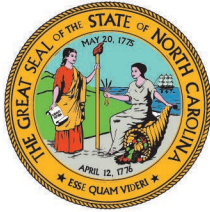


ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

BRAXTON DAVIS
Director



NORTH CAROLINA
Environmental Quality

CRC-23-13

April 12, 2023

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Public Comments and Consideration of Adoption – Amendments to 15A NCAC 7K .0207 & 7H .0308 – Beach Mats

In 2021, the Commission amended the specific use standards for structural pedestrian accessways (dune crossovers) for public access to the beach to allow governmental entities to use synthetic or wooden roll-out matting as a handicap-accessible alternative for beach access. Use of these materials was limited to State, federal or local governments due to concerns expressed by the NC Wildlife Resources Commission (NC WRC) and the U.S. Fish & Wildlife Service (USFWS) about potential adverse impacts on sea turtle habitat resulting from their use waterward of the frontal dune.

At the September 2022 meeting, the CRC approved for rulemaking the use of beach matting for residential applications as an alternative to structural accessways. By limiting matting to the same general standards that apply to structural accessways (six feet wide 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 during storm events. Residential application of matting material would adhere to the same standards previously approved for government entities, including installation at grade and prohibiting extension onto the public trust beach.

The Commission has also approved for rulemaking a change to 07H.0308(c)(2)(C) to allow beach mats on the dry sand beach without the need for a variance, where projects are sponsored by a local government for the purpose of enhanced handicap accessibility and are subject to review by the NC WRC and USFWS. This amendment is consistent with several variances issued by the Commission.

A public hearing was held in February 2023 and the Division received two public comments, an oral comment from a representative of Coast Home NC real estate company in favor of the amendments allowing beach matting for residential use and one from the NC Wildlife Resources Commission (WRC) opposed to allowing residential use. The WRC states that allowing residential use will increase the footprint of these structures beyond the more limited footprint associated with utilization by governmental entities. The WRC's primary concern is that there will be low consistency, minimal enforcement, and unsupportable impacts to wildlife. The WRC believes the temporary nature of beach matting will lead to the dimensional guidelines being



violated, dune stability would be compromised, and more matting would be placed down the beach profile.

Compliance and enforcement are essential components of any regulatory program and Division strives increase its compliance rate through education, inspection and remediation. The proposed amendments allow the residential use of beach mats provided they conform to present standards for structural accessways, notably including the limitation of no farther seaward than six feet from the toe of the dune. In addition to the Division's inspection and enforcement activities, most beach towns have sea turtle programs as well as town employees which traverse the beach on a regular basis. The Division believes that these additional "eyes" on the oceanfront will be useful in ensuring that any beach mats exceeding the use standards will be reported either to the Division or the Local Permitting Officer for compliance and enforcement. The Division also maintains that while less expensive than a traditional structural accessway, beach mats still represent a sizeable investment for property owners and there will be interest in ensuring that they are removed prior to storm events, leading to less debris on the beaches following these events.

In addition to the public comments submitted, the Division has received numerous informal comments of support from the public advocating for the increased handicap access this will provide. Staff recommends adoption.

I look forward to discussing any questions you may have on these amendments and the public comments at our upcoming meeting in Manteo.



☒ North Carolina Wildlife Resources Commission ☒

Cameron Ingram, Executive Director

MEMORANDUM

TO: Braxton Davis
Division of Coastal Management
North Carolina Department of Environmental Quality

FROM: Maria T. Dunn, Coastal Coordinator
Habitat Conservation Division

A handwritten signature in black ink that reads "Maria T. D." with a stylized flourish at the end.

DATE: March 20, 2023

SUBJECT: Proposed Rule Amendments for NC Division of Coastal Management
15A NCAC 07B .0702, 15A NCAC 07B .0803, 15A NCAC 07H .0308,
15A NCAC 07K .0207, 15A NCAC 07H .0208, 15A NCAC 07M .0603

Biologists with the North Carolina Wildlife Resources Commission (NCWRC) reviewed the rule amendments with regard to impacts on fish and wildlife resources, public trust, and navigation. Our comments are provided in accordance with provisions of the Coastal Area Management Act (G.S. 113A-100 through 113A-128), as amended, Sections 401 and 404 of the Clean Water Act, as amended, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Magnuson-Stevens Fishery Conservation and Management Act (FCMA), as amended (16 U.S.C. 1801 et seq.), and the Migratory Bird Treaty Act (16 U.S.C. 703-712 et seq.).

The NC Division of Coastal Management (NCDQM) proposes to amend several rules. Staff with NCWRC have reviewed these proposals and offer the following comments on specific rules:

15A NCAC 07H .0308 and 15A NCAC 07K .0207

These rule amendments propose to allow greater flexibility to local governments, government agencies, and private property owners in constructing accessways and enhanced handicap access to the beach by allowing the use of beach matting. The NCWRC has concerns with environmental impacts and management difficulties that may result from this change.

In recent years, the NCWRC has coordinated with the US Fish and Wildlife Service (USFWS) and the NCDQM to develop guidelines to allow the installation of beach mats for local, state or federal government at public access areas. These guidelines included restrictions on width, distance from primary or frontal dune, orientation, and seasonal use. These conditions for use were established to allow

expanded accessibility at specific public access locations, while helping to minimize the amount of area covered with beach matting to limit and help quantify the impact to nesting sea turtles and shorebirds versus expanding the allowance to private use. The expansion to private use would significantly increase the footprint of these structures beach-wide. North Carolina's beaches provide nesting opportunities for five species of sea turtles, with several areas designated as critical habitat for loggerhead sea turtles (*Caretta caretta*). The covering of the ocean facing beach with beach mats will remove nesting habitat and may misorient nesting females and hatchlings. While we may accept the impacts associated with beach mats at public access areas, the number of accesses is limited and even with statewide use, do not result in significant cumulative effects.

The installation of beach mats, while under NCDCM rule, may be managed under the CAMA Minor Permit program managed by Local Permitting Officers (LPO). While this program is appropriate in managing many aspects of minor development, the NCWRC is concerned that the magnitude of beach mat use on a private level would lead to low consistency, minimal enforcement, and insupportable impacts to wildlife resources. The ease of installation and low cost would lead to more accesses over dunes and down the beach profile, potentially affecting dune stability as well as sea turtle nesting opportunities. Due to the temporary nature of beach matting, the dimension guidelines set for accessways could be more easily violated or moved whereas traditional accessways are more permanent and easier to ensure compliance.

NCWRC continues to support the use of beach matting for local, state, and federal public access areas, but does not support beach matting use for private properties due to the anticipated extenuating use and overall impacts. We strongly encourage the installation of beach matting at public access sites to follow previous guidance provided by the NCWRC and USFWS. This guidance includes width, distance from the frontal or primary dune, orientation, and seasonal use recommendations.

15A NCAC 07H .0208 and 15A NCAC 07M .0603

These rule amendments propose to specifically address Floating Upweller Systems used in shellfish aquaculture operations to determine how they can be sited in public trust waters. The NCWRC supports the amendments to address the siting of these structures so as not to significantly impact wildlife and public trust resources as well as to not impose a significant navigation hazard within public waters.

We appreciate the opportunity to review and comment on these rule amendments. If you need further assistance or additional information, please contact me at (252) 495-5554 or at maria.dunn@ncwildlife.org