

No. 142, Original

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

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STATE OF FLORIDA,

*Plaintiff,*

v.

STATE OF GEORGIA,

*Defendant.*

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**GEORGIA'S OBJECTIONS TO WRITTEN DIRECT TESTIMONY OF DAVID  
KIMBRO, PH.D.**

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CRAIG S. PRIMIS, P.C.  
*Counsel of Record*  
K. WINN ALLEN  
DEVORA W. ALLON  
KIRKLAND & ELLIS LLP  
655 15th Street, NW  
Washington, DC 20005  
Tel.: (202) 879-5000  
craig.primis@kirkland.com

November 6, 2016

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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 David Kimbro, Ph.D.

Portion of Testimony	Basis of Objection
¶ 5(a)-(f) : “Other scientists and scholars including federal and state government Scientists reached similar conclusions.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 6: “In addition to being consistent with the findings of other scientists, my conclusions are consistent with the experience of a seafood business owner in Apalachicola, Florida, as explained in Mr. Tommy Ward’s testimony. This individual owns oyster leases in Apalachicola Bay that have been profitable for generations and closed to the commercial fleet of oystermen. But in 2012, the oyster production of these private leases collapsed. Because these private leases were exposed to high salinity conditions and a large abundance of predatory snails.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 30: “The amount of freshwater discharge from a river can also influence oyster nutrition and ultimately oyster populations, because the floating algae (phytoplankton) that sustains the growth, maintenance, and reproduction of oysters depends on nutrients, as explained in the testimony of Dr. Glibert. These nutrients are delivered to eastern and gulf coast estuaries by discharge of freshwater from rivers.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 32: “The stability of the Apalachicola Bay fishery was attributed to the state management of this natural resource.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 34: “This decline in oyster production also occurred on private oyster leases in Apalachicola Bay, as explained in Mr. Tommy Ward’s testimony.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)

Portion of Testimony	Basis of Objection
<p>¶ 35: “The Florida Fish and Wildlife Conservation Commission’s (FWCC) 2012-2013 Florida Gulf Coasts Oyster Disaster Report outlined this fishery decline in greater detail. The report also addressed potential causes of the decline, including: (i) negative effects of toxins from the Deepwater Horizon oil spill; (ii) negative effects of fishery management decisions in the wake of the Deepwater Horizon oil spill (i.e., opening the weekend harvest rule in summer 2010 for 26 extra days and the winter harvest area for 73 extra days); and (iii) reduced freshwater discharge from the Apalachicola River.”</p>	<p>Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ 38: “After reviewing the FWCC report (JX-91) and additional independent data, the NOAA Climate Program Office concluded that the primary cause of the oyster fishery collapse was a multi-step process initiated by a severe drought. According to this report (FX-413), the severe drought reduced the discharge of freshwater from the Apalachicola River and this freshwater reduction increased water salinity in Apalachicola Bay. With prolonged conditions of high salinity, the abundance of oyster disease and predators increased to a degree that caused the oyster fishery collapse.”</p>	<p>Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ 39: “While the NOAA report acknowledged that commercial harvest also reduced oysters, NOAA concluded that the oyster fishery collapse would have occurred regardless the amount of harvest. As a result, the fishery was declared a Federal Disaster by the U.S. Commerce Department in May of 2013.”</p>	<p>Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>

Portion of Testimony	Basis of Objection
¶ 42: “Numerous individuals have attempted to make sense of the various factors that could have caused the 2012 oyster fishery collapse in Apalachicola Bay, but none of these studies succeeded.”	Foundation; Speculation
¶ 43: “Both of these research efforts were unsuccessful because they relied primarily on two types of observational data: fisheries-dependent data and fisheries-independent data.”	Foundation; Speculation
¶ 45: “While fisheries-dependent and fisheries-independent data are useful, a researcher that uses only these observational data will be unable to conclusively identify the cause of the oyster fishery collapse. This is because the Apalachicola Bay ecosystem is too big and there are too many factors that could have individually or in combination caused the fishery collapse.”	Foundation; Speculation
¶ 46: “Observational data alone cannot be used to simultaneously evaluate the relative importance of all these factors.”	Foundation; Speculation
¶ 47: “Dr. Pine and colleagues attempted to go beyond an observational approach by combining a mathematical model with the observational data. But as explained in detail below, this effort was unsuccessful because none of the researchers had first-hand experience with the study system and because the model was flawed.”	Foundation; Speculation
¶ 52: “Because of these flaws, researchers cannot use the results or conclusions of the Pine study to identify the cause of the 2012 oyster fishery collapse.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 80: “In East Apalachicola, many oysters in the protected cages died most likely because of high water salinity and disease.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)

Portion of Testimony	Basis of Objection
<p>¶ 89(a): “To evaluate this criticism, I re-evaluated the results of an experiment that was initiated in Fall of 2015. In the Mid zone on the west side of Apalachicola Bay, the State of Florida restored a section of the oyster reef with 200 yds<sup>3</sup>/0.25 acre. Approximately 100 m away on the same oyster reef, the State of Florida restored another section with 400 yds<sup>3</sup>/0.25 acre. In this zone, I now had access to the original study location, which contained little reef structure, and two other reefs with more reef structure. These reefs gave me the ability to repeat my experiment across a gradient in reef structure, while holding water salinity relatively constant.”</p>	<p>Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ 89(b): “In this experiment, predation occurred. But oyster survivorship due to predation did not differ among the reefs.”</p>	<p>Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ FX-842(a)</p>	<p>Not Produced in Discovery; Incomplete Exhibit; Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ 89(a)-(e):</p>	<p>Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ 89(b): FX-842(a)</p>	<p>Not Produced in Discovery; Incomplete Exhibit; Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ 89(c): FX-841</p>	<p>Not Produced in Discovery; Incomplete Exhibit; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>
<p>¶ 90(a): “This is because FDACS did not consistently or rigorously quantify box data. I confirmed the absence of these data by inspecting the FDACS data set and conferring directly with FDACS employees.”</p>	<p>Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)</p>

Portion of Testimony	Basis of Objection
¶ 90(c): “In addition, on commercial oyster reefs, the ability to use boxes as an estimate of predation on oysters is compromised because tonging activity separates oyster valves. Consequently, on an oyster reef with significant snail predation, tonging can eliminate the existence or reduce the amount of boxes.”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 90(a)-(h)	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 94: FX-855	Foundation; Not Authenticated; Not Produced in Discovery
¶ 98(h): “To evaluate the model’s performance, the predicted oyster biomass was compared to the observed oyster biomass at Cat Point and Dry Bar, which were obtained from fisheries-independent data set (FDACS surveys).”	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1)
¶ 100(a)-(n)	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1); Not Authenticated
¶ 102(a)-(b)	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1); Not Authenticated
¶ 103(a)-(m)	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1); Not Authenticated
¶ 104(a)(i)-(iii)	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1); Not Authenticated
¶ 105(a)-(f)	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1); Not Authenticated

Portion of Testimony	Basis of Objection
¶ 105(e): FX-438	Foundation; Not Produced in Discovery; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1); Not Authenticated
¶ 106(a)-(j)	Foundation; Improper Supplemental Opinion under Fed. R. Civ. P. 26(e)(1); Not Authenticated