

LEGAL INTRODUCTION & OVERVIEW

INTRODUCTION AND OVERVIEW OF
CCA, NC et al. v. State of North Carolina
filed in Wake County Superior Court, Nov. 10, 2020

1. This lawsuit is about the State of North Carolina's failure to satisfy its obligations under the public-trust doctrine—a legal doctrine that is as old as the State itself, and which the people of North Carolina have ratified as a permanent part of their Constitution.
2. The public-trust doctrine originated in ancient Roman law, was adopted by the British Crown, and was ultimately passed on to the thirteen original American colonies, including North Carolina. The doctrine remains one of the sacred components of the compact that the State has with its citizens. It imposes on the State a legal duty to hold and manage in trust, for the benefit of its current and future citizens, all of North Carolina's public-trust resources.
3. These public-trust resources include all navigable waters, including those in North Carolina's coastal regions, as well as the lands they submerge. These public-trust resources also include the public's use of those navigable waters, including the public's right to navigate those waters and fish for personal use and enjoyment. And these public-trust resources include the fish that swim in those public waters, which the State holds in trust for the benefit of all North Carolinians.
4. The public-trust doctrine operates according to the same basic trust principles that govern the trust relationship between trustees and beneficiaries. Under those principles, the trustee (the State) owes a fiduciary duty to hold the trust property (public-trust resources) in trust for the benefit of the trust beneficiaries (current and future citizens). That fiduciary duty includes the obligation to preserve and protect the trust property (public-trust resources) from human overexploitation or waste.
5. Thus, for North Carolina's coastal fisheries resources, the public-trust doctrine imposes a fiduciary duty on the State to manage and regulate the harvest of coastal finfish and shellfish in a way that protects the right of current and future generations of the public to use public waters to fish. As a result, the State may not allow finfish or shellfish harvest gears or methods in public waters that generate undue wastage or impair the sustainability of coastal fisheries resources, which in turn threaten the rights of current and future generations of the public to use public waters to fish.
6. The State cannot disclaim or otherwise avoid its duties as trustee under the public-trust doctrine. In other words, the State does not have the option to simply "resign" as trustee. Nor may the General Assembly abrogate the State's legal duty under the public-trust doctrine. To the contrary, the duties of the State in managing public-trust resources for the benefit of the public are inviolable.
7. To that end, the people of North Carolina in their Constitution have mandated that the State uphold its public-trust obligations and respect their public-trust rights. Article I, Section 38 of the North Carolina Constitution provides in pertinent part:

The right of the people to hunt, fish, and harvest wildlife is a valued part of the State's heritage and shall be forever preserved for the public good. The people have a right, including the right to use traditional methods, to hunt, fish, and harvest wildlife, subject only to laws enacted by the General Assembly and rules adopted pursuant to authority granted by the General Assembly to (i) promote wildlife conservation and management and (ii) preserve the future of hunting and fishing.
N.C. Const. art. I, § 38.

Furthermore, Article XIV, Section 5 of the North Carolina Constitution, entitled "Conservation of Natural Resources," provides in pertinent part:

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to . . . preserve as a part of the common heritage of this State its . . . estuaries [and] beaches.

N.C. Const. art. XIV, § 5.

8. In contrast to these public-trust rights of the public, the right of any business or individual to fish in public waters for profit is a narrow, limited privilege, afforded only by statute. Thus, that limited privilege is subject to legislative discretion. When the State is determining appropriate policies or plans for managing coastal fisheries resources, that limited privilege granted to a relative few citizens or companies to fish for profit must yield in priority to the constitutionally protected public-trust rights of the broader public. Accordingly, the State cannot allow the for-profit harvesting of finfish or shellfish in quantities or through methods that cause overexploitation or undue wastage to North Carolina's coastal fisheries resources.

9. When private entities are freely allowed to profit from the use of public, natural resources, it almost always results in the demise of those resources. That is because there is no incentive to conserve resources jointly shared with others, and there is every incentive to harvest such resources before someone else does so. This is the sad "tragedy of the commons" that characterizes the use of coastal fisheries resources in North Carolina. That tragedy can only be prevented or reversed by intentional and decisive government action by the State, the resource trustee, in meeting its public trust and constitutional obligations owed to all current and future citizens.

10. In the case of North Carolina's coastal fisheries resources, however, the State has failed to take decisive action to preserve and protect those resources from overexploitation and waste. The State has facilitated the tragedy of the commons by, in many instances, allowing the commercial-fishing industry to dictate or exert a disproportional influence on the State's coastal fisheries resources management policies and plans. The State has thereby allowed the overexploitation of coastal fisheries resources by those who possess the privilege to harvest those resources for profit, even though they represent less than one-tenth of one percent of the North Carolina citizens for whom those resources are held in trust. As described below, that disparate control or influence of State policy and State agencies by a small segment of North Carolina's citizens reflects "regulatory capture," where the State's regulatory agencies become co-opted to serve the commercial interests they are charged with regulating.

11. The root cause of the demise of North Carolina's public-trust coastal fisheries resources is the State's mismanagement of those resources. Commercial fishing licensees generally use only those gears and harvest methods that the State allows by law. Consequently, while commercial overharvest or waste of public-trust resources has been the major factor in the decline of coastal fisheries resources, it has occurred only because the State has permitted it to occur. The State has extended the industry's collective privilege to fish for profit beyond what is permissible in light of the State's public trust and constitutional duties owed to all current and future citizens of North Carolina.

12. As described more fully below, the State has breached its duties under the public-trust doctrine by mismanaging North Carolina's coastal fisheries resources, resulting in a decades-long, uninterrupted, dramatic decline in these resources overall, as well as a decline in the health of multiple, specific species and/or stocks of these fish.

13. For example, the State has continued to allow—and even facilitated—several commercial fishing practices that result in substantial wastage of coastal fish stocks or their prey species, or result in critical habitat destruction. Those commercial fishing practices include trawling in estuarine waters with significant populations of juvenile finfish, and using "unattended" gillnets. The State's tacit

approval of these destructive practices is a fundamental failure of its duties as the trustee charged with managing and protecting coastal fisheries resources in North Carolina.

14. Sadly, North Carolina is the last bastion of these two wasteful fishing practices. Long ago, all other southeastern states either banned or severely curtailed these commercial fishing practices because of the waste in fisheries resources they generate. But not North Carolina. The State has consequently earned a reputation among its sister states as an outlier in coastal fisheries management.

15. As a result, stocks of multiple fish species (for example, Spot (*Leiostomus xanthurus*), Atlantic Croaker (*Micropogonius undulatus*), and Weakfish (*Cynoscion regalis*)) have declined precipitously—84 to 98 percent—since the last major fisheries management reform legislation was enacted in North Carolina in 1997. The once vibrant public fishing for those species in North Carolina's coastal waters has all but vanished.

16. In addition, the State has tolerated chronic, long-term overfishing of multiple species. One such stock, "River Herring" (collectively Blueback Herring (*Alosa aestivalis*) and Alewife (*Alosa pseudoharengus*)), has been overharvested to the point of local extirpation due to the intentional inaction by North Carolina's fisheries management agencies to halt or prevent commercial overfishing. Although commercial landings historically exceeded twenty million pounds annually, the State's inaction caused a stock collapse. River Herring may never recover to the point that any harvest is biologically sustainable.

17. The State's decades-long tolerance (and, indeed, even promotion) of commercial overfishing, as well the use of commercial practices that result in overfishing or enormous resource wastage, have resulted in the decline of other fish species. Southern Flounder (*Paralichthys lethostigma*) and Striped Bass are examples. Draconian measures will likely be needed to save these stocks from suffering the same fate as the River Herring.

18. The consequence of the State's mismanagement of coastal fisheries resources is that it has eliminated or, at a minimum, severely curtailed the public's right to fish for those species. Increasingly more restrictive "public fishing limits" is one indicator of that curtailment. Examples are "open" seasons, minimum size limits, and the number of fish of any species the fishing public is lawfully allowed to keep. In North Carolina, public fishing limits have steadily become more restrictive over time for many coastal fish species that have been historically important to the public. Many North Carolina residents who once avidly pursued coasting fishing have, out of frustration over the inability to catch fish, given it up for other pursuits.

19. While North Carolina statutes expressly recognize the historical importance of public subsistence fishing in our State, the State's mismanagement and resultant stock declines have rendered subsistence fishing virtually impossible coastwide. Piers that once dotted the coast, where citizens often stood shoulder-to-shoulder to harvest the reliable annual "runs" of migratory fish species, have slowly disappeared. The piers that remain sit empty much of the time.

20. As another indicator of the poor health of our coastal fisheries resources, commercial landings of most coastal finfish stocks or species in North Carolina have likewise steadily declined since the 1980s to historic lows. Managing coastal fish stocks in the overall public interest would result not only in the ability of the fishing public to exercise its constitutionally-protected, public-trust right to fish, but would mean an overall increase in stock size, with more fish allocable to the commercial sector as well.

21. As described below, both the General Assembly and the State's administrative agencies have been culpable for the long-term demise, current poor condition, and continuing decline of our coastal

fisheries resources. The cumulative result of these failings has been unimpeded, staggering resource wastage; chronic overfishing of multiple species of coastal finfish; an inability to reach the stated statutory objective of sustainable harvests and stock viabilities, as independently required under the public-trust doctrine; and resultant economic harm to North Carolina's coastal economy.

22. With North Carolina's public-trust, coastal fisheries resources in continuing decline and in serious jeopardy, the Plaintiffs bring this action to hold the State accountable.