

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 Western Louisiana Due to
the Deepwater Horizon MC 252 Oil Spill

Date: August 11, 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 4,281 square miles of the current federal fishery closed area will be re-opened. The area to be re-opened is located in the northwestern corner of the federal closed area off the western coast of Louisiana. Specifically, this area is bounded by the following coordinates: state/federal water line beginning @ 93°30'W and ending at 91°00'W, then 28°22'N / 91°00'W, 28°36'N / 91°08'W, 28°36'N / 91°32'W, 28°58'N / 91°40'W and 29°31'N / 93°36'W. The area comprises about 2 percent of federal waters in the Gulf of Mexico and 7.4 percent of the current closed area, as modified on August 10, 2010.

Background

NOAA sampled this area between July 26 and July 29, 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 documented oil in the area was July 18, 2010, more than 72 hours before the sampling commenced. Remote sensing data reported some scattered anomalies in the area between July 22 and July 30, 2010; however, these anomalies were primarily spotted east of 91°30'W (near the eastern border of the area to be re-opened) and overflight observations indicate they were predominantly light sheens with very little recoverable oil being observed. A study was recently completed that analyzed water from below light sheen and found no detectable concentrations of PAHs (Peter Koufopoulos, pers. comm.) 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 41 finfish and shrimp samples for sensory analysis and 125 finfish and shrimp samples for chemical analysis, from the area to be re-opened and from adjacent areas. NOAA had difficulties in collecting the targeted number of samples of sufficient size for sensory testing from the area due in large part to a hypoxic event in the C2 and C3 grid areas (see attachment 3). During hypoxic events, oxygen levels in the water are low forcing fish to move out and away

from the area of low oxygen into the surrounding areas. Therefore, sampling around the hypoxic area was necessary. As such, NOAA collected additional samples from adjacent grids to the south and west of the closed area (Grids D-1, D-4, D-6, and D-7) for testing. In addition, samples analyzed by NOAA and FDA for the State of Louisiana collected adjacent to the grid areas C5 and C7 and to the north and east of the area to be re-opened have been taken into account in this re-opening. The testing of the Federal re-opening samples was completed by NOAA on August 9, 2010. The samples from within grid C-1 to C-4 and adjacent areas 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 30.
2. Evaluation of oil movement – 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 8) 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 23 samples from finfish and shrimp taken from the proposed re-opening area and 18 finfish and shrimp samples from the adjacent grids (D1, 4, 6, 7) 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 77 finfish and shrimp specimens that were composited into 6 samples from the proposed area for re-opening and 48 finfish and shrimp specimens that were composited into 8 samples from the adjacent area (D1, 4, 6, 7) for chemical analysis, 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 4,281 square mile area to be re-opened off the western coast of Louisiana since July 30. NOAA analyzed 41 finfish and shrimp samples for sensory analysis and 125 finfish and shrimp samples for chemical analysis, 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 snapper and menhaden, as well as 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, including the previously referenced samples from the State of Louisiana. Attachment 4 provides the testing results for both the sensory and chemical analysis.

The numbers of finfish and shrimp sampled from the area are less than expected given the level of fishing effort expended, especially near the center of the area where dissolved oxygen levels measured in-situ were below the levels required for fish and their prey organisms to live. This is due to recurring hypoxia that is a result of nutrient loading from the Mississippi River. The

hypoxia is not associated with the Deepwater Horizon spill. Results obtained from the samples collected within the area to be re-opened were augmented by additional samples collected from areas immediately outside the area to be re-opened, which were not affected by hypoxia. There were 18 samples collected from these adjacent areas and subjected to sensory analysis and eight composite samples were subjected to chemical analysis, with all results also well within the public safety levels of concern specified in the protocol, with no detectable odors or flavors of contamination. Samples taken by the State of Louisiana and analyzed by NOAA for sensory and chemistry from above the referenced area also passed all analyses.

Conclusion

The subject area to be re-opened was progressively closed through westward expansions between May 25 and June 12 in response to information on the actual and projected path of oil. Different portions of the area were impacted by oil and sheen at various times between May 20 and July 30. However, 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 now, and the successful results of the sensory and chemical testing, the area should be re-opened to commercial and recreational fishing for shrimp and finfish.