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Secretary  
Primary Production Select Committee  
Parliament Buildings  
Wellington

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## **SUPPLEMENTARY SUBMISSION ON: FISHERIES ACT 1996 AMENDMENT BILL: Textural Amendments to Section 10**

Further to ECO's submission on the Bill to amend section 10 of the Fisheries Act 1996, we provide here text for clarifying amendments to make the application of the Precautionary Principle clear.

- 1 We have changed the chapeau to require that decision makers "give effect to" rather than just "take into account".
- 2 We have replaced "caution" with "precaution" since an essential element of the precautionary principle is that it is **precaution**, ie, anticipatory action is required.
- 3 Since one of the ambiguities of the existing version of section 10 is that the objectives of the precaution are not stated, and hence lose their focus on avoiding significant or irreversible environmental harm, we have added in text to say that the objective of the precaution is to avoid significant or irreversible harm to the environment and fisheries resources.

Arguments that precaution should relate to the social, economic etc objectives and utilisation are invalid since this is not the object of the precautionary principle and those things are not in need of the same protection that the ecological systems are.

It may assist the Committee to understand that essential concepts in the Precautionary Principle include these.

- 1 Preventative Anticipation; - timely action must be taken to avert harm, not to wait for it to occur or to wait for conclusive evidence of harm.
- 2 Safeguarding the Environment. The margin for tolerance of environmental harm is very low, thus we cannot wait for scientific proof of harm. This provides greater resilience of the environment to human activities – and in the long run thus protects the fisheries resources and the values that we derive from them and the environment.
- 3 The precautionary principle does not apply to trivial damage – there is a proportionality of response with the requirement that it apply to significant or non-trivial harm to the environment.
- 4 The Reversal of the Burden of Proof  
The onus of proof is such that those undertaking the activity need show it does not do environmental harm and precautionary measures must be taken if there may be harm, not only if such is proved.

### **The question of Utilisation – harvest uses only or non-harvest as well?**

The Ministry of Fisheries has asserted in writing several times that the Fisheries Act requires them to manage fisheries only for extractive uses. We believe that their interpretation of the Act is incorrect, since nowhere does the definition in S8 of utilisation restrict the objectives to extractive uses.

We can think of no other situation in New Zealand, aside from minerals and coal or oil mining where the *in situ* values of the resource are not managed for. We manage for all the values under the Resource Management Act, and in relation to forests or other ecosystems. It eludes us why in 21<sup>st</sup> century New Zealand we have an agency that (in its opinion) as a matter of law ignores the value the non-extractive values of an element of the ecosystem.

We submit that Parliament should explicitly and urgently address this situation. We have urged the Ministry of Fisheries many times to propose such a law change and they have refused. We now make a direct appeal to Parliament to remedy this anomaly of a vital set of non-harvest uses and values being ignored in management.

ECO's suggested drafting changes:

**Fisheries Act 1996 – suggested changes, including a change to the chapeau of**

**Section 10, to section b as well as additional changes to subsections c and d.**

10. Information principles---All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall

~~take into account~~ give effect to the following information principles:

(a) Decisions should be based on the best available information:

(b) Decision makers should consider any uncertainty [we recommend change to “any uncertainty, inadequacy, unreliability, bias or indeterminacy”] in the information available in any case:

~~—(c) Decision makers should be cautious when information is uncertain, unreliable, or inadequate:~~

~~—(d) The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any~~

~~—measure to achieve the purpose of this Act.~~

(c) if information is absent or is uncertain, indeterminate, unreliable, or inadequate, decision makers

“(i) should be precautionary in order to avoid significant or irreversible harm to the marine environment and fisheries resources ~~cautious~~; and

“(ii) should not use any uncertainty, indeterminacy, unreliability or inadequacy of information [~~of those factors~~] as a reason for postponing or failing to take timely measures to ensure sustainability to avoid significant or irreversible harm to the marine environment and fisheries resources.

