

Burgos, Alexander N

Subject: FW: MFC 18A Request for Technical Change

From: May, Amber Cronk <amber.may@oah.nc.gov>
Sent: Wednesday, March 16, 2022 4:22 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Blum, Catherine <catherine.blum@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: MFC 18A Request for Technical Change

Thank you, Jennifer. I will forward this on and will let you know if I hear of any other questions.

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, March 16, 2022 3:42 PM
To: May, Amber Cronk <amber.may@oah.nc.gov>
Cc: Blum, Catherine <catherine.blum@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: MFC 18A Request for Technical Change

Hi Amber,

We would like to offer a few clarifications related to the commissioner's question. The MFC's jurisdiction has a number of interplays with federal jurisdiction, but the portion of the 15A NCAC 18A rules before the RRC only deals with crustacea meat. 15A NCAC 18A .0173 relates specifically to repacked crustacea meat. This is meat that has been processed and packaged in a processing facility. The product is then sold or transferred to another vendor. That vendor removes it from its original packaging and places it in a new container before it is ultimately transferred to a retailer or sold to a consumer. For imported crab meat, that would mean that the product has been removed from the container it was in when it cleared customs. The effect of 15A NCAC 18A .0173 is that the new packaging into which the repacked crab meat is placed must also comply with federal labeling requirements. If the crab meat is still in its original packaging, it is not subject to 15A NCAC 18A .0173.

Hope this helps. See you tomorrow.

Thank you!

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
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From: May, Amber Cronk <amber.may@oah.nc.gov>
Sent: Tuesday, March 15, 2022 5:06 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Blum, Catherine <catherine.blum@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: MFC 18A Request for Technical Change

Hi Jennifer,

I have discussed this with the Commissioner in order to provide some clarification regarding his concerns. He has provided the following additional comments:

Many thanks for getting me this information, however I am still not clear as to the Marine Fisheries Commission authority to inspect packaged fish products that are shipped into North Carolina. Also, could you ask where their authority ends, and federal jurisdiction begins?

To go further, the regulation on out-of-state shipments must refer to raw product that has not been packaged, because seafood that has already been packaged (frozen or unfrozen) would be distributed to supermarket chains and grocery stores. Additionally, if you had a commercial fishing operation based either in South Carolina or Virginia and your catch was caught off the coast of Virginia or South Carolina and you brought it to Manteo or Wanchese for sale to a NC commercial fish processing company/distributor that is what the MFC regulation refers to?

Thank you so much for your attention to this!

Amber

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Monday, March 14, 2022 4:58 PM
To: May, Amber Cronk <amber.may@oah.nc.gov>
Cc: Blum, Catherine <catherine.blum@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: MFC 18A Request for Technical Change

Hi Amber,

We are happy to address the inquiry. However, we need a bit more clarification on this question as to what context it has to rule .0173.

Thank you.

Jennifer Everett
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From: May, Amber Cronk <amber.may@oah.nc.gov>
Sent: Monday, March 14, 2022 10:32 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Blum, Catherine <catherine.blum@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: MFC 18A Request for Technical Change

Hi Jennifer,

I hope that you're well. One of our Commissioners had a question regarding your response on .0173. It is as follows:

.0173: o Paragraph (d)(5): N.C.G.S. 113-221.2(a) states "For the protection of the public health, the Marine Fisheries Commission shall adopt rules establishing sanitation requirements for the harvesting, processing and handling of scallops, shellfish, and crustacea of in-State origin. **The rules of the Marine Fisheries Commission may also regulate scallops, shellfish, and crustacea shipped into North Carolina.**" 2 o Paragraph (d)(5): Yes, our regulated stakeholders are familiar with the federal labeling requirements referenced in 18A .0173.
• .0174: Yes, our regulated stakeholders understand the intent of 18A .0174(a). • .0184: Yes, our regulated stakeholders understand the intent of 18A .0184(a)

With regard to the excerpted paragraph (sentence highlighted in yellow) contained in the email sent to the RRC, could you ask the Marine Fisheries Commission if that includes product that is imported into the United States and cleared through US Customs which meet FDA requirements? That rule clashes with federal law. Could you ask that they give us an explanation?

Please get back with me as soon as possible.

Thank you,

Amber

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, March 9, 2022 4:57 PM
To: May, Amber Cronk <amber.may@oah.nc.gov>
Cc: Blum, Catherine <catherine.blum@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: MFC 18A Request for Technical Change

Hi Amber,

Staff have addressed your additional requests for technical change to the Marine Fisheries Commission rules in 15A NCAC 18A. There are 25 amended rules attached. You also asked a few questions about a small portion of the rules that did not lead to amending the corresponding rule. Those responses follow. Finally, in the process of addressing the requests for technical change to a few rules, one additional definition has been added to 18A .0134 and a second definition was modified, as described:

- .0134:
 - Item (4): Yes, this is a term of art for regulated stakeholders.
 - Item (14): In the process of addressing the request for technical change to 18A .0144 and .0156, a definition for "good repair" has been added to .0134(14). Doing so follows the same guidance you provided for the addition of a definition for "clean" that has also been added.

- Item (27): In the process of addressing the request for technical change to 18A .0138, staff identified the inconsistent use of "responsible person" versus "responsible individual" in the group of 18A rules, as compared to the definition in G.S. 113-130(1b) for "individual" and G.S. 113-130(3) for "person". As a result, in .0134(25) [now definition (27)], "responsible person" is proposed as "responsible individual". Accordingly, the same changes to the terminology have been made in .0138, .0145, .0153, and .0165, for consistency.
- Item (28): The definition of "thermal processing" in .0134(30) and "pasteurization" in .0134(22) reference the phrase "Process Validation Study Report", which is defined in .0134(24). The definition of "Process Validation Study Report" includes a reference to the "Rules of this Section".
- .0144: Yes, our regulated stakeholders are familiar with the applicable State and federal laws and rules referenced in 18A .0144.
- .0145: Yes, our regulated stakeholders are familiar with the applicable State and federal laws and rules referenced in 18A .0145.
- .0173:
 - Paragraph (d)(5): N.C.G.S. 113-221.2(a) states "For the protection of the public health, the Marine Fisheries Commission shall adopt rules establishing sanitation requirements for the harvesting, processing and handling of scallops, shellfish, and crustacea of in-State origin. The rules of the Marine Fisheries Commission may also regulate scallops, shellfish, and crustacea shipped into North Carolina."
 - Paragraph (d)(5): Yes, our regulated stakeholders are familiar with the federal labeling requirements referenced in 18A .0173.
- .0174: Yes, our regulated stakeholders understand the intent of 18A .0174(a).
- .0184: Yes, our regulated stakeholders understand the intent of 18A .0184(a).

Last month, staff addressed your initial requests for technical change to the 15A NCAC 18A rules. That iteration yielded one rule with no change (.0152) and three rules with changes (.0177, .0186, .0187) for which you did not have additional requests. In case those three rules are needed for filing purposes they are attached here after the other 25 rules. Please let us know if anything further is needed for these rules. Thanks for your ongoing assistance.

Jennifer

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