

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 C5-9) Currently Closed off Eastern Louisiana, West of the Mississippi River delta of the Federal Closed Area Due to the Deepwater Horizon MC 252 Oil Spill

Date: September 30, 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 5,628 square miles of the current Federal fishery closed area will be re-opened. The area to be re-opened is located along eastern Louisiana, just west of the Mississippi River delta. Specifically, the area is bounded by the following coordinates: state/federal water line beginning at 91°00'W and ending at 89°27'W, then 28°30'N / 89°27'W, 28°30'N / 90°00'W, 28°00'N / 90°00'W, 28°00'N / 90°47'W, and 28°22'N / 91°00'W. The area comprises about 2 percent of Federal waters in the Gulf of Mexico and 18 percent of the current closed area, as modified on September 21, 2010.

Background

NOAA began sampling this area on July 27, 2010 through August 1, 2010 following the overall sampling strategy based on oil density data within the fisheries closed area. NOAA trajectory maps forecasted potentially recoverable surface oil in the area on July 25, 2010. Overflight observations after that date indicate that scattered anomalies on satellite imagery in the area were predominantly patches of light sheen with very little recoverable oil being observed. NOAA scientists observed some oil and oil sheen during the initial sampling of this area and suspended sampling to review the oil conditions in the area. No oil or sheen has been documented in the area since August 6, 2010. NOAA again commenced sampling of the area on August 15, 2010.

NOAA proceeded with testing the specimens brought in from the July 27th to August 1st sampling. NOAA analyzed 63 finfish samples and 11 shrimp samples for sensory analysis. NOAA analyzed 142 finfish specimens for chemical analysis in 15 composite tests and 63 shrimp specimens in 12 composite tests, from the area to be re-opened. The species analyzed are representative of the targeted species by commercial and recreational fishers in the area, including snapper, menhaden, and shrimp. The results of the July 27 partial sampling are presented in Attachment 4a July 27_Aug 1.

In accordance with the Re-opening Protocol, NOAA conducted a second and complete sampling in the area (Grids C5-9) beginning August 15 through September 19 after the area was free of oil. NOAA analyzed 89 finfish samples and 25 shrimp samples for sensory analysis; NOAA analyzed 188 finfish specimens for chemical analysis in 15 composite tests and 75 shrimp samples in 15 composite tests collected from the area to be reopened after August 15th. The species analyzed are representative of the species targeted by commercial and recreational fishers in the area, including snapper, menhaden, and shrimp.

Discussion

We determine that the four specific re-opening criteria in the Re-opening Protocol are met in this case with the samples collected beginning August 15.

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 August 6, 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 89 samples from finfish and 25 samples of shrimp 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 188 finfish specimens in 15 composite tests and 75 shrimp specimens in 15 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 5,628 square mile area to be re-opened along the northwestern boundary of the Federal closed area since August 6, 2010. The testing of the Federal re-opening samples collected after August 15 was completed by NOAA on September 29, 2010. NOAA analyzed a sufficient number of finfish and shrimp samples to exceed the sampling plan from locations widely distributed over the area to be re-opened and of species which are representative of the species targeted by commercial and recreational fishermen in that area, including snapper, menhaden, and shrimp. 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 4b Aug 15_Sept 19 provides the test results for both the sensory and chemical analysis from samples taken after August 15. Attachment 4a July 27_Aug 1 provides test results from samples taken between July 28 and August 1 before NOAA suspended sampling due to observed oil.

Conclusion

Portions of the area to be re-opened were incorporated into the Federal fishery closure on May 12, 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 and shrimp.