

8 September 2008

Senator McEwen, Chair
Senate Standing Committee on Environment, Communications and the Arts
by email to eca.sen@aph.gov.au

**Australian Fishing Tackle Association Submission to the Senate Standing
Committee on Environment, Communications & the Arts
On
THE GREAT BARRIER REEF MARINE PARK & OTHER LEGISLATION
AMENDMENT BILL 2008.**

Dear Senator McEwan,

Please accept this submission to the inquiry into the Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008.

Our submission concentrates on the attached the Ernst and Young Report titled Australia's Marine Protected Areas - Challenging Times Ahead and the following extract refers to the Precautionary Principle that has not been sufficiently addressed in the Amended Bill.

UN Convention on Biological Diversity, which has been ratified by Australia, includes a 'weak' formulation of the 'precautionary principle', which has been included in Commonwealth, State and Territory environmental protection legislation. For example:

– the preamble to the UN Convention on Biological Diversity states that:... where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat the Commonwealth Government's Environment Protection and Biodiversity Act 1999 states that:

3A(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent

environmental degradation; the Intergovernmental Agreement on the Environment states that:

3.5.1 precautionary principle - Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

i. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and

ii. an assessment of the risk-weighted consequences of various options.

∨ The objective of this 'weak' formulation of the precautionary principle is to ensure that precautionary measures are taken to protect the environment only when there is a 'threat of serious or irreversible damage' to the environment, thereby reducing the risk of implementing precautionary measures that unnecessarily restrict activities that only have a minimal adverse effect on the environment.

∨ In practice, however, officials involved in MPA zoning often seem to be applying a 'strong' formulation of the 'precautionary principle', which involves declaring marine areas to be no-take 'sanctuary zones', even when there is little or

no evidence that recreational fishing in those areas is having an adverse effect on the marine environment in those areas.

✓ **A potential source of the confusion currently surrounding the application of the**

'precautionary principle' is the definition of the 'precautionary principle' that is contained in the ANZECC Guidelines for Establishing the National

Representative System of Marine Protected Areas. These guidelines define the precautionary principle as follows:

The absence of scientific certainty should not be a reason for postponing measures to establish MPAs to protect representative ecosystems. If an activity is assessed as having low risk of causing serious or irreversible adverse impacts, or if there is insufficient information with which to assess fully and with certainty the magnitude and nature of impacts, decision making should proceed in a conservative and cautious manner.

✓ **The main problem with this definition is that it is somewhat ambiguous and is open to an interpretation that is not consistent with the 'weak' formulation of the 'precautionary principle' that is included in legislation:**

– The first sentence of the definition correctly notes that the absence of certainty should not be a reason for postponing measures to establish MPAs to protect ecosystems.

– However, the second sentence is ambiguous and potentially fails to limit the application of precautionary measures to just those cases where there is a threat of serious or irreversible damage:

- The first part of the second sentence correctly notes that even if the risk of serious or irreversible damage is low, then there is still a case for precautionary measures.

- However, the second part of the sentence is ambiguous:

- ♣ One interpretation which is consistent with the legislative definition of the precautionary principle, is that precautionary measures are appropriate even when there is a threat of serious or irreversible damage but where there is insufficient information with which to assess fully and with certainty the magnitude and nature of that threat of serious and

irreversible damage (i.e. we know there is a threat of serious or irreversible damage but we can't estimate the precise magnitude of that magnitude of that risk with certainty). We believe this is the interpretation that was originally intended, since it is consistent with the legislative definition of the 'precautionary principle'.

- ♣ However, the second sentence is also open to another interpretation that is not consistent with the legislative definition. It could be interpreted as implying that the precautionary measures should be applied in those cases where an activity threatens to damage the environment, but the magnitude of that damage is not known with certainty.

✓ **There is an urgent need for the Commonwealth Government to develop guidelines to assist officials with the application of the 'precautionary principle'.**

For example, this issue could be referred to the Productivity Commission for consideration and clarification. We note that the Productivity Commission has already released a staff working paper on the precautionary principle

Precaution: principles and practice in Australian environmental and natural resource management, which highlights the need to develop clear guidelines for applying the principle:

Although the application of precaution will always involve some degree of subjectivity, the development of clear guidelines for applying the precautionary principle nevertheless has major benefits. Placing the principle within the context of good regulatory practice helps to ensure that decision making is transparent, consistent and accountable; that it utilises all relevant information; that costs, benefits and risks are identified, assessed and compared; and that measures are targeted at,

and proportionate to, the problem. This decision making framework will help to avoid many of the potential problems arising from application of the precautionary principle, including the risk of perverse outcomes, over-reaction to trivial risks, and misuse as a rent-seeking (or protectionist) measure.

We also consider the change to the definition of “fishing” which could be misused if someone is “considered” guilty of an offence such as “searching” if they

- have any fishing equipment on board when traversing “closed areas”
- have any fishing equipment on board when anchored in any “closed area”.

If equipment is “stowed & secured” then there should be no offence.

Further the criminality issues appear harsh and excessive for public anglers not engaged in a commercial activity.

This needs revision to apply on the spot fines for infringements made by the general public, without a mandatory criminal conviction. The overall criminality aspect of the Amendments appear to strong, compared to a system of light sentences being handed out to criminals threatening life and limb, theft etc. in Australian society.

To conclude the time frame provided to comment by The Senate Standing Committee on Environment, Communications & the Arts is far to short by normal standards of public engagement and we do not consider the Great Barrier Reef Amendment Bill has taken any Independent advice from the Ernst & Young Report thus the bill and ACT. are lacking in an all encompassing direction relating fair and equitable public sharing of the publics own resource.

Yours Sincerely
Doug Joyner- Executive Officer
Australian Fishing Tackle Association