

Memorandum To: Administrator Jane Lubchenco, National Oceanic and Atmospheric  
Administration  
Commissioner Margaret Hamburg, U.S. Food and Drug Administration

From: Eric Schwaab, Assistant Administrator, National Marine Fisheries Service, NOAA  
Michael Taylor, Deputy Commissioner, U.S. FDA

Subject: Re-opening of a Portion of Federal Waters Currently Closed Due to the  
Deepwater Horizon MC 252 Oil Spill

Date: July 20, 2010

### **Decision**

In accordance with the *Protocol for Interpretation and Use of Sensory Testing and Analytical Chemistry Results for Re-Opening Oil-Impacted Areas Closed to Seafood Harvesting* (the Re-opening Protocol) (see attachment 1), and after an extensive consultation between the FDA and NOAA, we have concluded that approximately 26,388 square miles, or 11 percent of Federal waters in the Gulf and 32 percent of the current closed area, of the current federal fishery closed area will be re-opened, the hatched area on the map of the closed area (see attachment 2). The area to be re-opened (Area A) lies southeast of the area bounded by the coordinates: 28°19'0"N / 85°30'0"W, 27°0'0"N / 85°30'0"W, and 27°0'0"N / 86°23'0"W.

### **Background**

From May 18 through June 02, 2010, Area A was progressively closed to fishing as a precautionary measure. Surveillance of the area observed reflections on the surface of the water in Area A from around May 18 through June 15, 2010. The reflections may have been from light sheen, algal blooms, sargassum, or other naturally occurring water features. In addition, offshore trajectory forecasts at that time projected that oil might be pulled into the loop current and quickly spread through this area. We now have evidence that the oil in the vicinity of Area A actually became entrained in a circular current in the middle of the Gulf and remained there. Oil never spread through Area A because in early June the loop current shifted far to the south and has not shifted back to the north through the center of the Gulf. The last confirmed sighting of oil in Area A occurred on June 15th. NOAA data demonstrating the absence of oil in Area A since June 15th has been further corroborated by the United States Coast Guard (USCG) based on observations from over flights they have performed since then. In accordance with the Re-opening Protocol, NOAA conducted sampling in the portions of Area A most likely to be fished. All of the samples met the safety requirements contained in the Re-opening Protocol.

### **Discussion**

We have determined that the four specific re-opening criteria in the re-opening protocol are met in this case.

1. Low threat of exposure – We have reviewed the most recent data and confirmed by visual observation and aerial reconnaissance that Area A is currently free of sheen on the surface. We have confirmed with NOAA and the USCG that there is no surface sheen in Area A as a result of the Deepwater Horizon incident, and that there has been none in the area for more than 30 days.
2. Evaluation of oil movement – An analysis by NOAA’s trajectory modeling experts shows that Area A is at a low risk or threat to be exposed to future re-oiling based on present conditions. We have confirmed this with NOAA’s trajectory modelers, and reviewed their analysis of the overall oil and ocean conditions. We have concluded that there is a low risk or threat that Area A will be exposed to future re-oiling based on present conditions.
3. Assessment of seafood contamination by sensory testing – In accordance with the methodology and procedures set forth in the re-opening protocol, NOAA analysis of samples taken from the proposed reopening area found no detectable oil or dispersant odors or flavors during sensory analysis.
4. Assessment of seafood contamination by chemical analyses – In accordance with the methodology and procedures set forth in the re-opening protocol, NOAA analysis of samples taken from the proposed reopening area for chemical analysis were found to be well below the levels of concern contained in the re-opening protocol.

In summary, a small portion of the proposed reopening area may have been lightly oiled, however, the vast majority of the area was never oiled, and the entire area has been oil free for more than 30 days. NOAA collected and tested finfish samples from the area from June 23 through July 5, 2010, with the last group of samples completing testing on July 14, 2010. The sampling was concentrated in areas where fishing is most likely to occur. These samples have all undergone the required sensory and chemical analysis and all the samples have passed in accordance with the safety criteria in the Re-opening Protocol. Attachment 3 provides a map showing the location of the samples collected. Attachment 4 provides the testing results for both the sensory and chemical analysis.

## **Conclusion**

- Area A was closed primarily as a precautionary measure due to the occurrence of lightly patches of sheen within the area; the potential of oil to spread rapidly throughout the area, which did not occur; and concerns that the loop current might play a role in the transport of oil through Area A during the late May to mid-June timeframe. The loop current, however, did not in fact transport oil through Area A.
- All samples tested from Area A were well within the established public safety levels of concern in the Re-opening Protocol, with no detectable odors or flavors of contamination, and all testing was done in accordance with the Re-opening Protocol.

- The fisheries in the area with commercial or recreational significance are primarily pelagic highly migratory species such as tuna, marlin, and mahi mahi (dolphinfish), as well as reef fish such as grouper and porgy. Scientific studies from previous spills indicate that these finfish quickly metabolize and eliminate the harmful chemicals (polycyclic aromatic hydrocarbons) that could taint or otherwise contaminate seafood, as noted in attachment 5, the memo from Dr. John Stein Deputy Director of the Northwest Fisheries Science Center.

Therefore, NOAA and FDA agree that based on the oil-free surface conditions of the area now, and the successful results of the sensory and chemical testing, Area A, the hatched area shown in attachment 2, should be re-opened to commercial and recreational fishing.