



PROHIBITING REPACKING OF FOREIGN CRAB MEAT IN NORTH CAROLINA

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CAROLINA ISSUE PAPER



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October 21, 2020

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Shannon Jenkins, Section Chief
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SUBJECT: Prohibiting Repacking of Foreign Crab Meat in North Carolina

Issue

At its May 2020 business meeting, the Marine Fisheries Commission (MFC) directed Division of Marine Fisheries staff to initiate rulemaking "to make it illegal to repack any imported crab meat in North Carolina into another container for resale in the State of North Carolina." This action followed the MFC review of an information paper titled "Information on Repacking of Foreign Crab Meat in North Carolina" that was presented during the same meeting. The information paper covered several topics. These included the negative publicity regarding fraudulent representation of foreign crab meat as "Product of the USA" by firms including one in North Carolina, and the potential economic impact to N.C. crab processors that currently participate in the repacking of foreign crab meat if the practice was prohibited.

Findings

- The language of the MFC motion as passed would prohibit the repacking of foreign crab meat in North Carolina and subsequent sale within the state. After consultation with legal counsel, it was determined that while the MFC does have authority to promulgate rules that would prohibit the repacking of foreign crab meat by DMF permitted facilities, it does not have the authority to prohibit the sale of repacked foreign crab meat.
- The motion as passed by the MFC would allow foreign crab meat that has been repacked in other states to continue to be marketed in North Carolina retail and grocery outlets.
- Option 1 would support the status quo by continuing to allow the repacking of foreign crab meat by N.C. crab processors. While this option would not resolve the issues expressed by the MFC, it is offered as an option since the MFC's authority is not consistent with the MFC motion in its entirety as passed.
- Option 2 would prohibit the repacking of foreign crab meat in North Carolina into another container via proposed rule 03L .0210 (REPACKING OF FOREIGN CRAB MEAT)

PROHIBITED). While this would not expressly prohibit the sale as stated in the MFC motion due to the lack of authority, it would effectively accomplish the same result by prohibiting the repacking of foreign crab meat within North Carolina and thus these products would not be available for sale.

- Revisions to two existing MFC rules that reference foreign crab meat (18A .0136 and 18A .0173) are proposed if either option is selected. These revisions would ensure consistency with proposed rule 03L .0210 if selected, and would also ensure conformance with current rulemaking standards regardless of option selected.

Action Needed

The Marine Fisheries Commission will vote on their preferred management option.

For more information, please refer to the full document titled [“PROHIBITING REPACKING OF FOREIGN CRAB MEAT IN NORTH CAROLINA ISSUE PAPER”](#) that is included the briefing materials.

PROHIBITING REPACKING OF FOREIGN CRAB MEAT IN NORTH CAROLINA ISSUE PAPER

October 21, 2020

I. ISSUE

By N.C. Marine Fisheries Commission (MFC) Rule, make it unlawful to repack any imported crab meat in North Carolina into another container for sale in the State of North Carolina.

II. ORIGINATION

An information paper titled “Information on Repacking of Foreign Crab Meat in North Carolina” was presented during the N.C. Marine Fisheries Commission meeting on May 14, 2020. After discussion, the Commission voted to initiate the rulemaking process to make it unlawful to repack any imported crab meat in North Carolina into another container for sale in the State of North Carolina.

III. BACKGROUND

Crab Picking Industry in North Carolina

Blue crab (*Callinectes sapidus*) supports the largest and most valuable commercial fishery in North Carolina (NCDMF 2019). An important part of this fishery involves the harvest of hard-shell crabs from N.C. waters to be sold to N.C. Division of Marine Fisheries (DMF) certified and permitted crab processors. In North Carolina, the number of crab processors, otherwise known as “crab picking” facilities, has decreased significantly from as many as 43 in 1990 to 14 in 2020. Potential factors in the reduced numbers include the live crab or “basket” market where dealers in other states pay higher prices for live crabs, the lack of a steady supply of live crabs due to reduced overall landings during some years, and competition from lower cost crab meat imported from overseas or other states (NCDMF 2020).

Crab processors typically cook baskets of live crabs in a steam retort cooker under pressure to eliminate food-borne pathogens such as bacteria, and produce a product that is shelf-stable. After cooking, the whole crabs are air-cooled prior to being stored in refrigeration. Employees then use sanitary techniques to pick the meat of the crab for subsequent packing, typically into individual plastic containers labeled with their particular brand. Although there is no consensus regarding shelf-life, it appears that N.C. crab processors use a range of 10-14 days, if properly stored, with the extremes being as low as 7 days and as high as 21.

The crab processor may also use pasteurization as an alternative or additional process to further extend the shelf-life of the product by months. Pasteurization involves an additional heating and cooling process after the meat is placed in a hermetically sealed container, typically a metal can.

Repacking

Processors that are certified and permitted by DMF as a crustacea repacker can also repack crab meat that has been previously cooked and packed initially. Crab processors who repack usually do so in order to market the product in their own branded containers. Repacking involves transferring crustacea product from the original packed container into the repacker’s branded container using sanitary techniques in accordance with N.C. MFC rules (15A NCAC 18A Section .0134-.0191, *Handling: Packing: and Shipping of Crustacea Meat*). Examples of required sanitary techniques include maintaining a safe temperature during repacking in order to limit bacterial growth, and taking precautions such as sanitizing utensils, tables, etc. to limit possible contamination from the packing process. The repacker is required to label the repacked container with their name, address, certification number followed by the letters “RP”, and a code indicating the repack date.

Repacking of Foreign Crab Meat

In addition to repacking domestically sourced crab product, processors can also repack product from foreign sources. Sources include Asia and South America with countries such as Indonesia, Vietnam, China, Mexico, Brazil, and Venezuela. Imports include the meat from two types of “swimming crabs” that are related to blue crab: *Portunidae* (family that includes blue crabs) and *Callinectes* (blue crab genus). Processors who repack meat from foreign sources typically receive pasteurized product in cans and then repack the product directly into their own branded plastic containers. In addition to the labeling requirements for repacked containers described above, containers that are repacked with foreign crab meat are required to be labeled in accordance with Federal labeling requirements as set forth in MFC rules 15A NCAC 18A .0136 (Applicability of Rules) and .0173 (Repacking).

During the “Issues from Commissioners” portion of the Feb. 20, 2020 MFC meeting, Commissioner Doug Cross requested that the Director of the Division of Marine Fisheries (DMF) consider developing an information paper to amend N.C. MFC Rule 15A NCAC 18A .0173 regarding the repacking of foreign crab meat. Commissioner Cross requested the DMF to examine the possibility of making it unlawful to repack or possess foreign crab meat in North Carolina unless it remains in the original container. The Commissioner stated that recent publicity regarding foreign crab meat being fraudulently represented as local blue crab product hurts North Carolina’s crab meat reputation. He further stated that in his opinion the only reason for foreign crab meat to be repacked is to defraud the consumer. The request did not apply to value-added products such as crab cakes or use of foreign crab meat for restaurant use.

The information paper titled “Information on Repacking of Foreign Crab Meat in North Carolina” was presented during the next N.C. MFC meeting on May 14, 2020. The paper covered several topics. These included the negative publicity regarding fraudulent representation of foreign crab meat as “Product of the USA” by firms including one in North Carolina, and the potential economic impact to N.C. crab processors that currently participate in the repacking of foreign crab meat if the practice was to be prohibited.

After presentation of the information paper, Commissioner Cross reiterated his view that the repacking of foreign crab meat into a container other than the original is designed to defraud the customer. He also stated that it results in an economic advantage for those firms repacking foreign crab meat compared to those firms that pack domestic crab meat and that it also reduces the price of domestic crab meat. He offered that consumers would be more confident if they know that foreign crab meat cannot be repacked in North Carolina. After further discussion and by unanimous vote, the MFC passed a motion “to make it illegal to repack any imported crab meat in North Carolina into another container for resale in the State of North Carolina through the rulemaking process.”

IV. AUTHORITY

N.C. General Statutes

§ 113-134. Rules.

§ 113-182. Regulation of fishing and fisheries

§ 113-221.2. Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized

§ 143B-289.52. Marine Fisheries Commission – powers and duties.

N.C. Marine Fisheries Commission Rules (As of April 1, 2020)

15A NCAC 18A .0135 Permits

15A NCAC 18A .0136 Applicability of Rules

15A NCAC 18A .0173 Repacking

V. DISCUSSION

N.C. General Statutes 113-134, 113-182 and 143B-289.52 provide the MFC the authority to regulate and adopt rules regarding the marine and estuarine resources within its jurisdiction. A new MFC rule in Subchapter 03L section .0200 of the MFC rules (Crabs) appears to be the most appropriate location in the N.C. Administrative Code for prohibiting the repacking of foreign crab meat into another container. It is important to note that the rule should clarify that the prohibition of foreign crab meat repacking does not apply to value-added products such as crab cakes, a topic discussed

during the May 14, 2020 MFC meeting. The processing of seafood to create value-added products is regulated by the North Carolina Department of Agriculture and so does not fall under the rulemaking authority of the MFC.

A rule that would prohibit the repacking of foreign crab meat within the state would affect a portion of the existing crab meat industry in North Carolina. There are currently three crustacea processing facilities in North Carolina that engage in repacking of foreign crab meat out of the 14 total permitted processors in the state. A change as contemplated above could also affect grocery stores and retail outlets in North Carolina statewide that market foreign crab meat that has been repacked within the state into a container other than the original.

It is also important to note that the action by the MFC would allow foreign crab meat that has been repacked in other states to continue to be marketed in North Carolina retail and grocery outlets. This could result in competition issues for the N.C. crab processors that currently participate in this repacking activity. This would not completely resolve the original concern expressed by Commissioner Cross, which was the opinion that foreign crab meat in a container other than the container that it was initially packed in could deceive the customer even if it is labeled with the country of origin.

The language of the MFC motion as passed would prohibit the repacking of foreign crab meat in North Carolina and subsequent sale within the state. Currently, repacked foreign crab meat can be sold by licensed fish dealers that are clearly under the MFC's authority, but it can also be sold by grocers and other similar retail outlets that can fall under the jurisdiction of other entities, such as the Department of Agriculture. As part of the issue paper process, the laws granting authority to the MFC were reviewed. After consultation with legal counsel, it was determined that while the MFC does have authority to promulgate rules that would prohibit the repacking of foreign crab meat by DMF permitted facilities, it does not have the authority to prohibit the sale of repacked foreign crab meat.

As a result of that determination, there are two options presented in this issue paper. The first option ("Option 1") would support the status quo by continuing to allow the repacking of foreign crab meat by N.C. crab processors. While this option would not resolve the issues expressed by the MFC it is offered as an option since the MFC's authority is not consistent with the MFC motion in its entirety as passed.

A second option ("Option 2") presented would prohibit the repacking of foreign crab meat in North Carolina into another container. While this would not expressly prohibit the sale as stated in the MFC motion due to the lack of authority, it would effectively accomplish the same result by prohibiting the repacking of foreign crab meat within North Carolina and thus these products would not be available for sale. The proposed new rule for this option specifies that it applies to those crab processing facilities permitted by DMF in accordance with MFC Rule 15A NCAC 18A .0135 (Permits). The proposed new rule also clarifies that the prohibition of the repacking of foreign crab meat does not apply to crab meat that has been transformed into another product such as crab cakes or other value-added products.

It is important to note that very little precedent or academic research on this proposed rule change exists to help understand how North Carolina's seafood markets might be affected moving forward if Option 2 was selected. While Option 2 would likely provide the intended effects of increased consumer confidence in North Carolina crab products, there is no clear evidence that domestic blue crab prices would be bolstered by the removal of repackaged foreign crab meat in the state. Overall, there is an assertion that the removal of foreign crab meat products that have been repacked in North Carolina would result in higher prices for domestic blue crab product. However, this assertion may not fully account for the presence of repackaged foreign crab meat that was processed in another U.S. state, which the MFC does not have rulemaking authority to regulate. With this, as these out-of-state products are a stronger substitute for repackaged foreign crab meat in North Carolina, there would likely be no market impacts to domestic blue crab demand in the state, and therefore no price effects would be observed.

In addition to the adoption of a new rule, there are two existing MFC rules that would need to be amended due to references to foreign crab meat if Option 2 was selected. MFC Rule 15A NCAC 18A .0136 (Applicability of Rules) currently requires that "Foreign crustacea meat processed in North Carolina shall comply with all applicable Federal requirements." This provision should be deleted if the repacking of foreign crab meat within North Carolina is prohibited under Option 2, as there does not appear to be any processing of foreign crab meat that could occur other than repacking.

MFC Rule 15A NCAC 18A .0173 (Repacking) currently requires that "Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking." This provision should also be deleted if the repacking of foreign crab meat is prohibited under Option 2, as N.C. crab processors would no longer be allowed to repack foreign crab meat so the requirement to submit reports would be made moot.

MFC Rule 15A NCAC 18A .0173 also currently requires that "Each container of foreign crustacea meat which has been repacked shall be labeled in accordance with Federal labeling requirements." With the selection of Option 2, this rule should be further amended to clarify that "foreign crustacea meat which has been repacked outside of North Carolina shall be labeled in accordance with Federal labeling requirements." This would further clarify that foreign crab meat cannot be repacked in North Carolina if Option 2 is implemented. The amended passage would continue to require that foreign crab meat that has been repacked outside of North Carolina meets Federal labeling requirements while being marketed in North Carolina.

VI. PROPOSED RULE(S)

Option 1: No substantive changes, just conforming updates for grammar, punctuation, and capitalization.

15A NCAC 18A .0136 APPLICABILITY OF RULES

The Rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0135 of this Section and all other businesses and persons that buy, sell, ~~transport-transport,~~ or ship cooked crustacea or crustacea meat ~~which-that~~ has not been transformed into another product. Foreign crustacea meat processed in North Carolina shall comply with all applicable Federal requirements.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0173 REPACKING

(a) Crustacea meat for repacking ~~which-that~~ is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking ~~which-that~~ is processed outside of North Carolina shall comply with Rule .0182 of this Section. Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking.

(b) The repacker shall provide the Division of Marine Fisheries a current written list of all sources of crustacea meat used for repacking.

(c) Repacking of crustacea meat:

- (1) Crustacea meat shall not exceed 45° F (7.1° C) during the repacking process.
- (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
- (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on 30 minute intervals during repacking.
- (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
- (5) Blending or combining of any of the following shall be prohibited:
 - (A) ~~Fresh~~ fresh crustacea meat.
 - (B) ~~Frozen~~ frozen crustacea meat.
 - (C) ~~Pasteurized~~ pasteurized crustacea meat.
 - (D) ~~Crustacea~~ crustacea meat packed in another facility.
- (6) Crustacea meat shall not be repacked more than one time.
- (7) All empty containers shall be rendered unusable.

(d) Labeling of repacked crustacea meat:

- (1) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's or the distributor's name and address.
- (2) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's certification number followed by the letters "RP."
- (3) Each container shall be permanently and legibly identified with a code indicating the repack date.
- (4) Each container shall be sealed so that tampering can be detected.

- (5) Each container of foreign crustacea meat which has been repacked shall be labeled in accordance with Federal labeling requirements.
- (e) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

*History Note: Authority G.S. ~~130A-230~~;113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. August 1, 2002; April 1, 1997;
Readopted Eff. April 1, 2022.*

Option 2: Prohibits the repacking of foreign crab into another container within North Carolina.

15A NCAC 03L .0210 REPACKING OF FOREIGN CRAB MEAT PROHIBITED

It shall be unlawful to repack foreign crab meat in North Carolina into another container. This rule shall apply to all facilities and persons permitted in accordance with Rule 15A NCAC 18A .0135. This rule does not apply to crab meat that has been transformed into another product, such as crab cakes or other value-added products.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. April 1, 2022.*

15A NCAC 18A .0136 APPLICABILITY OF RULES

The Rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0135 of this Section and all other businesses and persons that buy, sell, ~~transport-transport~~ or ship cooked crustacea or crustacea meat ~~which-that~~ has not been transformed into another product. ~~Foreign crustacea meat processed in North Carolina shall comply with all applicable Federal requirements.~~

*History Note: Authority G.S. ~~130A-230~~;113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0173 REPACKING

(a) Crustacea meat for repacking ~~which-that~~ is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking ~~which-that~~ is processed outside of North Carolina shall comply with Rule .0182 of this Section. ~~Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking.~~

(b) The repacker shall provide the Division of Marine Fisheries a current written list of all sources of crustacea meat used for repacking.

(c) Repacking of crustacea meat:

- (1) Crustacea meat shall not exceed 45° F (7.1° C) during the repacking process.
- (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
- (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on 30 minute intervals during repacking.
- (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
- (5) Blending or combining of any of the following shall be prohibited:
 - (A) ~~Fresh-fresh~~ crustacea meat.
 - (B) ~~Frozen-frozen~~ crustacea meat.
 - (C) ~~Pasteurized-pasteurized~~ crustacea meat.
 - (D) ~~Crustacea-crustacea~~ meat packed in another facility.
- (6) Crustacea meat shall not be repacked more than one time.
- (7) All empty containers shall be rendered unusable.

(d) Labeling of repacked crustacea meat:

- (1) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's or the distributor's name and address.
 - (2) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's certification number followed by the letters "RP."
 - (3) Each container shall be permanently and legibly identified with a code indicating the repack date.
 - (4) Each container shall be sealed so that tampering can be detected.
 - (5) Each container of foreign crustacea meat which has been repacked outside of North Carolina shall be labeled in accordance with Federal labeling requirements.
- (e) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;
 Eff. October 1, 1992;
 Amended Eff. August 1, 2002; April 1, 1997;
Readopted Eff. April 1, 2022.

VII. PROPOSED MANAGEMENT OPTIONS

1. Status quo: continue to allow the repacking of foreign crab meat by N.C. crab processors.
 - + Avoids any economic impact on some N.C. crab processors and a number of grocery stores and retail outlets that market that type of product.
 - + / - Does not resolve any economic advantage of N.C. repacked foreign crab meat over domestic crab meat.
 - Does not comply with MFC motion.
 - Does not resolve the potential for confusion by N.C. consumers regarding whether retail crab meat is domestic or foreign.

2. Adopt MFC Rule 15A NCAC 03L .0210 that would prohibit the repacking of foreign crab meat. Also, amend references to foreign crab meat in MFC Rules 15A NCAC 18A .0136 and .0173 accordingly.
 - + Achieves the goal of the MFC motion.
 - + Reduces the potential for confusion by N.C. consumers regarding whether retail crab meat is domestic or foreign.
 - + / - Alleviates any economic advantage of N.C. repacked foreign crab meat over domestic crab meat.
 - Has a negative economic impact for those N.C. crab processors that participate in the repacking of foreign crab meat and any grocery stores or retail outlets that market that type of product.

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