



DEPARTMENT OF DEFENSE  
REPRESENTATIVE FOR OCEAN POLICY AFFAIRS

WASHINGTON, DC 20301-2400

Admiral James D. Watkins  
Chairman  
U.S. Commission on Ocean Policy  
1120 20th Street, NW  
Suite 200 North  
Washington, D.C. 20036

Dear Admiral Watkins:

As the U.S. Commission on Ocean Policy continues its important work, we would like to take this opportunity to highlight several remaining concerns. We are gratified to hear that the Commission is considering adopting the recommendations of the National Research Council regarding the definition of "harassment" in the Marine Mammal Protection Act. The Department of Defense strongly supports a new definition that would reflect the Act's conservation objectives, yet still provide greater clarity and notice concerning the application of the Marine Mammal Protection Act (MMPA) to military readiness activities.

We are concerned, however, about statements made at recent public meetings regarding incorporation of the so-called "precautionary approach" as a basis for ocean policy decision-making. The precise intent of the precautionary approach continues to be controversial and subject to widely different interpretations and applications. As adopted in the Rio Declaration in 1992,<sup>1</sup> the precautionary approach was originally intended to encourage caution and the adoption of practicable and cost-effective protective measures when decision-making must take place despite scientific uncertainty. In practice, however, the precautionary approach too often is applied to prevent a proposed action altogether unless every conceivable risk to the environment is first disproved. Consequently, we urge you to avoid adopting the precautionary approach as a basis for ocean policy decision-making.

As an alternative approach, we offer for the Commission's consideration the following factors that we believe should be reflected in any framework for ocean policy decision-making concerning military readiness activities:

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<sup>1</sup> Principle 15 of the Rio Declaration reads: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

- Conformity with the international law of the sea - and in particular, with the preservation of the internationally guaranteed freedoms of navigation, which are vital to national security - must be required;
- Environmental stewardship must be balanced with the military readiness needs of the U.S. Armed Forces, especially as new lawsuits seek to extend the reach of existing environmental laws, beyond what Congress intended, to limit critical military preparedness testing and training activities;
- Include the concepts of practicability and cost effectiveness, critical components of any rational effort to balance human activity and the desire to protect the environment;
- Base decisions on the best available scientific research and analysis; and
- Consider the relevance and importance of incomplete or missing information prior to making a decision.

Finally, we are concerned about statements at recent public meetings regarding the creation of a statutory framework for Marine Protected Areas (MPAs). Executive Order 13158, Marine Protected Areas, already provides an agreed upon interagency framework for the establishment of MPAs. The Executive Order addresses already all of the elements contained in the Commission proposed definition and recommendations. There would appear to be no need for statutory authority unless and until the Executive Order process proves to be ineffective.

The Department of Defense remains committed to supporting fully the Commission's activities. Please do not hesitate to contact us should you require additional information. Our points of contact are Dr. Cynthia Decker, CNO (N962DB) at 202-762-0272 and CDR Scott Kenney, Assistant to the Department of Defense Representative for Ocean Policy Affairs, at 703-614-4386.



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