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 (Grid C19) Surround the Well Head of the Federal Closed Area Due to the Deepwater Horizon MC 252 Oil Spill**

Date: **April 08, 2011**

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, approximately 1,041 square miles of the current Federal fishery closed area will be re-opened. The area to be re-opened surrounds the Deepwater Horizon wellhead. Specifically, the boundary of the closed 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 0.4 percent of Federal waters in the Gulf of Mexico and 100 percent of the Federal closed area, as modified on February 02, 2011.

Background

NOAA sampled this area (Grid C19) beginning November 11, 2010 following the overall sampling strategy based on oil density data within the fisheries closed area. No recoverable oil was documented in the area since August 4 (Overflight, Sector Mobile 08-04-2010 0900-1200 hrs CDT) as part of the early response observations. After the well had been capped and decontamination efforts on the Discoverer Enterprise were conducted the Coast Guard had the Discoverer Enterprise transit across the grid to determine if any recoverable oil would be released. The first set of maneuvers was conducted on December 10, 2010 and a light sheen was seen trailing the Discoverer Enterprise. Another set of maneuvers was performed on February 21, 2011 and no sheen or recoverable oil was observed.

In accordance with the Re-opening Protocol, NOAA collected samples from the area between November 11 and November 14, 2010, March 12 and March 16, 2011, and March 28 and April 01, 2011. NOAA analyzed 85 finfish samples for sensory analysis; NOAA analyzed 112 finfish specimens in 25 composite tests for chemical analysis. The species analyzed are representative of the pelagic species targeted by commercial and recreational fishers in the area, including tuna, swordfish and escolar.

Building upon the extensive testing and protocols already deployed by federal, state and local officials on the fishing waters of the Gulf, NOAA and FDA developed and are now using a chemical test to detect dispersants used in the Deepwater Horizon-BP oil spill in fish, oysters,

crab and shrimp. The test is able to reliably detect Dioctyl sodium sulfosuccinate (DOSS) at levels of 2000 times below the lowest level of concern, 100 parts per million, and more sensitive equipment can detect DOSS at levels 20,000 times below the 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 November 11, 2010.

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 recoverable oil has been documented in the area since August 04, 2010. After the well was capped and decontamination efforts on the Discoverer Enterprise conducted the Coast Guard had the ship transit across the grid to determine if any recoverable oil would be released. The first set of maneuvers was conducted on December 10, 2010 and a light sheen was seen trailing the Discoverer Enterprise. On another set of maneuvers performed on February 21, 2011, no sheen or recoverable oil was observed.
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 last NOAA trajectory produced August 23, 2010, 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 86 samples of 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 112 finfish specimens in 25 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 112 finfish specimens in 25 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, there was no recoverable oil documented in the 1,041 square mile area to be re-opened since August 04, 2010. The testing of the Federal re-opening samples collected after August 04, 2010 was completed by NOAA on March 23, 2011. 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 and 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. Attachment 4 provides 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 02 and May 07, 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 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.