Environment, Climate Change and Land Reform Committee

EU Environmental and Animal Welfare Principles

Written submission from Sustainable Inshore Fisheries Trust

The Sustainable Inshore Fisheries Trust (SIFT) is a Scottish charity founded in 2011, to promote the sustainable management of Scotland’s inshore waters so that they provide the maximum long term socio-economic benefits to all Scotland’s coastal communities. SIFT promotes fisheries policies which restore the diversity and abundance of the marine ecosystem and it thus believes that the protection of the marine environment must be an integral part of fisheries policy.

In view of SIFT’s charitable objectives, this submission focuses on environmental principles and does not address animal welfare principles.

The importance of environmental principles

SIFT believes that the EU principles listed in the call for evidence are vitally important in that they ensure that basic environmental considerations are taken into account in developing policies that may impact upon the environment or the use of natural resources. In particular, these principles have had a significant role in shaping policy the use and protection of the marine environment in Scotland.

In the context of inshore fisheries, perhaps the most important of these principles is the precautionary principle. This principle is already reflected in the general policies contained in the Scottish National Marine Plan (NMP) and it is also reflected in the High-Level Marine Objectives agreed between the UK government and the devolved institutions, and in the UK’s Programme of Measures designed to implemented the EU Marine Strategy Directive. It is important for the development of marine policy because it demands early action where there is a plausible risk to a fish stock or other marine species or feature, despite the lack of clear evidence that harm will occur. Some of the other principles may also be relevant in the inshore fisheries context, including the principle that environmental harm by fishing activities should be prevented through careful spatial management.

Importance of enshrining these principles in legislation

Despite their broad recognition in a variety of existing policy documents, SIFT considers that enshrining these environmental principles in legislation would nevertheless be a vital step in order to guarantee that they continue to guide decision-makers, by providing a clear and stable legal basis for the principles. Indeed, legal recognition of these principles may also give the principles a greater weight, ensuring that they are translated from policy into actual practice.

How principles could be enshrined

In this respect, SIFT would like to see a statutory duty for public bodies to take into account these principles in the exercise of their functions, including in the development of plans, policies, and other decisions that are likely to have impacts on the environment or the use of natural resources. This duty should apply to a wide range of decision-makers across various sectors, including fisheries.
Even if the environmental principles are not incorporated into general environmental legislation, SIFT is of the view that there is an overwhelming case to incorporate these principles, as well as other environmental and socio-economic principles, into more specific statutory frameworks, particularly fisheries legislation. Given that most fisheries conservation and management measures are adopted through secondary legislation, it is essential that there should be a clear statement of the principles that should guide the development of such measures by the Scottish Ministers in the exercise of their powers.

**Additional principles that should be enshrined**

SIFT believes that there are a number of additional environmental principles which would benefit from incorporation into an Act of the Scottish Parliament in order to increase their visibility and to promote their general application. SIFT would highlight the following principles as being relevant in this context: sustainable use; the ecosystems approach; best available scientific evidence; transparency; and long-term community benefits. All of these principles have strong support at the international level, evidence by their inclusion in various treaties or other instruments.

**Examples of where principles have been enshrined in legislation elsewhere**

Fisheries legislation in other countries explicitly enshrines key principles as a guide to fisheries managers. Prominent examples include the Australian Fisheries Management Act (defining ‘principles of ecologically sustainable development’ for the purpose of exercising functions under the Act), the New Zealand Fisheries Act (describing ‘environmental principles’ which must be taken into account by fisheries managers) and the United States Magnuson-Stevens Fishery Conservation and Management Act (defining ‘national standards for fishery conservation and management’ for the purpose of developing fisheries management plans and regulations). The Basic Regulation of the EU Common Fisheries Policy also contains a list of objectives and principles of good governance, which guide the development of more specific management measures by the EU institutions.

**Importance of this issue, particularly for inshore fisheries in the context of Brexit**

SIFT is concerned that withdrawal from the EU will place these principles at risk and therefore it is necessary to reaffirm their place as a matter of Scots law. This could be achieved as part of a wider reform of the inshore fisheries legislation, as was promised by the Scottish Government in its 2015 Scottish Inshore Fisheries Strategy and later in its 2016 Programme for Government. But there is a case for incorporating these principles into existing legislation as an interim step in order to ensure that there is no gap following Brexit.

**Preferred enforcement options**

Not only do these principles need to be recognised in legislation, but an effective means of enforcement is also needed. Whereas judicial review may provide a means of last resort, it is both time-consuming and expensive and it is not suitable for ensuring systematic implementation of the principles.
Ideally, SIFT would like to see the development of an alternative mechanism, such as an environmental ombudsperson, to oversee implementation of the principles in practice or some other mechanism that would allow stakeholders to seek review of decisions in a cost-effective and efficient manner. In this respect, SIFT welcomed the announcement by the Secretary of State for the Environment in November 2017 of a consultation on a new independent, statutory body to advise and challenge government and potentially other public bodies on environmental legislation and we would hope that similar steps would be taken in Scotland.