

## 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 Currently Closed off the Florida Panhandle Due  
to the Deepwater Horizon MC 252 Oil Spill

**Date:** August 8, 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 5,144 square miles of the current federal fishery closed area will be re-opened. The area to be re-opened is located in the northeast corner of the federal closed area off the Florida panhandle, as illustrated in Attachment 2. Specifically, this area is bounded by the following coordinates: state/federal water line beginning @ 87°00'W and ending at 85°29'W, then 28°23'N / 85°55'W, 28°24'N / 86°00'W, 29°30'N / 86°00'W, and 29°30'N / 87°00'W. The area comprises 2 percent of federal waters in the Gulf of Mexico and 9 percent of the current closed area.

### Background

A very small portion (about 10 square miles) of the waters located on the western edge of the area to be re-opened was included in the original federal fishery closure established May 2. That original closure was designed to encompass the projected path of surface oil illustrated on trajectory maps at that time. Subsequent federal fishery closure boundary modifications, which occurred between May 7 and June 28, expanded the closure to the east and to the south in response to information on the actual coverage and projected path of oil. Together, these boundary modifications resulted in the formation of the current northeast corner of the federal closure, which is the subject of this action.

NOAA data indicate different portions of the subject area were impacted by oil at various times between May 3 and July 3. However, no DWH oil has been documented in the area since July 3. NOAA data demonstrating the absence of DWH oil in the area since that time has been corroborated by the United States Coast Guard (USCG) based on overflight observations.

In accordance with the Re-opening Protocol, NOAA conducted sampling in the area. We collected 153 finfish from the area from June 27<sup>th</sup> through July 20, and completed testing of

these specimens on August 6. 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. We have confirmed with NOAA and the USCG that there is no surface oil or sheen in the area as a result of the Deepwater Horizon incident, and that there has been none in the area for more than 30 days.
2. Evaluation of oil movement – An analysis by NOAA’s trajectory modeling experts shows the area is at a low risk or threat to be exposed to future re-oiling based on present conditions. We have confirmed this with NOAA’s trajectory modelers, and reviewed their analysis of the overall oil and ocean conditions. 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.
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 153 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, NOAA analysis of 153 samples from finfish taken from the proposed re-opening area for chemical analysis were found to be well below the levels of concern contained in the re-opening protocol.

In summary, the 5,144 square mile area to be re-opened in the northeast corner of the current closed area was impacted by oil between May 3 and July 3. However, the entire area has been oil free for more than 30 days. NOAA collected 153 finfish from the area from June 27 through July 20, and completed testing on the last group of samples on August 6. The samples were collected from locations widely distributed over the area to be re-opened and are representative of the species targeted by commercial and recreational fishermen in that area, including bottom-dwelling reef fish and pelagic species. 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.

### **Conclusion**

The subject area to be re-opened was progressively closed between May 2 and June 28 in response to information on the actual and projected path of oil. Different portions of the area were impacted by oil at various times between May 3 and July 3. However, no oil has been documented in the area for more than 30 days.

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.

The fisheries in the area with commercial or recreational significance are primarily reef fish, such as snapper and grouper, as well as pelagic highly migratory species such as tuna, marlin and mahi mahi (dolphinfish). Scientific studies from previous spills indicate these finfish quickly metabolize and eliminate the harmful chemicals (polycyclic aromatic hydrocarbons) that could taint or otherwise contaminate seafood, as noted in Attachment 5, the memo from Dr. John Stein Deputy Director of the Northwest Fisheries Science Center.

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 [approximately 5,144 square miles of the current federal fishery closed area] should be re-opened to commercial and recreational fishing.