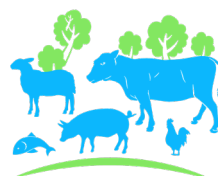




The Legal Protection of Farmed Fish vs Terrestrial Farmed Animals:

What are the anomalies and how can they be addressed?



**Conservative
Animal Welfare
Foundation**

Overview:

An estimated 73-180 billion fish are farmed each year – making them the most farmed vertebrate in the world¹. In the UK we farm an estimated 28 to 77 million fish and catch a further 1.5 to 2.7 billion every single year².

The sentience of fish is not in dispute, their ability to suffer has long been recognised in UK law and this year the sentience of fish was enshrined into UK law for the first time as part of the Animal Welfare (Sentience) Act 2022.

Yet despite legal recognition of their sentience, a growing UK industry with ambitious plans for growth and vast numbers of fish killed each year, fish are afforded relatively little legal protection. There are significant anomalies between the levels of protection given to terrestrial farmed animals and aquatic animals, but with no logical explanation or justification of these anomalies.

The Farm Animal Welfare Committee (FAWC) noted in 2014 in their report Opinion on the Welfare of Farmed Fish at the Time of Killing, that the humane stunning of farmed fish is necessary to remove fear, pain and distress at the time of killing. Their findings noted that they believe that all farmed fish should be stunned before killing, whether or not death accompanies the stun (as in stun/kill methods) or when death follows some short time after the stun but before the fish has the time to regain consciousness, and that the stunning, slaughter and killing of fish should be included in EU welfare legislation³.

¹ www.fishwelfareinitiative.org/why-fish-welfare

² www.conservativeanimalwelfarefoundation.org/wp-content/uploads/2021/03/CAWF-Fish-Welfare-Report-1.pdf

³ assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/319331/Opinion_on_the_welfare_of_farmed_fish_at_the_time_of_killing.pdf



In the Farm Animal Welfare Committee’s Opinion on the Welfare of Farmed Fish, 2014 they noted the need for: “specific legal requirements of the sort included in Schedule One of the Welfare of Farmed Animals Regulations to be extended to farmed fish to provide a baseline of management regulation”. This was in addition to the duty of care under the Animal Welfare Acts and the number of standards applied by industry and others to safeguard fish welfare.

The Farm Animal Welfare Committee also noted that industry led self-assessment regulation has limitations – and lacked information on compliance and enforcement, and pace of updating standards could be an issue in a rapidly changing industry. The Farm Animal Welfare Committee concluded that Governments should consider detailed requirements as a longer-term aim, informed by more scientific research on the needs of fish, and should improve enforcement if necessary⁴.

There have been vast numbers of scientific studies in this field in the eight years since the Farm Animal Welfare Committee reports were published. The UK Governments that hold the legislative powers on aquaculture can no longer continue to on one hand make great strides in animal welfare, and on the other hand, continue to leave a vast industry dealing with tens of millions of animals each year to self-manage.

The Conservative Animal Welfare Foundation, aligned to countless other animal protection organisations, is calling for time to be called on the anomalies of protection that exist between sentient animal species, and to align legislation so that all farmed animals, regardless of whether they are bred and reared on land or in water, are afforded the same protection.

This briefing document gives an overview of these anomalies and recommendations for action to close these legislative gaps, to better protect the lives of tens of millions of fish every year.

⁴ assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/319323/Opinion_on_the_welfare_of_farmed_fish.pdf

Legal Differences between Farmed Terrestrial Animals and Aquatic Animals:

The Animal Welfare Act 2006 (AWA) applies to fish farming in England and Wales but does not apply to anything that occurs in the ordinary course of fishing. In addition, the explanatory note specifically states it will not apply to the sea⁵. The sea exemption is an extremely broad and worrying exemption, as offshore farming may start to occur in England and Wales, which would mean important animal welfare protections were not applicable to those farms. This same carve out does not exist in Scotland, under the Animal Health and Welfare (Scotland) Act 2006 (AHWA), which already has offshore farms. Whilst this causes little legal issue at present, the English Aquaculture Strategy, Seafood 2040, is seeking tenfold growth by 2040⁶.

The Welfare of Farmed Animals Regulations for England, Scotland and Wales (WOFAR) all specifically say that they do not apply to fish. This is in direct contrast to the EU Directive 98/58/EC⁷ they each transpose. 98/58 applies the following protection to fish:

Article 3: Member States shall make provision to ensure that the owners or keepers take all reasonable steps to ensure the welfare of animals under their care and to ensure that those animals are not caused any unnecessary pain, suffering or injury.

It is likely that the reason for the specific exclusion of fish in WOFAR is because the general Article 3 protection, that was included in Directive 98/58/, is already provided for by virtue of farmed fish being included in the AWA and AHWA.

However, it is worth noting that the fact the AWA does not apply at sea could mean that offshore farmed fish (outside of Scotland) are receiving less protection than what was required under EU law.

Whilst the general WOFAR protection from unnecessary pain, suffering or injury is being covered by the AWA and the AHWA, there is a fundamental issue in that WOFAR still excludes fish from the more detailed and species-specific protections afforded to terrestrial farmed animals that are provided for in the schedules. These include:

- | | |
|--------------------------|--------------------------------------|
| a) Staffing requirements | f) Species specific requirements, |
| b) Record keeping | covering species specific needs for |
| c) Internal inspections | a whole range of situations, such as |
| d) Housing | space, enrichments and noise. |
| e) Space requirements | |

⁵ www.legislation.gov.uk/ukpga/2006/45/notes/division/6

⁶ www.seafish.org/about-us/news-blogs/english-aquaculture-strategy-sets-out-plan-for-sustainable-growth/

⁷ eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998L0058



Mandatory Guidance for Fish:

There are no official codes of practice, guidance or recommendation on farmed fish welfare, which is in direct contrast to most terrestrial farmed animals⁸.

With terrestrial animals there tends to be official guidance on how to comply with the legal provisions in place, such as husbandry practices to meet welfare needs. By way of example, these include the Code of Practice for the Welfare of Laying Hens and Pullets⁹, Code of Recommendations for the Welfare of Livestock: Cattle¹⁰, etc.

Instead, the main guidance that is used is the unofficial Code of Good Practice¹¹. This Code was originally created by the salmon industry in Scotland but has since also been subscribed to by the trout industry^{12 13}.

Welfare requirements include water quantity and quality, veterinary treatment and predator control. Inspections are said to take place on a regular basis¹⁴. As this is only industry guidance and self-regulated, it remains unclear legally what will happen to a farm if they fail an inspection. As noted above, the Farm Animal Welfare Committee raised their concerns of the effectiveness and limitations of industry led regulation in 2014.

Whilst the industry Code of Good Practice is a robust document in parts, specific standards that ensure welfare needs are met, are not covered. These include slaughter methods and what lice treatments will and won't comply with the law. Instead, the Code just mentions the need to comply with welfare needs in broad and vague terms. The broadness of industry led codes means non-compliance is harder to enforce, should such a mechanic for enforcement exist.

This voluntary, industry born code allows for a perverse loophole – where the Government is able to claim that official guidance is not required due to industry guidance existing yet will refuse to enforce the industry guidance by claiming it is not their guidance to enforce. Given the vast numbers of fish farmed annually, and the size and scale of the industry, this is of grave concern.

⁸ www.gov.uk/guidance/farm-animals-looking-after-their-welfare

⁹ assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732227/code-of-practice-welfare-of-laying-hens-pullets.pdf

¹⁰ assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69368/pb7949-cattle-code-030407.pdf

¹¹ www.salmonscotland.co.uk/code-of-good-practice

¹² qualitytrout.co.uk/code-of-good-practice/

¹³ www.salmonscotland.co.uk/code-of-good-practice

¹⁴ www.salmonscotland.co.uk/sites/default/files/inline-images/kOdTkixNtgU2KVLsfqs4BaZ88XEE73Et3lqfnPXzHTRvV2QZZI.pdf



Transport and Handling:

Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations is retained in the UK and enforced through the Welfare of Animals (Transport) Order/Regulations¹⁵. Fish receive the general protections afforded to all animals under the regulations.

However, unlike domestic equidae, domestic animals of bovine, ovine, caprine and porcine species, fish do not receive the species-specific protections, such as minimum daily feed requirements, journey times and resting periods, ventilation, and temperature requirements and space allowances.

The Code of Good Practice and other welfare schemes does provide some guidance on handling and transport; however, due to the fact it is not official, it will not be viewed as a legal requirement, nor will it be enforced by a regulator.

Some examples include:

The Code of Good Practice guidance on pre-transport fasting is broad and gives no timeframe¹⁶:

Before transport or harvest, feed should be withheld to reduce metabolic rate and the excretion of waste products, and to eliminate the presence of food and/or faecal material in the gut at harvest, thus minimising the risk of microbiological contamination during processing.

The period during which fish are deprived of food to achieve gut clearance prior to certain procedures or harvesting should be appropriate to the species and temperature.

By way of contrast, RSPCA Assured certification for salmon states that pre-transport fasting must: *never exceed 48 hours, unless specified by a veterinary surgeon/senior production manager*¹⁷.

¹⁵ Order in England and Wales and Regulations in Scotland

¹⁶ www.salmonscotland.co.uk/sites/default/files/inline-images/hHRor7UcGsPnhrBWv4ThyyOQB8bNargXH94tl67sTXISHRnVM.pdf (5.60 and 5.61)

¹⁷ science.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+standards+for+farmed+Atlantic+salmon+%28PDF%29.pdf/60ae55ee-7e92-78f9-ab71-ffb08c846caa?version=2.0&t=1618493958793&download=true



Fish Welfare at the Time of Killing/Slaughter:

The Welfare of Animals at the Time of Killing Regulations (WATOK), which transposes the Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing (PATOK) does include Fish under regulation 30 and schedule 5.

These provisions require fish to be spared any avoidable pain, distress or suffering during their killing and related operations and appropriate measures to this end must be put in place.

However, fish are not included in the definition of 'animal' for the purpose of the more detailed provisions in WATOK/PATOK, which means there are no specific requirements as to how they should be delivered, held, stunned or killed.

The industry Code of Good Practice does not detail killing methods; however, it does allude to a requirement to stun by stating:

Killing efficiency should be monitored by a proficient person to ensure fish do not regain consciousness prior to death¹⁸.

There is also a strong legal argument that stunning should be taking place, regardless of any species-specific protections, as under WATOK/PATOK all animals, including fish, must be protected from avoidable pain, suffering, injury and disease. As stunning before slaughter uses technology that is widely available, widely used within the industry globally, and widely scientifically understood to help prevent pain or suffering, the question legally of whether not stunning before slaughter is avoidable is of interest.

The Scottish Government has said it is standard practice for all farmed salmon and large farmed trout in Scotland to be killed using a percussive stunning method, which delivers irreversible instantaneous unconsciousness. Small, farmed trout are killed using electrical stunning methods. Any unacceptable methods would be investigated by the Animal and Plant Health Agency (APHA) if reported to them. However, this may be because practically all farmed salmon in Scotland is RSPCA Assured certified, and stunning is a mandatory requirement of this certification scheme.

¹⁸ www.salmonscotland.co.uk/sites/default/files/inline-images/hHRor7UcGsPnthrBWv4ThyyOQB8bNargXH94tl67sTXISHRnVM.pdf (5.80)

However, due to the fact that it is not clearly banned in legislation or official guidance, it is possible (outside of any certification schemes) that stunning is seen as voluntary and not officially enforced. This is supported by a recent Animal Equality undercover investigation in Scotland that showed that even where stunning is taking place it is not done properly, causing severe suffering.

Defra has not been clear on stunning methods in England.

Inspections of Slaughterhouses:

Inspections of slaughterhouses are required under several pieces of retained EU food safety law, including Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

Under this regulation, the UK is required to put in place official controls to ensure compliance with several rules, including monitoring food safety at any stage of production and the health and welfare requirements for animals. Official controls must take place with 'appropriate frequency'; however, this is calculated on a risk-based assessment.

In addition, Commission Implementing Regulation (EU) 2019/627 lays down rules for the official controls imposed on the UK and other Member States to verify compliance with Union legislation in the area of food safety at all stages of production, processing and distribution. This includes ensuring compliance with Council Regulation (EC) No 1099/2009, which covers the protection of animals at the time of killing. The nature and frequency of auditing tasks in respect of individual establishments shall depend on the assessed risk. The risk assessment will consider animal welfare aspects in slaughterhouses.

The Scottish Government states that inspections take place on a routine basis and at times unannounced¹⁹. However, through Freedom of Information requests submitted by The Humane League (THL) to the Scottish Government, it appears that there is no established process for regular welfare inspections at fish processing sites.

¹⁹ www.gov.scot/policies/fish-health-inspectorate/surveillance-programme/

Marine Scotland informed THL that it does not conduct welfare checks, but that the Animal and Plant Health Agency (APHA) may “possibly” conduct them. THL was informed however by APHA that:

“APHA does not have a routine programme of official inspections at fish processing sites.”

Similarly in England, it appears that there is currently not an official inspection regime in place for farmed trout at the time of slaughter. From Freedom of Information requests, not one public body has a clear understanding of what regime is in place. THL was informed that neither the Food Standards Agency (FSA) nor the Fish Health Inspectorate (FHI) conduct welfare inspections of fish slaughterhouses in England/Wales and was instead told that the Environmental Health departments of local authorities conduct these. However, Environmental Health responded to say that APHA was actually responsible for conducting fish welfare checks. Finally, APHA informed THL that it does not conduct regular inspections of fish processing sites. This information strongly suggests that no government officials are monitoring fish welfare at the time of killing.

Independently from official controls, Quality Trout UK²⁰ states on its website that scheme members are inspected annually by an independent body to ensure standards are being met. It is also understood that the RSPCA conducts announced audits of producers signed up to its standards on an annual basis. Similarly, it is understood that every salmon farm is inspected annually under the Code of Good Practice.

The slaughterhouse inspection framework for fish, and the understanding of that framework by official bodies, is significantly different to that afforded to terrestrial animals. Terrestrial farmed animals are inspected both ante and post-mortem in slaughterhouses. In addition, the official bodies are very aware of their responsibilities, with primary responsibility falling on the Food Standards Agency and Food Standards Scotland.

²⁰ qualitytrout.co.uk/about/

CCTV in Slaughterhouses:

In 2018, the Mandatory Use of Closed Circuit Television (CCTV) in Slaughterhouses (England) Regulations came into effect. The equivalent Scottish regulations came into effect in 2021. These regulations require a duty to install and operate a CCTV system and footage must be kept for 90 days, during which time it can be seized and inspected by the relevant authority. Late 2021, the Welsh Government announced that they will also be implementing rules to introduce mandatory CCTV in slaughterhouses. There is currently no equivalent requirement for fish slaughterhouses to have CCTV.

Cleaner Fish:

An estimated up to 15 million cleaner fish (wrasse and lumpfish) are used annually in the UK aquaculture industry²¹. All of these are slaughtered at the end of each cycle, but mortalities can be extremely high throughout the cycle and there are a host of complex welfare needs that have to be met²². It is critical that cleaner fish are afforded the same level of legal protection as any terrestrial animal used in farming receives.

Whilst legally, cleaner fish will be covered in exactly the same way fish bred for food are, in any new legislation any regulations and/or official codes of practice should cover their specific treatment and needs.

Self-Regulation:

The UK Governments have the power to issue regulations for detailed protections for fish and official codes/guidance for how to comply with the law and best practice on how to farm fish. However, no such regulations or official guidance has been issued throughout the UK, with the single exception of guidance issued in June 2021, where the Scottish Government issued its first official code for fish farming in relation to the Containment of and Prevention of Escape of Fish on Fish Farms (in relation to Marine Mammal Interactions). Although this code does not cover key areas mentioned in this document, it is worth noting this will from the Scottish Government and precedent to release official codes for farmed fish.

²¹ Conservative Animal Welfare Foundation Cleaner Fish Report

²² Conservative Animal Welfare Foundation Cleaner Fish Report

In lieu of government codes, the industry relies on the voluntary Code of Good Practice. The Scottish Government has made it clear that it does not enforce the Code of Good Practice. The English and Welsh position is unknown; however, it is very likely the same.

In effect the fish farming industry in the UK is self-regulated. This self-regulation is in direct contrast to land animals, where detailed regulations and guidance exists for most (if not all) farmed animals and the monitoring and enforcement roles are significantly clearer and more routine.

The Pathway to Legislative Change:

There are a range of powers that would suggest that the required changes could take place via secondary legislation, or even through the issuance of an official Code of Practice.

Under section 12 of the Animal Welfare Act, Defra and the Welsh Government are able to make regulations to promote the welfare of fish for which a person is responsible, this includes imposing specific requirements for the purpose of ensuring that the needs are met. However, before making such regulations, the Government shall consult such persons appearing to represent any interests concerned.

Similarly, under section 26 of the Animal Health and Welfare Act, the Scottish Government may make regulations to secure the welfare of fish for which a person is responsible, including prescribing general or specific requirements. The AHWA is more detailed than the AWA and specifies that such requirements may include (among other things) the prevention of suffering, the way in which animals are looked after and the conditions in which they are kept, how animals are transported, how animals are prepared for killing and are killed, hygiene and the prevention of disease and of the spread of disease. Like the AWA, before making regulations, the Scottish Government must consult such persons appearing to them to represent relevant interests.

WOFAR and The Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018 were made under the above regulation making powers. This means the same powers could be used to improve fish welfare at farms and for CCTV in fish slaughterhouses. However, consultation with industry would be required.

In terms of whether a more robust inspection and enforcement regime could be made through secondary legislation, section 26 provides a specific power under the AHWA to make regulations for inspections and enforcement.

The AWA, however, does not specify such powers. However, the general inspection and enforcement regimes that exist under the AWA would apply to any regulations that are made under it. Regardless of the fact the AWA does not include specific powers to create inspection and enforcement regimes for animals, which would include fish, it is important to remember that those inspection powers already exist (and should arguably already be taking place). Under retained EU law, food safety law requires monitoring regimes to ensure compliance with animal welfare, both during farming and slaughter.

The above means it should be possible to implement an appropriate inspection regime for fish farming and fish slaughter via secondary legislation, or even through a government policy using the legislation that already exists.

In addition to the potential for secondary legislation, there is also scope to introduce official codes of practice for fish welfare under section 13 of the AWA and section 37 of the AHWA.

Codes of practice offer practical guidance on how to comply with legal provisions. Whilst a breach of the code is not in itself an offence, it does indicate that an offence has occurred. The practical guidance that would be useful in an official code would be how to avoid the offence of unnecessary suffering, how to meet the needs of fish during farming and how to transport fish in a way that minimises suffering; all of which is required by law. It would also be useful to have guidance on how to avoid pain and suffering during killing, which almost definitely would mean stunning, again as required by law.

Summary:

The launch of a consultation on the introduction of a Code of Practice is a logical next step for the UK Governments to work towards alignment of afforded protections of terrestrial farmed animals and aquatic animals, and to end the anomalies that exist between sentient farmed species.

This should be done alongside consultations into the mandatory use of CCTV in fish slaughterhouses and enhanced protection under WOFAR and WATOK (including detailed methods on pre-stun slaughter), and the implementation of a clear inspection regime.

Such legislation and the supporting code should be welcomed by the industry, as there already exists industry codes and the vast majority of the aquaculture industry in Scotland is already signed up to the RSPCA Assured certification scheme.