

No. 142, Original

**In The
Supreme Court of the United States**

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

GEORGIA'S OBJECTIONS TO WRITTEN DIRECT TESTIMONY OF ERIC SUTTON

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Pursuant to Case Management Order 20, the State of Georgia hereby serves objections to the admission of the following portions of the Direct Testimony of Eric Sutton.

Portion of Testimony	Basis of Objection
<p>¶7 “I will also describe the actions the federal government took in response to the crash. The U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), quickly concluded that the central cause of the crash was the stress of low freshwater input to the Bay, and that overharvesting was not a central cause. These findings were memorialized in a memo by Laura Petes of the NOAA Climate Program Office in September 2, 2012, and in a decision memo issued by NOAA in August 2013, both of which I have reviewed in my capacity as Assistant Executive Director of the Commission.”</p>	<p>Foundation, Hearsay</p>
<p>¶8 “Specifically, Petes found that “oyster mortality would be occurring even in the absence of harvesting pressure,” concluding that “Florida Gulf Coast oysters have been negatively affected by drought and reduced freshwater input.”</p>	<p>Foundation, Hearsay</p>
<p>¶9 “Likewise, the NOAA decision memo concluded that “the physical (high salinity) and biological (increased predation and natural mortality) environmental issues have played a more central role in the declines to the oyster stock in this area.” (NOAA Decision Memo, FX- 413 at 3 of the Decision Memo). Indeed, it is my understanding that had overharvesting or mismanagement been the central cause, Florida would not have been eligible for disaster funding.”</p>	<p>Foundation, Hearsay</p>

Portion of Testimony	Basis of Objection
<p>¶37 “In summer of 2012, the Apalachicola Bay experienced a dramatic crash in oyster resources, which was precipitated by extremely low flows in the Apalachicola River. As the situation unfolded, FWC used the regulatory authorities I have discussed to limit the annual oyster harvest and protect the resource.”</p>	<p>Foundation</p>
<p>¶45 “In addition to FWC’s own findings, the agency considered the input from researchers at the University of Florida, who had reached some similar conclusions in a public report issued in April 2013: The UF report indicated “the 2012 decline in oyster landings and recruitment of juvenile oysters is unprecedented during the period of data analyzed and has likely involved recruitment failure or high mortality of small oysters.” The UF report indicated “there is no evidence that the harvesting of sub-legal oysters has or would lead to overfishing . . . unless the sub-legal harvest has been unregulated and extremely high. The UF report concluded that recruitment overharvest did not play a role in the fishery failure as “the decline in sub-legal abundance, sudden as it was, cannot be attributed to reduced spawner abundance (i.e., adult population) and/or larval supply.” The UF stock assessment indicated that “the current [3”] size limit is generally sufficient for maximizing yield.”</p>	<p>Hearsay, Foundation</p>
<p>¶46 “FWC completed the Oyster Disaster Report in May of 2013 and provided it to NOAA Fisheries, to explain the causes behind the oyster crash and the basis for which Florida was requesting federal disaster assistance. On August 12, 2013, the Secretary of Commerce issued a determination that a fishery resource disaster had occurred for the oyster stocks in Florida’s portion of the Gulf, primarily in the Apalachicola Bay. “</p>	<p>Foundation</p>

Portion of Testimony	Basis of Objection
<p>¶47 “The decision memorandum from the Regional Administrator, for NOAA Fisheries to the Deputy Assistant Administrator for Regulatory Programs explained the legal basis on which the agency could grant the Florida Governor’s request for federal fishery disaster assistance: Under [Magnuson-Stevens Fishery Management and Conservation Act] 312(a) the allowable cases for a fishery resource disaster are natural causes, undetermined cases, or man-made causes beyond the control of fishery managers to mitigation through conservation and management measures ... *** Under [Interjurisdictional Fisheries Act] 308(d) the allowable cases for a fishery resource disaster are natural or undetermined cases. After thorough consideration of all the factors leading to the crash, NOAA Fisheries rejected overharvesting as the primary cause of the crash and concluded, as did FWC, that it was brought about primarily by the stress of low freshwater input to the Bay.”</p>	<p>Hearsay, Foundation, Speculation</p>
<p>¶48 “One of NOAA’s Climate Program Office staff, Laura Petes, provided input to decision makers on the causes of the oyster crash. She specifically considered, and rejected, the theory that harvesting pressure was the cause of the collapse, finding rather that “due to stressful conditions associated with the severity and duration of the recent drought, it is likely that high Florida Gulf Coast oyster mortality would be occurring even in the absence of harvesting pressure.” (Laura Petes Memo FX-412, at NOAA-0003818). More than a year later, federal scientists confirmed Petes’ initial findings. NOAA Fisheries, on behalf of the Secretary of Commerce, declared the fishery resource disaster and identified three primary causes for the crash, each related to low flows in the rivers reaching the Bay (including increased salinity).”</p>	<p>Hearsay, Foundation, Speculation</p>

Portion of Testimony	Basis of Objection
<p>¶49 “While Georgia alleges in this case that Florida mismanagement of the oyster fishery is the cause of the 2012 collapse, my understanding is that the federal fisheries laws obligates the Secretary of Commerce to deny federal disaster assistance in situations where the cause of the fishery failure is related to mismanagement. That did not occur.”</p>	<p>Foundation</p>