

No. 142, Original

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

**UPDATED PRE-FILED DIRECT TESTIMONY OF FLORIDA WITNESS
MAJOR ROB BEATON**

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

GREGORY G. GARRE
Counsel of Record
PHILIP J. PERRY
CLAUDIA M. O'BRIEN
ABID R. QURESHI
JAMIE L. WINE
LATHAM & WATKINS LLP
555 11th Street, NW

Suite 1000
Washington, DC 20004
Tel.: (202) 637-2207
gregory.garre@lw.com

PAUL N. SINGARELLA
LATHAM & WATKINS LLP

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

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

ATTORNEYS FOR THE STATE OF FLORIDA

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Introduction to Testimony

1. My name is Major Rob Beaton, and I have worked as a law enforcement officer for the Florida Fish and Wildlife Conservation Commission (FWC), and its predecessor agencies, for more than 25 years. From September 2012 to September 2014, I served as Captain of FWC's Carrabelle field office in Franklin County, Florida and part of my responsibility was overseeing the enforcement of the state's oyster harvesting rules and regulations in the Apalachicola Bay area.

2. During the time I worked in Carrabelle from September 2012 to September 2014, FWC's law enforcement efforts in the Apalachicola Bay were effective. There is no question that FWC has had enough people, boats, and other resources to be able to aggressively patrol the Apalachicola Bay and discourage potential violators.

3. Two operations in particular – named Operation Black Pearl I and II – gave us great insight into the illegal oyster harvesting activity taking place in the Apalachicola Bay. These operations, in addition to observations from our daily law enforcement activities, confirmed that concerns about overharvesting and the harvesting of undersized oysters, were overstated and that the vast majority of oyster harvesters in the Apalachicola Bay comply with the applicable rules.

Background

4. My family moved to Miami when I was in second grade, and I have been a Floridian ever since. I attended Florida State University and earned a bachelor's degree in Criminology. I then graduated from the Florida Marine Patrol Academy and began working at FWC in 1989. Aside from a two-year hiatus from 1991 to 1993, I have been at FWC my entire career.

5. During my time at FWC, I have worked in various capacities in the Florida Keys, including as uniformed patrol, covert patrol, boating homicide investigator, staff lieutenant, and

field lieutenant. In 2003, I transferred to FWC's Tallahassee headquarters (GHQ) as an Investigator II and was later promoted to lieutenant. I was then promoted to captain in GHQ in 2007 and in 2012, I transferred as a captain for the Carrabelle Field Office.

6. After spending two years as the captain in Carrabelle, I took a lateral position back to the Florida Keys and oversaw investigations and operations until April 2016, when I was promoted to major in GHQ, where I currently oversee the Division of Law Enforcement's Captive Wildlife and Environmental Crimes Section. The section enforces rules and regulations designed to ensure that wild animals are housed properly and safely by zoos, pet shops, private owners, and other entities that display or keep wild animals.

FWC's Structure and Enforcement Priorities

7. FWC is responsible for managing Florida's fish and wildlife resources. The agency develops and enforces rules to protect fish and wildlife species, keep waterways safe for outdoor recreation, and respond to natural disasters. FWC also cooperates with other law enforcement agencies to ensure public safety. FWC is headquartered in Tallahassee, and it formed in 1999 after divisions of three separate state agencies merged into a single agency. FWC employs over 2,000 individuals, over 800 of whom are law enforcement officers. The agency has one headquarters, six regional offices, and 76 field offices throughout Florida.

8. First and foremost, FWC's top priority is public safety and protection of the natural resources of the state. Oysters and other shellfish are among the most regulated food products because of the risk they carry for certain individuals. Our efforts to protect public health not only save lives but also ensures consumer confidence, since outbreaks of food poisoning or illnesses would reduce demand for Apalachicola Bay oysters. Consequently, FWC is primarily concerned with enforcing regulations that ensure that oysters are safe for the public to consume, including

rules that forbid harvesting in areas that are closed due to poor water quality, contamination, red tide (high concentrations of algae), or time limits on harvesting.

9. FWC also enforces other regulations, such as oyster size limits and bag limits.

While bag limits are intended to benefit oyster harvesters and the industry by helping maintain the oyster population, the oyster size limit is a consumer-driven regulation that reflects market preference for three-inch oysters. Undersized oysters are considered any oysters less than three inches in the greatest dimension. No more than 5% of an oyster harvester's catch may consist of these sub-legal oysters – we refer to this 5% threshold as the “tolerance level.” The fact that oysters are undersized or harvested beyond the allowable limit, for example, are not a public health concern. No one has ever died because they ate an undersized oyster.

10. FWC's enforcement authority, as it relates to oyster size limits, is limited to times when the oysters are on the water and in bags or containers aboard the harvesters' boats. We can patrol and inspect oyster harvesters for compliance with size limits and other regulations while they are out on the water, but another agency, the Florida Department of Agriculture and Consumer Services (FDACS), shares jurisdiction with the FWC once oysters are brought to shellfish processing facilities on the land. FDACS's primary concern, once the oysters are at the processor, is health and safety. The agency focuses on tagging, licensing, and time and temperature requirements.

11. FWC works closely with FDACS to share information and collaborate on rulemaking and enforcement responsibilities. Both FWC and FDACS also get regular feedback from representatives of the oyster industry and other stakeholders, and we encourage self-policing efforts and try to get the industry on board with our enforcement priorities whenever possible.

Enforcement Efforts in the Apalachicola Bay

12. The Apalachicola Bay area and its resources have been a historical enforcement priority for the FWC and all of its predecessor agencies. Appropriate resources and staff have been assigned to the area to enforce oyster harvesting regulations.

13. There are around seven to nine FWC law enforcement officers assigned to Franklin County at any given time. Four additional law enforcement officers also spend a significant amount of time patrolling the Apalachicola Bay along Franklin County through a joint enforcement agreement between FWC and the National Marine Fisheries Service. One of FWC's patrol units tasked with targeting illegal oyster harvesting is the Resource Protection Squad, which utilizes plain clothed officers and unmarked equipment. This squad has been very successful in arresting individuals violating resource regulations and securing successful prosecutions of those individuals. In addition, many other law enforcement officers outside of Franklin County receive training on enforcing oyster regulations and have some enforcement responsibilities in the Apalachicola Bay from time-to-time when additional resources are needed.

14. If I were asked if I could have used more officers, of course I would say yes, just as any law enforcement agency in the country would accept additional resources and put them to use. But there is no question that FWC has had enough people, boats, and other resources to be able to aggressively patrol the Apalachicola Bay and discourage potential violators.

15. Our primary enforcement method is conducting regular patrols on the water of the Apalachicola Bay, including areas that are closed to harvesting. These include high visibility patrols aimed at deterring oyster harvesting violations as well as covert operations using unmarked boats and plain clothes officers. FWC officers also regularly inspect harvesters by examining the oysters they catch while they are on their boats. When inspecting, officers search to make sure

oyster harvesters possess an allowable number of bags, that all bags are appropriately tagged and accurately indicate (1) where the oysters were caught, (2) the time the oysters were harvested, and (3) that oysters meet size requirements, in addition to verifying compliance with other requirements such as having proper boating safety equipment and marine sanitation devices.

16. Additionally, FWC officers patrol along the shoreline and use binoculars, night vision devices, aviation, and other technology to patrol the bay. The agency did not use formal checkpoints on the water while I served as Captain, but now there are checkpoints both on the water and at shore where oysters are inspected before they are brought to the land.

17. FWC is evaluated annually by the Food and Drug Administration (FDA) by a shellfish specialist who assesses law enforcement patrols to make sure various enforcement benchmarks are achieved. Historically, FWC has far exceeded the FDA's requirements for patrol frequency, equipment, education efforts, number of citations and convictions, and other areas.

Exaggerated Concerns of Overharvesting and Undersized Oysters

18. While I was assigned to Apalachicola Bay, FWC occasionally received reports about unlawful harvesting activity, including reports that oystermen were harvesting undersized oysters. Many reports of unlawful harvesting activity came from consumers who were served undersized oysters at restaurants or who purchased undersized oysters at retail stores. Conscientious oyster harvesters who followed the rules also filed complaints because they were upset about having to compete against oystermen who cut corners. Staff from FDACS who inspected oyster processing facilities would often give us information related to undersized oysters. FDACS staff would observe bags containing undersized oysters beyond the tolerance level and would pass the harvester's information to us. More often than not, we would arrest the identified individual within the following weeks.

19. However, these concerns about overharvesting and the harvesting of undersized oysters were not corroborated by what my officers and lieutenants encountered on a day-to-day basis in the Apalachicola Bay area. While these illegal harvesting practices occurred, they were not widespread in the Apalachicola Bay.

20. This is backed up by FWC's enforcement statistics and Operation Black Pearl, which I describe more below. Most of these violations were committed by a small percentage of repeat offenders – not the oyster harvesting community as a whole, the vast majority of whom followed the rules.

Operation Black Pearl

21. Operation Black Pearl was a targeted FWC law enforcement operation in the Apalachicola Bay that culminated in a three-day, around-the-clock patrolling effort in late October 2013. Lieutenant Kent Harvey drafted the written plan for Operation Black Pearl, and I oversaw the execution of the operation. I reviewed drafts of this written plan and was one of several FWC law enforcement officers who approved the plan. Our enforcement priorities were based on tips we had been receiving from oyster harvesters and other workers in the industry as well as our own observations. JX-134 is a true and accurate copy of the Operation Plan for Black Pearl created in late October 2013. This is the type of plan we regularly created at FWC as part of our law enforcement efforts and FWC routinely maintained records of such plans in the course of its regularly conducted business.

22. FWC brought in officers from outside the area, and more than 30 law enforcement officers were involved in the operation, which involved 24-hour patrols of the area. This highly visible operation got substantial attention and made it clear to the oyster industry that FWC was serious about enforcing oyster harvesting regulations. We also intended that Operation Black

Pearl would deter future illegal oyster harvesting.

23. Operation Black Pearl went after all illegal oyster harvesting practices, including harvesting in closed areas, night harvesting, falsifying tags, and harvesting undersized oysters. The operation gave FWC a full picture of the range of illegal harvesting activity occurring in the Apalachicola Bay and allowed the agency to verify whether reports from harvesters and rumors about widespread unlawful activity were accurate.

24. In total, FWC confiscated approximately 1,300 pounds of unlawfully harvested oysters during Operation Black Pearl. The majority of oysters seized were illegally harvested because they were untagged, not properly shaded, or stored in unsanitary conditions. Based upon the number of inspections, arrests, and warnings, we determined that only seven percent of users inspected – 50 out of 737 – were issued warnings or citations for possessing undersized oysters in excess of the 5% tolerance allowed by rule. JX-101 is a true and accurate copy of an email I sent on November 22, 2013 to Melissa Thompson attaching the final statistics for Operation Black Pearl. These statistics were compiled by FWC staff, and I reviewed them before emailing them to a constituent who I was referred to by an aide for one of Florida's representatives in Congress. I regularly send such emails as part of my duties as a law enforcement officer, and the State of Florida routinely maintains records of my emails in the course of its regularly conducted business.

25. Based on the success of Operation Black Pearl, FWC conducted a similar operation called Operation Black Pearl II, which took place in October 2014, but this occurred shortly after I left the Carrabelle field office in September. I reviewed drafts of the written plan for Operation Black Pearl II, and it was very similar to the written plan for Operation Black Pearl. JX-53 is a true and accurate copy of the Operational Plan for Black Pearl II created in fall 2014. This is the type of plan we regularly created at FWC as part of our law enforcement efforts and FWC

routinely maintained records of such plans in the course of its regularly conducted business.

26. Statistics from Operation Black Pearl II similarly showed that harvesting undersized oysters was a relatively small problem. Out of 908 users inspected just 39, or 4%, of oyster harvesters were issued warnings or citations for carrying more than the 5% tolerance level for undersized oysters. JX-53. In addition, only one harvester was caught possessing more oysters than were permissible under the bag limit.

Conclusion

27. FWC proactively and aggressively enforces oyster harvesting regulations in the Apalachicola Bay. We enforce these rules on a day-to-day basis, with a particular focus on requirements that are intended to protect public health. Moreover, FWC has put substantial resources in conducting multi-day operations, like Operation Black Pearl I and II, to communicate the seriousness of our enforcement efforts and to deter the illegal harvesting of oysters in the Apalachicola Bay. Our efforts have been successful in limiting illegal oyster harvesting and have confirmed that overharvesting and the harvesting of undersized oysters are not widespread.