

Environment, Climate Change and Land Reform Committee

EU Environmental and Animal Welfare Principles

Written submission from Fisheries Management Scotland

Introduction

Fisheries Management Scotland are the representative body for Scotland's District Salmon Fishery Boards (DSFBs) and Fisheries Trusts. Our members work to safeguard the interests of Scotland's valuable and iconic wild freshwater fisheries, by promoting and delivering best practice in fishery management.

Conservation and management of Scotland's wild fish stocks and their natural habitats is essential. Our members monitor the health of our fish populations, fisheries and associated habitat and deliver actions to protect, conserve and enhance these natural resources. The core funding for this work is almost entirely derived from the salmon levy, which is raised from the owners of salmon and sea trout fisheries. This income is derived from angling, and therefore there is a direct link between the activities of anglers, and the core funding for the management of fish and fisheries and the river environment on which they depend.

A recent Scotland-wide economic impact assessment of wild fisheries indicated around £135m of angler expenditure, 4,300 full-time equivalent jobs and £79.9m Gross Value Added (GVA) in 2014 – the monetary value of the contribution to the economy made by the industry.

We welcome the opportunity to provide views on the EU Environmental and Animal Welfare Principles.

How important are the EU principles of: the precautionary principle; preventative action; environmental damage should as a priority be rectified at source; the polluter should pay; and animal sentience?

We consider the environmental principles included in the Treaty on the Functioning of the European Union to be a vital component of environmental protection. Whilst we do not always consider that these principles have been fully implemented in Scotland (as discussed during the Committee inquiry on the environmental impacts of aquaculture), we do support these principles being enshrined in law.

With regard to animal sentience our comments relate to the Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill. We note that, as drafted, Section 1 would extend to Scotland. We also note that This bill would bring into law the concept of animals as 'sentient beings', but the draft Bill does not explicitly define the term 'sentience' or 'animal'.

We would draw the Committee's attention to the evidence presented to the Environment Food and Rural Affairs Committee at Westminster by Mike Radford, Reader in Law, University of Aberdeen and Sir Stephen Laws KCB, QC, former First

Parliamentary Counsel¹. They concluded that the bill as drafted could have unintended consequences and would leave the situation open to legal challenge with final determinations made by the courts rather than parliament.

We note that provisions about animal sentience were introduced in 2009 by the Lisbon Treaty and are now included in Article 13 of the Treaty on the Functioning of the European Union. Article 13 states that:

"In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage."

It is important to recognise this context when considering how to adopt or enshrine this principle in law or when considering alternative approaches.

Finally, during evidence to the Environment Food and Rural Affairs Committee, Mike Radford also noted that, in article 13 *sentience* is not the crucial issue. The crucial issue is that sentience is the basis on which the active part of the provision - namely, to have regard to animal welfare - is based. We do not take issue with the principle of ensuring animal welfare, but we are concerned that a poorly drafted piece of legislation could lead to a series of legal challenges by groups opposed in principle to angling.

Views on the appropriateness of retaining/adopting/enshrining these EU principles in law or alternative principles/approaches that could be adopted.

In our view, the EU environmental principles should be enshrined in law. Whilst District Salmon Fishery Boards have legal powers to protect and enhance salmon and sea trout fisheries, these powers are limited. There are a range of pressures on our fish and fisheries, and the freshwater habitats on which they depend, which are out with the powers of DSFBs. A regulatory system, in which these environmental principles are enshrined, is important to ensure the protection and improvement of our environment.

Effective laws also require effective supporting mechanisms and institutions to ensure effective implementation. Robust enforcement mechanisms are also required where standards are not met. It is therefore important that the key functions performed by EU bodies – such as the oversight and enforcement roles of the Commission, European Court of Justice and other EU bodies – are replaced.

These institutions provide a mechanism for individuals to raise and seek to address potential breaches of environmental law allowing governments to be held to account. Currently, this mechanism is not replicated in Scotland or the UK. Replacing these functions may require the creation of a new body or bodies or existing bodies may

¹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/draft-animal-welfare-sentencing-and-recognition-of-sentience-bill-2017/oral/77281.pdf>

need to have some functions expanded or strengthened to compensate for the loss of functions currently performed by EU bodies. Any such body or institution must have (i) adequate resources, (ii) be independent of government, (iii) have relevant expertise and (iv) have sufficient legal powers to enforce the law and hold the government to account.

The North Atlantic Salmon Conservation Organisation is an international organization, established by an inter-governmental Convention in 1984. The objective of NASCO is to conserve, restore, enhance and rationally manage Atlantic salmon through international cooperation taking account of the best available scientific information. Scotland is a member of NASCO, through the UK as part of the EU as the Contracting Party.

NASCO and its Contracting Parties have agreed to adopt and apply a Precautionary Approach to the conservation, management and exploitation of salmon in order to protect the resource and preserve the environments in which it lives².

Views on if and how environmental principles could and should be enshrined in law in Scotland and enforced.

We note the amendments to the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill in the name of Claudia Beamish and Mark Ruskell. However, we also recognise that it is still possible that agreement over the UK Withdrawal Bill will be reached. Additionally, the UK Government may seek to challenge the European Union (Legal Continuity) (Scotland) Bill. On that basis, it may be necessary to retain the EU environmental principles in law by another means.

We believe that consideration could be given to Scottish Ministers and all public bodies being placed under a general duty, similar to the Biodiversity Duty contained in the Nature Conservation (Scotland) Act (2004), to act in accordance with the environmental principles when carrying out their responsibilities.

² http://www.nasco.int/pdf/agreements/pa_agreement.pdf