

The Marine Management Organisation (MMO) Response to an Independent High Level Review of Current UK Action Level Guidance

Important Note: This response is based on information presented in the full report that should be read alongside the recommendations made below, and considered in light of current Government policy (National Policy Statements, Marine Policy Statement etc.).

Link to Full Report used as basis for this response:

<https://www.gov.uk/government/publications/action-levels-1053>

Introduction

The UK is signatory to both the London Protocol and OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic which address the prevention of marine pollution from disposal at sea. The Marine and Coastal Access Act 2009 (MCAA) transposes the requirements of these conventions into English law and provides the necessary statutory means to help meet the UK's wider obligations. The Marine Management Organisation (MMO) is the licensing authority for England with regards to the disposal of dredge materials to sea and the way it regulates this activity is guided primarily by guidelines produced by OSPAR.

A marine licence for the disposal of dredged materials requires characterisation of the sediments to be disposed of to enable consideration of potential adverse environmental effects of such a disposal activity. The OSPAR guidelines call for action levels (sediment quality criteria) to be established for chemical determinands on a primary list, as a minimum. In the UK, action levels are used as part of a 'weight of evidence' approach to licensing the disposal of dredged material. Contaminant levels in dredged material below action level 1 are generally assumed to be of no concern and are unlikely to influence the licensing decision; contaminant levels between levels 1 and 2 generally trigger further investigation of the material proposed for disposal at sea; and contaminants in dredged material above action level 2 are generally considered unsuitable for sea disposal.

Action levels applied in licensing were reviewed in 2003 by an independent project funded by Defra as the licensing authority at the time. It was highlighted that many of the action level 2 values were at such a level that potentially toxic sediments would fall between action level 1 and 2. Reductions in action level 2 values were proposed by the report authors; however the proposed changes would have severely disrupted

dredging and disposal activity therefore the original action level values were retained so appropriate management plans could be established before changes were made.

Appropriate action levels, and a practical approach to apply action levels for licensing sediment disposal to sea, are essential to facilitate sustainable development of the marine environment. This is particularly important for the ports, harbours and shipping industries, but also for other marine activities where sediment disposal to sea, or sediment mobilisation, may be required.

The MMO has now sought to re-open this issue by commissioning an independent high level review to establish whether the current action level guidance is appropriate, effective and consistent with current legislative requirements, or whether a more in-depth review, and potential revision of the approach, is required. The report provides a high level review of current action levels guidance and draws conclusions with regards the efficacy of this approach for identifying the potential toxicity, and thus environmental risk, of sediments for disposal to sea. Report objectives include:

1. Undertake an independent high level review of the current action level guidance for the UK. This includes the application of action levels and a high level comparison of the UK process with those of other EU states.
2. Provide recommendations with regards whether existing guidance and action levels are appropriate and fit for purpose given current requirements or whether a further, more detailed, review of action levels is required.

The project report was published by the MMO in December 2015. This document is the MMO response to that independent review and provides recommendations on the next steps to further evaluate the application of action levels.

Approach

The project was awarded following a competitive tendering exercise through the MMO's Scientific Framework Agreement.

The current action level values and approach applied by the MMO and their scientific advisors was reviewed and compared to that within other European / OSPAR countries. A substantial dataset of co-located whole sediment toxicity and contaminant concentrations data was also used to assess effectiveness of the action level values to identify toxic sediments (acute and chronic) relative to those of other European / OSPAR countries.

Results and recommendations

This project has provided a useful high level review of the approach to actions levels and although there are differences between approaches taken in different European / OSPAR countries, the current UK approach fulfils legal obligations under OSPAR.

Despite this, the report concludes that the current approach to action levels taken by the MMO does not effectively identify toxicity. It suggests that the action level 1 is more conservative than other European countries whereas action level 2 passes more potentially toxic sediments than that of other European / OSPAR countries. Overall, the UK therefore has the largest proportion of sediment samples falling between the two action levels and thus subject to further evaluation. Sediment samples falling between the two action levels are currently evaluated through application of expert judgment considering historical information, the material's physical characteristics and the disposal site characteristics.

The report focuses on fitness for purpose of the action levels in terms of the ability to correctly identify toxic and non-toxic sediments and concluded that the existing guidance and action levels were not fit for purpose. It recommends that a further, more detailed, review of action levels is required to inform potential changes to the values and approach taken to sediments falling between action levels 1 and 2.

Next steps

Action levels provide a tool for marine management decisions and reflect a policy driven approach to sustainable development of the marine environment. In addition to environmental protection, the UK government also strives towards a marine licensing system that is proportionate and cost-effective in terms of requirements placed on marine users.

The MMO is working with Defra and other relevant bodies to develop a further piece of work to more fully review and evaluate the use of sediment quality criteria (i.e. action levels). Additionally, water quality criteria will be considered to ensure integration with up to date policy direction, practical implementation and implications of changes for the natural and economic marine environment. It is anticipated that this work will begin in spring 2016 and outcomes will be used as appropriate to inform the future approach taken by the MMO to licensing decisions regarding disposal of sediments at sea.