

DRAFT

## 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 B1-6) Currently Closed Along the Southern Boundary of the Federal Closed Area Due to the Deepwater Horizon MC 252 Oil Spill

**Date:** September 17, 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 7,970 square miles of the current Federal fishery closed area will be re-opened. The area to be re-opened is located along the southern boundary of the Federal closed area, offshore of central Louisiana, Mississippi, Alabama and the western edge of the Florida panhandle. Specifically, the area is bounded by the following coordinates: 28°00'N / 90°47'W, 28°00'N / 87°00'W, 27°30'N / 87°00'W, 27°30'N / 87°30'W, 27°13'N / 87°30'W, 27°39'N / 89°50'W, and 27°35'N / 90°33'W (Attachment 2). The area comprises about 3 percent of Federal waters in the Gulf of Mexico and 20 percent of the current closed area, as modified on September 3, 2010.

### Background

NOAA sampled the area between July 31 and August 10, 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. No oil or sheen has been documented in the area since July 21, 2010.

In accordance with the Re-opening Protocol, NOAA conducted sampling in the area (Grids B1-6). NOAA analyzed 93 finfish samples for sensory analysis and 92 finfish specimens for chemical analysis in 18 composite tests, from the area to be re-opened. The species analyzed are representative of the pelagic species targeted by commercial and recreational fishers in the area, including tuna, swordfish, and mahi mahi.

The testing of the Federal re-opening samples was completed by NOAA on August 31. The samples from within Grids B1-6 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 21.
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 93 samples from finfish taken from the proposed re-opening 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, the analysis of 92 finfish specimens in 18 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 8,084 square mile area to be re-opened along the southern boundary of the Federal closed area since July 21. NOAA analyzed 93 finfish samples for sensory analysis and 92 finfish specimens for chemical analysis in 18 composite tests, from locations widely distributed over the area to be re-opened, which are representative of the pelagic species targeted by commercial and recreational fishermen in that area, including tuna, swordfish, and mahi mahi. These samples have all undergone the required sensory and chemical analysis. 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 analyses for PAH.

### **Conclusion**

Portions of the area to be re-opened were incorporated into the Federal fishery closure between May 12 and June 21 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 concentrations of PAHs well below the levels of concern. Sensory and chemical analyses were 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.