trust doctrine, a legal doctrine under which the State holds certain natural resources in trust for its current and future citizens.

The State responded to the lawsuit in January 2021 by filing a motion to dismiss the plaintiffs' claims. Among the State's various arguments for dismissal, it asked the Court to give it immunity from lawsuits of this kind. The State also denied that it had any responsibility to hold in trust and manage coastal fisheries resources for the benefit of its current and future citizens. The Wake County Superior Court considered hundreds of pages of materials and held a two-hour hearing on the State's motion on June 9, 2021. On July 28, the Court issued an order rejecting each and every one of the State's arguments. The State is now seeking to appeal that ruling.

A number of observers were surprised by the State's position in response to the lawsuit. "For the State to argue in court that it has no responsibility for preserving our coastal fisheries is deeply concerning," said Bert Owens, Chair of the Coastal Conservation Association of North Carolina's Board of Directors. "By taking this approach, the State has made this about something larger than the documented decline of our coastal fisheries under its management. There is a fundamental disagreement here about the relationship that we, as citizens, have with our government, and the government's responsibility to ensure that we have natural resources like fish and wildlife to pass along to future generations."

Other third-party observers also offered their praise for the Court's decision. Tim Gestwicki, Chief Executive Officer of the North Carolina Wildlife Federation, said that he was "pleased that the Court reached the correct result, which reflects the basic, time-honored principle that the State is responsible for protecting our public trust resources." Professor Joseph Kalo, the Graham Kenan Emeritus Professor of Law at the University of North Carolina School of Law, offered the following: "The State's assertion that it does not have an enforceable, affirmative obligation to manage North Carolina fisheries for the long-term public good flies in the face of the clear language of the North Carolina Constitution, Article 1, Section 38, which states that the right to fish shall be forever preserved for the public good. The State's position would make the constitutional right to fish meaningless. Surely the voters in 2018, who by a wide margin approved this amendment to the Constitution, believed that the right to fish meant something more than the

right to wet a hook. Preserving the right necessarily implies an obligation to use sound science to secure, protect, and manage the health of fishery resources for the long-term public good.”

Notably, the group of 86 citizen plaintiffs in the case includes five former members of the North Carolina Marine Fisheries Commission, a state government commission responsible for fisheries management. Mac Currin, one of the five former state officials who joined the lawsuit as a plaintiff, commented that he was “grateful for the Court’s ruling, which puts us closer to ensuring that sustainable coastal fisheries will be there for our children and grandchildren.”

For more information about the lawsuit or to inquire about joining the lawsuit as a plaintiff, please visit www.ccanc.org, or contact the Coastal Conservation Association of North Carolina’s Executive Director, David Sneed, at david@ccanc.org.