

Fishing as a tradition is enshrined in Article I, Section I, Paragraph XXVIII of the Georgia Constitution, which states that “[t]he tradition of fishing and hunting and the taking of fish and wildlife shall be preserved for the people and shall be managed by law and regulation for the public good.” In addition, with respect to wildlife, O.C.G.A. §27-1-3 entrusts the ownership of, and jurisdiction over, all wildlife to the State of Georgia, with those wildlife resources to be “managed in accordance with sound principles of wildlife management, using all appropriate tools, including hunting, fishing, and the taking of wildlife.”

The committee discussed and heard about the diversity of rivers, streams, and tributaries in Georgia. According to the Georgia River Network, Georgia has 70,150 miles of rivers and streams, from smaller, cold-water streams in the North Georgia mountains to blackwater rivers in South Georgia like the Altamaha and Ogeechee. Those rivers and streams have different geographic features, water flows, and accompanying fish species.

Further, in some cases intensive local conservation efforts are integral to maintain these ecosystems. For example, testimony from North Georgia landowners discussed the requirements for healthy trout populations – namely clean, cold water and buffer zones free from other species. Regardless of the type of fish, all wildlife is affected by litter and trash coming into streams, and the committee heard from fishermen and landowners aggravated about litter from passersby harming their local rivers and streams.

Georgia watercourses flow through different communities, who have established histories and local traditions. Generations of families have fished, hunted, and lived along these rivers and streams. The committee, through its meetings, heard from both fishermen and landowners about the need to consider each river or stream uniquely, with one member comparing the uniqueness of rivers to that of fingerprints, and they recommended taking into account the ecological and physical characteristics of each body of water.

Navigability and Rights of Landowners

Determining Navigability

Navigability is a key factor when determining the public’s right to access particular waters and the rights of adjoining landowners. O.C.G.A. §44-8-5(a) defines a non-tidal “navigable stream” as one “capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year,” noting “[t]he mere rafting of timber or the transporting of wood in small boats shall not make a stream navigable.”² This definition dates back to 1863.

To determine navigability, and thus the public’s right to access particular streams, the Georgia Department of Natural Resources has relied on a variety of sources and factors: state and federal

² Compare with the federal definition of “navigable waters” as set forth in relevant part in 33 C.F.R. §329.4: “those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.