

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 Nearshore Federal Waters Currently Closed off
Mississippi/Alabama/Florida Due to the Deepwater Horizon MC 252 Oil Spill

Date: September 1, 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 consultation between the FDA and NOAA, we have concluded that approximately 5,130 square miles of the current federal fishery closed area will be re-opened. The area to be re-opened is located in the north-central portion of the Federal closed area, stretching from the far eastern coast of Louisiana, through Mississippi, Alabama and the western Florida panhandle. Specifically, the area is bounded by the state/federal water line beginning at 29°30'N and ending at 87°00'W, then 29°30'N / 87°00'W. In addition, the area off the Florida panhandle currently open only to finfish fishing will be opened to all fishing. The total area is about 4 percent of Federal waters in the Gulf of Mexico and 21 percent of the current closed area, as last modified on August 27, 2010.

The results of testing proposed in this re-opening proposal are being used to open waters to all fishing, including both finfish and shrimp. In addition, the August 10, 2010, fishery closure modification re-opened federal waters off the Florida panhandle only to finfish fishing pending the results of sensory and chemical analyses on shrimp samples. The results of the testing proposed in this re-opening proposal, supplemented with the test results of shrimp samples collected in Florida state waters, were considered and a decision made to re-open to all fishing in those waters off the Florida panhandle that are currently open only to finfish fishing.

Background

NOAA sampled this area between July 27 and August 11, 2010. Oil was not observed in the area during the period of time when samples were taken or since that time, and is not forecast to re-impact that area at a future date. The last day of confirmed oil in the area was July 12, 2010, more than 72 hours before the sampling commenced. Remote sensing data reported some scattered anomalies in the area between July 19 and July 29, 2010; however, these anomalies were primarily spotted in the southeast portion of the area and overflight observations indicate they could have been light sheens with very little recoverable oil or another type of anomaly

appearing as would a sheen. NOAA scientists sampling the area during that time period observed no oil in any form.

In accordance with the Re-opening Protocol, NOAA conducted sampling in and around the area. NOAA analyzed 112 finfish and 11 shrimp samples for sensory analysis and 110 finfish and 73 shrimp samples for chemical analysis, from the area to be re-opened and from adjacent areas. The species collected are representative of the species targeted by commercial and recreational fishers in the area, including shrimp, bottom fish and reef fish species such as red snapper.

The testing of the Federal re-opening samples was completed by NOAA on August 11, 2010. The samples from within grid C-13, C-17, C-21, C-22, C-26 all passed sensory and chemical analyses and 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 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 29.
2. Evaluation of oil movement – 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 123 samples from finfish and shrimp taken from the proposed re-opening area found no detectable oil or dispersant odors or flavors during sensory analysis. There was one sample that was deemed inconclusive because it did not meet the criteria for passing or failing. Appendix A describes the process undertaken by NOAA with respect to the inconclusive sample. Because the sample did not fail the sensory analysis, NOAA sent the sample for chemical testing.
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 183 finfish and shrimp specimens that were composited into 27 samples from the proposed area for re-opening, were found to be well below the levels of concern contained in the re-opening protocol. The inconclusive sample passed the chemical test.

In summary, no oil or sheen has been documented in the 5,130 square mile area to be re-opened in the north-central portion of the Federal closed area, stretching from the far eastern coast of Louisiana, through Mississippi, Alabama and the western Florida panhandle since July 29. NOAA analyzed 123 finfish and shrimp samples for sensory analysis and 183 finfish and shrimp samples for chemical analysis, from locations widely distributed over the area to be re-opened, which are representative of the species targeted by commercial and recreational fishermen in that area, including finfish such as snapper, as well as shrimp. 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.

The results of testing proposed in this re-opening proposal are being used to open waters to all fishing, including both finfish and shrimp. In addition, the August 10, 2010, fishery closure modification re-opened federal waters off the Florida panhandle only to finfish fishing pending the results of sensory and chemical analyses on shrimp samples. The results of the testing proposed in this re-opening proposal, supplemented with the test results of shrimp samples collected in Florida state waters, were considered and a decision made to re-open to all fishing in those waters off the Florida panhandle that are currently open only to finfish fishing. Finding few shrimp in Zone C-26 was not surprising. This area is not a traditional offshore shrimping ground. Trawl surveys since 1973 indicate a total of 783 individual shrimp in 32 trawls. Catch rates were only between 0.4 and 40lb per hour in the positive trawl samples.

Conclusion

Much of the area was included in the original federal fishery closure imposed on May 2 to encompass the projected path of surface oil from the Deepwater Horizon/BP incident illustrated on trajectory maps at that time. Subsequent federal fishery closure boundary modifications, which occurred between May 7 and June 2, expanded the closure to the north and east in response to information on the actual coverage and projected path of oil. However, the area is currently free of oil and sheen and trajectory models show the area is not likely to become oiled in the future.

The 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.

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