

**NC COASTAL RESOURCES COMMISSION (CRC)**

**September 15, 2022**

**Holiday Inn, Wilmington**

**Present CRC Members**

Renee Cahoon, Chair  
Larry Baldwin, Vice-Chair  
Neal Andrew  
D.R. Bryan  
Bob Emory  
Robert High  
Sheila Holman  
W. Earl Smith  
Alexander "Dick" Tunnell

**Present CRAC Members**

Daniel Brinn  
Jett Ferebee  
Kris Noble  
Spencer Rogers  
Debbie Smith  
Dave Weaver

**Present from the Office of the Attorney General**

Mary Lucasse

**Present from the Department of Environmental Quality, Office of the General Counsel**

Christine Goebel

**CALL TO ORDER/ROLL CALL**

Renee Cahoon called the meeting to order at 9:00 a.m. on September 15, 2022, reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. The Chair requested that if any member knows of a conflict of interest or a potential conflict of interest, they so state when the roll is called. Commissioners Doug Medlin, Phil Norris, Lauren Salter, and Angie Wills were absent. No conflicts were reported. Commissioners D.R. Bryan and W. Earl Smith read their evaluations of statement of economic interest from the State Ethics Commission which indicated no actual conflicts of interest and any potential conflicts would not prohibit service on the Commission. Based upon this roll call Chair Cahoon declared a quorum.

**CHAIR'S COMMENTS**

Chair Cahoon welcomed Commissioners Bryan and Smith to the Commission. Commissioner D.R. Bryan was appointed by Governor Cooper and Commissioner Smith was appointed by

Senate Pro Tempore Berger. Governor Cooper reappointed Commissioners Holman, Salter, Emory, and Cahoon with terms ending June 2026. Chair Cahoon reappointed Candy Bohmert, Daniel Brinn, David Kellam, Ike McRee, Kris Noble, Bobby Outten, Kathleen Riely, Spencer Rogers, Debbie Smith, and David Weaver to the Coastal Resources Advisory Council (CRAC). Kyle Breuer, Sandra Cross, Ryan Davenport, John Farrell, Webb Fuller, David Hewett, John Spruill, David Szerlag, and John Windley were appointed to the CRAC.

The Commission discussed and approved the 2023 CRC meeting dates as follows: February 22-23; April 26-27; June 14-15; August 23-24; and November 8-9.

### **MINUTES**

Commissioner Holman noted a correction to the June Coastal Resources Commission meeting minutes. On page four of the minutes under the old/new business heading, it states “the EMC is scheduled to approve the readoption of its rules on June 28”; however, it should read, “the WRC...”

**Bob Emory made a motion to approve the minutes of the June CRC meeting with the correction. Sheila Holman seconded the motion. The motion passed unanimously (Tunnell, Holman, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High).**

### **EXECUTIVE SECRETARY’S REPORT**

DCM Director Braxton Davis gave the following report:

I’ll begin my report on the regulatory side of DCM. Permitting is still hovering around historically high numbers for our program. We’ve seen a 10% increase in permitting fees in the first two months of this fiscal year compared with the first two months of last fiscal year, so certainly no slow-down at this point. Over this past weekend, swells produced by Hurricane Earl, combined with a full moon and king tides, caused overwash along NC12 and uncovered sandbags in the S-turns area in Dare County. Due to the recently opened Rodanthe Jug Handle Bridge taking traffic in this area, for the first time in a long time, there was no emergency response initiated by NCDOT to clear the area and traffic was not shut down at any point this weekend. Sandbags and roadway in this area will be removed prior to November 30. On another DOT project, last week DCM participated in an interagency coordination meeting about the proposed mid-Currituck Bridge project in Currituck County. The meeting was led by the North Carolina Turnpike Authority for the purpose of continuing agency coordination and to prepare for the submittal of permit applications in late 2022 or early 2023 with the expectation of awarding the design/build contract in the Summer of 2024. Interagency coordination on the Mid-Currituck Bridge project began in the mid-1990s, and it was identified as a Turnpike project when the N.C. Turnpike Authority was created around 2002. The Final Environmental Impact Statement Reevaluation and Record of Decision were issued in March 2019. DCM staff completed internal testing of our new e-permitting system in July and August. Staff learned about each permit process within the system and then used examples to process test applications from start to finish. The new system will include major permits, modifications, renewals and transfers of major permits, general permits, and enforcement and compliance cases. Currently staff are creating knowledge articles to assist users, preparing federal and state review agencies for implementation, and preparing for a “soft” roll out with a few experienced consultants.

Over the past year, DCM led an interagency working group made of representatives from the Corps of Engineers, National Marine Fisheries Service, Fish and Wildlife Service, N.C. Division of Marine Fisheries, Division of Water Resources, and the Wildlife Resources Commission to develop guidance for permitting “thin layer” placement projects on tidal marshes in North Carolina. Thin-layer placement is a coastal wetland restoration or enhancement strategy where material, usually dredged sediment, is intentionally placed on a wetland to increase its elevation while maintaining hydrology necessary for the restoration of targeted wetland species. The guidance document includes a range of site assessments and monitoring protocols that will help applicants and regulatory agencies determine the suitability of proposed sites, how a project will be monitored, and how impacts and project outcomes will be evaluated. While not all the information in the guidance document will necessarily be required for all projects, each item in the guidance was identified as important for project scoping and interagency permitting reviews. We also benefitted from technical reviews of the document provided by several outside organizations, including the Corps of Engineers’ Regional Sediment Management Center of Expertise in Jacksonville, Florida, and NOAA’s National Center for Coastal Ocean Science. This has been a significant effort, and it has been great to achieve a level of consensus among the regulatory agencies in NC for this relatively new approach to tidal wetlands restoration that is beginning to gain interest across our coast, regionally, and nationally. The guidance document has been finalized and posted on our website, or we’d be happy to provide a copy if you reach out to me or one of our staff. Last, Robb Mairs, DCM Minor Permitting Coordinator, is planning a workshop for Local Permitting Officers for the Northern Districts on October 5 at the Coastal Studies Institute in Wanchese and is also in the process of scheduling a workshop for the Southern District to be held at Carolina Beach State Park in late October.

In the Policy and Planning section, I’ll start with a brief update on land use plans. Amendments to the CAMA Land Use Plans for the Towns of Newport and Morehead City were certified by the Division since your last meeting. Please let us know if you need any further information on those amendments. Also, the first round of Phases 1 and 2 of the Resilient Coastal Communities Program (RCCP) is complete and staff are conducting a program evaluation to identify areas for improvement for future rounds. We’re incorporating feedback from the participating communities, contractors, and program partners in the evaluation. A Request for Applications for a second round of Phases 1 and 2, with a focus on technical assistance, will be released this fall and supported by additional funding from the General Assembly and a second grant from the National Fish and Wildlife Foundation. Phase 3 of the program, which entails engineering and design work, is currently underway. DCM recently awarded \$1.14 million for twenty E&D projects, with no local match requirement. Examples of awarded projects include wetland restoration, flood mitigation, stormwater infrastructure, and the development of a flood damage prevention ordinance. We’ll be happy to provide the list of awards upon request. Communities that complete Phase 3 will also be eligible to apply for Phase 4, which will fund the implementation and construction of their project. While our Phase 4 funding is limited and will be competitive, Staff continues to connect communities to other state and federal funding sources that could fund project implementation. I wanted to mention that DCM is coordinating closely with other state programs on resiliency work and worked with the NC Coastal Federation and other partners to develop a set of Principles and Guidelines for Financial Support of Coastal Resiliency Projects. We are using these guidelines within the RCCP and have also shared them and seen them incorporated into other state funding programs. This week, we are also releasing a

request for applications for a round of Planning & Management grants for local governments. While all the usual planning & management topics will be eligible for funding, we are prioritizing support for three specific focus areas, including the development of Beach Management Plans per your recently adopted rules, plans focused on shoreline management and public trust waters, and enhanced handicap accessibility to coastal waters and shorelines. In the Coastal Reserve program, the Coastal Training Program continues to offer trainings in partnership with regulatory staff to support the Division's work to manage estuarine shorelines and barrier islands. The training program held a virtual living shoreline workshop for real estate professionals last week with close to 100 participants. The training program is also offering an in-person "Living on a Barrier Island" workshop in partnership with the Cape Fear Realtors Association in Wilmington later this month. Participants in both workshops receive continuing education credits from the NC Real Estate Commission.

Finally, in staffing news, I am pleased to announce that Kelsey Beachman joined the Wilmington DCM office in August. She comes to us from the Florida Department of Environmental Protection. She has a master's degree in Environmental Science with a focus in coastal management from UNCW. She also has an undergraduate degree from the University of Rhode Island in Marine Biology. She will be covering Northern New Hanover County. Krista Early started with DCM in July as a Coastal Resiliency Coordinator. Krista joined Mackenzie Todd on our resilience team and works out of our Morehead City office. She has a Master of Environmental Law and Policy from Vermont Law School, and a Bachelor's in Environmental Policy and Decision Making from Ohio State University. She was previously at Environment North Carolina in Raleigh as their Clean Water Advocate. We have completed interviews for a second Resiliency Specialist and expect to make an offer soon to bring that person on board. With that, the new RCCP will be fully staffed for the positions recently funded by the NC General Assembly. Three new graduate fellows joined the Reserve this summer. Madison Lytle, a PhD student at UNCW, and Andrew McMains, a PhD student at ECU, are the 2022 North Carolina Coastal Research Fellows, a program jointly funded by the Division and NC Sea Grant. Daniel Bowling, a PhD student at North Carolina State University, is the 2022-2024 NOAA Margaret A. Davidson Fellow at the NC Reserve. We are excited about working with these fellows and to utilize and share the results of their studies.

### **CRAC REPORT**

Spencer Rogers, co-vice chair, stated the CRAC looked at fishing piers along the oceanfront and whether they allowed fishing. After discussion, there was no indication that fishing piers precluded fishing and the Advisory Council has no recommendations for the CRC for action.

### **BEACH MANAGEMENT**

#### **Cape Hatteras National Seashore and Collapsed Structures**

##### **Dave Hallac, Superintendent National Park Service**

Dave Hallac stated there are five National Parks in North Carolina. Cape Hatteras National Seashore is a highly visited site. There are 230 buildings and three lighthouses located on Park Service property. The National Parks provide a large economic contribution to North Carolina. The discussions that DCM and Parks have recently had center around beachfront erosion that results in oceanfront homes falling into the ocean which has an impact on visitors' experiences, access, safety, human health, and wildlife habitat. Three houses collapsed in Rodanthe within the

past few months, one on February 9 and two on May 10. These three most recent collapses were not a result of a nor'easter, a tropical storm, or a hurricane. When these homes collapse, we are finding that the contents of the houses create a debris field with more than just lumber and building materials. The debris field from the recent collapses was around 15 miles long. Debris is being strewn up and down the beaches and even when a structure has not collapsed, we still see debris washing off structures and exposing septic systems. There are many more structures within the tidal zone which doesn't allow for safe access to the beach. After the May 10 collapse, we discovered there are 33 septic systems and drain fields which are exposed. While beach nourishment buys some time, these structures become vulnerable in a short amount of time due to the high erosion rates in these areas. The National Park Service has purchased a surf rake to address the small debris left on the public beaches. Challenges associated with erosion are likely to become more significant and complex with sea level rise. NOAA's latest sea level rise report indicates that by 2050 there will be between 10-14' of sea level rise on the east coast with moderate flooding events elevating to ten times as often as today. We have been working with 24 homeowners to move their structures out of harms way without impacting public beaches. The Division of Coastal Management and DEQ Secretary Biser have been working with us on these challenging issues and I cannot thank them enough for their support. We have partnered with DCM to lead a collaborative workgroup that will meet regularly to come up with medium and long-term solutions.

**Erosion Threatened Oceanfront Structures (CRC 22-22)**  
**Initial Recommendations Regarding Oceanfront Septic Systems**  
**Braxton Davis, Director NC Division of Coastal Management**

Braxton Davis stated this is not a new issue. A survey conducted in 1986 showed there were 777 structures facing short-term erosion risks. Some of the challenges associated with relocating threatened structures are a lack of vacant lots, property owners that are willing to move structures, and the need for cost sharing. From 2020 imagery, DCM has observed that of the 8,777 oceanfront structures, 764 are currently at short-term risk. Approximately 350 existing parcels are submerged. Additional parcels may have been delisted. DCM does not have records of which of these submerged parcels were ever developed. We estimate between 20-30 structures have collapsed over the past 20 years. In reviewing hot spots along the coast, it is important to note a few project updates since the 2020 analysis. The Town of Ocean Isle Beach has installed a terminal groin. The construction was coordinated along with beach nourishment from the US Army Corps of Engineers' Coastal Storm Risk Management project, and this has helped this hot spot area. A terminal groin was installed on Bald Head Island in 2015. Bald Head also received nourishment from the US Army Corps of Engineers' Wilmington Harbor dredging project in 2021. North Topsail Beach is still experiencing erosion and there are a lot of sandbags in this area. Buxton and Avon have benefited from nourishment and engineered dune construction. Nags Head has also had issues with structures on the beach but has benefited from the construction of a beach nourishment project in 2019. North Carolina has some of the strongest oceanfront construction setbacks in the country. Our setbacks are erosion-rate based so larger structures in areas with high erosion rates have increased setbacks. There are limited exceptions allowed within setback areas. In addition to oceanfront setbacks, North Carolina has dune protection rules, inlet hazard area use standards, and bans on most permanent erosion control structures. Sandbags are allowed for up to eight years as a community looks for long-term solutions to erosion. Legislation has recently allowed up to six terminal groins to be constructed

to address erosion. The CRC's rules require that permits include the condition that the structure shall be relocated or dismantled when it becomes imminently threatened and in any case upon its collapse or subsidence. Since 1991 there hasn't been enforcement on relocation, likely due to a combination of factors, such as natural beach recovery, beach nourishment, sandbag structures, and a lack of clarity on the enforcement process and the likelihood of litigation. The CRC's rules also say that structures relocated landward entirely with non-public funds do not have to meet the setback, merely be relocated to the maximum feasible distance landward of its present location. Since 2020, this rule has applied to seven houses in Rodanthe. Another challenge is on-site wastewater treatment, septic tanks. DHHS oversees a county's implementation of on-site wastewater treatment permits. New or replacement systems must be 50 feet from mean high water on the oceanfront. When a property owner comes in with a survey, the County Health Department will issue a septic tank permit. Within DHHS' rules it states that septic tanks are not allowed in areas subject to tidal or storm overwash unless it is designed and installed to be watertight. If a tank is damaged in a way that it is no longer watertight, then it must be serviced immediately. The CRC also has rules that govern septic systems. New septic systems are subject to oceanfront construction setbacks. DEQ policy dictates that replacement of an existing septic system must be in the same location and is usually considered repair. The relocation of an existing septic system requires a CAMA permit. CRC rules say that the system shall not be relocated oceanward of the primary structure and can be protected by sandbag structures. When talking about structures on the beach, there are several legal authorities that come into play. The Public Trust Doctrine provides that the beach is a public easement over private property for public fishing, navigation, and recreation. NC case law supported the Public Trust Doctrine and found that it applies to the entire dry sand beach, seaward of the vegetation line. Regulatory takings claims have shown mixed results and are unpredictable, time-consuming, and expensive. In a 2012 NC case, *Cherry Inc. v. Nags Head*, which dealt with eight houses on the beach in South Nags Head, the ruling said that only the State, not local governments can enforce the Public Trust Doctrine. Legislation was passed in 2013 that clarified that local governments have authority to abate nuisances and condemn structures which are found to be dangerous, or which unreasonably restrict the public trust rights on the beach. Another legal consideration regarding this issue is whether there is any legal authority to enter private property or to require removal of hazardous material prior to collapse. Are there any specific standards for beach clean ups and where is the authority and process for the State to clean up the debris and recover costs. Georgia considers debris "unpermitted shoreline engineering or land alteration" under the Georgia Shore Protection Act. In lieu of a fine, property owners are required to remove debris via consent order or administrative order of the courts. The Georgia Statute also allows for recovery costs if the State removes the debris. In Florida, a collapsed building would be considered "of a solid or highly impermeable design" and their Statute places the responsibility for clean up on the abutting upland property owner. With the National Flood Insurance Program (NFIP), most oceanfront properties in designated flood zones are required to have a policy to secure a mortgage. This policy covers the collapse, undermining or subsidence of land along the shore of a lake or other water body. Erosion is a covered peril if it is caused by waves or currents of water exceeding their cyclical levels which result in flooding. Imminently threatened properties are ineligible for NFIP claims until the structure succumbs to erosion and results in either marine debris, losses of public access or public trust uses, impacts on tourism, permitting conflicts, or litigation. This is an inefficient process. In 1988, the Upton Jones Amendment to the NFIP provided proactive assistance for property owners to deconstruct or relocate structures prior to

collapse. Up to 110% of the insured value was provided for deconstruction and up to 40% of the insured value was provided for relocation. This program ended in 1995 following passage of the NFIP Reform Act of 1994. According to a 1995 local news article, in total, more than 300 claims were submitted nationwide with a total of \$24 million paid out. Of these claims, 238 claims for a total of \$13.3 million, were paid out to properties in North Carolina. Of the properties in North Carolina, 168 were for demolition and 70 were for relocation, with the bulk of the claims being in Dare and Brunswick Counties. FEMA shifted to mitigation grant programs currently administered by NCORR in NC, however investment properties and second homes are typically not eligible for those FEMA mitigation grants. There are state grant programs that aren't targeted to this issue but could provide some limited assistance. In August, DCM and the NPS co-hosted an interagency meeting to discuss new rules, including those governing replacement and relocation of septic systems seaward of the oceanfront vegetation line. DCM recommends the CRC consider rule amendments that clarify that septic tanks are development, require a CAMA permit, and are not to be permitted seaward of the vegetation line. We will continue to educate homeowners and local governments on the existing option to relocate structures to otherwise unbuildable lots if landward of the current location.

In thinking broadly, the interagency group came up with some possible approaches. Some would require Congressional authorization. Approaches suggested for further research and discussion include authorizing federal, state, or local officials to enter property to remove hazards prior to collapse, by looking at parallels with abandoned vessel legislation and clarifying that property owner have liability for debris associated with house collapses. There is also a need to clarify the state versus federal authorities along the National Seashore beaches. There could also be a limit on NFIP policy transfers for imminently threatened structures, or structures partially or wholly located on ocean beaches. We could pursue reinstatement of the Upton Jones program and evaluate the potential for FEMA to allow NFIP payouts for imminently threatened structures prior to collapse. Local governments could potentially lower damage thresholds and allow for assessments of incremental damages. We could look at "continuous lake flooding" claims under NFIP and require local or state certification of beach clean-up prior to NFIP payouts. Consider a mechanism to withhold a portion of a NFIP payout to reimburse local, state, or federal entity involved in a clean-up following a collapse. There could be consideration for state matching funds or a revolving loan program for relocation or deconstruction of erosion-threatened structures. Consider eligibility of federal mitigation assistance for deconstruction or relocation of investment properties and second homes and look at cost/benefit calculations under federal grant programs. At this first interagency meeting, we asked whether the Corps of Engineers would consider any local or state costs of structure removals from within beach project areas to serve as match for federally sponsored beach nourishment projects. After discussion and review by the Corps, it was determined that this could be acceptable to use as match. Consider eligibility of State CSDM fund to address hot spots through relocation or deconstruction funds for threatened structures. Consider establishing federal/state conservation tax credits for threatened structure removal/property abandonment.

The next step will be to have the attendees from the first interagency meeting reconvene and invite other stakeholders to discuss these ideas with the goal of coming up with short and long-term solutions.

**Sheila Holman made a motion for staff to bring back amendments to the septic tank rules based on DCM's recommendations to require a permit for septic tanks and not allow septic systems on the beach. Bob Emory seconded the motion. The motion passed unanimously (Tunnell, Holman, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High).**

### **ACTION ITEMS**

#### **Consideration of Adoption of Amendments to 15A NCAC 07H .0304, .0306, .0309, .0310 – Inlet Hazard Areas**

##### **Ken Richardson**

Ken Richardson stated staff will be asking the Commission to consider adoption of the updated inlet hazard area boundaries and corresponding setbacks based on inlet erosion rates, in addition to rule amendments to 15A NCAC 7H .0304, .0306, .0309, and .0310. This adoption of amendments follows a second round of public hearings. 7H .0304 defines inlet hazard areas as natural hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. IHAs are one of three Areas of Environmental Concern (AEC) and were delineated in 1978, then amended in 1981, using statistical analyses with consideration of each inlet's geomorphology, geological weaknesses, and human influence such as jetties and channelization. Although work on updating the IHAs has not been a continual process, it is one that has been ongoing for decades. When initially developed it was estimated that the current IHA boundaries would have a 10-year relevancy. In 1998-99, one of the first recommendations to the CRC from the newly formed CRC Science Panel on Coastal Hazards was that Inlet Hazard Area boundaries should be updated. However, a few things were needed such as resources, additional data, and methodologies. In the early 2000's, DCM worked diligently on collecting data and working with the Science Panel to develop the methodologies that would be used for the 2010 IHA update. For a variety of reasons, questions centered on the size of the proposed boundaries, degrees of risk throughout each boundary, and the need for rule amendments until temporarily giving way to other priorities at the time, specifically the terminal groin study and updating the next oceanfront erosion rates. In 2012, the General Assembly directed the CRC to study the feasibility of created a new AEC for lands adjacent to the mouth of the Cape Fear River. Session Law 2012-202 required the CRC to consider the unique coastal morphologies and hydrographic conditions of the Cape Fear River region, and to determine if action is necessary to preserve, protect, and balance the economic and natural resources of this region through the elimination of current overlapping AECs by incorporating development standards into one single AEC unique to this location. During this study, the CRC found that while the Cape Fear River inlet did present a unique set of challenges, but other inlets may have similar issues. The Commission decided to undertake a comprehensive review of inlet-related issues and with the expectation of developing additional management tools that would allow the CRC to more proactively address the issues confronted by local governments in these dynamic areas. Much of the focus was based on the matter of terminal grins, but inlet AECs were a significant part of that consideration. In 2014, DCM presented a report to the Commission that was prepared following a series of stakeholder meetings, entitled "NC Coastal Resources Commission Inlet Management Study Findings and Policy Options." Stakeholders made several recommendations to the CRC that pertained specifically to IHAs. The first was that the CRC should task the Science Panel to complete the development of methods to defined revised IHAs and potential inlet and near-inlet setback lines for the CRC to review. The second was that the IHAs should be eliminated and incorporated into



the Ocean Erodible Area (OEA) while applying the same development standards currently utilized in the OEA. In 2016, the CRC acknowledged that inlet areas are different and are not under the same influences as the oceanfront and should be identified as a separate AEC. At that time, the Commission issued a Scope of Work to the Science Panel to develop a methodology for calculating inlet shoreline change rates and to re-evaluate points along the oceanfront shoreline where inlet processes no longer influence shoreline position. In 2018, after two years of dedicated work, the Chair of the Science Panel gave a detailed presentation to the Commission on the IHA boundary update methodologies and results. In 2019, the CRC approved amendments to rules pertaining to IHAs, the updated Inlet Hazard Area boundaries as recommended in the CRC's Science Panel report, and the IHA erosion rate setback factors. In 2019 and through 2020, the fiscal analysis associated with these amendments and boundary updates were approved by NCDEQ, OSBM, and the CRC. DCM staff then presented the proposed changes at public hearings in seven affected counties: Brunswick; New Hanover; Pender; Onslow; Carteret; Hyde; and Dare Counties, following by five workshops in Ocean Isle Beach, Holden Beach, Carolina Beach, Topsail Beach, and North Topsail Beach to allow for additional public discussion. The rulemaking process was deliberately extended to give the Commission, the public, and staff the opportunity to work through all issues raised by local governments and the public. Comments were not limited to, but centered around, the size of the updated boundaries at some locations; erosion rates, density, and size limits; ability to replace existing structures; applications of small structure exception; and in current rule, the ability to build dunes in an IHA if needed. Following the Covid-19 delay, in 2022 after careful consideration of all public comments, the CRC made a few additional amendments to the IHA rules. Most of these changes were for clarification purposes for the benefit of property owners who are not currently in an IHA but would be once the amendments become effective. In April and May of 2022, DCM staff presented the proposed rule amendments at the second round of public hearings in the seven effected counties and DCM accepted public comments until June 17, 2022.

During the first round of public hearings and workshops, there were many questions on the ability to restore/repair dunes in an IHA. Currently, the rules state that "no new dunes shall be created in an IHA". The Commission approved additional amendments for clarification purposes to state that "dunes may be restored". Currently, 7H .0309 has exceptions with conditions for small structures (1,000 square foot footprint, max of 2,000 square feet) that cannot meet the current setback. Currently IHAs are excluded, but the Commission approved amendments to allow exceptions in an IHA to include the size limit, that development be as far landward on the lot as feasible, have a minimum setback of 60 feet from the vegetation line or pre-project vegetation line, and cannot be oceanward of the landward most adjacent structure for lots platted prior to 1979. Amendments to 7H .0310 include grandfathering density limits of existing lots with less than 15,000 square feet of land area and limits new construction to 5,000 square feet. 7H .0310 grandfathers existing large structures of greater than 5000 sf but less than 10,000 square feet within an IHA. This is existing OEA grandfathering rule language that will now be extended to property owners in an IHA. Staff is requesting that the Commission approve the Science Panel's updated Inlet Hazard Area Report and Maps, the inlet erosion rate setback factors, and rule amendments to 7H .0304, .0306, .0309, and .0310.

**Bob Emory made a motion to adopt the updated IHA report and maps, inlet erosion rate setback factors, and amendments to 15A NCAC 07H .0304, .0306, .0309, and .0310. Sheila**

**Holman seconded the motion. The motion passed unanimously (Tunnell, Holman, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High).**

**Consideration of Approval of Fiscal Analysis – Amendments to 15A NCAC 07H and 07J to Allow Electronic Payments (CRC 22-18)**

**Gregg Bodnar**

Gregg Bodnar stated currently the Division is only permitted by rule to accept physical checks, money orders, and account transfers from other state agencies. Staff is proposing amendments to allow for e-check and credit card payments. The State contracts with PayPoint to collect electronic payments. Credit card transactions will incur a fee. For Visa transactions there will be a flat fee of \$3.95 per transaction and for non-Visa transactions there will be a fee of 2.65% of the transaction. The payments for transaction fees will show up as separate transactions on the customer's statement. E-checks, physical checks, and account transfers will not incur a transaction fee. The fiscal analysis assumes the estimated maximum number of Major Permits to be 230 per year and 3,000 General Permits per year. The maximum CAMA application fee is \$475 and the maximum transaction fee for a credit card payment would amount to \$12.59 per transaction. This would be a total fee cost of \$40,657.63 per year. Staff is requesting approval of the fiscal analysis for amendments related to electronic payments.

**Robert High made a motion to approve the fiscal analysis for amendments in 15A NCAC 7H and 7J allowing for electronic payments. Larry Baldwin seconded the motion. The motion passed unanimously (Tunnell, Holman, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High).**

**PUBLIC INPUT AND COMMENT**

Chris Matteo, NC Shellfish Growers Association, spoke in favor of floating structures within shellfish leases and commented that shellfish aquaculture should fall under the agriculture exemption for development.

Joe Hudyencia, NC Dept. of Agriculture Consumer Services, spoke in favor of shellfish aquaculture being considered agriculture.

Alyson Flynn, NC Coastal Federation, spoke in favor of the DCM and CRC's positions that septic tanks should be prohibited on the dry sand beach, that CAMA permits should be required to replace an existing septic tank located in the ocean hazard area, and prohibit placement of septic tanks seaward of the vegetation line.

Julie Youngman, Southern Environmental Law Center, spoke in favor of DCM Director Davis and Cape Hatteras National Seashore Superintendent Hallac's leadership in addressing houses on the beach and the CRC's motion directing DCM to provide rule amendments that would address septic systems.

## VARIANCES

### **Spogli – (CRC-VR-21-05), Bald Head Island, Oceanfront Setback**

#### **Robb Mairs, Christine Goebel, Esq., Charles Baldwin, Esq.**

Robb Mairs gave an overview of the site. Christine Goebel stated Petitioner Ronald Spogli owns a lot at 706 Shoals Watch Way on Bald Head Island in Brunswick County. The property is located near the southern point of West Beach. Petitioner applied for a CAMA Minor Permit to construct a 4,500 square foot home on the lot. The proposed house did not meet the 270-foot setback measured landward from the vegetation line. The CAMA LPO for the Village of Bald Head Island denied Petitioner's application as the proposed house did not meet the applicable setback. Petitioner now seeks a variance from 15A NCAC 7H .0306 to allow development as proposed in the application. Ms. Goebel reviewed the stipulated facts of the variance request and stated that staff and petitioner disagree on three of the four variance criteria which must be met in order to grant the variance. Petitioner is represented by Charles Baldwin.

Charles Baldwin, counsel for petitioner, reviewed the stipulated facts which Petitioner contends supports the granting of this variance request. Mr. Baldwin stated that strict application of the applicable setback rules will render the Petitioner's lot unbuildable for residential purposes and reviewed the petitioner's position on the four variance criteria which he argued supports the request to grant a variance.

**Larry Baldwin made a motion to support Petitioner's position that strict application of the applicable rules, standards, or orders issued by the Commission will cause the Petitioner an unnecessary hardship. Robert High seconded the motion. The motion passed with seven votes in favor (Tunnell, Emory, Cahoon, Baldwin, Andrew, Smith, High) and two opposed (Holman, Bryan).**

**Larry Baldwin made a motion to support Petitioner's position that hardships result from conditions peculiar to the Petitioner's property. Robert High seconded the motion. The motion failed with four votes in favor (Tunnell, Baldwin, Smith, High) and five opposed (Holman, Emory, Bryan, Cahoon, Andrew).**

**Larry Baldwin made a motion to support Petitioner's position that hardships do not result from actions taken by the Petitioner. Robert High seconded the motion. The motion passed with eight votes in favor (Tunnell, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High) and one opposed (Holman).**

**Larry Baldwin made a motion to support Petitioner's position that the variance request will be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; will secure the public safety and welfare; and will preserve substantial justice. Earl Smith seconded the motion. The motion passed with five votes in favor (Tunnell, Cahoon, Baldwin, Smith, High) and four opposed (Holman, Emory, Bryan, Andrew).**

This variance request was denied.

## **SHELLFISH AQUACULTURE**

### **Attorney General Advisory Opinion Regarding CRC Authority Related to Shellfish Leases (CRC 22-15) Mary Lucasse**

Mary Lucasse, Special Deputy Attorney General and CRC Counsel, stated her detailed opinion on this issue was provided to the Commission in the September 12, 2022 letter providing an analysis regarding the Commission's authority to regulate floating structures in shellfish lease and related issues. This presentation will focus on how to interpret the statutes which provide authority to the CRC to regulate development within shellfish leases. The Shellfish Growers Association claims that because aquaculture is agriculture, it should be included within the agriculture exception in NCGS 113A-103. However, simply because aquaculture can be defined as agriculture, does not answer the question of whether it is included in this exception. NCGS 113A-103 provides a definition of development. When reviewing a statute, the first thing to do is look at the plain language in the statute. The plain language in the definition of development defines placing floating structures in Estuarine Waters AEC and Public Trust Areas AEC as development. The statute also provides for exceptions to development. In considering the exception, we note that the exception language does not refer to aquaculture, shellfish, or submerged lands. The legislature has provided authority to the CRC to regulate, and require permits, for development where excavation or fill affects estuarine waters or navigable waters. Based on the rules of statutory construction, more detailed and specific sections control. Exceptions are to be narrowly construed. When a statute lists things, it excludes what is not listed. The purpose of the NC Statute and NC Constitution are to prioritize the protection of North Carolina's natural resources for the benefit of the public. This includes submerged lands held in trust for the use and benefit of all citizens. CAMA is a balancing statute. The Commission must balance the rights of shellfish lease owners and public trust rights. The authority provided by CAMA clearly requires that the CRC balance the protection of natural resources and the use of the resources for development. CAMA authorizes the Commission to set policies, management objectives, and use standards. The plain language of CAMA defines the placement of a floating structure in AECs as development. The spirit and purpose of CAMA authorizes the CRC to establish policies, guidelines, and standards for the protection of the Public Trust Areas and Estuarine Waters AECs. The agricultural exception does not prevent the CRC from regulating a floating structure placed within a shellfish lease in the Public Trust Areas and Estuarine Waters AEC as development.

### **Update on MFC Shellfish Lease Rulemaking**

#### **Owen Mulvey-McFerron, NCDMF**

Today I will be providing an update on the shellfish lease rule amendments that took effect on August 23<sup>rd</sup>. As a reminder, the amendment process began in 2020 for three of the eleven shellfish lease rules to address user conflicts associated with shellfish leases while supporting a productive shellfish aquaculture industry resulting from the User Conflict Study, as required by Session Law 2019-37. These are the same rule amendments we have discussed with the CRC during the rule development process over the past two years. We incorporated some of the CRC's concerns expressed into the rule amendments and policies. Generally, these rule amendments seek to address user conflicts by addressing navigation concerns, improving shellfish lease marking requirements, and addressing changes associated with a growing shellfish aquaculture industry. Specific changes to these rules are as follows:

1. Increase setback requirement for shellfish leases from developed shorelines from 100 feet to 250 feet. This includes any riparian parcel that has a built structure, or water-dependent shore-based structures, such as docks or bulkheads.
2. Add a 250-foot buffer requirement between existing and new shellfish leases.
3. Limit the allowable number of shellfish lease corner markers to eight to simplify the polygon shapes.
4. Modify allowable corner pole marker requirements to allow 3-12” poles without additional permitting and require at least 12 vertical inches of reflective material that is visible from 360° on each pole. Poles greater than 12” in diameter require a CAMA permit.
5. Initiate the Shellfish Aquaculture Training Program for new leaseholders that emphasizes user conflict reduction strategies, as well as general best management practices, storm preparedness, and marine debris mitigation.
6. Add cumulative impact language to allow the DMF Director to account for the impacts to public trust use of existing shellfish leases when determining the compatibility of proposed leases.

Other amendments to eight shellfish lease rules were completed to help streamline and shorten processes for shellfish lease applications, address application grievances by the public, lease production reporting requirements, shellfish lease transfers and subleases, and further address recommendations laid out in Session Law 2019-37 and the subsequent Shellfish Aquaculture User Conflict Study. Lastly, staff have been working on related legislative requests from the 2019 Shellfish Aquaculture Bill, including the Shellfish Enterprise Area (SEA) pilot study. We are exploring the feasibility of SEAs in Bogue sound, as well as other areas of the state.

#### **DCM Recommendations and Commission Discussion**

Braxton Davis stated in February, the Commission discussed the history of floating structures and whether they were allowed within shellfish leases. DCM’s recommendation was that supporting infrastructure within shellfish leases could be regulated by the Division of Marine Fisheries as gear, but floating structures and platforms for processing shellfish should be permitted by DCM, as development under CAMA. Under the existing rules, any permit application for floating structures in open water would be denied; however, the permit applicant would have the option to submit a variance request for CRC consideration. The Division will move forward with rulemaking that will allow floating upweller systems within permitted marinas and shore-based operations and will regulate them under existing platform restrictions.

#### **BEACH MANAGEMENT**

##### **Amendments to 15A NCAC 7H .0305(5) Proposed Minimum Growing Season for Planted Vegetation and Oceanfront Setback Determinations (CRC 22-16)**

##### **Robb Mairs**

Robb Mairs stated, the Commission’s current rule 15A NCAC 7H .0305 describes the natural and man-made features found within the Ocean Hazard AEC. This includes ocean beaches, the nearshore area, primary dunes, frontal dunes, the vegetation line, and the pre-project vegetation line. The vegetation line is defined as the first line of stable and natural vegetation which is used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms

and wind and the more stable upland areas. The vegetation line is generally located at or around the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer determines the location of the stable and natural vegetation line based on visual observations of plant composition and density. The vegetation line determines the oceanfront setback designed to minimize losses of life and property resulting from storms and long-term erosion, prevent encroachment of permanent structures on public beach areas, preserve the natural ecological conditions of the barrier dune and beach systems, and reduce the public cost of inappropriately sited development. The first line of stable and natural vegetation is determined by the location of the vegetation and rhizomes and the vegetative species composition based on visual observation and/or aerial imagery, and interpolation across small gaps. CAMA field reps and LPOs determine a first line of stable and natural vegetation prior to submittal of a permit application. When a CAMA permit is issued, a pre-construction meeting is held to verify the first line of vegetation, and construction must begin within 60 days after the pre-construction meeting. Any major shoreline change prior to construction requires a new line delineation. Regarding planted vegetation, the current rule states if the vegetation has been planted it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In recent years, several oceanfront property owners have attempted to re-establish vegetation through aggressive planting, fertilizing, and watering regimes which can result in a vegetation line significantly oceanward compared with adjacent areas. While the planting of vegetation for stabilization of dunes and other areas is encouraged, DCM staff and LPOs have questioned when these newly planted areas are appropriate to use for oceanfront setback determinations. Staff consulted with Dr. Zachary Long with UNCW who specializes in dune ecology and Steve Mercer with Coastal Transplants, Inc. who have extensive agriculture and horticultural experience in constructing and planting dune systems along the North Carolina coast. Dr. Long and Mr. Mercer generally agreed that, based on their experiences with oceanfront property owners and beach communities, at least two growing seasons are needed for dune-planted grasses to establish. DCM staff agree and therefore are recommending adding a two-year minimum post planting growth requirement to 15A NCAC 7H .0305(5).

**Bob Emory made a motion to approve amendments as proposed to 15A NCAC 7H .0305 for public hearing. Sheila Holman seconded the motion. The motion passed unanimously (Holman, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High).**

#### **Proposed Expanded Exemption for Beach Mats (CRC 22-17)**

##### **Mike Lopazanski**

Mike Lopazanski stated the Division began receiving requests for beach mats along the dry sand beach in 2020-2021. Local governments were requesting the mats for enhanced handicapped access. The current rules do not allow the mats and these applications require a variance from the CRC. Last year the Commission amended its rules that allow for public access to the beach. The use standards previously limited these accessways to elevated, pile-supported structures terminating on the beach near the seaward toe of the frontal dune. Due to numerous local governments expressing an interest in using synthetic or wooden roll out matting as handicap-accessible alternatives for beach access, the accessway rules were amended to allow the use of

these types of mats for public beach access. However, only State, federal, or local governments were allowed to use these mats due to concerns expressed by the NC Wildlife Resources Commission and U.S. Fish and Wildlife Service about potential adverse impacts on sea turtle habitat resulting from the use waterward of the frontal dune. The Commission has approved three petitions for variances from local governments seeking to install beach mats on the dry sand beach. The Division and Commission have supported these variance requests and efforts were taken to minimize risks to sea turtles, including changes in siting, size, and orientation of proposed structures. Since the amendments went into effect, Staff has had further discussions regarding the use of beach matting for residential applications as an alternative to structural accessways. During storms, dune crossovers can account for a great deal of debris that winds up scattered across beaches and in waterways. Staff believe that by limiting matting to the same general standards that apply to structural accessways, limited to six feet wide in width and no farther waterward than six feet from the toe of the dune, public access and wildlife protection goals will be met while reducing debris on the State's beach during storm events. Residential application of matting material would adhere to the same standards previously approved including installation at grade and prohibiting extension onto the public trust beach. These amendments will remove the limitation restricting use of the mats to local, state, and federal governments and allowing mats for public or private use to allow access over primary and frontal dunes. Installing beach matting farther seaward to enhance handicap accessibility at a public beach access would still be limited to local, state, and federal governments to allow review by the Wildlife Resources Commission and US Fish and Wildlife to determine whether the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.

**Larry Baldwin made a motion to approve the rule amendments as proposed to 15A NCAC 7K .0308 and 7K .0207 for public hearing. Neal Andrew seconded the motion. The motion passed unanimously (Holman, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High).**

#### **Division of Water Resources DMMP Study Update Kevin Hart, NCDWR**

Kevin Hart stated the Army Corps of Engineers changed their internal policy in 2017 to not accept any additional dredge spoil material from dredge projects along the Atlantic Intracoastal Waterway (AIWW). The first phase in addressing this issue was to identify and assess existing non-federal dredged material placement locations along the AIWW. The Corps developed a GIS database mapping of existing non-federal placement sites. A dredging history was compiled from 13 coastal counties. The Corps reached out to existing marinas along the AIWW to find out their historical and current dredging needs. Small facilities, less than 10 slips, were excluded since dredged material volumes are smaller and do not require a confined upland placement site. This process revealed 26 existing non-federal placement sites that extend across 35 parcels. Twelve parcels are owned by the State of North Carolina, 22 parcels are privately owned, and one is federally owned. The Corps identified 227 waterfront facilities along the AIWW. They received responses from 206 facilities. 62% of the marine facilities are located in two counties (Carteret and New Hanover) and 77.5% of the marine facilities are located in three counties (Brunswick, Carteret, New Hanover). Phase Two of this study will assess the 20-year dredged material capacity needs and identify general environmental concerns associated with upland placement. The Corps will identify the 20-year material placement needs for 206 identified marine facilities

and identify the counties which have the greatest placement needs. The Corps will then map 70 to 75 potential non-federal placement sites not currently being utilized and provide a summary report.

### **PERMIT PROCESSING**

#### **Additional Amendment to General Permit Time Limits (CRC 22-19)**

##### **Jonathan Howell**

Jonathan Howell stated the proposed extension was brought up during a public comment from a marine contractor who asked the Commission to extend the amount of time a General Permit is active. The contractor stated that because of supply chain issues which limit access to materials, he has been required to renew General Permits multiple times before completing a project. At the April meeting, the Commission directed staff to bring back rule amendments that extended the General Permit active period. To accomplish this and determine an appropriate amount of time to extend permits, staff reached out to local governments and found that building and zoning permits were good for 180 days. Staff reviewed all 17 of the Commission's General Permits and found that 10 of the 17 are active for less than six months. At the June CRC meeting, staff presented rule language that expanded the active period from 120 to 180 days. After discussion, the Commission asked staff to bring back additional language that would allow contractors an additional six months to complete the work on a project where substantial development has occurred. Additionally, amendments were made to the Emergency General Permit (7H .2500) to allow for additional time following a storm event when the Secretary activates the Emergency GP.

**Robert High made a motion to approve amendments as presented to extend some General Permit expiration dates from 120 days to 180 days. Neal Andrew seconded the motion, The motion passed unanimously (Holman, Emory, Bryan, Cahoon, Baldwin, Andrew, Smith, High).**

### **LEGAL UPDATES**

#### **Update on Litigation of Interest to the Commission (CRC 22-21)**

Mary Lucasse updated the CRC on active litigation and any actions since CRC memo 22-21 was provided.

### **OLD/NEW BUSINESS**

#### **Inland Waters Boundary Update**

Chair Cahoon stated that the Chair of the Marine Fisheries Commission (MFC) has proposed a joint meeting between the MFC, Coastal Resources Commission, and Wildlife Resources Commission to discuss this issue.

Braxton Davis stated the Wildlife Resources Commission and the Marine Fisheries Commission are in the process of readopting their existing rules in conformance with G.S. 150B 21.3A. Those efforts include the re adoption of joint rules these two Commissions share. Earlier this spring, the WRC published proposed changes to their 10C rules related to joint waters that had the potential to impact jurisdictional lines between the two agencies. After it became clear the two commissions would not agree on the proposed changes prior to the deadline set by the Rules Review Commission to re adopt these rules, the WRC agreed to re adopt the existing 10C and




03Q rules as-is and resume any discussions about changing the joint rules after the rules were readopted. The commissions completed the readoption of the existing rules, with minor technical corrections, which were approved by the RRC at its August meeting. The readopted rules did not alter the existing boundaries between inland, joint, and coastal waters. Those boundaries are codified in the MFC's 03Q .0200 rules, which were categorized as necessary without substantive public interest and not subject to readoption. The Chairs for the WRC and MFC have committed to continue to discuss ways in which the joint rules can be improved and to consider potential changes to the boundaries between inland, joint, and coastal waters.

Chair Cahoon stated the next scheduled meeting of the CRC will be November 16-17 in Beaufort.

With no further business, the CRC adjourned.

Respectfully submitted,

  
Braxton Davis, Executive Secretary

  
Angela Willis, Recording Secretary