

Memorandum

To: Michael Taylor, Deputy Commissioner, U.S. Food and Drug Administration

From: Eric Schwaab, Assistant Administrator, National Marine Fisheries Service, NOAA

Subject: Re-opening of Federal Waters (Grids C14-16, 18, 20, 23-25) Surround the Well Head of the Federal Closed Area Due to the Deepwater Horizon MC 252 Oil Spill

Date: November 9, 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) (Attachment 1), and after consultation between the FDA and NOAA, we have concluded that approximately 8,403 square miles of the current Federal fishery closed area will be re-opened. The area to be re-opened surrounds a 30 nautical mile by 30 nautical mile grid (1,041 square miles) which contains the Deepwater Horizon wellhead. The outer boundary of the area extends from the state/federal water line beginning at 89°00'W and running north to 29°30'N, then 29°30'N / 87°30'W, 28°00'N / 87°30'W, and 28°00'N / 89°00'W. The inner boundary of the area immediately surrounding the wellhead extends from 29°00'N / 88°30'W to 29°00'N / 88°00'W to 28°30'N / 88°00'W, then 28°30'N / 88°30'W. The area comprises about 3.5 percent of Federal waters in the Gulf of Mexico and 89 percent of the Federal closed area, as modified on October 22, 2010.

Background

NOAA sampled this area (Grids C14-16, 18, 20, 23-25) beginning August 31 following the overall sampling strategy based on oil density data within the fisheries closed area. NOAA trajectory data last documented potentially recoverable surface oil in the area on July 25, 2010 (Nearshore Trajectory for 1200 CDT July 26 prepared on July 25 2000 CDT). No oil or oil sheen has been documented in the area since that time.

In accordance with the Re-opening Protocol, NOAA collected samples from the area between August 31 and November 1 after the area was free of oil. NOAA analyzed 286 finfish samples and 55 shrimp samples for sensory analysis; NOAA analyzed 207 finfish specimens in 33 composite tests and 50 shrimp specimens for chemical analysis in nine composite tests. The species analyzed are representative of the pelagic species targeted by commercial and recreational fishers in the area, including tuna, swordfish and escolar.

As announced on October 29, 2010, NOAA and FDA have developed and are now using a new chemical test to detect Dioctyl sodium sulfosuccinate (DOSS) ,in addition to sensory and chemical PAH testing, to detect in fish, oysters, crab and shrimp the presence of one of the main chemicals found in the dispersants used in the Deepwater Horizon-BP oil spill. The level of

concern for dispersants is 100 parts per million for finfish and 500 parts per million for shrimp. The test is able to reliably detect DOSS at levels of 2000 times below the lowest level of concern.

Discussion

We determined that the four specific re-opening criteria in the Re-opening Protocol and an additional test for dispersant are met in this case with the samples collected beginning August 31.

1. Low threat of exposure – We reviewed the most recent data and confirmed by visual observation and aerial reconnaissance the area is currently free of oil and sheen on the surface. No oil or sheen has been documented in the area since July 25, 2010.
2. Low risk of oil movement into area – We concluded that there is a low risk or threat that the area will be exposed to future re-oiling based on present conditions. The current (August 23) NOAA trajectory states no offshore recoverable oil is expected in the forecast.
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 286 samples from finfish and 55 samples from shrimp taken from the proposed re-opening area found no detectable oil 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, the analysis of 207 finfish specimens in 33 composite tests and 50 shrimp specimens in nine composite tests from the proposed re-opening area were found to be well below the levels of concern contained in the Re-opening Protocol.
5. Assessment of seafood contamination by DOSS detection—In accordance with the methodology and procedures developed and agreed to by the FDA and NOAA to test for DOSS, the analysis of 207 finfish specimens in 33 composite tests and 50 shrimp specimens in nine composite tests did not detect DOSS or found levels of DOSS well below the level of concern. The results confirm the results of our sensory testing that none of the samples pose a threat to human health.

In summary, no oil or sheen has been documented in the 8,403 square mile area to be re-opened since July 25, 2010. The testing of the Federal re-opening samples collected after August 31, 2010 was completed by NOAA on November 01, 2010. NOAA analyzed a sufficient number of finfish samples from locations widely distributed over the area to be re-opened, including species which are representative of the species targeted by commercial and recreational fishermen in that area, such as tuna, swordfish, and escolar. 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. Additionally, in accordance with the methodology and procedures developed and agreed to by the FDA and NOAA to test for DOSS the analyzed composite samples all passed. Attachment 3 provides a map showing the location of the samples collected. Attachments 4a and 4b provide the test results for both the sensory, chemical, and DOSS analysis.

Conclusion

Portions of the area to be re-opened were incorporated into the Federal fishery closure between May 2 and May 12, 2010 in response to information on the actual and projected path of surface

oil from the DWH/BP spill. The area is currently free of oil and sheen and trajectory models show the area is not likely to become oiled in the future.

All samples tested from the area 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.

Additionally, the composite samples used for the chemical analysis were subjected to the dispersant test developed by FDA and NOAA as an added precaution. The DOSS analysis either did not detect DOSS in these samples, or found DOSS at levels well below the level of concern to protect public health.

Therefore, NOAA and FDA agree that, based on the current oil-free surface conditions of the area, and the successful results of the sensory and chemical testing, the area should be re-opened to commercial and recreational fishing for all species of finfish and shrimp.