

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 B12, C28-29, C32, C35-37) Currently Closed South of the Florida panhandle, between the Florida/Alabama state line and Cape San Blas of the Federal Closed Area Due to the Deepwater Horizon MC 252 Oil Spill

Date: October 19, 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 7,037 square miles of the current Federal fishery closed area will be re-opened. The area to be re-opened is located about 80 nautical miles south of the Florida panhandle, between the Florida/Alabama state line and Cape San Blas. Specifically, the area is bounded by the following coordinates: 29°00'N / 87°30'W, 29°00'N / 86°00'W, 28°24'N / 86°00'W, 28°19'N / 85°30'W, 28°00'N / 85°30'W, and 28°00'N / 87°30'W. The area comprises about 3 percent of Federal waters in the Gulf of Mexico and 43 percent of the Federal closed area, as modified on October 15, 2010.

Background

NOAA sampled this area (Grids B12, C28-29, C32, and C35-37) beginning September 12 following the overall sampling strategy based on oil density data within the fisheries closed area. NOAA trajectory data last documented oil in the area on July 19, 2010, which was described as scattered sheens and possible tarballs (Nearshore Trajectory for 1200 CDT July 20 prepared on July 19 2100 CDT). No oil or oil sheen has been documented in the area since that time. Scientists sampling the area observed no oil in any form during the sampling period.

In accordance with the Re-opening Protocol, NOAA collected samples from the area between September 12 and October 3 after the area was free of oil. NOAA analyzed 155 finfish samples for sensory analysis; NOAA analyzed 156 finfish specimens for chemical analysis in 22 composite tests. The species analyzed are representative of the pelagic species targeted by commercial and recreational fishers in the area, including tuna, swordfish and wahoo.

Discussion

We determined that the four specific re-opening criteria in the Re-opening Protocol are met in this case with the samples collected beginning September 12.

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 19, 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 155 samples from finfish 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 156 finfish specimens in 22 composite tests from the proposed re-opening area were found to be well below the levels of concern contained in the Re-opening Protocol.

In summary, no oil or sheen has been documented in the 7,037 square mile area to be re-opened off the Florida panhandle since July 19, 2010. The testing of the Federal re-opening samples collected after September 12, 2010 was completed by NOAA on October 8, 2010. NOAA analyzed a sufficient number of finfish samples to exceed the sampling plan 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 wahoo. 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 test results for both the sensory and chemical analysis.

Conclusion

Portions of the area to be re-opened were incorporated into the Federal fishery closure between May 7 and June 28, 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.

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.