

Devon & Severn IFCA: Decision Making & the Precautionary

Principle

The UN Convention on Biological Diversity, in its Preamble, states that:

“Noting also 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”¹.

This principle that a lack of evidence or gaps in the evidence should not preclude precautionary regulation has become known as the ‘Precautionary Principle’. A Preamble forms part of an International Convention and as the UK is a signatory to the Convention the application of the Precautionary Principle in decision making by public bodies is thus a legal obligation. To this end the United Kingdom Interdepartmental Liaison Group on Risk Assessment (UK-ILGRA) has defined the purpose of the Precautionary principle as the creation of:

“... an impetus to take a decision notwithstanding scientific uncertainty about the nature and extent of the risk, i.e. to avoid ‘paralysis by analysis’ by removing excuses for inaction on the grounds of scientific uncertainty.”

This means that the Precautionary Principle should be applied when, on the basis of the best scientific advice available in the timeframe for decision-making:

- there is good reason to believe that harmful effects may occur to human, animal or plant health, or to the environment; and
- the level of scientific uncertainty about the consequences or likelihoods is such that risk cannot be assessed with sufficient confidence to inform decision-making.²

This requirement on public bodies to apply the Precautionary Principle in their decision-making is thus both a legal and a policy obligation which IFCAs have to comply with.

IFCAs & the Precautionary Principle

For IFCAs, when deciding how to discharge their statutory duties to manage fisheries in a sustainable way and balance socio-economic benefits with protecting the marine environment³, it means that where there is no evidence, or more likely, gaps in the available evidence then the IFCA cannot use this to avoid making a decision, but must apply the

¹ <https://www.cbd.int/convention/articles/default.shtml?a=cbd-00>

² ‘The Precautionary Principle: Policy and Application’ United Kingdom Interdepartmental Liaison Group on Risk Assessment (UK-ILGRA). <http://www.hse.gov.uk/aboutus/meetings/committees/ilgra/pppa.htm>

³ S.153 Marine & Coastal Access Act 2009

Precautionary Principle and make a decision accordingly. This requirement is confirmed in the Explanatory Notes to the Marine & Coastal Access Act 2009⁴ where it states:

*“IFCA authorities will be able to apply precautionary measures ... in order to fulfil their main duty. Precautionary measures in this context means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependant species and non-target species and their environment.”*⁵

Although an IFCA cannot avoid making decisions where evidence is lacking or incomplete there is nevertheless a good degree of flexibility allowed in the decision-making. As has been pointed out:

“Precaution is not an all-or-nothing commodity: different approaches can be precautionary to different degrees. ... In principle, a 'precautionary approach' to a fishery is any approach which reduces the likelihood of stock collapse or significant impact on natural heritage or the supporting environment. Selecting the appropriate mechanism, and choosing the 'degree' of precaution to be used, is a matter for ... judgement by decision-makers. Precautionary approaches can reflect the full panoply of mechanisms (e.g. regulations, incentives, spatial planning of fishing activity, etc), up to and including prohibition ('strict precaution'). Often, however, precaution can be exercised through the proper application of a feedback loop between activity and impact which modifies the intensity of a process over time ('adaptive precaution'). Adaptive precaution is the preferred option where:

- *the activity is one which can be undertaken at different levels of intensity;*
- *it is technically feasible to establish a feedback monitoring regime; and*
- *institutional frameworks are sufficiently robust to guarantee that monitoring and feedback controls future mortality.”*⁶

By utilising current systems such as catch reporting and monitoring, together with evidentiary reviews and a Permitting By-Law system, Devon & Severn IFCA can apply an adaptive precautionary approach which is flexible, responds to increased evidence gathering and ensures a proportionate balance between risk and public benefit is maintained. The participation of sea users in this exercise is essential and should be seen as a collaborative exercise between the public and the IFCA in order to improve decision making.

⁴ The Stationary Office 2009

⁵ Para.435 p.57.

⁶ <http://jncc.defra.gov.uk/page-2520>