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Via U.S. Mail and Electronic Mail

Mr. Gordon Myers
Executive Director
Wildlife Resources Commission
1701 Mail Service Center
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gordon.myers@ncwildlife.org

Dear Director Myers and Commissioners:

On behalf of the North Carolina Herpetological Society, the Southern Environmental Law Center submits this letter regarding the efforts of the Wildlife Resources Commission (“WRC”) to allow sport hunting of American alligators (*Alligator mississippiensis*) (hereinafter “alligators”) in North Carolina. The WRC has undertaken and continues to pursue these efforts despite the consistent and well documented concerns of the scientific community that such a hunt is contrary to the best available science and in violation of the WRC’s own policies, procedures, and statutory commands. We call on the WRC to immediately halt these efforts unless and until there is a scientific consensus that such a hunt can be carried out in a sustainable manner in accordance with North Carolina law. We further call on the WRC to immediately develop and adopt by regulation a conservation plan for the recovery of the American alligator in North Carolina.

Alligators are protected as a threatened species under both federal and state law. 50 C.F.R. § 17.11(h) (federal listing as a threatened species); N.C. Gen Stat. § 113-334(a) (federally listed species have the same status on North Carolina protected animal lists). North Carolina’s population is particularly vulnerable as it represents the far northern end of the species’ range, where alligators are less numerous and take longer to mature to full adulthood than in more southern states.

Despite this vulnerable population status, the WRC has for at least three years pursued the development of an alligator hunting season in North Carolina. On November 16, 2015, the WRC published a proposed rule to establish a season for the sport hunting of alligators in North Carolina (“Proposal H4”).¹ Public hearings on H4 held resulted in 976 public comments, over 80% of which were in opposition to the proposal. Organizations weighing in against an alligator hunting season included the Society for the Study of Amphibians and Reptiles, the North Carolina Partners in Amphibian and Reptile Conservation, the Carteret County Wildlife Club, the Coastal Plain Conservation Group, the North Carolina Wildlife Federation, the North Carolina Chapter of the Nature Conservancy, and the Alligator Alliance. Furthermore, the

¹ The WRC intended to codify this proposed rule as 15A N.C. Admin. Code 10B 0.0224.

WRC's own Nongame Wildlife Advisory Committee, established by the North Carolina General Assembly with the express purpose to advise the WRC on the biology, ecology, and conservation of protected species, formally expressed its opposition to alligator hunting at that time. *See* N.C. Gen. Stat. §§ 113-335, 336.

Recognizing this backlash from the public and its own scientific advisors, the WRC voted at its February 11, 2016 meeting to reject Proposal H4 and resolved to instead establish a North Carolina Alligator Task Force to develop a North Carolina Alligator Management Plan that includes:

- Evaluation of all available biological information on alligators in North Carolina,
- Identification of knowledge gaps and additional research needed on alligator population demography, historical changes in alligator habitats, and public attitudes and opinions on alligator conservation,
- Identification of areas where alligators may be over-populated and recommend biological and social strategies to address alligator management issues in these areas,
- Recommendations of geographical management zones,
- Recommendations for metrics to establish the number of permits per year that could be issued for opportunities to harvest alligators by hunting where sustainable and consistent with local alligator population, habitat, and social conditions, and
- Recommendations on a framework for gathering public input on the North Carolina Alligator Management Plan.

“Resolution Regarding Proposed Establishment of an Alligator Hunting Season in North Carolina,” N.C. Wildlife Resources Commission (Feb. 11, 2016). In June 2016, WRC Executive Director Gordon Myers established the Alligator Task Force and tasked it with writing a management plan within one year.

The Alligator Task Force produced the alligator management plan (“AMP”) on October 5, 2017 and presented it to the WRC. The AMP divided North Carolina into two separate Alligator Management Units (“AMU”): AMU 1 contains Brunswick, Columbus, New Hanover, Pender, Onslow, Jones, Craven, Pamlico, Carteret, and Hyde Counties; and AMU 2 contains all other counties. For AMU 1, the AMP stated that take of alligators can only occur where necessary to address frequent human-alligator conflicts **in municipalities**, and where research demonstrates a population growth rate that can maintain long-term population viability despite hunter harvest.

The AMP also required that the WRC acquire demographic, vital rate, and other biological information before allowing hunting in a substantial portion of a population's inhabited area. Factors informing the decision to permit hunting of a population, according to the AMP, include: area inhabited, alligator abundance by life stage, sex ratio, fecundity, and

survival rates. The Task Force recommended that if take were to be allowed outside of municipalities, then close monitoring would be required to ensure that take does not exceed harvest quotas set by WRC biologists based on this ongoing collection of biological data. The AMP further laid out a schedule of action items to be undertaken over the next three years to better understand how to survey for alligators, how to measure dispersal and spatial ecology of alligators, and how to estimate vital rates for alligators before population goals could be set no earlier than 2020 to potentially allow for recreational hunt permits to be issued if the population data supported it as biologically sustainable. *See* AMP, p. 21. None of these items have yet been completed.

The AMP also stressed that the WRC should maintain a distinction between hunting and the removal of animals to protect the public or property. As explained by the AMP, “hunting provides a legal means for a person to take a public trust wildlife resource into lawful possession for personal benefit. Hunting removes a surplus of animals and does not violate the public trust by diminishing wildlife populations below sustainable levels over the long-term.” AMP, p. 11. By contrast, the “removal of wildlife for a public safety or property protection purpose is a benefit to the public and not primarily to the person removing the alligator.” *Id.* The AMP cautioned that “some people would, and have tried to, take public trust wildlife resources by hunting under the guise of protecting property or public safety.” *Id.*

Despite these findings and the system laid out for acquiring information to address them in a precautionary manner, in July 2018, the WRC amended the AMP of its own accord to allow an alligator hunt in Hyde County. Hyde County does not contain any municipalities, and rather than using the AMP’s formal process for municipalities to request WRC assistance in managing human-alligator conflicts within their city or town boundaries, the WRC opened up a hunt for members of the public to apply for permits to take alligators within the unincorporated areas of Swan Quarter, Fairfield, and Engelhard. The WRC claimed that this was a population reduction hunt to promote public safety, yet there were no documented incidents to support this assertion. Moreover, the WRC had no recent population data to evaluate whether the issuance of permits in this area at the far northern end of the alligator’s range would have a detrimental impact on the population.

On October 2, 2018, the WRC’s Nongame Wildlife Advisory Committee again voiced its opposition to the WRC’s actions on alligator hunting. The Committee unanimously voted that no alligators should be harvested in North Carolina until data supporting evidence of long-term viability has been collected. On November 14, 2018, the Committee passed a Resolution Regarding the Nongame Status of the American Alligator, affirming that alligators are properly classified as nongame species and do not fit under the statutory definitions of “game,” “game animal,” or “big game species.” *See* N.C. Gen. Stat. § 113-129. Rather, alligators are a threatened species, and it is improper to hunt them as game. Furthermore, alligators are long-lived (>50 years in the wild, >80 years in captivity) and extremely slow to reach reproductive maturity. Thus, even if their population and vital rates are viable, they simply cannot be “managed” through annual regulated harvest in the same way as game species.

It is our understanding that, despite these clear science-based objections, the WRC intends to move forward with establishing and implementing an alligator hunt in AMU 1 for 2019. Such action would be directly contrary to the recommendations of the Nongame Wildlife

Advisory Committee's experts, is unsupported by the best available science, and is counter to the procedures and recommendations established in the WRC's AMP. In particular, while the AMP specifically focused on the ability of municipalities to request hunts, it is our understanding that not a single municipality has done so in either 2018 or 2019. This basic fact underscores that there is no need for a hunt as there is no problem that cannot be managed through nuisance relocations and permits.

Moreover, in addition to the WRC's actions violating the AMP, the AMP itself does not meet the requirements of N.C. Gen. Stat. § 113-333, which requires the development of **conservation plans** to recover threatened and endangered species. In 1987, the General Assembly directed the WRC to "coordinate development and implementation of conservation programs and plans for endangered and threatened species of wild animals and for species of special concern," and "adopt and implement conservation programs for endangered, threatened, and special concern species and to limit, regulate, or prevent the taking, collection, or sale of protected animals." N.C. Gen. Stat. §§ 113-333(a)(3), (4).

Specifically:

Using the [rulemaking] procedures set out in Article 2A of [the North Carolina Administrative Procedure Act], the Wildlife Resources Commission **shall develop a conservation plan** for the recovery of protected wild animal species. In developing a conservation plan for a protected wild animal species, the Wildlife Resources Commission shall consider the range of conservation, protection, and management measures that may be applied to benefit the species and its habitat. The conservation plan shall include a comprehensive analysis of all factors that have been identified as causing the decline of the protected wild animal species and all measures that could be taken to restore the species.

N.C. Gen. Stat. § 113-333(b) (emphasis added).

Accordingly, the WRC is legally required under N.C. Gen. Stat. § 113-333 to develop and implement a conservation plan for the American alligator. This conservation plan must be based on the best available science. N.C. Gen. Stat. § 150B-19.1(a)(5). The appropriate place for input from stakeholders is in the public comment stage of the formal rulemaking procedures that will necessarily precede the adoption of the conservation plan. *Id.* § 150B-21.2. This conservation plan cannot be unilaterally modified by the WRC without the opportunity for public input. *Id.*; *id.* § 150B-18. A conservation plan that is properly promulgated in this manner carries legal force and cannot be arbitrarily violated. *Id.* § 113-337(a)(2).

The AMP was not developed through appropriate notice and comment rulemaking, as required by state law, and the WRC has unilaterally amended the AMP to eliminate the essential conservation limitation on alligator hunts to those municipalities that request them. Moreover, the AMP was designed in part as a game management plan and fails to provide the rigorous scientific analysis required of a conservation plan. These legal violations have undermined both the conservation and recovery of American alligators in North Carolina, as well as the procedural guarantees codified in North Carolina law.

Finally, allowing this threatened species to be hunted for sport without knowing the impacts that this hunting will have on population vital rates is clearly against the WRC's agency mandate. The WRC was created by the North Carolina Wildlife Resources Law, N.C. Gen. Stat. §§ 143-237, *et seq.*, with the charge to "manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina." The North Carolina General Assembly specifically found "that the recreation and aesthetic needs of the people, the interests of science, the quality of the environment, and the best interests of the State **require that endangered and threatened species of wild animals and wild animals of special concern be protected and conserved, that their numbers should be enhanced and that conservation techniques be developed for them.**" N.C. Gen. Stat. § 113-332 (emphasis added). The WRC "[is] charged with stewardship of these resources." *Id.* § 113-131.

Conclusion

We call on the WRC to abandon its current pursuit of a scientifically unsupported hunt of threatened American alligators in the State of North Carolina. Instead, we urge the WRC to put its resources towards reaching a greater scientific understanding of North Carolina's unique population of alligators in the northern limits of their natural range, and to develop and legally adopt a conservation plan for the recovery of the species in North Carolina.

If the WRC takes these steps, we believe that North Carolina's alligators can be managed in accordance with science and the law. Please contact us at (919) 967-1450 or sweaver@selcnc.org if you have any specific questions or would like to discuss these matters in greater detail.

Sincerely,



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