

***The Reality of Precaution:
Comparing Risk Regulation in
Europe and the United States***

The Marine Environment

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Summary

- Looking at variety of regimes which protect the marine environment
- 1980s emergence of “principle of precautionary action” – re pollution of North Sea
- Rapid spread to other international marine environmental fora
- 1992 moves into capture fisheries and included in major international fisheries instruments
- acceptance by US and EU ...

General Findings

- **Re control of marine pollution**
 - Europe strongly supports PP - is now a principle of EC law -applied in practice
 - US has de facto precautionary environmental laws but has consistently opposed adoption of the “principle”
- **Re fisheries**
 - EU initially opposed to use of PP
 - US uses precautionary techniques
 - Both now accept PP as guiding principle for capture fisheries
 - US uses it in practice - always ?
 - Is the EU Common Fisheries Policy precautionary ?

The North Sea

- **1980 German Council of Experts on Environmental Matters**
 - described a precautionary approach
- **International Conferences on the North Sea (1984, 1987, 1990)**
 - endorsed precaution
- Implemented by regional regimes
 - **Paris Convention** for the prevention of marine pollution from land-based sources (PARCOM)
 - **Oslo Convention** on prevention of marine pollution by dumping (OSCOM)

Adoption by other Marine Environmental Fora

- **1989 UNEP Governing Council**
- **1989 Barcelona Convention** for the Protection of the Mediterranean Sea
- **1989 Nordic Council** Conference on Pollution of the Seas
- **1990-1 London [Dumping] Convention**
 - opposition from the US
- **1990-2 Cartagena Convention** (Wider Caribbean Region)
 - opposition from the US

1992 Instruments

- **1992 Helsinki Convention** (Baltic Sea)
- **1992 Helsinki Convention** on Transboundary Watercourses and Lakes,
- **1992 Bucharest Convention** (Black Sea)
- **1992 Paris Convention** (North-East Atlantic)
- **1992 Maastricht European Union Treaty**
- **1992 UNCED** Rio Instruments
 - 2 Conventions
 - Rio Declaration Principle 15
 - note US influence on the text
 - Agenda 21 regarding marine environment

Precaution and Fisheries

After Rio

- **1992 FAO Technical Workshop**
 - **EU opposed PP**
- **1995 UN Fish Stocks Agreement**
- **1995 FAO Code of Conduct on Responsible Fisheries**
- **Mandated in virtually all new Regional Fisheries Agreements**
 - **Bering Sea “Donut hole” Agreement**
 - **Western Pacific Tuna Agreement**

Other Fora which have endorsed Precaution

- **1989 UN General Assembly**
Resolution 44/225 on Driftnet Fishing.
- **Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)**
- **International Whaling Commission**

US Practice

- **1952 International Convention for High Seas Fisheries of the North Pacific Ocean**
 - used the *abstention principle*
- **1996 Sustainable Fisheries Act**
 - incorporates Precautionary methodologies
- **Alaskan Pollock Fishery**
 - case study

EU Practice

- **Common Fisheries Policy**
 - possesses precautionary tools and methodologies
 - But are management decisions made on the basis of precautionary use of scientific advice ?
 - Will current reform processes affect this ?