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 Offshore Federal Waters (grids C27, C31, C34) Currently Closed off the Florida Panhandle Due to the Deepwater Horizon MC 252 Oil Spill**

Date: **September 2, 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 3,114 square miles of the current federal fishery closed area will be re-opened. The area to be re-opened is located approximately 40-70 miles offshore the western Florida panhandle. Specifically, the area is between 29°00'N and 29°30'N and between 86°00'W and 87°30'W. The total area is about 1 percent of Federal waters in the Gulf of Mexico and 7 percent of the current closed area, as last modified on August 27, 2010.

Background

NOAA sampled this area on July 19 and between August 20 and August 24, 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 3, 2010. Remote sensing data reported some scattered anomalies in the area between July 16 and July 21, 2010; however, these anomalies were primarily 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 104 finfish samples for sensory analysis and 101 finfish specimens for chemical analysis in 9 composite tests, 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 pelagic and highly migratory species such mahi mahi, tuna, and swordfish.

The testing of the Federal re-opening samples was completed by NOAA on August 31, 2010. The samples from within grid C-27, C-31, C-34 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 have 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 have 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 21) 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 104 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 101 finfish specimens in 9 composite tests from the proposed area for re-opening, 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 3,114 square mile area to be re-opened in federal waters offshore of the western Florida panhandle since July 21. NOAA analyzed 104 finfish samples for sensory analysis and 101 finfish specimens for chemical analysis in 9 composite tests, 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 tuna, swordfish, and mahi mahi. 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 of samples from the area proposed in this re-opening proposal are being used to open waters to all fishing, including all species of finfish.

Conclusion

Some 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 DWH/BP spill illustrated on trajectory maps at that time. Subsequent federal fishery closure boundary modifications through June 21 expanded the closure to the east in response to information on the actual coverage and projected path of oil. 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 and nearby waters 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.