

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 27 September 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

27th Meeting 2006, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Rob Gibson (Highlands and Islands) (SNP)

*Richard Lochhead (Moray) (SNP)

*Maureen Macmillan (Highland and Islands) (Lab)

*Mr Alasdair Morrison (Western Isles) (Lab)

*Nora Radcliffe (Gordon) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Trish Godman (West Renfrewshire) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Mr Mark Ruskell (Mid Scotland and Fife) (Green)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

David Dunkley (Scottish Executive Environment and Rural Affairs Department)

Ross Finnie (Minister for Environment and Rural Development)

David Ford (Scottish Executive Environment and Rural Affairs Department)

Phil Gilmour (Scottish Executive Environment and Rural Affairs Department)

Arthur Griffiths (Scottish Executive Environment and Rural Affairs Department)

Russell Hunter (Scottish Executive Legal and Parliamentary Services)

Claire McGill (Scottish Executive Environment and Rural Affairs Department)

Dr Alastair Stephen (Institute of Fisheries Management)

Ian Strachan (Scottish Executive Environment and Rural Affairs Department)

Dr Rodney Wootten (University of Stirling)

Dave Wyman (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 27 September 2006

[THE CONVENER *opened the meeting at 10:03*]

Aquaculture and Fisheries (Scotland) Bill: Stage 1

The Convener (Sarah Boyack): Good morning. I welcome members, anyone from the press and members of the public to the meeting. I remind everyone to switch their mobile phones and BlackBerrys to silent and I ask colleagues not to sit them beside the microphones because they affect the sound system.

Agenda item 1 is the first of our evidence-taking sessions at stage 1 of the Aquaculture and Fisheries (Scotland) Bill. The committee's role at stage 1 is to consider the bill and produce a report that recommends to the Parliament whether the general principles of the bill should be agreed to. To assist us in doing that, we have a strong programme of evidence from a range of witnesses over the next five weeks. We have also called for all interested parties to submit evidence in writing.

I invite any declarations of relevant interests from members.

Mr Alasdair Morrison (Western Isles) (Lab): I eat salmon regularly.

The Convener: That does not quite qualify.

Our first panel of witnesses is a group of officials from the Scottish Executive. We have asked them to provide an overview of the bill and how the policy has developed. David Ford is the Aquaculture and Fisheries (Scotland) Bill team leader; David Dunkley is the head of freshwater fisheries policy; Phil Gilmour is the head of aquaculture policy; Dave Wyman is head of fish health and welfare policy; and Russell Hunter is from the office of the solicitor to the Scottish Executive.

I thank them for being with us and invite them to make a brief opening statement.

David Ford (Scottish Executive Environment and Rural Affairs Department): Thank you for giving us the opportunity to explain the Aquaculture and Fisheries (Scotland) Bill. I am the bill team leader and, as the convener said, I have with me four colleagues who might answer some of the committee's questions.

The bill grew out of the Executive's strategic framework for Scottish aquaculture, which was drawn up by the ministerial working group on aquaculture. That group, chaired by the Deputy Minister for Environment and Rural Development, is made up of stakeholders from the aquaculture industry, freshwater fisheries and environmental non-governmental organisations. This committee also devotes one of its members to the group—first Maureen Macmillan and now Alasdair Morrison. Ministers are greatly appreciative of the hard work of everyone in the group.

The strategic framework, published in 2003, envisaged both an industry code of practice and legislation that would mainly impact on those who do not sign up to or do not stick to the voluntary code. The bill is finely balanced to minimise additional burdens or costs in light of the Executive's commitment to support the aquaculture industry.

The policy on freshwater fisheries was drawn up collaboratively with the freshwater fisheries forum, an open stakeholders forum set up by ministers, representing a wide range of freshwater interests, including fisheries managers and anglers. The bill is the first step of a process to deliver freshwater fisheries in Scotland. The Executive is working closely with the forum to take forward the preparation of a strategic framework for freshwater fisheries and to develop proposals for new management structures. In the meantime, protection orders are being made more fit for purpose and their future can be reviewed once the new management structures are in place. There are also no provisions in the bill to make liaison committees for protection orders mandatory. To do so might well involve the creation of 14 or so new non-departmental public bodies, whose existence would be superseded by whatever new management structure emerged in due course.

I would like to give a brief overview of the bill, taking the opportunity as I go to respond to one or two issues that have been raised by stakeholders.

Some stakeholders have expressed a worry that, because much of the bill is composed of enabling powers, they will have no say when the detail is specified. The Executive is committed to consulting on statutory instruments, and secondary legislation is, of course, subject to parliamentary scrutiny. It might reassure the committee to know that ministers have asked that all proposals for subordinate legislation emanating from the bill should be developed with stakeholders through one of the many collaborative groups that exist. The Executive also intends to involve stakeholders when developing non-legislative issues such as guidance.

Part 1 of the bill, on aquaculture, provides for the regulation of parasite control and the containment

of fish. Inspectors appointed by the Scottish ministers will have powers to inspect fish farms and shellfish farms to assess whether they have satisfactory measures in place for the prevention, control and reduction of parasites and—for fish farms only—for the containment and prevention of escape of fish and for the recovery of escaped fish. It is intended that these inspectors will, with training and extra recruitment as necessary, form part of the current fish health inspectorate with the Fisheries Research Services.

The information provisions in part 1 permit the gathering of relevant information that will allow objective judgments to be made as to conditions on a farm and what appropriate action may be taken. It is the Executive's intention to publish clear guidance, developed with stakeholders, on how the inspectors will undertake their inspections and how they will reach their decisions. It would be unreasonable for inspectors not to follow those published agreed operating procedures.

Should inspectors, on the basis of an objective inspection informed by the guidance that I mentioned, come to the view that a farm does not have satisfactory measures in place, they would first give advice about what steps need to be taken to put things right. If the advisory approach proves to be insufficient, inspectors would ultimately rely on the powers in the bill for the serving of an enforcement notice on the farm to ensure that the relevant steps are taken.

Inspectors are bound, as a matter of administrative law, to act reasonably. Therefore, they will have to be able to demonstrate that the requirements in an enforcement notice are reasonable and fair. Clearly, the industry's code of practice, which sets out industry-accepted standards of good practice for, *inter alia*, the control of sea lice and the containment of fish, would inform that process and the courts would be able to take the code into account.

The Executive's guidance could supplement the industry's code in terms of clarifying certain issues more precisely, but there is no intention to go beyond the standards that are set out in the codes of good practice. We therefore believe that the bill should add no extra costs and burdens for fish farmers and shellfish farmers over and above those that would fall to them anyway.

I want to make two things clear in relation to sea lice. In no circumstances could an enforcement notice be issued for a treatment if the farm's discharge consent had been used up. Secondly, there can be no question of an inspector ever overruling the advice of a company vet. Rather, any enforcement notice would direct a fish farmer to seek veterinary attention with a view to reducing the lice burden.

Part 2 of the bill provides a range of powers to tackle the virulent salmon parasite known by its Latin name of *Gyrodactylus salaris*—fortunately, it is also known by the abbreviation GS. Experience in Norway and in other countries has shown that the parasite can kill between 90 and 95 per cent of affected salmon. Because the consequences of an outbreak are so enormous, the bill extends the powers in the Diseases of Fish Act 1937 to designate areas such that movements of fish and equipment are restricted if the presence of GS is suspected anywhere in the United Kingdom.

The bill gives a range of powers to attempt eradication of the GS parasite, including the construction of barriers and the addition of chemical treatments to waterways. Before using those powers, ministers must discharge their responsibilities under the European habitats and water framework directives. That means that they must take into account the environmental, social and economic consequences of any proposed action. Before they could take such measures, a comprehensive assessment of the affected area would have to be undertaken, and all interested parties would have to be consulted. The end result of such an assessment might be that ministers decided not to attempt eradication.

Part 3 of the bill amends existing freshwater fisheries legislation to make legal certain acceptable fishing practices, such as the use of rod rests, and to prohibit the use of certain unacceptable auxiliaries to fishing, such as gaffs. It also extends salmon conservation provisions to other freshwater fish and introduces an enabling power to specify baits and lures. The Executive proposes to use that power, in the first instance, to introduce a Scotland-wide ban on the use of live vertebrates as bait.

Part 4 of the bill introduces a number of miscellaneous provisions, notably the powers to make payments and the provisions on the movement of fish.

We are in the process of assessing what amendments the Executive might wish to lodge at stage 2. We will inform the committee of those as soon as we can, once ministers have approved them. We are happy to answer questions from the committee as best we can.

The Convener: Thank you very much. We appreciate that commitment to let us see at an early date any amendments that the Executive is considering for stage 2. That will be most helpful to us in scrutinising the bill. A raft of colleagues want to ask questions. I will work my way down the list.

Mr Morrison: I thank Mr Ford for a useful and informative overview of the contents of the bill. I was heartened to hear him use the words “no

extra costs". Imagine that I was running a small organic fish farm in the Western Isles or that I worked for one of the multinationals that operate in my constituency. If we were to pass the bill today, what would I notice a year from today? Would I notice that there were no extra burdens or costs? What would I notice in terms of my efficiency and competitiveness?

Phil Gilmour (Scottish Executive Environment and Rural Affairs Department): I will try my best to answer that question. The industry has produced its code of practice, which was developed in parallel with procedures to introduce a bill under the strategic framework for Scottish aquaculture. Both issues were taken forward with a view to being overseen by the ministerial working group on aquaculture. We have a code of practice that has been fully endorsed, and most of the industry is now committed to taking that forward. That sets our benchmark for appropriate practice on fish farms. The bill does not attempt to introduce anything above that; we are trying to make underpinning legislation. For a small fish farmer or a large multinational that is signed up to acceptable practice, as set out in the industry's code of practice, there should be no additional cost.

David Ford: The one potential flaw in the code of practice, in the perception of the general public, is the fact that it is voluntary. We are always being asked, "What would happen if somebody didn't join in?" The answer is that the legislation would bite. In a year's time, you might notice that public confidence has risen overall, which should help the industry's case.

10:15

Mr Morrison: I have two brief supplementary questions. First, how many companies have not bought into the code of practice or are outwith it?

Phil Gilmour: The Scottish Salmon Producers Association claims that 95 per cent of the companies, by production, have joined in. The SSPA wants that figure to be increased to 100 per cent. I am not sure how many companies have not signed up to the code of practice, but 95 per cent, by production, have.

Mr Morrison: Secondly, I return to my hypothetical question about the bill being passed today. Fast-forwarding a year, what would the bill have done for my competitiveness? We often hear companies talking—quite rightly—about the importance of competitiveness; not about what they have done in the past decade, but about how things will impact on them in the next decade.

Phil Gilmour: With respect to the control of sea lice and the containment of fish, it is essential that the industry controls sea lice for its own benefit as

well as for the benefit of the wild-fish sector. It is also essential that companies contain their fish for their profitability and the profitability of others. They have developed their procedures, which we endorse. With respect to competitiveness, I believe that the idea is to underpin the practice that companies have already signed up to.

Maureen Macmillan (Highlands and Islands (Lab): Can I get some more information from you about GS? I am aware of concerns among wild-fish interests about the possibility of GS coming to the UK. You said that, if the parasite arrived in the UK, you would take measures to deal with it. What measures are being taken to keep it out of the UK? There is concern that importing smolts and eggs might transfer the parasite. What assurances can you give me about that?

Dave Wyman (Scottish Executive Environment and Rural Affairs Department): The fish health regime that operates in this country is set by the European Union. The rules that apply at the moment prevent trade from areas that are affected by disease into areas that are not affected by disease. There are trade restrictions on importing live fish from Norway because GS is prevalent in that country.

Maureen Macmillan: Thank you. My next question is about sea lice. We all know about the problem of treating sea lice if the Scottish Environment Protection Agency says that the discharge consents have been used up. What would happen if an inspector said that a cage needed treatment but SEPA said that no further treatment was possible? What would be the process then?

Dave Wyman: SEPA is autonomous, and the arrangements that we envisage would not involve an inspector seeking to override SEPA. If the discharge consent was used up, that would be the end of the matter.

Maureen Macmillan: So the fish would stay covered in lice. I presume that they would not be slaughtered. What would happen to them? I understand that that might happen only very rarely, but it is a theoretical possibility.

Phil Gilmour: There are several ways of dealing with such a matter. We would not expect the inspector to move immediately to take the fish out and have them slaughtered; we would look for other ways of dealing with the situation. We would also have to consider whether the discharge consent was appropriate in the future and, ultimately, consider whether there was potential for some form of well boat treatment so that the discharge consent was not a problem. Such issues are not yet resolved and tied down, and we need to think about them; however, we foresee

very few cases in which we would run into that type of problem.

Nora Radcliffe (Gordon) (LD): Maureen Macmillan has asked the question that I wanted to ask. I, too, wondered what would happen if the discharge consent was used up.

Can you say a bit more about the fish health inspectorate? For example, how many fish health inspectors will be needed to provide effective cover?

Phil Gilmour: We have developed a financial memorandum that considers this issue and we believe that a substantial team of fish health inspectors is already in place. We envisage bringing in another two fish health inspectors to deal with sea lice, and that one additional inspector with the appropriate experience—perhaps with an engineering qualification—will come in to deal with the containment issue. That would be a sensible first-stage approach. However, we will try to take a minimal approach based on our hope or belief that the industry code of practice will do the main job of self-policing.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I would like to pursue the question of costs that was first raised by Alasdair Morrison. From what you said, I understand that you do not believe that fish farms will be put at any further competitive disadvantage by any costs that might arise from the proposed legislation. That seems to be in direct contrast to the submission that we received from the institute of aquaculture, which claims that the costs have been “grossly underestimated”, and that

“The financial impact on industry has similarly been underestimated. Many of the proposals required additional manpower, may have significant impact on profitability”.

How do you respond to that?

David Ford: The institute of aquaculture's response is based on the proposals in the consultation document and not on the bill's provisions. The institute of aquaculture is mistaken.

Mr Brocklebank: So it is simply wrong and you are right. We will have the opportunity to talk to the institute of aquaculture later on. Your view is that, as you have said, the proposals in the bill will not impact on the profitability of fish farms.

David Ford: We stand by the figures in the financial memorandum. Mr Gilmour wants to say something more.

Phil Gilmour: The underpinning proposal for the legislation is to have an industry code of practice that works. If the industry implements a code of practice that has stakeholder endorsement, we believe that we can deliver the proposals

efficiently and in a way that will require minimal policing. We do not believe that the impact of the bill will be what the institute of aquaculture believes it will be.

Mr Brocklebank: I have two further questions. The first is specifically about lice. You have identified particular species of lice that will be covered by the proposed legislation, but I understand that the salmon rod fishermen—if I can call them that—feel very strongly that a species of freshwater louse of the genus *Argulus* should also be included. Why has it not been included?

Dave Wyman: I will try to explain. Throughout the consultation period, no mention was made of that parasite and it came as something of a surprise to see it in the recent submission. At this time, all I can say is that we would have to investigate the extent to which that parasite is a problem and come to a view about whether it should be added to the list of parasites in the bill or to the list of notifiable diseases. That process has yet to start.

Mr Brocklebank: So you have not turned your face against it totally.

Dave Wyman: Absolutely not.

Mr Brocklebank: My final question is about escapes and I am really asking for information; perhaps you can guide me. As you can imagine, we have been lobbied by different groups representing the fish farms and the rod interests, if I may call them that. There seems to be a divergence of opinion. Most people accept that we do not want escapes and that we should try very hard to stop them happening. However, there appears to be a body of opinion in the farming sector that suggests that escapees are very unlikely to be able to breed, so the genetic composition of Atlantic salmon will not deteriorate. The rod interests appear to take the counter view that escapees will get into the wild species, which could detract from them genetically. What is the right balance in that argument?

Phil Gilmour: It is a difficult scientific issue. There is some evidence of interbreeding between farmed and wild stocks. Although I am not a geneticist and cannot tell you the risks, consequences and so on, well-qualified scientists have said that there is a risk. As a result, we are developing containment legislation underpinned by the precautionary principle.

Purely and simply, we believe that the legislation is not at odds with what the industry wants because it is in its interests to contain its fish. We would expect an inspector to become interested in a situation only where someone took a commercial risk around containment. From a precautionary point of view, it is important to have sensible regulation and a sensible approach to making it if

there is a risk to the genetic wild stocks. Again, I stress that the industry itself ensures that containment is covered effectively and properly in its code of practice.

Maureen Macmillan: I have a follow-up question about interbreeding—the question of escapees, if that is the right word. I have heard that some rivers are stocked with farmed smolts, which I presume will breed with wild salmon when they go out to sea. Is that true? If so, it seems to suggest that there is a problem of escapees interbreeding with wild salmon.

David Dunkley (Scottish Executive Environment and Rural Affairs Department): That has happened in the past. If it still happens, it is extremely rare, rather than widespread practice.

If fish escape from a fish farm when they are close to maturity, they might go up a local river immediately and there could be a high survival rate among the fish before they spawn. However, once fish that have been stocked as smolts go to sea, the evidence is that there is a high mortality rate and that the return rate is small. That does not mean that there is no genetic impact. As my colleague said, we take a precautionary approach to such matters, which means trying to avoid taking irreversible actions. If something gets into the genes of an animal, it is pretty irreversible.

Nora Radcliffe: Will you give me an idea about the aftermath of an escape? How likely are escapes to happen? What is done afterwards? Are attempts made to recover the escaped fish or are they just written off?

Phil Gilmour: We usually go through a process to find out whether recovery is worth while. Recovery can include the deployment of gill nets and so on, but that should happen only when there is minimal risk to the existing wild stocks. We might seek to recover, say, 100 escaped fish, catch one or two wild stocks, and do more damage to the wild stocks. Biologists from fisheries trusts and other experts must be asked their opinion of the likelihood of recovery, and there must be pre-agreement about what recovery action should be taken. In other words, a recovery action plan should be agreed at local level.

Nora Radcliffe: Are there agreed levels of escape that trigger that process?

Phil Gilmour: Every escape is treated individually and the right action decided. The wrong action at the wrong time of year—for example, deploying gill nets—might be a much more sensitive matter.

10:30

Richard Lochhead (Moray) (SNP): One of the recurring themes of the past few years has been

the call from the industry to have a one-stop shop to deal with aquaculture. How many agencies does an aquaculture operator currently have to deal with during the registration process and so on? How many will they have to deal with once the bill is enacted?

Phil Gilmour: The bill is not designed to tackle the number of regulatory bodies that exist. The FRS's fish health inspectorate tries to ensure that no additional body becomes involved in regulation of the industry; reducing the number of regulatory bodies is a different matter.

The core message on streamlining regulation is that we have been through an extensive consultation exercise, considered the issues that most stakeholders think are of paramount importance and tried to progress a bill that reflects the fact that there will be a code of practice and that the industry will self-police. The industry already wants to focus on improved containment and ensure that sea lice are properly controlled. We are going in behind that approach and ensuring that it is underpinned. It is a matter of having efficient regulation.

Richard Lochhead: My next questions are on freshwater fisheries. To what extent are non-native species being introduced to Scottish fresh waters? Have there been any prosecutions under the existing legislation for introducing such species? How can the number of introductions be monitored and the legislation be enforced? Relying on anglers reporting that they have caught a non-native species must be difficult. Will you tell us about the existing problem?

David Dunkley: There is a problem. An oft-quoted example is that Loch Lomond has acquired around eight new species in the past 20 years.

Legislation is already in place to deal with the matter, which is interesting. The Import of Live Fish (Scotland) Act 1978 deals with the movement of fish into Scotland. However, the Aquaculture and Fisheries (Scotland) Bill proposes more regulation on the movement of fish within Scotland so that they are not moved between catchments.

You asked about prosecutions. There was a prosecution case as a result of the alleged introduction of North American signal crayfish in Tayside, but I think that it failed on a technical issue.

The proposals relating to the movement of fish were called for forcefully by the Scottish freshwater fisheries forum. We expect that local fishery managers, water bailiffs, the police and others will become involved. Awareness of the seriousness of the matter has increased enormously. Not only have new fish been brought into Loch Lomond, but fish have been moved from Loch Lomond to other places—or at least, that has

been suspected. Such activities can cause significant ecological problems.

Richard Lochhead: My next question is about migratory fish in our fresh waters. Many anglers say that grilse are smaller than they were two or three years ago and that they are smaller because of a lack of food at sea. They look to the marine phase of migratory species' lives. To what extent is science looking into that problem? What are the latest findings?

David Dunkley: The FRS has identified that grilse—which are fish that have returned after one winter in the sea—have been small this year, particularly in June and July. We have noticed that there have been smaller fish previously. Our scientists have seen growth checks on the scales of fish, which probably indicate that their growth has slowed down. That, in turn, strongly suggests that there is a feeding problem, but we do not know where or when that problem has occurred, although we know that it has occurred in the sea.

Scotland, as part of the UK and the European Union, is a signatory to the North Atlantic Salmon Conservation Organization convention. NASCO has an international Atlantic salmon research board, which has developed the salmon at sea—or SALSEA—research programme, which seeks international co-operation on research into the marine environment. That research is such an expensive operation that we feel that it is necessary to have an international scheme. Scientists from Scotland are involved with scientists from elsewhere around the north Atlantic in developing programmes to look into these issues.

Richard Lochhead: Our briefing from the Scottish Parliament information centre refers to the Scottish Executive consultation process and says that angling access has not increased in some areas in which a protection order has been introduced. Clearly, that is one of the reasons why such orders are controversial. Where are those areas and to what extent is there a problem?

David Dunkley: There were a couple of cases of that a few years back. The then fisheries minister Lord Sewel was minded to revoke protection orders in the Tweed and the Tay. The revocations did not go ahead, because the whole system was reviewed and people were brought back into line. Should evidence become available that people who have signed up to a protection order are no longer making fishing accessible, they can be removed from the order and lose the protection of the criminal law. It was not immediately obvious whether that was possible under the existing legislation, but, should the bill go through, existing provisions will be amended to provide for it.

Elaine Smith (Coatbridge and Chryston)

(Lab): I understand the need for good management and conservation. However, it has always seemed a bit odd that certain elements of the landed gentry, if you like, can own the fish in the water and that people cannot therefore fish in certain areas. As we have heard, it is a criminal offence to fish in certain areas. Will you explain in a bit more depth what protection orders are about and how withdrawing the order would be a punishment? Would it mean that people could fish in the area? I really do not understand how it would all work.

The Convener: Would someone like to give us a brief explanation of the purpose of protection orders and how they are meant to work?

Elaine Smith: Who are the orders meant to protect—the fish or the owners of the fish?

Russell Hunter (Scottish Executive Legal and Parliamentary Services): Where a landowner enjoys the right to fish, although they do not legally own the fish in the water they control the right to fish in the water from their land. The purpose of the protection order regime is that if they apply for a protection order—

Elaine Smith: Sorry, I just want to clarify that. If someone was out in a boat, would the order not apply and could they fish in the area?

Russell Hunter: It would depend whether there was a public right of navigation in the area. That would depend on the river and a series of other factors that I am not able to go into at the moment.

In return for a landowner making proposals, which are acceptable to ministers, to increase the availability of fishing on their land, the protection order would put in place a regime whereby it would no longer be just a civil offence for someone to fish without permission but a criminal offence.

Elaine Smith: As it is with salmon anyway. Is that correct?

Russell Hunter: No. If someone does not have a protection order and someone comes on to their property and fishes without their permission, their remedy is under civil law. A landowner would have to go to court and persuade it to grant them an interdict. To get a protection order, a landowner would have to open up fishing on their property to satisfy ministers. Once a protection order is in place, the criminal law comes into play so that, if someone fishes without the necessary permission, they are committing a criminal offence and will be dealt with through the criminal courts.

Elaine Smith: How would the bill's proposals on protection orders help when anglers find it difficult to find anyone to tell them which bits of the land they are allowed to fish from, or to find anyone who can give them permits? The Pike Anglers

Alliance for Scotland said in its evidence that it was no coincidence that access for pike and coarse angling in some areas is more difficult than elsewhere, and that it was often impeded by unjustified restrictions on fishing methods. The alliance obviously has a problem with pike in particular. How would the proposals assist?

Russell Hunter: I can answer only on the legal point, as I am the lawyer for the bill team. David Dunkley might deal with the general points.

David Dunkley: An administrative requirement when a protection order is made is that a liaison committee is established. Such committees publish a list of permit outlets. Interestingly, we hear from those committees about the lack of permit take-up. Often, the issue is not that there is a lack of availability of fishing, but that more fishing is available than is taken up. We are engaged with an angling tourism development group that is designed to promote fishing and make people more aware of its availability.

The bill addresses the concerns about the methods of fishing being restricted. For historical reasons—I cannot think what they are because they are much older than I am—fishing in Scotland by rod and line means fishing with a single rod and line with such bait or lure as is lawful under the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, although the act has been amended since 1951.

The bill tries to bring the methods available to coarse anglers into line with those that are available pretty well everywhere else in the world. Anglers who want to fish for freshwater fish other than salmonids will be entitled to use up to four rods, provided that those rods are not left unattended. That is pretty much the norm elsewhere.

Elaine Smith: Will the liaison committees be obligatory? The Pike Anglers Alliance for Scotland mentioned the committees.

David Ford: I referred to that in my opening statement. The committees will not be mandatory, but Executive ministers make a strong case that they should exist. If a protection order did not have a liaison committee, that might be a basis for revoking the order.

Nora Radcliffe: When protection orders were going to be lifted, there was a lot of concern in my area. A lot of the fishings in my area are publicly owned and administered by the local authority. Before that, they had been administered by all sorts of bodies. Fishings were run in the public interest with a lot of access for local anglers. There is a lot of concern that, if protection orders were no longer available, fishing could not be managed in the best interests of local people. It is

not only private landlords who have an interest in the issue, but ordinary anglers in local areas.

David Dunkley: The issue arose throughout the consultation. Often, fishings were operated by angling clubs whose members paid significant sums of money to stock waters, but then anybody was coming along without a permit and fishing.

We have to consider where we are going. At the moment, we are at the end of the beginning, if you like. Ultimately, we are aiming for integrated management of salmon and freshwater fisheries. When that happens, and when there are properly constituted boards—or bodies, or whatever they will be called—that develop fisheries management plans, there may not even be a need for protection orders. There may be, but there may not be. That will come out in the development of new management. However, that is not covered in the bill.

10:45

Nora Radcliffe: I presume that that will feed into river basin planning and so on under the water framework directive, so it is part of a bigger whole.

David Dunkley: Yes.

Maureen Macmillan: The information that you gave Nora Radcliffe is helpful. Concerns have been raised with me about the River Spey, where people cannot fish because of the protection orders. They want to participate in coarse fishing and fish for trout, but they are not allowed to do that because it is a salmon fishing river. They think that that is unfair.

You talked about moving towards integrated management of freshwater fisheries. Do you envisage that rivers such as the Spey will become more open for other kinds of fishing?

David Dunkley: The object of the exercise is to have integrated management throughout Scotland so that everything is tied up, including the requirements of the water framework directive and the habitats and species directive. We need that integration because fish do not live in splendid isolation. They live as part of a system, and the system has to be managed sensibly, including the fisheries. That will take a bit of doing because it involves a lot of interests, but properly integrated management is the ultimate aim.

Rob Gibson (Highlands and Islands) (SNP): Part 1 of the bill appears to be dominated by the interests of fish farming. However, fish farming has an impact on shellfish farming. Why are regulations needed for fish farming but not for the rest of mariculture?

David Ford: The regulations on parasites apply to shellfish farming as well as fish farming. The

provisions that apply only to fish farming are the ones on escapes, because shellfish do not usually get very far if they escape. I am not sure what other provisions you are referring to. For example, the power in section 30 to make payments to support and develop aquaculture applies throughout aquaculture. I am not sure what is excluded.

Rob Gibson: It is clear that, although the production of shellfish is much smaller in terms of tonnes, the number of people who are employed in shellfish production is about a third of the number of people who are employed in fish farming. Also, there are far more companies and the sites are almost as numerous, so the regulations on fish farming must have an impact on shellfish farming. Can you tell me of any particular impact that those regulations will have?

Phil Gilmour: Again, the point is that the shellfish sector has proceeded with its own code of practice. If there is a need for regulation with respect to parasites, in particular, we could cover that in secondary legislation, but that would come from the shellfish sector itself asking for intervention on parasites.

David Ford: Section 7 permits ministers to adopt a code of practice, so if there was a need or requirement in the shellfish sector, that would be another route by which ministers could introduce regulation.

Rob Gibson: I presume that that is because the shellfish sector does not have as many problems with parasites as the fish farming sector has. The experience of dealing with GS has been that the river system is flushed with a particular chemical. How does that affect shellfish?

David Dunkley: The treatment is fairly carefully controlled. The experience in Norway is that one does not necessarily flush the whole system. A joint approach is involved, with the use of barriers and the treatment of certain sections. Invariably, that involves a chemical that becomes more and more dilute as it goes downstream. Shellfish farms are usually in the marine environment, so there will be no impact on them. *Gyrodactylus salaris* can live in brackish water for a short time, but it is basically a freshwater parasite.

Rob Gibson: What is the risk of GS getting to Scotland? Is it high, medium or low?

Dave Wyman: Opinion is divided on that. People in certain sectors say that it is inevitable that GS will come to Scotland, but the majority opinion is that the risk is low. European Union epidemiologists have assessed the existing trade rules and concluded that the risk from importation of live fish is low. They have also considered the risk of GS coming into the country through

contaminated angling equipment, which, similarly, they assessed as low.

Eleanor Scott (Highlands and Islands (Green)): The bill gives ministers new powers to request information from fish and shellfish farming businesses. What information is currently collected and what new information could be requested under the proposal?

Phil Gilmour: I will try my best to explain that. At present, we carry out production surveys for fin fish and shellfish, which involve collecting information on a voluntary basis. The information, which is provided voluntarily, is used to produce annual reports, which everyone who is involved sees as useful. However, there is a risk that a company could withdraw from the process, which would, shall we say, interfere with the series of reports. It is sensible to ensure that that cannot happen.

Another issue is that the ministerial working group that has been set up to manage the implementation of the strategic framework for Scottish aquaculture has been discussing high-level indicators. If we develop such indicators to ensure that the industry is progressing correctly—in other words, that we are delivering a sustainable industry—there would be no point trying to collect the data for them if that process was not underpinned by statute. Any information that was to be collected would be agreed by the ministerial working group, so the industry would be part of the decision-making process.

There is a potential need for other information. If we are to engage in the issues of supporting the industry, we would need to have information to underpin policy development on that and to ensure that it was robust and appropriate.

Eleanor Scott: You say that information is provided voluntarily at present. What proportion of fish and shellfish growers participates in that?

Phil Gilmour: I believe that all the producers contribute voluntarily to the production surveys, because they all find the end product, the report, useful.

Eleanor Scott: Is there any information that you seek but which the producers do not supply you with?

Phil Gilmour: For the production surveys, we will not ask for any more information. On the high-level indicators, we would seek to agree, through the ministerial working group, exactly what economic, environmental and social information we should gather.

Eleanor Scott: What is meant by a high-level indicator? What sort of thing are you talking about?

Phil Gilmour: Sorry—I should have explained that. A high-level indicator would be used if, say, we decided to measure the social worth of the industry. We would try to find out how many jobs there were in different areas, which would provide a headline measure that told us that aquaculture is important in certain areas because X per cent of the population there are involved in the industry. That would allow us to gauge in social terms the industry's contribution to local economies.

Eleanor Scott: Figures on that are provided already, so that would not be new information.

Phil Gilmour: Information is out there. We would use readily available information if possible. We would not try to reinvent the wheel, but we would try to ensure that we had an agreed format, so that we could produce a series over the years to show, for example, whether the industry was still a significant employer in certain areas.

Eleanor Scott: Will you request any information that it would be costly for the industry to collate and supply to you, that would have resource implications for the industry or that would impinge on commercial confidentiality?

Phil Gilmour: Information for production surveys that is seen as commercial is already collected. That information is treated in a confidential manner. I suspect that for high-level indicators we will have to agree certain principles with regard to economic information. Other policy development issues that emerge from discussion in the ministerial working group may be economic, and commercial confidentiality will have to be agreed in respect of those. Our aim with high-level indicators has always been to take an approach that will minimise data requirements. In other words, we will go first and foremost to readily available information. We will look to proceed in the most efficient manner. However, we will have to follow the agreed ministerial working group process. We will take into account everyone's view and, we hope, produce a high-level indicator with which everyone is happy. In other words, we will try to reduce the burden to one of mere transcription.

Eleanor Scott: Are the workings of the ministerial working group in the public domain?

Phil Gilmour: Yes.

Eleanor Scott: So any information that the group uses will become public property.

Phil Gilmour: The papers that are produced will go into the public domain. However, we can put in place procedures to ensure that commercial confidentiality is respected for information of a commercial and sensitive nature. We already do that in respect of production surveys.

Mr Brocklebank: I should have raised this issue when I questioned you about escapes. You rightly said that it is important for you to take measures to prevent escapes. However, the wild-fish lobby believes that an opportunity may have been missed and that the Executive should have made the escape of fish from a fish farm a strict liability offence. Why did you not take the opportunity to give the provision more teeth?

Phil Gilmour: The main reason is that we do not think that that is necessary. I am not saying that we do not see escapes as an important issue, but ultimately it is in the fish farmer's interest to ensure that he contains his fish, because if he loses them, that is an economic burden that he must bear. A strict liability offence should be applied only where there is an identified need for that. We think that we can deal with the issue sensibly, without resorting to what we regard as a draconian measure.

David Ford: There was a feeling in the Executive that making an escape, however it was caused, into an offence could prove a disincentive to reporting escapes, which would be counterproductive. It would also expose farmers who had all the right measures in place to being charged with an offence if, for example, there was vandalism, as happened last week on a halibut farm. We did not think that that was the appropriate way of tackling the situation.

The Convener: You referred to the management of freshwater fisheries. A consultation on future structures for managing freshwater fisheries is under way, but those proposals have not been slotted into the bill. At what point is legislation on the management of freshwater fisheries likely to be introduced to the Parliament? How is the discussion progressing? Will it spill over into discussion of the bill, or are they relatively discrete areas? Will we be able to address the issue later?

David Dunkley: Discussion of future structures for managing freshwater fisheries should not spill over into discussion of the bill, because the issues are separate. We are involved in an iterative exercise, of which the bill is one part. This afternoon we will attend a meeting of the steering group of the freshwater fisheries forum. We are working in collaboration with all our stakeholder groups, which are the major groups that are involved in salmon and freshwater fishing interests in Scotland. I cannot as yet give the committee a timescale for that work, because we have not yet discussed major issues such as property and employment.

We have a system of district salmon fishery boards, some of which have been in place since the early part of the 19th century. We will have to see how those big structures can be fitted into the

new systems. We are working on that. We have embarked on the development of a strategic framework for freshwater fishing in Scotland and we have got all the stakeholders enthused about working with us to develop it. I hope to be able to answer your question, but as yet I do not have a date by which I can do so.

The Convener: But we are talking about the next session of the Parliament.

David Dunkley: Yes.

The Convener: I wanted to get a sense of whether you think that it will happen early in the next session, or whether big issues still need to be bashed out. You are saying that the framework is absolutely not ready at the moment.

David Dunkley: No. It is not ready. We need to ensure that we take the time to get it as right as we can. We will do that by taking on board all the views of the people whose lives and businesses will be affected by it.

The Convener: I think that we have exhausted all our questions. It was useful to get your overview of how the bill will work in practice and why the different sections were included. In hearing evidence from other witnesses, we will return to the issues. At the end of the process, Ross Finnie, the Minister for Environment and Rural Development, will come before the committee. Thank you for kicking off our discussions on the Aquaculture and Fisheries (Scotland) Bill. We will have a short suspension to allow for the changeover of witness panels.

11:01

Meeting suspended.

11:02

On resuming—

The Convener: I think that that was the fastest changeover in the history of the committee. Thank you.

I welcome our second panel: Dr Rodney Wootton is from the institute of aquaculture at the University of Stirling; Dr Alastair Stephen is from the Institute of Fisheries Management; and Arthur Griffiths MRCVS is the chair of the Scottish Executive Environment and Rural Affairs Department's Gyrodactylus salaris task force. Thank you for your submissions, which the clerks have circulated to members. Maureen Macmillan will open the questioning for the committee.

Maureen Macmillan: Alasdair Morrison said earlier that I was chickening out by talking about GS; he told me that I have to say Gyrodactylus salaris. There—I have said it. Given that GS has

been around for a long time, why are we now having to deal with it by way of legislation? Are there other diseases out there that we should be thinking about?

Arthur Griffiths (Scottish Executive Environment and Rural Affairs Department): I will kick off on the GS front. I will say "GS"; I get tongue-tied if I say the rest of it.

In February last year, SEERAD convened a working group to consider GS because it wanted to examine whether GS could get into Scotland and, if it could, what we could do about it. That working group drew on expertise from Norway and there was involvement from the Department for Environment, Food and Rural Affairs and from Wales and Ireland.

I understand that one of the clear messages from the working group was that there was the need to set up a task force to consider the risks and to decide whether, if the disease did get into Scotland, we were prepared and, if not, how we would get ourselves prepared to deal with the situation. At that stage, I was invited to chair the task force, primarily because of my experience of farm-animal diseases.

Maureen Macmillan: Is the bill's commitment to take measures to deal with GS the result of the task force's findings?

Arthur Griffiths: It became obvious early on that there is only one model—the Norwegian model—for dealing with GS, so whichever way we wanted to go, we found that we were left with the Norwegian model. When we looked at the existing legislation—there are something like 20 pieces of legislation that impinge on GS, quite apart from legislation that is specific to fish disease—we found that the minister did not have the powers that would enable officials to do many of the things that would need to be done if we were to follow that model. We found no other expertise that would enable us to deal with the parasite; we were locked into using the Norwegian model, albeit with variations that would address the environmental situation in various parts of Scotland.

Maureen Macmillan: Has it been a worry that the disease might turn up in Scotland? As we heard earlier, it is not possible, under European legislation, to move fish from an infected area into the UK.

Arthur Griffiths: I will refer to my experience of animal diseases. For the best part of 30 years, we thought that we would never get foot-and-mouth disease again because we thought that we had put in place the controls that would prevent that occurrence. We all know what happened in February 2001. Scotland has to be prepared for the risk of GS; the response then has to be proportionate to the perceived risk.

Mr Brocklebank: My question is for Dr Wootten. The previous panel said that no additional financial burden will be placed on the aquaculture industries as a result of the bill. What is your response to that? In your submission, you state that

“The timetable for introduction of the Bill appears rushed”

and that there could be

“a dramatic rise in regulation”

that could

“seriously increase the cost of aquaculture”.

Members of the first panel do not appear to agree with you.

Dr Rodney Wootten (University of Stirling): I did not hear the evidence from the previous panel, so I am afraid that I cannot comment directly on what the witnesses said.

Our view is that there is at least the risk of an increase in cost to the industry, particularly with regard to the provisions on sea lice. The industry has established a rigorous code of practice that seems to be working well. In general, licensing control has improved enormously over recent years. That licensing control should be given more of a chance; we should see how it works out before we proceed to legislation. Obviously, the industry needs inspection, whether by the Executive or an outside party.

Our view is that issues of compensation may arise, both in respect of the lice against which treatments are directed, and in relation to GS. If fish farms have to be killed out—which might well be necessary—it would be unfair for the industry not to be compensated properly. There is also a risk that some of the other provisions, such as the requirement to collect more data, could increase costs. Some of the measures, particularly in respect of sea lice, are more rigorous than they need to be.

Mr Brocklebank: You are saying that the extra costs that will affect the profitability of the sector will fall on the industry.

Dr Wootten: Yes—there is a risk of that.

Mr Brocklebank: I turn to your criticism of the provisions for parasite control. You say:

“It is unlikely that the proposed regulator will have sufficient professional experience and training and it is hard to imagine them providing the necessary local clinical control.”

Will you expand on that?

Dr Wootten: Two issues are involved. If we assume that Fisheries Research Services will be the inspectorate, the question arises whether it has the expertise to act in that capacity. At the

moment, the FRS may not have the expertise, although such expertise could be acquired. The problem is not insurmountable.

My veterinary colleagues are concerned that the bill gives rise to issues about who would be in control of the treatment of fish. We feel that because the inspectorate would not be able to override the local veterinary surgeon who had care of the fish, there is scope for considerable conflict. We wonder what the legal issues are. Some of my colleagues feel that it is legal only for the veterinary surgeon in charge of the fish to prescribe a treatment. As we understand it, all the treatments in question are medicines under the veterinary acts. That is where we feel the biggest source of conflict between the proposals and practice on farms lies.

Mr Brocklebank: Even though you have heard that we must be extremely vigilant because there is at least the possibility of more serious infestation as a result of other lice species getting into the stocks, you appear to be saying that we are rushing into legislation too soon.

Dr Wootten: As you know, there are two species of lice present on salmonids in the marine environment in Scotland. *Lepeophtheirus*, which is commonly known as the salmon louse, is a serious parasite that must be controlled. *Caligus* is a similar organism, but it has a slightly different biology. I am not sure how the bill will pick up on that. *Caligus* is a highly mobile creature that can jump from fish to fish with astonishing ease. Caged fish can sometimes become heavily infected by it overnight, possibly as a result of wild fish coming in around the cages—the parasites can jump off the wild fish and swim on to the farmed fish. It would be difficult to cover that through inspection; I am not sure how it could be done. However, it is not known whether that is a serious problem for local salmonid populations. It is difficult to identify any other parasites that might cause similar problems for salmonids as a result of interaction between wild and farmed fish.

Elaine Smith: I have a question for Dr Alastair Stephen about the Institute of Fisheries Management's submission. It is welcome that you say that you support the majority of the bill's provisions. After outlining results from the study that was commissioned by the Scottish Executive that demonstrate the important impact that angling has on the Scottish economy, you go on to say that, as well as being effective and meaningful, the measures in the bill need to be

“backed with sufficient resources to ensure effective implementation, compliance, and enforcement.”

Will you give us more detail on what you mean?

Later in your submission, you say that fisheries law enforcement

"is undertaken by fishery board staff who are privately funded"

and you suggest that adequate training and resourcing will be necessary

"to deal with any new regime regulating fish movements."

Where else do resources need to be provided?

Dr Alastair Stephen (Institute of Fisheries Management): Elaine Smith has raised a number of points. Resources are always short and although the bill is heading in the right direction and the institute supports the majority of its provisions, we are concerned about whether enough resources will be made available on a number of different levels. To be frank, without the necessary resources, it is not worth legislating.

It is worth looking back at what has happened in fish farming. One reason why we are here is that fish farmers have not behaved well environmentally over the past 30 years. If they had, we would not need the provisions in the bill. Problems such as sea lice that have been rumbling on for a number of years and have affected wild-fish stocks on the west coast to the detriment of employment opportunities in that area have only recently been properly dealt with as a result of measures such as the establishment of the tripartite working group, which involved fish farmers getting together with wild-fish interests and the Executive to produce area management agreements. AMAs—which are in the best interests of the fish farmers—should have been established years ago to prevent sea lice problems, which are just as important to the industry as they are to the wild-fish interests.

11:15

Elaine Smith: You talk about there being robust penalties. What do you mean?

Dr Stephen: We want to ensure that penalties that result from the bill are strong enough so that, if fish farmers are not operating correctly, they realise that there is a serious stick in the background.

Elaine Smith: Do you have suggestions for those penalties?

Dr Stephen: No, I do not; I just think that they need to be significant. I do not know enough about banding of penalties to know what is and could be available.

On resources, we welcome the establishment through the FRS of the fish health inspectorate. We need, however, to ensure that inspectors are adequately trained and have enough resources to do the job that the bill wants them to do.

On the freshwater side, the committee has raised the issue of fish movements. The IFM is

keen to ensure that the bill will be passed because the introduction of inappropriate fish in different places is, as Dave Dunkley said earlier, a significant biological issue that could affect, and has affected, wild-fish populations to the detriment of fisheries and the economy. If there are not adequately trained staff or adequate resources, how will we deal with that?

The Environment Agency in England and Wales has a similar type of operation that takes place under section 30 of the Salmon and Freshwater Fisheries Act 1975. It can be effective, although there are problems with it and it is a costly operation. If we are going to rely on staff who work for the district salmon fishery boards—the bailiffs—to help with it, they must be trained. Some people think that may be inappropriate, in that organisations in the private sector should perhaps not police the new measures.

Elaine Smith: What would be the appropriate vehicle?

Dr Stephen: There are several possible opportunities, including SEPA, Scottish Natural Heritage and the FRS itself.

Elaine Smith: You mention in your written submission the protection order system. I do not know whether you heard our discussion with the previous panel, but that system was mentioned. You say that it

"is not responsive or linked in any way to the ability of fish stocks to support a fishery."

Can you expand on that?

Dr Stephen: There has from the word go been a fundamental problem with the protection orders. They were set up as a way of trying to regularise access, but no thought was given to the resource that was being exploited. Unless there is a link between the fish and access, there is no way of telling whether whatever is being suggested is a sustainable option. The Institute of Fisheries Management has continuously suggested that we need to produce a better solution in the future, such that increased access is linked with sustainability of the resource.

Elaine Smith: That ties in with the question that I asked earlier about for whom protection orders exist—whether they are for the people who own the land or for the fish stocks.

Dr Stephen: They are definitely not for the fish.

Elaine Smith: No—but you are making the point that they should perhaps involve consideration of the fish.

Dr Stephen: As far as the bill is concerned, we feel that an opportunity is being missed in not establishing by statute liaison committees and reporting. Although we hope to be talking in the

future about better ways of managing fisheries locally, it is—to be frank—many years away. Such committees would be a halfway house in gaining better input to that, at least from the perspective of the fish stock.

Elaine Smith: Are there areas that are of particular concern around Scotland, or are you giving an overview of the whole situation?

Dr Stephen: It is a general overview.

Nora Radcliffe: Do you have evidence that people who utilise protection orders have not been managing their fishing stocks responsibly or with a view to sustainable exploitation?

Dr Stephen: The problem is that very little evidence has been produced in any of the protection order areas that would enable such a determination to be made. Most of the people who are involved with protection orders are angling based and are concerned only about stocking as many fish as they can in the waters. That seems to be one of the major issues, anyway. The outsider might think that that is a good idea because it will mean that there will be as many rods fishing as possible, which will maximise the income that is generated. However, that might not be a sustainable way of managing a wild fishery—it can have major downsides and consequences for the biological resource. It is obvious that that is happening in some places.

Nora Radcliffe: How many protection orders cover a whole catchment?

Dr Stephen: I think that there are 14 protection orders. Some cover parts of a catchment and some cover most of a catchment. I am unaware of whether any cover a whole catchment.

Nora Radcliffe: It will be different in different parts of the country.

Dr Stephen: Yes.

Nora Radcliffe: My experience is that they cover bite-size chunks.

Dr Stephen: Yes, although there are some bigger chunks. The Tay and the Tweed have two big protection orders, although they do not cover the whole of the catchments.

Eleanor Scott: The institute of aquaculture's submission states:

"Legislation to manage movement is not appropriate—this is an industry role."

Could you please expand on that?

Dr Wootten: We felt that there was a danger that the controls could be too prescriptive. Fish farmers sometimes need rapidly to move fish at short notice, possibly for harvest reasons or for transfer between sites. Our worry would be that, if

permission had to be obtained for every single movement, it might not be possible to get responses quick enough to enable that. We wonder whether it is possible to have a system whereby blanket coverage could be given to a particular area for a particular time. We feel that having to seek permission for every single movement could lead to severe operational difficulties for farms. It is hard to know how often that would be an issue.

Eleanor Scott: How often does it become necessary to move fish at a few hours' notice? If it is for harvest, surely that is entirely predictable.

Dr Wootten: It probably does not happen enormously often, but there is a danger that it might happen. A farmer might need to harvest quickly and move fish between sites—if there has been storm damage or other damage, for example. It is difficult to say exactly what the circumstances might be, but they could occur.

Eleanor Scott: You accept that the intention behind the proposal is to limit the spread of disease by limiting or at least tracing movements.

Dr Wootten: Absolutely. We fully support that.

Eleanor Scott: If you could be reassured that a rapid response was possible, would your concerns be allayed to some extent?

Dr Wootten: Yes—they would be utterly allayed.

Eleanor Scott: I have another question about fish movements, but for Dr Stephen this time. You expressed concern that the proposals do not go far enough or do not cover everything that you want them to cover. Could you expand on that?

Dr Stephen: The institute would welcome control on all fish movements. We realise that that is probably unrealistic but, from a biological perspective, the management of all wild-fish stocks and movements into areas where wild fish are unpolluted by what are called alien species are of paramount importance for managing what is a very valuable Scottish resource. We would welcome restrictions on all fish movements, if that could be done.

Eleanor Scott: Do you mean movements within fresh water, from fresh water to seawater and from seawater to seawater?

Dr Stephen: Yes.

Eleanor Scott: Perhaps Arthur Griffiths can give us his reaction to that from a disease control point of view. How necessary are restrictions on fish movements?

Arthur Griffiths: From a disease control point of view, the containment element of the contingency plan is probably the crux. I do not want to keep

going back to what happened in 2001, but the size of the outbreak then was a problem because the national restriction was not imposed quickly enough. The disease was confirmed on the Tuesday, but I think it was the following Monday before we stopped movements from all livestock markets. I do not think that anybody could put an arithmetical figure on it, but that decision undoubtedly increased the size of the outbreak. I will not try to put a figure on it.

It is important that we have facilities whereby the minute we suspect that there is disease we can, if necessary, stop all movements in order to prevent the disease from spreading while we find out exactly where it is. We must ask what we are dealing with and whether we have one point of infection and nothing else, or whether it is scattered throughout Scotland. We need a standstill to be able to do that.

I must disagree with the view that we cannot set up a licensing system to deal with movements. We did it successfully with foot and mouth; we are talking about many more movements than the Scottish fish industry envisages. It is not easy to implement a licensing system, particularly in the first few days, when things are not geared up properly. It means that farmers must do a bit of emergency planning so that they do not end up banging on the door at 5 o'clock at night wanting a permit to move stock at 7 o'clock the next morning. They must think through what is required. I accept that there are problems in a licensing system until folk get into it. However, we must stop the movement of susceptible stock and of the disease organism itself, if there is to be a chance of getting rid of the disease quickly.

Eleanor Scott: To do that, would you first have to know what movements were taking place? In other words, would all movements have to be accounted for?

Arthur Griffiths: Yes, we would have to account for all movements. If we suspect disease on farm A, for example, then in order to assess how far the disease has spread we must ask to where the farm sent fish and from where it brought fish. We look for not only the spread of disease but its source. Nine times out of 10, the first case that is picked up is not the origin of the disease. We need to know where things have gone and where they have come from.

Eleanor Scott: Would you agree with Dr Stephen that that should apply to freshwater fish movements, as well?

Arthur Griffiths: Yes, I think that I would. We would not deal with GS unless it was purely in fish farms.

Dr Stephen: I did not intend to suggest in my previous answer that there should be restrictions

on all fish movements. I meant to say that we should license fish movements. A pertinent recent example is the problem that we had down south this summer with viral haemorrhagic septicaemia, which is a new disease that has broken out in the rainbow trout industry. Fish movements had taken place and it transpired that some fish from the area where the disease was identified had arrived in Scotland and had been moved to other farms, so restrictions were put in place. It is lucky that we do not have that disease now in Scotland.

The Convener: I presume that the trick is to set up a system that is easy to administer and transparent. Do you envisage that the bill will make that possible?

Dr Stephen: Yes—if the system is thought about sensibly and logically. It should not impact hugely on the industry if it is done in a way that involves the industry. Two or three issues are crossing over; they include unrestricted movements of inappropriate wild fish in the system and movements of farmed fish.

11:30

The Convener: We have sent somebody to try to stop the noise from above us where the windows are being cleaned, which is slightly off-putting. I hope that that will be resolved.

Maureen Macmillan: I thought that VHS and infectious salmon anaemia, for example, had been taken care of in the regulatory system and that movements would not be allowed. I know that stiff regulations apply if ISA breaks out, so I am not sure what the big concern is.

Dr Wooten: It is true that such regulations apply when notifiable diseases occur. Our concern was that all movements would have to be registered before they took place. It is essential to record all movements of fish, so that they can be traced if necessary and disease outbreaks can be contained. Our concern was merely that requiring authorisation to be sought routinely for all movements when no risk or suspicion of disease existed might be too restrictive on farmers. However, when a notifiable disease such as ISA or VHS occurs, the regulations are robust and would be effective.

Dr Stephen: I agree. The last thing we want is to place an extra burden on rainbow trout units that move fish regularly, for example every month. A farmer would have a blanket licence to do that, but we need to ensure that evidence exists of where fish are going.

Maureen Macmillan: Are you talking about healthy fish and not about an outbreak of a disease? I am becoming confused about what is proposed. Are you talking about wanting licences

to move perfectly healthy fish or only when a disease outbreak occurs? If a disease outbreak occurred, I would have thought that restrictions would be imposed anyway.

Dr Stephen: You are right.

Rob Gibson: I will return to GS. Mr Griffiths points out that the Scotch whisky trade and Scottish Water are two major users of our water, along with the hydroelectric industry. The contingency plans that you are drawing up are important in relation to the human consumption of water that is affected by disease-eradicating chemicals. Will you tell us a little more about what we know about the effects of those chemicals on humans?

Arthur Griffiths: We can use two chemicals to treat GS. One is rotenone, which is an old derris compound that kills the parasite, the fish involved, all the other fish species in the river and probably some of the invertebrates as well. The other is aluminium sulphate, which kills the parasite but does not kill the fish, although it kills some invertebrates. The problem with aluminium sulphate is that the pH of the water must be reduced to about 5.5 for it to be effective. That is probably okay on short west coast rivers that come off a peat bog, because they are fairly close to that level, but east coast rivers are probably much more towards neutral pH. The last time that I was in Norway, an aluminium sulphate trial was being undertaken on a big river, and people were talking about having to build a railway up the side of the river to transport up the chemical. Aluminium sulphate does not have the effect on all the other species that rotenone has, but it too has a fairly big environmental impact.

Rob Gibson: What do you know about the effect on human beings?

Arthur Griffiths: In large quantities, rotenone may have a mild effect on human beings, but in the quantities that are used to treat rivers, it does not appear to have an adverse effect. With aluminium sulphate, problems are more likely to arise from acidity.

Rob Gibson: Norwegian rivers are probably shorter, steeper and more rapid than the east coast rivers in Scotland where the concerns might arise, given that it is mainly water from those rivers that is used in whisky production. Have you surveyed how much treated water is likely to end up in Scotch whisky or indeed in the water that is abstracted by Scottish Water?

Arthur Griffiths: We have not surveyed that in detail. We know that the Scotch whisky industry's main concern would be the effect of treated waters on the distillation process, although I notice that in its evidence the Scotch Whisky Association mentions the cooling process. Industry

representatives have told me that it does not matter what goes through the coolers and that the problem is keeping the water for distillation pure. We are planning to hold an exercise in January and February to test the plan. The Scotch whisky industry has put forward a detailed list of things that it wants us to consider, one of which is the fact that many smaller distilleries do not distil all year round; some of them are seasonal.

To minimise the cost of treatment, the Norwegians opt to treat when the river runs at its lowest, so that a lot less chemical is required. It may well be that we can work out a system with the whisky industry whereby we treat when water runs are very low. If a distillery is distilling, it may be possible—we must examine the technical issues—to divert water into storage for it to use while we are treating. If we treat with rotenone there is a very short period before there appears to be very little in the way of rotenone or its vestiges left in the water—we are talking about days.

We have a problem with aluminium sulphate, because it is not registered under the bioscience directive. The Norwegians are using it under an experimental licence. The dossier on rotenone has gone through under the bioscience directive, so we have access to rotenone until at least 2010.

Rob Gibson: So you are telling me that the test that you will carry out may take place in February. I do not know what the timetable is for the progress of the bill, but do you think that aspects of the legislation might need to be altered depending on the outcome of the test?

Arthur Griffiths: I do not want to prejudge the outcome of the test, but I do not think so. This is a brand new plan written this year. The aim of what we will do in January and February is to test the plan to ensure that we have got all the assumptions right and that we can deliver what the 41 stakeholders told us was required when we put the plan together. I have had quite a lot of experience of putting these things together and know that, when we put the scenarios to them, some organisations tell us that they can do more than they really can in practice, while others are a bit conservative, so we find that we have made allowances that perhaps we did not need to make.

The issue is the practicalities of running the exercise rather than the detail of the techniques of the use of chemicals. If the minister decides that we will treat in the event of the outbreak of disease, we have only two options: rotenone and aluminium sulphate. The aluminium sulphate option is probably questionable under the bioscience directive. As far as I am aware, no country has put a dossier forward to register aluminium sulphate, which means that any country that wants to register it now has missed the

deadline and would have to put a full dossier forward from the beginning, which is an expensive process.

The Convener: We will return to some of these issues. Many issues to do with the management of GS and other parasites have been raised. On that last answer, I presume that the key issue is not the changes that might be made to a plan but having provision in the bill for a plan to be pushed forward by ministers. The key issue now is to test what it is appropriate to have in the plan. Is that a correct interpretation?

Arthur Griffiths: Yes. That is a good summary.

The Convener: I thank the three witnesses for their written submissions and for giving evidence to us this morning. That is the end of our oral evidence session on the bill today, but we will return to the matter with a series of witnesses over the next few weeks. We will now have a quick break before we proceed to the next item.

11:39

Meeting suspended.

11:44

On resuming—

Subordinate Legislation

Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 (Draft)

11:45

The Convener: We have one affirmative instrument to consider. The Parliament must approve the draft Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 before it can be formally made. The Minister for Environment and Rural Development, Ross Finnie, is here to move the motion in his name inviting the committee to recommend to the Parliament that the draft order be approved. I welcome the minister and his officials. The Subordinate Legislation Committee has considered the order and circulated a note of its comments to us.

Before we debate the motion, we have an opportunity for colleagues to clarify any purely technical measures or to allow explanation of detail while the officials are at the table. Once the motion is moved and we move into the formal debate, the officials will not be able to participate.

I ask Ross Finnie to introduce his officials and to make any opening remarks. We will then move to questions and clarifications.

The Minister for Environment and Rural Development (Ross Finnie): Thank you, convener. I am joined this morning by John Paterson, Claire McGill and Ian Strachan, all of whom operate in the animal health and welfare element of the Executive.

As the committee will be aware, this is the first order made under the Animal Health and Welfare (Scotland) Act 2006. The order amends and repeals provisions in both primary and secondary legislation, which is why it is before the committee. Despite the complicated legal text, the purpose of the order is fairly simple. It amends provisions and references in a number of existing acts that deal with the welfare of animals to refer to the 2006 act. Where appropriate, it removes references to the Protection of Animals (Scotland) Act 1912. That will ensure that existing legislation is amended to take account of the provisions of the principal act.

Most of the substantive provisions of the 2006 act will be commenced on 6 October. The order has been laid in advance of commencement to allow the amendments made by it to apply from a date shortly after commencement. As the

committee is aware, it is our intention to replace most of the existing animal health and welfare acts that the order amends by introducing new secondary legislation. As I indicated during the passage of the 2006 act, that process will take some time and in some cases will require additional consultation exercises. In the meantime, it is necessary to keep the existing provisions but to amend them to take account of the new act.

My officials and I will be happy to take any questions to clarify anything in the order that committee members wish to pursue.

The Convener: Can I clarify that the order basically ensures that people who have committed a crime in the past or been found guilty of an offence under animal health and welfare legislation are prevented from looking after animals or having them under their control? Is that a correct interpretation?

Ross Finnie: Yes, that is one purpose. We are delighted that you have summarised the order so succinctly.

Mr Brocklebank: I have a point of information. You referred to the difficulties of understanding the legalistic wording and I had some difficulty in understanding what is intended, so can you confirm that none of the consequential provisions relates to the proposed banning of the shortening of dogs' tails?

Ross Finnie: That is not a matter before you at all. It is a delight yet to come.

The Convener: If you go on too long, minister, we will ask you when the other regulations are coming. I would be very careful.

Eleanor Scott: Schedule 2 makes changes to the Welfare of Animals (Slaughter or Killing) Regulations 1995. Do they apply to individuals who are employed in a slaughterhouse or to the establishment?

Claire McGill (Scottish Executive Environment and Rural Affairs Department): The amendment in the order applies to the process for somebody seeking a licence to operate as a slaughterman.

Eleanor Scott: Would that apply to the person in charge of the slaughterhouse rather than each individual? Would there be a vetting procedure for people working in an establishment?

Claire McGill: I do not think so. I think that it would apply to the individual slaughterhouse.

Ross Finnie: It is for the slaughterhouse.

Ian Strachan (Scottish Executive Environment and Rural Affairs Department): No, it applies to the individual slaughterman. We want to ensure that someone convicted of an

offence under the 2006 act cannot get a slaughterman's licence or, indeed, can have their slaughterman's licence removed.

Eleanor Scott: So there will be an onus on people who run slaughterhouses or abattoirs to ensure that their employees do not have any convictions under the act.

Ian Strachan: No, they have to ensure that anyone they employ has a slaughterman's licence.

Claire McGill: The proposed changes are to the process of applying for a licence.

The Convener: How will someone implementing the order or issuing a licence know that a person has previous convictions? Will there be a list of such people?

Ian Strachan: I am working with the Crown Office and another establishment in Scotland to get that information, which will be held by DEFRA on a central UK database. The database will provide details of anyone who has been convicted of any type of animal welfare offence. In that sense, it will be very similar to the sex offenders register.

The Convener: So any court conviction would automatically go on to the central register.

Ian Strachan: It will be notified to the register and the organisations responsible for issuing licences, such as local authorities, will have access to that information.

Maureen Macmillan: So it is a bit like a Scottish Criminal Record Office check, except that the check will be carried out by a potential employer—

Ian Strachan: No. In most cases, the check will be carried out by the local authority which, after all, issues the licences.

Maureen Macmillan: So the local authority will carry out the checks.

Ian Strachan: That is correct.

The Convener: As there are no other questions, we will move to the debate.

Motion moved,

That the Environment and Rural Development Committee recommends that the draft Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 be approved.—[*Ross Finnie.*]

The Convener: Do you wish to speak to the motion, minister?

Ross Finnie: I have nothing further to add, convener.

The Convener: Members do not seem to have any comments—indeed, I think that the committee is very happy with the order. We have certainly been interested in hearing how the system will

operate and are pleased to find that it will have some rigour.

As it is at my discretion to give the minister the chance to wind up and given that there has been no debate, I think that we will quit while we are ahead and go straight to the question.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 be approved.

The Convener: We will inform the Parliament of our decision. Minister, I thank you and your officials for attending this morning. You may now leave.

Ross Finnie: I am obliged.

**TSE (Scotland) Amendment (No 3)
Regulations 2006 (SSI 2006/430)**

**Cereal Seed (Scotland) and Fodder Plant
Seed (Scotland) Amendment Regulations
2006 (SSI 2006/448)**

**Plant Protection Products (Scotland)
Amendment (No 2) Regulations
(SSI 2006/449)**

**Animals and Animal Products (Import and
Export) (Scotland) Amendment (No 2)
Regulations 2006 (SSI 2006/450)**

**Pig Carcase (Grading) Amendment
(Scotland) Regulations 2006 (SSI 2006/451)**

The Convener: We will now consider five sets of regulations under the negative procedure. The Subordinate Legislation Committee has considered all the instruments, but has commented only on the first of them. Members will find the relevant extract of that committee's report in their papers.

As members have no comments or questions, I take it that everyone is content with the instruments and happy to make no recommendation to Parliament.

Members *indicated agreement.*

The Convener: Thank you.

As agreed last week, we now move into private session to discuss our supplementary stage 1 report on the Environmental Levy on Plastic Bags (Scotland) Bill. I invite the public, the press, any visiting members, the official report and broadcasting staff to leave.

11:55

Meeting continued in private until 12:13.

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