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May 25, 2010

The Honorable Margaret Hamburg, M.D.
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993

Dear Dr. Hamburg:

I write to request information relating to the potential impacts on seafood from the use of chemical dispersants following the explosion aboard the Deepwater Horizon drilling rig. The spill has significantly impacted the fishing industry in the Gulf of Mexico and its recovery will be dependent on public confidence in food safety. The current closures of fisheries in the Gulf ensure the safety of seafood in the near term, but there are questions that need to be addressed in order to re-open the fisheries quickly and safely. It is vital that FDA be involved in the monitoring of the impacts of dispersants on aquatic life.

As a measure to mitigate the impact of the oil spill, BP has used chemical dispersants, which break down oil into tiny particles that scatter and sink into the sea or are consumed by microbes. These chemicals are being sprayed onto the surface of the ocean, and are also being applied at the source of the leak, almost one mile below sea level, which has never been done before. The U.S. Environmental Protection Agency just yesterday ordered that their use be reduced because questions remain about their safety.

To date, BP has used approximately 705,000 gallons of a trademarked dispersant called Corexit on the ocean surface and approximately 115,000 gallons of the dispersant subsurface, at the source of the spill. According to EPA[1], the Corexit products selected are among the most toxic and least effective dispersants approved for use. Some Corexit formulations were banned in the United Kingdom more than a decade ago because of their toxicity to some aquatic life.

I am concerned that because these toxic chemicals were not intended to be used for such long durations, and were not intended to be used at such depths, there could be serious and unknown long-term consequences for the marine ecosystem, the food chain and human health.

[1] http://www.epa.gov/emergencies/content/ncp/tox_tables.htm

It is my understanding that when evaluating the toxicity of dispersants to determine whether they should be placed on the National Contingency Plan (NCP) Product Schedule of approved dispersants, EPA requires two species to be exposed to a mixture of the dispersant and oil for 48 hours (for mysidopsis, a species of shrimp) and 96 hours (for menidia, a species of fish) to determine how many of the test sample die upon exposure. The selected time-frames could be viewed as a relevant measurement of the toxicity of a dispersant intended to be used to mitigate a discrete oil spill, but it is unclear how these measurements could be used to assess the toxicity associated with the prolonged use of dispersants that has already been conducted during this incident. The standard tests on these dispersants do not appear to be designed to measure the effects associated with chronic, sustained exposure to these chemicals.

As part of the monitoring of the subsea application of dispersants, EPA is also measuring toxicity using a standard test on rotifers, a type of plankton important to the Gulf of Mexico aquatic food chain. It is unclear how results of the rotifer and NCP list tests can be used to predict the long-term impact of the dispersants on other aquatic animal species, coral and aquatic plants, particularly given the tendency for these chemicals to accumulate in sediment at the ocean's floor. In fact, just last week Dr. Sylvia Earle, former Chief Scientist of National Oceanic and Atmospheric Administration (NOAA), called on BP to halt the use of dispersants subsea, stating that multiple species of aquatic animals are "awash in a lethal brew" of oil and dispersant chemicals.

EPA recognizes the environmental tradeoffs that results from the use of these chemicals, which is why they have directed BP to identify and utilize a less toxic and more effective product and dedicated its own scientists to assist in these efforts.

Despite this directive, BP continues to insist on the use of its choice Corexit dispersant.[2] The truth is we know little about the long-term ecological effects of the use of any dispersants, and how these dispersants may, as result of contaminating the aquatic food chain, also impact human health. While it is understandable that other mitigating options must be explored in order to keep as much oil as possible from reaching land, the inability of BP to quickly stop the flow of oil and BP's choice to continue to use one of the most toxic and least effective of all approved dispersants, underscores the necessity to vigilantly monitor the impacts these choices may have human health. Consequently, I ask that you respond to the following questions:

1. FDA's webpage [3] states that "available information indicates that dispersants being used to combat the oil spill do not accumulate in seafood." On what basis was this statement made? Please provide all documentation that demonstrates that the sustained long-term use of high volumes of dispersants both on the surface and on the ocean floor does not accumulate in seafood. Does this available information also include evidence that the dispersants being used do not accumulate in plants or un-hatched eggs?

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[2] http://www.epa.gov/bpspill/dispersants/5-21bp-response.pdf

[3] http://www.fda.gov/Food/ucm210970.htm

2. How does the FDA monitor whether dispersant chemicals are present in the tissue of fish that are sold for consumption?

3. What federal standards are in place for how much dispersant (or its constituent chemicals) can be present in seafood consumed by humans?

4. Would it be necessary for the FDA to be aware of the full chemical composition of the dispersants being used in order to accurately monitor and regulate them? If so, does FDA have this information?

5. How does FDA plan on monitoring the long-term effect that these chemical dispersants have on aquatic life in the Gulf of Mexico and the consequent effect that consumption of seafood from the Gulf has on human health? Will FDA continue to conduct such monitoring to ensure that as these chemicals move up the food chain from plants to fish intended for human consumption, that they don't appear weeks, months or years after the use of dispersants is halted?

6. What actions will FDA be required to take if it is determined that consumption of contaminated seafood is a human health concern?

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Michal Freedhoff or Dr. Avenel Joseph of my staff at 202-225-2836.

Sincerely,

Edward J. Markey

Edward J. Markey

Member of Congress