

## **Fiscal Impact Analysis of Proposed Rule Adoption and Amendments to Prohibit the Repackaging of Foreign Crab Meat in North Carolina**

**Rule Amendments:** 15A NCAC 03L .0210 (adoption)  
15A NCAC 18A .0136, .0173 (amendments and readoptions)

**Name of Commission:** N.C. Marine Fisheries Commission

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**Impact Summary:** State government: Yes  
Local government: Yes  
Federal government: No  
Substantial impact: No

**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.

§ 150B-21.3A. Periodic review and expiration of existing rules.

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 Repackaging

**Necessity:** During the November 2020 meeting of the North Carolina Marine Fisheries Commission (MFC), commissioners voted unanimously to begin the rulemaking process to prohibit the repackaging and resale of foreign crab meat within the state of North Carolina. Based on this motion, the North Carolina Division of Marine Fisheries (NCDMF) developed the proposed rule for adoption, as well as two conforming amendments, which this fiscal note addresses. Additionally, N.C.G.S. § 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. The proposed amendments readopt the two rules in 15A NCAC 18A pursuant to this requirement.

## I. Summary

Following recent developments in the state of North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the MFC requested NCDMF to explore rulemaking options to prohibit the repackaging of foreign crab meat in the state to prevent future fraud and improve consumer confidence moving forward. After investigating its statutory authority over the issue, NCDMF prepared a new rule for adoption which prohibits the repackaging of foreign crab meat in North Carolina into another container. This does not affect value-added crab products, such as crab cakes. NCDMF has also amended two existing rules for readoption with conforming changes to address the new repackaging rules. Overall, NCDMF has identified just three processors in the state that currently repackage foreign crab meat legally for resale, while only four processors have been identified as participating in this practice over the past five years (S. Nelson, Personal Communication, February 15, 2021). We expect this proposed rule to incur insignificant costs due to a marginal reduction in output from the seafood processing sector, which could generate impacts felt at the state and local level. Alternatively, these changes will also generate small, nonquantifiable benefits to the state from increased consumer confidence, a more stable market for packaged domestic blue crab, and a reduced likelihood of future seafood fraud.

Lastly, the maximum allowable temperature during crustacea repacking is proposed to be reduced from 45°F to 40°F. This conforms with current U.S. Food and Drug Administration (FDA) guidance for the maximum storage temperature of cooked crab meat. This adjustment is not expected to have any significant economic impacts, as crab is repacked in small volumes in the state within cold-storage conditions, thus there is no additional cost to maintain this five-degree difference.

No new costs to enforcement are estimated from these proposed rule changes.

## II. Introduction and Purpose of Rule Changes

### 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 NCDMF 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 Meat Repacking

Processors that are certified and permitted by NCDMF 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 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 currently also repack product from foreign sources. Common sources include Asian and South American 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). This includes a requirement to state the country of origin, date of repacking, and the name of the repacking processor.

During the “Issues from Commissioners” portion of the Feb. 20, 2020 MFC meeting, Commissioner Doug Cross requested that the Director of the NCDMF consider developing an information paper to amend MFC Rule 15A NCAC 18A .0173 regarding the repacking of foreign crab meat. Commissioner Cross requested the NCDMF 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. This request was prompted by a recent case in which a North Carolina seafood processor was found guilty in January 2020 of illegally repacking foreign crab meat for resale between 2012 and 2015. While it was legal for the processor to repack this foreign product, the individual attempted to label it as domestic blue crab and was subsequently tried and charged with retail fraud. Based on this ruling, the MFC argued that continuing to allow the repackaging of foreign crab meat would only perpetuate the risk of seafood fraud, leading to reduced consumer confidence and a lower overall value for North Carolina’s blue crab fishery.

The information paper titled “Information on Repacking of Foreign Crab Meat in North Carolina” was presented during the next 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 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.”

### Crab Meat Repacking Temperatures

Finally, another proposed change to 15A NCAC 18A .0173 would reduce the maximum temperature for crab meat during the repacking process from 45°F to 40°F. The temperature of 40°F is the recommended maximum storage temperature for cooked crab meat according to the FDA Fish and Fishery Products Hazards and Controls Guidance. This change is proposed to conform to that standard in order to prevent the growth of pathogens and is also needed because there is currently no rule on the maximum time that crab meat can remain at 45°F during the repacking process. It should be noted that the State of Maryland, which has a crab meat industry similar to NC, reduced their maximum temperature for crab meat during the repacking process from 45°F to 40°F in 2017.

The reduction from 45°F to 40°F should have little effect on NC crab processors that repack, as only small volumes of crab meat are typically removed from temperature control at a time in order to repack. This minimizes the amount of time that the temperature could rise. An informal inquiry to one crab processor that repacks meat indicated it could potentially require processors to repack smaller volumes of meat at a time to stay below the new temperature threshold. However, this would not impact overall efficiency, productivity, or output over time.

### **III. Fiscal Impact Analysis**

Overall, this proposed rule creates a simple change to seafood processing in the state that generates market-level impacts to North Carolina’s seafood supply chain. Effectively, this rule would eliminate a small, secondary market in the state’s seafood processing industry, eliminating overall output. Conversely, the intent of this rule is to eliminate future cases of fraud, which could improve consumer confidence and purchasing of North Carolina crab. In the past five years, only four North Carolina seafood processors were identified to be repackaging foreign crab meat for resale. Only three of these processors have been identified as currently engaging in this practice; these three processors are located in three coastal counties all within the northeastern part of the state (S. Nelson, Personal Communication, February 15, 2021).

Lastly, there is also a proposed change to 15A NCAC 18A .0173, in which the maximum allowable temperature for repacking crab meat is lowered from 45°F to 40°F. If this proposed change would require processors in the state to change machinery, repacking practices, or the time it takes to repack crab meat it could incur costs to the state in a variety of ways. However, in discussion with seafood processors in North Carolina, this proposed change would simply conform state repackaging temperature requirements with federal storage temperature requirements that are already being met. While this proposed change may impact the total volume of crab meat that can be set outside of the cooler for repackaging at one time, no substantive changes to processors’ operations are expected from this proposed rule change, and therefore no economic impacts should be expected as well.

### **Summary of Potential Benefits**

The principle economic benefit to the state from this proposed rule is a more stable, and potentially more robust, market for North Carolina blue crab due to increased consumer confidence and a lower likelihood of future fraud cases. By making it unlawful to repack foreign crab meat in any capacity, the pathway to engage in labelling fraud in the future becomes much more difficult, and therefore the likelihood of future cases will decline. With this, fewer issues with seafood fraud moving forward should increase consumer confidence in North Carolina blue crab products, leading to a more stable market and supply chain.

Additionally, dealers and processors in the state are still allowed to sell foreign crab meat, it just cannot be repackaged in the state prior to sale. This still allows the foreign crab meat supply chain to stay open, meaning there can still be sales and tax revenue to the state from foreign crab meat. In other words, this rule change does not eliminate the foreign crab meat market, it simply restricts repackaging in order to maintain consumer confidence and reduce potential legal issues moving forward.

In all, these shifts translate to economic benefits to the state due to lower legal risk moving forward, a more trustworthy blue crab market in the state, and possibly increases in total sales volume in the future. However, these benefits cannot be quantified, as economic data on the foreign crab meat market in North Carolina is extremely limited. Despite this, NCDMF reports that only four licensed processors in the state have engaged in any foreign crab meat repackaging over the past five years, and therefore the total sum of benefits from this rule are not significant.

### **Summary of Potential Costs**

While the expected benefits of this proposed rule are relatively broad and indirect in nature, the potential costs simply reflect the elimination of a small, secondary processing market in the state and the related economic impacts. In essence, the ability to repack foreign crab meat in the state provides processors an additional market (or industry) to operate in. By buying, repackaging, and reselling foreign crab meat, processors marginally increase their sales, employment, and overall tax contribution to the state.

However, only four processors have been identified as generating revenue from this practice in the previous five years, and just three are currently engaging in any level of foreign crab meat repackaging. These three active processors are located in three different coastal counties in the northeast portion of the state. This low, geographically confined level of participation overall means the expected costs of this proposed rule are not significant. Despite this, there is the likelihood for these costs to be felt at both the state and local level, as these small reductions in output and tax revenue will be more strongly felt in the three coastal counties currently participating in the practice.

Lastly, as the inspection of prepared shellfish products at processors is part of the Division's ongoing monitoring activities by both the Marine Patrol and Shellfish Sanitation sections, there are no additional costs to enforcement expected.

## Appendix I Proposed Rule Changes:

### **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)~~ 40° F (4.4° 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~~ 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.*