

A Brief Initial Response to FISHERIES/2020/JUL/SWG-PEL/128 re the Precautionary Principle

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This document intends only some brief overview comments on FISHERIES/2020/JUL/SWG-PEL/128 re the Precautionary Principle. At a detailed level, some of the comments made, particularly regarding penguins, merit response, but that will in any case be more appropriate next year when this document is presumably submitted to the planned Discussion Forum to be constituted by DEFF.

But to the broader issues, PEL/128 provides a reasonably thorough and helpful summary of material related to the Precautionary Principle in concept, with much of this referring to policy/legislation. However, it has yet to address the Achilles heel that continues to dog application of the Principle, which is lack of an agreed approach for quantification, i.e. answering the question: “how precautionary is sufficiently precautionary?”; or put another way, how is the Principle to be **operationalised**. Thus internationally, though there may be commonality at the concept level, there is as yet very little agreement at the operational level on which decisions need to be based; debates have continued in some countries and RFMOs over closer to decades than years, with at best only slow progress being made towards agreement.

This debate does need to be taken up in South Africa, and at a wider level than the penguin-fishery issue alone – MSP/MPAs come immediately to mind. This would be assisted by an extension of the review of PEL/128 to cover how operationalization of the Precautionary Principle is being handled in some other countries and RFMOs.

Furthermore, both for the penguin issue and ultimately also this broader debate, the first steps taken next year will need to take account, *inter alia*, of the comments made earlier in FISHERIES/2020/OCT/SWG-PEL/110:

“Basically, the ultimate decision on this matter by a decision maker will involve trade-offs, and the responsibility of the PWG is to summarise and quantify (to the extent possible) each of the various components of benefits and losses involved. In particular, this will need to involve, and on an island-to-island basis:

- *Quantification of the benefit (if any) of closure to penguins*
- *Linkage of that benefit to the impact on the growth rate of the colony concerned relative to its current population trend*
- *Similar quantification of the impact on the pelagic fisheries (and other sectors of the economy, such as tourism) in socio-economic terms (relating to employment and additional costs).*

Clearly, although complete objectivity in such an exercise is desirable, some subjectivity introduced in the form of expert opinion will be inevitable (and desirable in areas where the potential for more fully objective evaluations is limited). Differences in such expert opinions may well exist, and it will be important that the information accompanying recommendations is summarized in a way that attempts also to provide some indications of the associated weights of supporting evidence for these. But furthermore, although likely to be difficult, such differences must be distinguished from differences in personal risk preferences in such summaries, as ultimately the decision relating to risk preference rests with the decision maker.”