RURAL ECONOMY AND CONNECTIVITY COMMITTEE

POST LEGISLATIVE SCRUTINY

SUBMISSION FROM THE SUSTAINABLE INSHORE FISHERIES TRUST (SIFT)

Introduction
SIFT welcomes the decision by the Rural Economy and Connectivity Committee (RECC) to consider post-legislative scrutiny of Acts passed during Sessions 1 to 3. This submission focuses entirely on the Marine (Scotland) Act 2010, (‘the Act’) and follows the format the Committee has set for respondents.

Do you consider that the Act has had sufficient time to have made a difference?
Yes. Although the Act is from late in Session 3, we believe that its strengths and weaknesses are already apparent.

Does the Act have a measurable outcome or policy objective, and has it fulfilled its intended purpose?
The Act introduced a wide range of measures regarding planning, licensing, conservation and enforcement. Whilst these have produced a range of specific outcomes, some more satisfactory than others, it is evident that they have not ensured that the Act has fulfilled its strategic intended purpose to balance competing demands on Scotland’s seas and integrate environmental and socio-economic considerations. The Policy Memorandum for the Bill is clear:

*Increasingly there are competing demands on Scotland’s marine environment from fisheries, aquaculture, shipping, ports and harbours, recreational activity, conservation, dredging, oil and gas extraction and renewable energy. Some of these activities are controlled through licensing while fisheries are managed through the EU Common Fisheries Policy. However, there is little strategic overview of the use of the marine environment: licensing is designed to control the environmental impact of certain activities but it does not and cannot address conflicts that may arise between marine activities. The provisions in this Bill create a framework to manage the growing and competing demands for the use of marine resources in the seas around Scotland, integrating environmental and socio-economic considerations to maximise economic growth within sustainable environmental limits.*

SIFT recommends that it is the overarching strategic effectiveness of the Act, as described in the Policy Memorandum, that should be the focus of scrutiny. However, we note that specific Parts of the Act have not fulfilled their intended purpose and would also benefit from scrutiny. In particular:

In Part 3: The planning frameworks have been implemented slowly. Indeed no Regional Marine Plans have been adopted in the almost 8 years since the legislation came into operation, with only 2 (out of a total of 11) Marine Planning Partnerships having been established to date. What frameworks are in place (particularly the National Marine Plan) have proved opaque and ill-suited to finding the balance set out in the Policy Memorandum.
In Part 5: It appears from the absence of management measures, and the continuing instances of conflict between economic and environmental interests in nominally Marine Protected Areas that the Act was, at least in part, insufficiently stringently worded. SIFT would also welcome additional Parliamentary scrutiny of the Scottish Marine Protected Areas Socioeconomic Monitoring reports.

In Part 8: re Sea Fisheries, additional scrutiny would be valuable particularly if it were coordinated with a wider review of fisheries legislation, although it is recognised that the impending departure from the Common Fisheries Policy, adds complexity to this issue.

Has another committee of the Parliament already carried out post-legislative scrutiny of the Act?
We are not aware of any equivalent post-legislative scrutiny of the Act since 2010.

Does the Act contain an in-built mechanism for post-legislative scrutiny?
Not at a strategic level, although lower-level reviews of different Parts of the Act are required, and these are ongoing.

Has the Act been subject to, or could it be subject to, significant revision?
No. However, elements of the Act relate to inshore fisheries and it is possible that new legislation regarding inshore fisheries will have a bearing on the Act. The Scottish Government's 2016 Programme for Government made the following commitment (6th September 2016): ‘...we will build on the current Scottish Inshore Fisheries Strategy .... and we will consult with all sectors and interests in fishing to develop an Inshore Fisheries Bill. However the timescale for the proposed Inshore Fisheries Bill is unclear. This is an issue that the REC Committee may elect to seek clarification upon, from Scottish Ministers.

Has there been a call from relevant stakeholders for the Act to be reviewed?
Some aspects of the Act remain heavily contested, including around management, enforcement, and the Marine Protected Area network. Whilst we are not aware that this has led to specific calls for review, it is evident that concerns are sufficiently broadly held by relevant stakeholders for scrutiny to be both widely welcomed and beneficial.

Would there really be merit in undertaking post-legislative scrutiny of the Act?
Yes. In the commentary to the call for views, the Committee asks "does the Act deal with a very technical or minor issue?" Quite the opposite: the Act had grand ambitions, and includes far-reaching provisions for the management of Scotland's marine environment, something of vital national importance for a wide variety of economic, social and environmental reasons.

Is the Act subject to legal challenge?
Not as far as we are aware.

The Committee goes on to ask the following inter-related questions:
Why do you think there is merit in reviewing this Act? and What is the likely benefit/outcome from reviewing this Act?
SIFT believes that the Act has not met its strategic objectives. A review of its strategic effectiveness would identify where amendments to the Act are necessary
and where other remedial actions would be sufficient. For example where the responsible authority is unclear, revisions to the legislation may be required. However in other instances the failure to meet strategic objectives might be resolved at a policy or administrative level by Scottish Ministers. For example, where Marine Protected Areas have been established with inadequate or entirely absent management measures.

If the Committee decides to scrutinise the Act, SIFT would be pleased to provide more detailed responses.

The Sustainable Inshore Fisheries Trust
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