

Speech by Robert Morgan
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It is a pleasure for me to be here with you today and to have an opportunity to speak to a group who I believe play a very important part in the economic life of our State. Your industry is the industry of the Sea, and probably more than any other group of persons in this State, you understand the delicate balance of nature and the need for conservation of our natural resources.

Because of the industry in which you are involved, you know far better than I what a fragile and threatened area the coastal margin of North Carolina is today. It is fragile because of its very nature and its exposure to the forces of wind and the Atlantic Ocean---the same forces which make the coast such an enchanting and mysterious place to visit.

It is threatened because of the increased activity taking place on the coast and the increasing interest in the potential of the area. It is threatened because of what one writer has described as our "rush to the sea" and our desire to build homes and develop recreation areas for our people.

This interest in our coastal area is healthy and it promises good things for Eastern North Carolina. It can mean good things for your industry, also, but only if we resolve to protect our coastal margin, our lengthy shoreline of some 3,375/^{miles} and the valuable estuarine areas which are so vital to the industries of the sea.

I do not believe that anyone who loves North Carolina as I believe all of us do would want to see our coast altered the way it has been done in so many other areas of the United States. This unfortunate situation was recognized by the House Committee on Government Operation of the U. S. Congress when in March 1970 they issued a report that stated:

"The natural environments of our nation's bays, estuaries, and other water bodies are being destroyed or threatened with destruction by water pollution, alteration of river courses, land filling of the shallow and marshland areas, sedimentation, dredging, construction of piers and bulkheads, and other manmade changes. Many of these water areas, including some located near densely populated urban areas, serve public needs for recreational opportunities and provide feeding, habitat, and nesting or spawning grounds for migratory waterfowl, fish, shellfish, and other wildlife."

I hope it will never be said that North Carolina had the opportunity to conserve its coastal region but allowed it to slip away. I hope we will never have to apologize to future generations of North Carolinians for allowing the destruction of our coastal industries.

Another federal report entitled "The National Estuary Study" issued by the Department of the Interior in January 1970 further pointed out the value of the North Carolina estuaries. It conservatively estimated that 90 percent of all commercial species caught in North Carolina spend some part of their life cycle in the estuarine habitat. If North Carolina were to allow the destruction of these valuable estuarine areas, it is only logical that this would have a serious effect on the fishing industry of our State.

I do not mean to imply that all development in the coastal margin is harmful. I am saying that North Carolina should look at development and prevent "resource-wasteful" development which would be harmful to those economic interests that rely so heavily on the natural features of our coastal margin.

As an attorney and as the chief legal officer of the State, I have a very keen interest in the legal aspects of our coastal problems. For this reason, today I want to focus primarily on some of the legislative action concerning our coastal region, some court cases which have some bearing on the preservation of coastal resources, and some of the goals we are looking toward in the future.

I. Achievements

A. Legislative

In 1967 the General Assembly enacted G. S. §146-6.1 which required that all power-operated equipment used in or on publicly owned beaches, marshlands, tidelands or navigable waters be registered with the Department of Water and Air Resources. This was somewhat limited because it did not regulate dredge and fill activity, but it was a start in requiring the registration of equipment so the State would at least know where activity was being conducted in the coastal area.

The present dredge and fill law (G. S. §113-229) was enacted in 1969 and is the basis for controlling such activity in marshlands, tidelands, estuarine waters and State-owned lakes. This law was amended in the 1971 General Assembly

to tighten some procedural problems and definitions which had proved troublesome during the first year of the law's existence.

In February 1971, I had the honor of speaking at the American Society of International Law's Conference on the Law of Marine Resources. At that conference, I addressed myself primarily to two problem areas in the coastal margin: marshland and sand dune destruction. One recommendation that I made relative to marshland protection was that the General Assembly consider enacting a Coastal Wetlands Act similar to the one adopted in Massachusetts. It authorized the Massachusetts Department of Natural Resources to regulate activity in the wetlands on a county-wide basis. I am happy to say that such a law was enacted by the 1971 General Assembly and is codified as G. S. §113-230. The reason that I felt this law was desirable was that the dredge and fill law, as effective as it is, is still a piecemeal approach and thus slows the process of protecting our coastal wetlands.

The other recommendation I made at that conference was that the General Assembly amend the sand dune protection law (G. S. §104B) so that if the county did not carry out the mandates of the law, the State could take over its administration. It was my desire to leave this law to the coastal counties if they would enforce it; but if for some reason they did not, then the State should ensure that the barrier

dune system along the Outer Banks would not be destroyed. The General Assembly had enacted a portion of the existing law in 1957 and strengthened it in 1965.

The law provides that the county commissioners or a shoreline protection officer appointed by them would establish a shore protection line and seaward of this line no construction of any type could be carried out in the sand dunes without first having obtained a permit to do so. However, even though the law in essentially its present form has been in force since 1965, valuable dunes were still being destroyed. The 1971 General Assembly did enact an amendment along the lines which I proposed which first gave the counties until December 31, 1971, to move to implement the law; and secondly, it empowered any interested State agency to appeal the decision of the shoreline protection officer and the county commissioners. I might point out that by December 31, 1971, all eight Outer Banks counties had enacted ordinances to protect the barrier dunes under this law.

B. Judicial

The legislature is not the only branch of State government which has moved in the direction of protecting our coastal margin. In 1969, the North Carolina Supreme Court in the case of State v. Brooks (275 N.C. 175), I believe, gave

a clear indication of where they intend to go. That case involved marshlands, and Chief Justice Parker speaking for the Court and quoting from a North Carolina Law Review article said:

"The vast estuarine areas of North Carolina-- those coastal complexes where fresh water from the land meets the salt water of the sea with a daily tidal flux"--are exceeded in total area only by those of Alaska and Louisiana. Estuarine areas include bays, sounds, harbors, lagoons, tidal or salt marshes, coasts, and inshore waters in which the salt waters of the ocean meet and are diluted by fresh waters of the inland rivers. In North Carolina, this encompasses extensive coastal sounds, salt marshes, and broad river mouths exceeding 2,200,000 acres. These areas are one of North Carolina's most valuable resources."

Indeed the coastal wetlands and the estuarines areas are valuable resources. It helps, however, when the highest court of our State also thinks so.

In a superior court case last September which involved a violation of the dredge and fill law, the court not only

ordered the defendants to cease and desist all further dredge and fill activity until they obtained the necessary State permit, but went further and ordered the defendants to remove all fill material which had been placed illegally in the marshlands in two separate areas. Although the defendants abandoned their appeal in this case, I believe it is a clear indication that the courts of this State are more inclined in the 70's to look for protection of our valuable coastal resources.

II. Goals

A. Legislature

Anyone who is interested in our coastal problems knows that we have only begun to scratch the surface and a great deal still needs to be done. Although there is much individual legislation needed to address all of the uses and conflicting uses of our coastal margin, it seems to me the most pressing goal from a legislative standpoint is a conservation, development and management plan for this margin. Until this is done, the State would only be stabbing at individual problems without realizing that possibly its temporary solution is really no solution at all in the long run.

The 1969 General Assembly directed Dr. Thomas Linton, Commissioner of Fisheries, to undertake a study of our coastal area and in 1973 to submit a plan to them proposing how the future of North Carolina's coast should look. It is an

extremely difficult task, I know, but one which must be done if a rational and realistic growth of our coastal area is to take in all the best uses with a minimal loss of resources.

It will be vital to this plan that it recommend a management system which includes representation by all levels of government---local, regional and State. The federal government has many forms of legislation on this problem pending. This is desirable because without the funds available it is obvious that the State and local governments simply cannot afford to accomplish the task without federal monetary support. Thus, the State legislation from a realistic standpoint must not ignore the pending federal legislation. This plan, which includes both preservation and development interests and the ensuing management system, is the most pressing legislative goal.

B. Judicial

At the conference of the American Society of International Law, I addressed myself to a problem that I believe is one of the most pressing judicial goals--ownership of coastal wetlands. We know that the wetlands are valuable and that the fishing industry of North Carolina is dependent

on them. However, the courts have still not settled all the issues involving ownership.

Not only is it important to the State and to the general public to have these issues determined conclusively, but private landowners have the right to know if their deeds which include wetlands are valid.

In the attempt to have this issue resolved, my office last week filed a lawsuit in Brunswick County involving marshland, oyster beds and mud flats, which we hope will decide this issue.

Another related issue which also needs to be decided is this: if certain marshlands are privately owned, who should pay compensation to the landowners to leave them in their natural state or bring them into public ownership. This is no simple question, but it seems to me that if the federal government--which indicates it will protect the wetlands if the states do not--requires North Carolina to protect its wetlands because of the interstate and international character of fish and wildlife that are found here, they rather than the State perhaps should compensate private citizens for any taking.

I say this because a federal court (Fifth Circuit) in the case of Zabel v. Tabb, clearly said that marine resources have an interstate character. We know that fish tagged in North Carolina have been caught off the coast of Massachusetts, and wildlife tagged in North Carolina have been hunted in Canada. Why should North Carolina because it has not allowed the destruction of coastal areas which have occurred in some Northeast states be penalized for the actions of other states who failed to conserve their natural resources? If North Carolina protects its marine environment, why should it have to do so by itself at the expense of its citizens alone so that other states can share its coastal resources? It seems to me that equity would require that these other states and the federal government assist North Carolina financially in compensating private landowners.

III. Conclusion

North Carolina has done much in the direction of protecting its coastal margin. There is still a great deal to be done. I have no doubt that North Carolina will take up the challenge and effectively deal with its problems.