

This document constitutes a submission for consideration by the Joint Committee on the Draft Marine Bill.

The **precautionary principle** was an integral and accepted part of the official documents antecedent to the draft Marine Bill. The precautionary principle is an important justification for the designation of networks of highly protected marine reserves<sup>1</sup>, to address uncertainty in the face of marine ecosystem complexity coupled with the difficulties of studying marine ecosystems.

The words precautionary or precaution are noticeably completely absent from the draft bill, despite the frequent acceptance of this principle in previous documents, particularly the White Paper:-

“8.153 The UK Government and the devolved administrations set out their strategy for the conservation and sustainable development of our marine environment in Safeguarding our Seas. We explained that our vision of clean, healthy, safe, productive and biologically diverse oceans and seas would be delivered by pursuing policies that promote sustainable development, integrated management, stakeholder involvement, robust science and the precautionary principle.

#### Glossary

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation (as defined in the 1992 Rio Declaration on Environment and Development)"

The replacement of the precautionary principle with the evidence-based approach in the draft Marine Bill will place a major hurdle to initiatives to designate HPMRs in the UK's waters, noting that the 2004 RCEP report *Turning the Tide* called for 30% of the UK's waters to be designated as such. Objectively justifying HPMRs on a precautionary basis will essentially represent an impossible burden of proof on the conservation agencies. The RCEP Report also recommended a reversal of the burden of proof, in that the fishing industry should have to prove that the impacts of a particular fishing practice in a particular area will not harm the long-term sustainability of marine ecosystems. The requirement for an evidence base to justify HPMRs clearly contradicts this recommendation. The onus should be on the fishing industry and other industries to provide evidence that their operations will not undermine the resilience and health of marine ecosystems, not vice-versa.

The replacement of the precautionary principle with the evidence-based approach will mean that objectively justifying HPMR proposals could be a major hurdle for marine conservation agencies, particularly given that our understanding of marine ecosystems is relatively poor and the related challenges of establishing cause-effect relationships. **I would urge the Committee to consider recommending revisions to the Draft Marine Bill that recognise the importance of the precautionary principle to address the high degrees of uncertainty related to marine ecosystems.** The lack of objective evidence for any given HPMR proposal does not mean that HPMRs are not needed to address scientific and societal concerns about the health of marine ecosystems and their constituent fish populations. The Draft marine Bill should be revised in order to recognise this, particularly those sections relating to marine conservation zones and the process for their designation.

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<sup>1</sup> Lauck T, Clark CW, Mangel M and Munro GR. Implementing the precautionary principle in fisheries management through marine reserves. *Ecological Applications* 1998;8(1):S72-S78; Murray SN, Ambrose RF, Bohnsack JA, Botsford LW, Carr MH, Davis GE, Dayton PK, Gotshall D, Gunderson DR, Hixon MA, Lubchenco J, Mangel M, MacCall A, McArdle DA, Ogden JC, Roughgarden J, Starr RM, Tegner MJ and Yoklavich MM. No-take reserve networks: sustaining fishery populations and marine ecosystems. *Fisheries* 1999;24(11):11-25.

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It should also be noted that The 1991 Maastricht Treaty on European Union incorporated the precautionary principle as a legal obligation and required objective for environmental policy (Article 130r(2)) and this was further amended by the 1997 Amsterdam Treaty and subsequent 2001 Treaty of Nice as follows: '*Community policy [...] shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements must be integrated into the definition and implementation of other Community policies*' (Article 174(2)). The European Commission released a Communication on the precautionary principle in 2000 (COM2000(1)), which stated that it had been progressively consolidated in international environmental law and consequently has become a 'full-fledged and general principle of international law'. Measures to implement the precautionary principle are also likely to be a requirement of the forthcoming EC Marine Strategy Directive, the draft stating that:-

(27) Member States should then establish and implement programmes of measures which are designed to achieve or maintain good environmental status in the waters concerned, while accommodating existing Community and international requirements and the needs of the Marine Region or Sub-Region concerned. ***Those measures should be devised on the basis of the precautionary principle and the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay.***

(44) Programmes of measures and subsequent action by Member States should be based on an ecosystem-based approach to the management of human activities and on the principles referred to in Article 174 of the Treaty, in particular the precautionary principle.

A Marine Bill that ignores the precautionary principle is thus not likely to comply with the forthcoming EC Marine Strategy Directive. Nor is it likely to fulfill the government's vision for 'clean, healthy, safe, productive and biologically diverse oceans and seas.' If you wait until you have incontrovertible evidence that seas are unhealthy, it may be too late.

Background references drawn on for this submission:-

De Santo E.M. and Jones P.J.S. (2007) Offshore marine conservation policies in the North East Atlantic: emerging tensions and opportunities. *Marine Policy* **31**(3), 336-347

Jones P.J.S. (2007) Point of view - Arguments for conventional fisheries management and against no-take marine protected areas: only half of the story? *Reviews in Fish Biology and Fisheries* **17**(1), 31-43. [doi:10.1016/j.marpol.2004.10.003](https://doi.org/10.1016/j.marpol.2004.10.003)

Jones P.J.S. (2006) The Marine Bill: cornucopia or Pandora's Box? *ECOS: A Review of Conservation* **27**(2), 1-6 [<http://www.homepages.ucl.ac.uk/~ucfwpej/pdf/MarineBillCornucopiaOrPandasBox.pdf>]

Jones P.J.S. (2008) Fishing industry and related perspectives on the issues raised by no-take marine protected area proposals. *Marine Policy* **32**(4), 749-758. [doi:10.1016/j.marpol.2007.12.009](https://doi.org/10.1016/j.marpol.2007.12.009)

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