

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 8 November 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

31st 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)

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

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Rhona Brankin (Deputy Minister for Environment and Rural Development)

David Dunkley (Scottish Executive Environment and Rural Affairs Department)

Phil Gilmour (Scottish Executive Environment and Rural Affairs Department)

Russell Hunter (Scottish Executive Legal and Parliamentary Services)

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 2

Scottish Parliament

Environment and Rural Development Committee

Wednesday 8 November 2006

[THE DEPUTY CONVENER *opened the meeting in private at 10:14*]

11:16

Meeting continued in public.

Aquaculture and Fisheries (Scotland) Bill: Stage 1

The Deputy Convener (Eleanor Scott): I welcome to the 31st meeting in 2006 of the Environment and Rural Development Committee members of the committee and members of the public and the press. I remind everybody that their mobile phones and BlackBerrys should be turned to silent. We have received apologies from the committee's convener, Sarah Boyack, who is, unavoidably, elsewhere, which is why I am chairing the meeting.

The committee has considered two agenda items in private. Agenda item 3 is our final stage 1 evidence session on the Aquaculture and Fisheries (Scotland) Bill.

I welcome the Deputy Minister for Environment and Rural Development, Rhona Brankin, and her officials from the Scottish Executive Environment and Rural Affairs Department. David Dunkley is the head of freshwater fisheries policy, Dave Wyman is head of fish health and welfare policy and Phil Gilmour is head of aquaculture policy. Russell Hunter is from Scottish Executive Legal and Parliamentary Services.

Rhona Brankin has provided a letter that sets out the anticipated amendments to the bill at stage 2. I invite her to make a short opening statement.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I am delighted to be at the meeting and I hope that I can assist the committee in its consideration of the Aquaculture and Fisheries (Scotland) Bill, which is an important development.

The evidence that has been presented to the committee so far indicates that in general the proposals have been welcomed. Among stakeholders there is widespread support of the bill's principles. In its written evidence to the committee, the Scottish Salmon Producers Organisation said that it

"welcomes the broad objective of the proposed Aquaculture & Fisheries Bill ... in so far as the Bill is 'intended to act as a legal "backstop" should any companies fail to meet the industry's standards of good practice.'"

Last week, Dr David Mackay of the Scottish Anglers National Association said:

"this excellent bill should be enacted more or less in its initial draft form."—[*Official Report, Environment and Rural Development Committee*, 1 November 2006; c 3635.]

The bill was drawn up collaboratively and inclusively with stakeholders and will provide for the first time the powers that are needed to deal with two outstanding issues of public and international concern: sea lice and the containment of fish. It is intended to act as a backstop to the fish farming industry's code of practice. All parties recognise that we have tried to strike the right balance with respect to the degree of regulation.

On freshwater fisheries, the bill will provide important powers to tackle the potent salmon parasite *Gyrodactylus salaris*—which is commonly known as GS—and introduce provisions that will help to facilitate the further development of freshwater fisheries, particularly for trout and coarse fish, in a way that ensures the sustainability of stocks. Protection orders will also be made more fit for purpose.

I have followed the committee's evidence sessions and it might be helpful to give my reactions to some of the issues that have been raised before I answer questions.

There has been uncertainty about how part 1 of the bill will operate. Essentially, appointed inspectors will have powers to inspect fish farms and assess whether they have satisfactory measures in place for the control of sea lice and the containment of fish. Shellfish farms may also be inspected for parasites under part 1, but the bill restricts the definition of parasite to sea lice, so such farms are not affected. Should shellfish parasites become a problem in future, the definition of parasite could be revised.

If, on the basis of an objective inspection, inspectors found that a farm did not have satisfactory measures in place for the control of sea lice or the containment of fish, they would first speak to the farmer and, if appropriate, other experts such as the company veterinary surgeon and the Scottish Environment Protection Agency, to assess the specific circumstances pertaining to the farm at the time. They could then give advice about the steps that should be taken to put things right. If the advisory approach proved insufficient, inspectors could ultimately use the powers in the bill to serve an enforcement notice on the farm.

The Executive intends to publish clear guidance, which will be developed with stakeholders through

the ministerial working group on aquaculture, on how inspectors will undertake their inspections and reach decisions. The guidance will acknowledge that the industry's code of practice sets out industry-accepted standards of good practice for the control of sea lice and the containment of fish. It is inconceivable that professional inspectors would serve random enforcement notices that were unfair or unreasonable or that took no account of the accepted standards. We will also seek to ensure that inspection procedures are streamlined and efficient as far as possible, through co-ordination with inspectors and other officers who make necessary visits to fish farm sites.

No enforcement notice would attempt to second-guess a vet or dictate how fish should be treated. At most, a notice would direct a fish farmer to seek veterinary attention, with the aim of reducing the sea lice burden to the acceptable levels that are set out in the industry's code. We are not seeking to force an unnecessary regulatory burden on farmers who make a proper commitment to controlling sea lice and containing their fish in accordance with their own code of practice. Rather, we seek to find farmers who do not or will not make that commitment and to bring those people into line with the bulk of the industry.

Part 2 deals with GS. Some stakeholders expressed concern that the powers in part 2 are too potent ever to be used, but I take issue with that interpretation. Although the powers on GS are undoubtedly wide—as they must be if they are to allow the necessary flexibility to deal with an outbreak, the full extent and circumstances of which we cannot know in advance—they need not be used to their fullest extent in any given scenario. The powers in the bill are quite capable of being exercised in a manner that is planned, proportionate and reasonable and that respects human rights. Any treatment can be planned to fit into the existing working practices of, for example, the whisky industry. In particular, I ask the committee to bear it in mind that ministers are legally bound to discharge their responsibilities under the European Union habitats and water framework directives, which means that we must take into account the environmental, social and economic consequences of any proposed action. If it were found that the remedy were worse than the disease, ministers would not pursue eradication but would work to contain the disease.

The Executive is developing a contingency plan on how we might tackle an outbreak of GS, and an economic impact assessment. Both documents will be published in the next two weeks and my officials will provide copies for the committee as soon as they are available. I hope that the contingency plan in particular will help to knock on the head the perception that the powers on GS

would be used hurriedly and willy-nilly without a comprehensive assessment of the affected area first being undertaken and all interested parties being consulted. Experience in Norway suggests that the approach could take up to two years to complete.

The other key issue on freshwater fisheries is protection orders, the purpose of which is to strike a balance between responsible access and conservation. An order is not granted unless measures are taken to increase access to fisheries in a manner compatible with sustainability, so it is wrong to suggest that protection orders do nothing to protect fish. Indeed, before an order can be made, ministers must consider the conservation status of fish species in the area to be covered. An overwhelming majority of stakeholders told us that the system of protection orders—with the changes proposed in the bill—must remain until new fisheries management bodies are in place to develop integrated plans.

The committee has heard concerns about the information-gathering provision in part 4, with worries that it might be burdensome and costly to provide the required information. I genuinely believe that the measure will help the fish farming industry, because it will strengthen the evidence base that we need for our policy making on aquaculture. It will allow us to help the sector, particularly in areas such as trade defence. It will also inform the high-level indicators programme, notably the economic leg of that work. We will of course do everything to ensure that those requirements are not costly to comply with, and we will develop indicators with the full participation of stakeholders through the ministerial working group on aquaculture.

Finally, I draw the committee's attention to the power to make payments for fish destroyed. This will be the first time that ministers have had explicit powers to offer financial reassurance on fish disease. I believe that that will go a long way towards building investor confidence in this important industry.

I hope that my comments have been constructive and of some assistance. I am happy to answer any questions that the committee might have.

The Deputy Convener: I thank the minister for her statement and invite members to ask questions.

Richard Lochhead (Moray) (SNP): I thank the minister for her constructive comments, which the committee will welcome. I will start with how to deal with a potential outbreak of GS, which has been one of the more controversial issues to have been discussed at stage 1 so far. Many witnesses

have said that the best way of dealing with GS is to put prevention measures in place to ensure that there is no outbreak in the first place. What discussions have you had with the authorities that protect our points of entry to ensure that adequate measures are being taken to prevent GS from arriving in the first place? Could you also talk about live salmon imports from Norway, which is one route by which the parasite could arrive in Scotland, and say whether it is your intention to clamp down on that? To what extent are live imports happening at the moment?

Rhona Brankin: As far as live salmon imports are concerned, the industry's code of good practice recognises some of the issues around the potential spread of GS from a country such as Norway, where the parasite exists in certain areas. There are at present no imports of live fish from Norway. Current European Union law allows us to ban live fish imports from those areas of Norway where GS exists, although we are not in a position to ban live fish imports from those areas of Norway where GS does not exist. There is a commitment on the part of fish farmers, through the industry's code of good practice, to introduce quarantine methods. Although there are currently no imports, if there were, veterinary inspections would have to be made before any batches came through.

I am not sure whether Dave Wyman wishes to add anything specific on that.

Dave Wyman (Scottish Executive Environment and Rural Affairs Department): No; that sums it up.

Rhona Brankin: The important matter of information has been raised. One of our key tasks is to ensure that people are informed about the potential problem—the potential disaster—that GS could pose in Scotland. The committee has been provided with examples of the leaflets and information that are available to people. Angling clubs have an important role in the dissemination of information. Fishing tackle shops also provide information, so they play a role, too. Measures that angling clubs implement to reduce the possibility of the spread of GS will be checked by local enforcement officers. As for liaison with other Government bodies, we liaise with the Department for Environment, Food and Rural Affairs on the points of entry into United Kingdom ports.

11:30

Dave Wyman: That issue occupied much of the time of the GS task force. Its conclusion was that the number of points of entry was so large that it would be impractical to legislate for screening people who were coming into the country with fishing gear, canoes and that sort of thing. The

thinking was that the threat should be tackled through public awareness campaigns and education rather than through legislation, which would be unwieldy and impossible to enforce.

Richard Lochhead: With the potential for GS on the agenda, the Government has produced a response, to an extent, in the form of the bill. Another response would be preventive measures at ports; however, you are saying that there are no plans for further measures to be taken at ports.

Dave Wyman: That is right. It is not only ports that could be sources of access for the parasite. People can enter the country at any number of points, and not just directly—they can also enter the country through England. It would be impossible to police against GS under the circumstances.

Richard Lochhead: I am sure that the committee will come back to that point. There are lots of things that we police against at the moment that might enter the country through our ports. I am trying to work out why GS should be excluded from that process.

Rhona Brankin: The GS contingency plan, which will be published shortly, will be reviewed annually in the light of further information that becomes available. It is not set in stone, and I am sure that we will return to the issue.

Richard Lochhead: I have two more quick questions.

The Deputy Convener: Are they about GS?

Richard Lochhead: One of them is. I will ask it first. In your opening statement, minister, you referred to concerns over the impact on other users of the rivers if there were—heaven forbid—an outbreak of GS in Scotland's rivers. Many of us have expressed concerns about the impact on the distilling sector in Scotland, especially the malt whisky producers, who gave evidence to us. Their concern is that the image of the industry could be destroyed if poisons to kill a parasite were poured into the rivers, because the distillers use the same water. You said that, if the cost of taking action was greater than the cost of not taking action, you would not take action but would try to contain the outbreak. How would you measure those costs, and what plans are in place to measure them, given that the timescale for action would be short? I presume that there would have to be an emergency situation for you to use chemicals in our rivers.

Rhona Brankin: The whisky industry and the hydropower industry have been involved in drawing up the contingency plan, as we are cognisant of the needs of the other people who use water and rely on having a clean supply. Although action would be needed, because of the

complexity of the considerations in some cases, treatment would not necessarily take place quickly. In considering an eradication plan, we would have to make a judgment about the implications of that plan for the whisky industry—if the watercourses were used by distilleries—or for the hydro schemes and reservoirs into which the rivers fed. Eradication could also affect other species of fish. We would have to assess all the implications and make a judgment on the basis of economic, social and environmental considerations before deciding whether to go forward with eradication or containment. As I say, how long it would take to arrive at that decision would depend on the complexity of those considerations. The key issue is that industries such as the whisky industry must be closely involved in this.

The Deputy Convener: Many members want to ask questions. I ask that we stay on the GS theme.

Maureen Macmillan (Highlands and Islands) (Lab): I want to backtrack and look at the role of the salmon farming industry in keeping GS out of Scotland. You said that industry members that have signed up to the code of good practice have plans in place to ensure that if smolts are imported they do not come from those parts of Norway that are infected with GS and that, if they come from other parts of Norway, they will be monitored. What about those industry members that have not signed up to the code of good practice? Do you have any concerns that they may be exercising bad practice? What dialogue has the Executive had with salmon farmers who are outside the code of good practice circle?

Rhona Brankin: There are currently no live fish imports from Norway. Phil Gilmour may be able to answer your question.

Phil Gilmour (Scottish Executive Environment and Rural Affairs Department): All the major fish-farming businesses are Norwegian-based, and they are all signed up to the code of good practice. The businesses that are not signed up to the code are the very small Scottish-owned businesses that get their smolts from Scottish sources. It is unlikely that they would go outside Scotland for smolts. The industry is aware of the issue and there is currently no importing of smolts into Scotland. The farms tend to import eggs from Norway, but those are sterilised and subject to veterinary inspection.

Rob Gibson (Highlands and Islands) (SNP): I have a more general question about the exercise that is to be undertaken in January and February, but first, why has it been timed for then and not earlier?

Dave Wyman: The GS task force's report is not yet published but was completed fairly recently.

The next stage that is required by the task force is the setting up of a dry run. It takes time to write a realistic outbreak scenario, and it is a question of timing. It is envisaged that, when the dry run takes place in February, it will be based on a fictitious outbreak in a whisky-producing area. There would be no point in a dry run if it did not test in the most challenging areas.

Rob Gibson: I understand that that is the timing, but it would help our scrutiny of the bill to know whether the dry run worked. There may be a need for further amendments to tighten up the bill, or whatever. We have longer rivers than those in Norway, and although the anglers say that the effects of any treatment with rotenone would be short-lived and would make only a fleeting impact on the natural scene, we do not yet know the effects of any treatment. Is it not important that we have an idea of whether what you propose is effective before we come to the next stage of the bill?

Rhona Brankin: I emphasise again the fact that the contingency plan will be reviewed annually. Any lessons that are learned about the effectiveness of the existing contingency plan could be incorporated into that. I do not know whether we might not be taking powers now that we might need in future or whether we would have the powers to vary orders. One of my officials might like to comment on that.

Dave Wyman: Were GS to arrive, the approach to eradication would be based closely on the Norwegian model. Norway has quite a history of the disease and some success in tackling it, so the powers that are proposed in the bill are based largely on practice there.

Rob Gibson: If that is so, I presume that the practice will have to be adapted to our rivers. I ask that, in the dry run, you include freshwater mussels in the fictitious river that you are going to adopt. John Thomson from Scottish Natural Heritage said:

"If GS arrived and affected a river that hosts freshwater pearl mussels, a difficult decision would have to be made."—[*Official Report, Environment and Rural Development Committee*, 24 October 2006; c 3586.]

What balance of environmental and biological diversity would cause you to decide against using rotenone? What sort of things would stop you from using it?

Rhona Brankin: We are covered by EU law, such as the habitats directive and the water framework directive with the controlled activities regulations under it. To arrive at a decision, we would have to balance those legal requirements. Under EU law, we have to balance economic, social and environmental requirements. It is difficult for me to say what balance would cause us to decide against using the treatment because

it would depend on the circumstances, but the presence of protected species such as freshwater mussels would clearly be an important consideration.

Phil Gilmour: We do not have GS in Scotland and the bill is precautionary legislation to deal with an outbreak. The risk of GS getting here is low but, if it ever gets here, the consequences will be extremely great. We are putting in place precautionary legislation based on working through a technical process with all the stakeholders to ensure that every area can be covered as far as possible. We are learning from the experiences in Norway, which has the disease, and ensuring that we have in place everything that we possibly can, based on proper technical assessment.

Elaine Smith (Coatbridge and Chryston) (Lab): I wanted to ask the questions that Richard Lochhead asked, but the answers you gave him lead me to some further questioning on the same themes.

We all agree that GS would be disastrous not only for Scotland's fishing industry but for its whisky industry and for water sports, which could affect tourism. The implications of GS for Scotland would be massive.

The section "Is it a notifiable disease?" in the leaflet that you have distributed to us says:

"legislation is in place to prevent the transfer of live salmon and trout This has now been supplemented by EU legislation that recognises the special status of the UK as being proven free of the parasite."

In reply to Richard Lochhead, I think you said that Norwegian fish that have GS would be banned from being imported to Scotland, but that if the rivers in an area of Norway are free of the parasite, fish from there could be imported to Scotland. That approach to prevention is a wee bit worrying.

I presume that GS will come in either through fish imports or as a result of water activities such as canoeing, as people bring back equipment or boots in bags, where the parasite can survive for a few days. Are those the main ways that it could come to Scotland? Will you expand on the legislation that is in place to prevent the transfer of live salmon and trout? Does that legislation apply only to Norway and only to areas that have the parasite?

11:45

Rhona Brankin: Under EU law, we are able to ban the import of live fish from areas of Norway that have the disease. However, some parts of Norway are GS free. Under EU law, we are unable to ban the import of live fish from those areas. Of

course, veterinary safeguards are also involved. Perhaps David Wyman will say something on that.

Dave Wyman: Yes. If trade in live salmon was to start up with Norway, the Norwegian authorities would have to certify that the area from which the fish were coming had been monitored over a period for the presence of the disease and that sampling and testing had failed to find the parasite. We would accept fish only in those circumstances.

Elaine Smith: Okay, that is a bit clearer. I turn to the other ways in which the disease could enter the country. Given the overall implications that GS could have for Scotland, should we not be a bit more robust in what we are doing? Richard Lochhead pursued that line of questioning. After all, the leaflet was produced by the Department for Environment, Food and Rural Affairs and the devolved Administrations—it was a joint effort.

One way or another, everyone who leaves the country has to go through customs when they re-enter it. Whether they are carrying canoes, fishing equipment, fishing tackle, boots or whatever that may have been exposed to the parasite and therefore be carrying GS, everyone has to go through customs. Surely it would not be too difficult to put in place a requirement under which, if they have visited a country where there is GS, they have to make a declaration to that effect. Those people should have to go through a special channel. It would be not unlike the requirement to go through a special channel if you are carrying gifts over a specified value or certain foodstuffs. Surely people who participate in water sports and fishing should be asked whether they have considered the issue of GS and whether they have checked over and disinfected their equipment.

Rhona Brankin: It is a question of risk and what is appropriate. Our minds are not closed to any suggestion the committee may make. At the moment, our view is that information and education are key and that our proposals should be adequate. If the committee believes that we should be taking other steps, we will examine its proposals with an open mind.

GS does not last very long, so the risk that is posed by people bringing canoes and so forth back into the country after using them in Norway is relatively low. Many angling clubs now provide that if their members are fishing on certain waters, they have to sign a statement that they have disinfected their gear. I am sure that more can be done. We are keen to do whatever we think is necessary. That said, we need to ensure that a risk-based approach is taken. Perhaps Dave Wyman will add something.

Elaine Smith: If you do not mind, I will come in again before you hand over to your official. I

began my questioning by making the point that GS would be absolutely devastating for Scotland. We are talking not only about salmon—that would be bad enough—but about everything that is involved in this aspect of our economic activity. Even if the risk is minimal, a maximisation of factors should be used to prevent GS from entering the country.

I note from your leaflet that GS can survive “for several days”. That is quite enough time for someone to return from a fishing trip abroad, go fishing here and let the parasite enter our waters. My understanding of what witnesses have said in evidence is that they do not feel that adequate notices, signs or other measures have been put in place to bring the matter to people’s attention or to raise awareness on the issue. We have the leaflet, but how many people have a copy and how many of them have read it? Are there notices for people to see when they come through customs?

Rhona Brankin: As I said in my opening statement, I agree absolutely that if GS came into Scotland the potential effects would be wide ranging.

As for our view that we are taking adequate steps, I can only reiterate that if the committee can suggest any specific measures or activities, we are prepared to take them on board. I am not really able to add to that response, but my officials might be able to say more about other prevention activities that are being carried out. Have I missed anything out?

Dave Wyman: I do not think so, but I should point out that although the freshwater fishery organisations, from which the committee recently took evidence, acknowledge that there is a risk and that the consequences of something going wrong are horrendous to contemplate, they accept that any risk is low and that, given the situation, legislation is inappropriate. It is not as if the Scottish Executive has imposed this view on the freshwater fisheries community; they reached it themselves.

Elaine Smith: I was worried by all the doom and gloom about GS, because it suggested that an outbreak was inevitable, but you are categorically saying that there is a very, very low risk of an outbreak.

Dave Wyman: European fish health scientists have assessed the likelihood of an outbreak of GS stemming from an importation of recreational equipment as low.

Elaine Smith: Is the risk higher from live fish?

Dave Wyman: Very much so.

Maureen Macmillan: How does what we are doing at ports of entry to combat the risk of a GS outbreak compare with the measures that have been taken with regard to foot-and-mouth disease, avian flu or whatever?

Dave Wyman: I do not have that information.

Rhona Brankin: We do not have those figures to hand, but I am more than happy to provide the committee with that information. I can say, however, that the GS task force’s contingency plan is based solely on the perceived risk of GS entering the country. I do not know whether it would be easy to draw any comparisons, but I can provide the committee with information that might help.

Maureen Macmillan: I was simply wondering what happens at ports of entry to prevent foot-and-mouth disease, which is more likely to come into the country than GS. After all, we want to have a proportionate response.

Rhona Brankin: Absolutely. We also need to weigh up the degrees of risk posed by the different ways in which GS can enter the country. We will try to give the committee some helpful information on that.

Nora Radcliffe (Gordon) (LD): It has been suggested that the contingency plan might include provision for a designated group of stakeholders to be called together quickly in the event of an outbreak. Will that form part of the plan?

Rhona Brankin: The key point about the contingency plan is that we must be able to work with stakeholders. As some situations might prove to be very complex, their engagement will be very important.

Dave Wyman: The contingency plan sets out the roles and responsibilities of the various agencies and organisations that would respond to an outbreak and details the range of considerations that the strategy group should take into account in deciding whether the response should be containment or eradication. With the plan, we would, if you like, hit the ground running.

The Deputy Convener: We will move on to discuss compensation.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): Why are your powers to make compensation payments for fish diseases discretionary, while compensation for other farmed animal diseases is compulsory?

Rhona Brankin: There is currently no system of compensation for fish loss, so by introducing the possibility of compensation we are bringing our approach into line with other compensation schemes.

Mr Brocklebank: You are not bringing your approach into line with the system for other farmed animals, for which compensation is compulsory rather than discretionary.

Phil Gilmour: The bill gives ministers the power to intervene to pay for fish that are destroyed, if

the circumstances are right and there is a need for such a payment. The bill provides for a discretionary power and ministers will weigh up the risks.

Mr Brocklebank: Will anyone else comment on the proposed approach, which is different from practice in relation to other farmed animals?

Dave Wyman: There is no proper answer to the question, except to say that post foot-and-mouth there is unease about the extent to which the Treasury is exposed to such payments. The establishment of a compensation scheme would be a matter for ministers' judgment and the proposed scheme would have to be endorsed by the Scottish Parliament.

Rhona Brankin: My officials have provided further information, which might be helpful. When ministers decide who will qualify for a payment, they might consider criteria such as the extent of compliance with the code of good practice, the prompt reporting of disease outbreak or illegal movements of stock into a farm. Ministers would exercise their discretion on such matters. The proposed approach is tailored to deal with loss of fish.

Mr Brocklebank: How would the compensation scheme work in a large-scale outbreak? The cost of compensation might be significant, but the disease might not be eradicable.

Rhona Brankin: Ministers would take such matters into consideration. A Scottish statutory instrument that provided for payment would be laid before the Scottish Parliament, so the Parliament would have a role in that context. In proposing a scheme that was designed to compensate for loss of fish, we might set out the criteria that would trigger a payment, but the moneys that ministers paid out would be determined by the Parliament, which would have to approve the SSI. My officials might elaborate on that.

Phil Gilmour: We have been through a situation in which the fish farming industry was hit by a bad disease outbreak. Although we were able to put in place a restart scheme, we wanted to be able to be more proactive and to intervene earlier. We have not opted for a compulsory compensation scheme; we decided on an approach whereby we could take account of the significance of the disease and the scale of the outbreak and intervene in an appropriate way, on the basis of the appropriate information, as the minister said.

Mr Brocklebank: How would compensation be funded?

Phil Gilmour: It would come from the Scottish block.

Mr Brocklebank: Have any contingency plans been made? How much money might have to be put aside?

Rhona Brankin: The industry estimated that the infectious salmon anaemia outbreak in 1998 resulted in losses of around £30 million. The extent of those losses was partly a result of the practice of moving live fish from area to area, which is now relatively rare.

12:00

The Deputy Convener: Richard Lochhead will move us on to another topic.

Richard Lochhead: In your submission to the committee, you outline the amendments that you intend to lodge at stage 2. You say that one of those amendments will seek to impose administrative penalties on the sea fisheries sector. When the idea was first mooted back in 2004—and, no doubt, during the consultation process—the industry expressed the concern that its members would be denied access to justice because they would not have the chance to defend themselves in court. You say that a right of appeal for offenders is a key factor in the development of the policy proposals. How will the appeals process work? In other words, how will you ensure that people on whom administrative penalties will be imposed have access to justice and are able to put their case?

Rhona Brankin: The issue is being consulted on.

Russell Hunter (Scottish Executive Legal and Parliamentary Services): I can answer the question from a legal point of view. I understand that the consultation is continuing. The intention is to create a system whereby a person who is suspected of contravening a particular fisheries provision is offered a fixed penalty, which is calculated on a sliding scale. The person to whom such an offer is made is not required to make payment—they can simply do nothing, in which case they can have their day in court. The proposal is entirely voluntary. The person to whom an offer is made can accept that they have done something wrong and take a fixed penalty or decide to have their day in court. Anyone who chooses to protest their innocence will not be diverted away from the court system.

Richard Lochhead: Are you saying that the acceptance of such a penalty is voluntary?

Russell Hunter: The procedure is similar to the one that is used for speeding offences. A person might receive through the post notification of an allegation that they have been caught on a speed camera doing 40mph in a 30mph zone. They can either accept the notice, pay the sum of money and that is the end of the matter—although I think people also get points on their licence for speeding—or choose to contest the allegation and have their day in court.

The proposal is that a fixed penalty should be available prior to the court process. The department would use its case files to determine whether to offer someone such a penalty. Once an offer was made, it would be entirely up to the person who received it to decide whether to accept it or to refuse it. If they did nothing, their case would go straight back into the court process.

Richard Lochhead: In their evidence, some witnesses have said that the granting of protection orders has not been accompanied by increased access to angling. Evidence that that principle has not been adhered to in some parts of the country has been a recurring theme. Other witnesses have said that there is not an issue with protection orders and that they are working perfectly well. What is your view on what has been said at stage 1? Do you feel that protection orders are working and that access to angling has increased when they have been imposed?

Rhona Brankin: It is difficult to give a blanket response because it is not easy to work out whether reductions in angling in particular areas are a result of the imposition of protection orders or of a decrease in the number of anglers. The freshwater fisheries forum continues to examine the issue. Its view is that protection orders play an important role because they allow conservation measures to be introduced in places where they have not existed before. In some areas, they greatly increase people's opportunities to fish, even if those opportunities are not taken up. Many others have expressed that view to the committee as well.

Because we are moving towards an integrated fisheries management system, we need to examine not only the role of protection orders and how they are policed but the extent to which the new system will integrate conservation and responsible access. That is a complex thing to achieve, which is why the stakeholder group was unable to come up with a solution in time for it to be included in the bill. In the meanwhile, we included new powers to enable ministers to take action when a problem is detected with a protection order. Ministers will be able to change or revoke a protection order if it operates in an inappropriate way.

David Dunkley might want to comment further.

David Dunkley (Scottish Executive Environment and Rural Affairs Department): It is difficult to measure increases and decreases in the number of anglers. In some areas where there are no protection orders, some people still perceive that they can fish wherever and whenever they like without permission and for free, but that is not the case. Anybody who wants to fish for freshwater fish needs permission, and if they do so without permission in an area that is

not a protection order area—with a few notable exceptions—they are committing a civil offence.

In protection order areas, people are required to avail themselves of a permit. The number of permits that are available in such areas has increased enormously. They have not all been taken up, but an awful lot more permits are available. Generally speaking, anglers who want to fish in a protection order area know that it is a protection order area and most of them are happy to take up a permit.

It is a concern, and not just in protection order areas, that there is a general decline in the number of people who go angling. Perhaps they would rather do it on an X-Box or a GameBoy. There are a number of initiatives to try to get people back out there, including the Scottish national angling programme. The decrease is not necessarily due to restrictions on fishing. There are cultural changes taking place and a number of our stakeholder groups are working on those.

The other day, we heard from the chairman of the Tay liaison committee that there has been a 7 per cent increase in the number of permits but an increase of only 2 per cent in the number of anglers. Lots of permits are available, but people are not taking them up.

Elaine Smith: Is that due to a lack of information? Perhaps people do not know where to get information and are worried about fishing in case they end up as criminals.

Secondly, should liaison committees be a statutory requirement?

Rhona Brankin: The problem with giving liaison committees legal powers is that that would create another 14 non-departmental public bodies. That is one of the reasons why the freshwater fisheries forum needs to consider the matter further. We need to come up with a system of fisheries management that ensures that proper conservation measures are carried out and followed, and that people have access to angling.

Angling is a sport that we want to encourage. The Executive has a policy to get more people more active more often, and we want to get people out in the fresh air. Quite often, people have to walk a significant distance to get to the river. We want to get people out and active. Angling fits in with that aim and I support the steps that have been taken by angling bodies to increase the number of people taking part in the sport.

Elaine Smith: Is angling affordable for youngsters? David Dunkley talked about kids using game machines, but is it affordable for them to go fishing?

Rhona Brankin: The cost varies hugely. David Dunkley can give some examples of the cost of

permits. It obviously depends on where people are fishing and for what sort of fish.

David Dunkley: To a large extent, the cost is market driven, but fishing can be available from as little as £5 for a day's fishing, up to however much people want to pay.

Elaine Smith: That is quite a lot for a child or young person.

David Dunkley: It is significantly less than they would pay to watch a football match or play a game of golf. It is all relative. There are some places that issue free permits to kids and there are a number of schemes to encourage them. It is a question of enthusing them to get out there and do it. That is what people are working on now.

Elaine Smith: Maybe more schemes like that would enthuse children more.

Rhona Brankin: There are certainly some good schemes that are trying to bring youngsters into fishing. I could probably get you more information about that and I am sure that the organisations involved could do the same.

David Dunkley: Quite a lot of good work is going on to make people more aware of angling. Websites are being developed and tourist information offices throughout the country are now displaying signs to show that they sell permits. Once a certain inertia has built up in a system, it can take a bit of time to kick it over, but we are quite excited about a lot of the initiatives that are under way at the moment.

Nora Radcliffe: We were talking about integrated fisheries management and about the fact that work is being done on possible changes to help to manage fisheries and the species that are involved. Is further legislation envisaged in due course? There are no powers in the bill to pick that sort of thing up at a later stage, are there?

Rhona Brankin: No. It is envisaged that a bill will be introduced in the next session of Parliament to deal with that.

Nora Radcliffe: Thank you. I just wanted to clarify that.

Maureen Macmillan: I want to talk about the location and relocation of fish farm sites. Minister, you will recollect that one of the problems that was flagged up in the past was that some of the fish farm sites were inappropriately located. Some witnesses had hoped that there would be powers in the bill to close down inappropriately sited fish farms, but there are no such powers in the bill. How many inappropriately sited farms are there? How are they being dealt with? Are fish farmers being given incentives to relocate?

Rhona Brankin: I will ask Phil Gilmour to answer that question in detail. In broad policy

terms, you are right to say that relocation has become an important issue, given that many fish farms were given permission in the early days to establish themselves in areas that we now believe—in the light of further knowledge about the potential impact on the sea bed—could be in inappropriate places. As you know, we have been addressing relocation through the location/relocation working group and work has been going on at Loch Roag.

12:15

Phil Gilmour: The location/relocation working group has been through two and a half years of discussion and we have almost finalised a strategic environmental assessment on relocation. Relocation remains a voluntary initiative because we have not yet found conclusive scientific proof that a fish farm should not be where it is. It would be very difficult to prove that, so the initiative has to remain voluntary. The problem is that someone who objects to a fish farm being in a certain place might say, "That fish farm has caused a sea lice problem and a decline in my stocks," but, when we start to consider the science, we find that the fish farm in that location is influenced by fresh water and so will not have a sea lice problem. This is not an easy problem to bottom out.

The general principle for relocation is that a fish farm has to meet the criteria for sites of interest—that is, sites that stakeholders wish to be relocated—or that relocation of the fish farm would lead to the development of best practice. For example, at Loch Roag, the fish and shellfish farming industries looked at what was being done and decided that they wanted to optimise sites. They also recognised the interests of other stakeholders, such as the freshwater fisheries and fishing and other boats that navigate the loch. Out of that came an optimisation plan and now a relocation plan.

An area management agreement has been delivered for Loch Roag that is based on the development of best practice. In other words, the fish farmers can now use co-ordinated treatments, they can fallow their sites in synchrony, and they have moved the fish farms away from the mouths of the important salmon rivers in the area. That is an integrated coastal zone management approach to delivery. That is what we are trying to promote through the relocation process, with respect to the delivery of area management agreements within the tripartite working group.

Maureen Macmillan: That is very interesting and I assume that you hope to roll that out.

I do not get the impression that all that many fish farms are poorly located; I think we were given a quite small number.

Phil Gilmour: It is quite difficult to say whether a fish farm is poorly located. People can make accusations or claims, but it is difficult to follow those up with any proof. However, fish farms can be moved for general environmental benefit. The fish farming industry is often located in sites to which stakeholders object and from where the fish farmer would ideally like to move. At the moment, we see relocation as a voluntary process; we could not provide for relocation in the bill because there is no scientific proof to say why it should happen.

Rhona Brankin: It is important to note that we believe that relocation projects would be eligible for grant assistance under state aid rules.

Phil Gilmour: The current process is that the strategic environmental assessment will set down the principles on which relocation could be funded. We now have in place a budget of £500,000 per annum until the next spending review. Relocation projects such as the one at Loch Roag will be eligible once independent economic bodies have considered the state aid issues. We are applying for state aid approval from Europe. We hope to have everything in place, including a national group of stakeholders who will make decisions on whether a project is suitable for funding assessment work or for funding capital work.

Maureen Macmillan: I want to ask about those fish farms that are no longer being used. There is perceived to be a problem where a large aquaculture business, for example, has given up the use of fish farms and they are lying empty, but the business does not want to allow other fish farmers to use the abandoned sites. Many of the people who would like to use those abandoned sites are crofters who want to start fish farming in a small, specialised way. Have you any plans to deal with the problem? Is there anything that could be put in the bill to address it? Are there any other strategies that you are going to use to deal with it?

Rhona Brankin: We are not putting anything in the bill to deal with that, although we are aware of the issue. I understand that the Crown Estate commissioners are currently considering the issue. Where a fish farm company has sites that are not being used, the Crown Estate can up its rents as a disincentive to the company not using those sites. Such action is being considered.

We are looking into the subject. Where a fish farm company has several sites that are not in use, that may be a competition issue and something on which we might think about liaising with the Department of Trade and Industry and the Competition Commission. We are aware of the issue and will continue to do work on it, on which we will keep the committee informed. At this stage, however, the bill does not seem to be the vehicle for progressing work on the matter.

Maureen Macmillan: I understand that. My final question on this theme is about the progress of the transfer of the planning powers from the Crown Estate to local authorities.

Rhona Brankin: The decision has been taken to introduce amendments at stage 3 of the Planning etc (Scotland) Bill to transfer planning powers to the local authorities. Those amendments either have been lodged today or are in the process of being lodged.

Maureen Macmillan: We will look at those amendments with interest.

Rob Gibson: Minister, I was interested in your answer about the number of fish farm sites for which there are leases but which are not being used. I understand from a freedom of information request that the Crown Estate has 252 leases in all but that 140 of those leases have produced nothing this year. Indeed, 67 leases have produced nothing for the past three years. That is a major problem, yet you have said that you have no intention of dealing with it in the bill.

Rhona Brankin: I did not say that we have no intention of dealing with the issue; I said that the bill does not seem to be the vehicle for dealing with it. However, if suggestions were made as to how the bill could do something about it, we would listen with interest. We are aware of the issue. Fish farm companies need to have flexibility in their use of sites for fallowing and must be able to take conservation measures, but we are aware that several fish farms are lying empty. As I have said, we are currently looking at the issue and we will keep the committee updated on our considerations.

Phil Gilmour: The Crown Estate's policy on charging for aquaculture sites has changed recently. I believe that it is going to increase the minimum lease charge for a site that is not stocked from £200 to £500. It also proposes to increase that charge after two production cycles and, after another production cycle, to double the charge again. That is what the Crown Estate believes to be a balanced, commensurate approach to maximising the lease rent that it can take. The Crown Estate has balanced that by decreasing the maximum amount of money that it will take from a salmon farm by, I think, about 8 per cent.

However, the issue could come down to competition. Ultimately, there has to be a balance between fish farm operators having some form of land bank that allows them to expand or contract production depending on the market, and other people who want to enter the market or expand production being treated fairly. Competition legislation already exists, and we will discuss the issue with the DTI to understand fully the

competition issues. Nevertheless, only if there were an aspect here that we should look at would we address the matter in the bill.

Rob Gibson: It would be a great help to us, in our considerations, to know the number of rented sites that are fallow at the moment. I imagine that it must be in the teens, if not higher.

Phil Gilmour: Yes. However, we must remember that the industry has changed considerably over the years. Although it may be company policy not to give up any site, there are probably sites that are small and inappropriate for production—hence, viewed as inefficient—that are lying fallow but are not given up because of the de minimis charge that is made against them. We may find that, as the lease costs go up, many of those sites are given up. Nonetheless, there may be sites regarding which there is a residual issue that needs to be addressed, and the competition legislation already covers that.

Rob Gibson: I would have thought that the matter would be more urgent in the light of the fact that the Competition Commission has given a provisional agreement for Panfish and Marine Harvest to merge. The question of a restraint being placed on the marine development of our economy is an urgent one. I therefore ask the minister to reconsider addressing the issues in the bill before we reach the next stage.

Rhona Brankin: As I said, we are actively considering the issues at this stage and we do not think that anything can be usefully introduced into the bill. However, if a suggestion comes up in our discussions or in the committee, we will consider it. You mentioned the merger of Panfish and Marine Harvest. We do not know what the final decision on that is going to be.

The work that has been done under “A Strategic Framework for Scottish Aquaculture” very much recognises the importance of the sector to the Highlands and Islands. We recognise the huge importance of the sector for jobs in remote or island communities, and we are committed to ensuring that we have a sustainable aquaculture industry. You will be aware of the huge amount of work that has been done on trade defence measures in conjunction with the EU salmon producers group to ensure that the smaller, indigenous salmon producers in Scotland are well supported. We are committed to doing whatever we can.

Rob Gibson: The fact that more than half the sites in Scotland are not being used surely makes it a huge problem that needs to be addressed urgently.

Rhona Brankin: It is an issue that we are addressing and will continue to address. As I have said, at the moment we do not think that there is

anything that we can usefully put into the bill. If, in the course of our discussions, we think that there is something that can be done, we will do it.

Maureen Macmillan: I understand that sites can be fallowed for environmental reasons, but we are talking about sites that are no longer being used at all. I was told by one fish farming business that it was not allowing others to use a site because of SEPA regulations and the fact that the consent that it had from SEPA was for its business specifically. I was told that if another operator took over the site, the business would have no control over what that operator did on the site, and that if the new operator breached SEPA regulations, the business that owned the site would be responsible. Do you know whether that was just a story or whether there is some merit in that?

12:30

Rhona Brankin: Phil Gilmour will be able to discuss that in detail, but those are clearly the sorts of issues that we will have to consider. Are there, for example, barriers to sites being released because of the way in which the discharge consent process works?

Phil Gilmour: Wherever there is a discharge, SEPA places a controlled activities regulations consent on that discharge to ensure appropriate protection of the environment. That CAR consent is either person specific or company specific, but SEPA also has a simple process for transferring that.

Maureen Macmillan: That answers my question.

Nora Radcliffe: It has been raised with us that strict liability was dropped from the original proposals for the bill. It would be useful if you could explain the reasons for that.

Rhona Brankin: The main reason is to do with the patterns of what has happened in the past, in particular in extreme storms in which, through no fault of the company concerned, incidents have taken place that have led to escapes. That was our thinking.

Phil Gilmour: I believe that the bill's procedures can be used to exert control with respect to risks and incidents. We do not need to be so draconian as to opt for strict liability. The response is appropriate for the problem. We believe that we have a fundamentally workable procedure through which we can ensure that those organisations that are lagging behind with respect to environmental risks can be brought up to the industry standard.

Nora Radcliffe: One of the disbenefits of taking a strict liability approach is that it might inhibit people from reporting escapes.

Rhona Brankin: The approach that is being taken is the one that has been developed through the creation of the industry's code of good practice, which underpins everything that we are doing. We believe that that code can make a big difference. The additional regulatory framework is there as a backstop. All that will be kept under review.

Nora Radcliffe: Another issue was whether the level of penalties that can be imposed for breaches is sufficient. I understand that there might be ways other than direct fines of exerting leverage on operators and that, if an enforcement order is served, it could affect their insurance. There are levers that are proportionate and which do not relate to fines.

Rhona Brankin: Absolutely. As you say, if an enforcement order has been served but is not being dealt with, that will affect the ability of the company to insure its business. That is a strong lever.

Phil Gilmour: The level of fine might seem low, but it should be borne in mind that enforcement notices could be served with respect to individual circumstances. In other words, a cage-based or incident-based approach could be taken. As such, the final fines could be rather large if there were a lack of co-operation or other problems.

Nora Radcliffe: It is useful to have that on the record.

Rob Gibson: I have two fairly minor points to raise. One is on the definition of "fish" and whether it does or should include crustaceans. Scottish Natural Heritage was concerned about the signal crayfish in relation to the definition.

Rhona Brankin: You are right to be concerned about signal crayfish, which are an important issue in Scotland. Signal crayfish are an invasive non-native species and are recognised as such by SNH. The issue is being dealt with in different ways. We are working closely with the Department for Environment, Food and Rural Affairs to draw up some work on non-native invasive species. I have asked SNH and other stakeholders to draw up a plan of action that we will require to take. I am happy to inform the committee of the progress of that work.

Rob Gibson: On the more general point about crustaceans, is there any way in which the bill requires them to be included in the definition of "fish"? The issue has been raised by several people.

Rhona Brankin: Shades of the Animal Health and Welfare (Scotland) Act 2006.

Maureen Macmillan: That was lobsters.

Rob Gibson: Indeed.

David Dunkley: The issue is to do with how we deal with the issue on the ground. From a practical point of view, including crayfish as fish in the bill would not give us any more levers than we already have for dealing with the situation. Crayfish are already included in the definition of fish in the Import of Live Fish (Scotland) Act 1978. Indeed, the keeping of all crayfish, bar the one type that is native to our waters, is prohibited under a statutory instrument that was made under the 1978 act. We already have mechanisms in place that allow us to catch and remove crayfish.

Rob Gibson: My final point was raised in relation to an amendment that might be made. The Crown Estate suggested that the bill might be an appropriate mechanism for banning the sale or purchase of monofilament nets, if that were feasible. The representatives who attended the committee sent us a supplementary note to say that it would be a good idea if that provision could be included in the bill. Have you considered that?

David Dunkley: Under an order that was made under the Inshore Fishing (Scotland) Act 1984, it is already an offence to carry monofilament gill nets on a British-registered fishing vessel or use them, unless they have a mesh size of more than 250mm and are used further than 6 miles from the baseline. It is not an offence to possess the nets and it would be difficult if we were to introduce such an offence. For example, a net supplier or a ship chandler could, quite conceivably, sell the nets to a fishing vessel from another European country that allows the use of the nets. A Danish boat might call into Wick or Scrabster and want to buy such a net. Further, although this is often regarded as a trivial issue, the nets could be used to cover strawberries. That is why it is not an offence to possess them. However, the important point is that it is an offence to fish with them.

Rob Gibson: That makes the situation clear, for the moment. However, I thought that I had better raise the question as the Crown Estate was good enough to get back to us.

Nora Radcliffe: I have two questions. Is there any intention to ban the use of live bait? Also, the bill has provisions that will lengthen the list of parasites. It has been suggested that Argulus might be a candidate for inclusion in the bill in the first place. Is that correct?

Rhona Brankin: My understanding is that, if Argulus became an issue, we would be able to introduce the appropriate measures by order. The bill allows us to do that.

David Dunkley: The bill provides for the possibility of a ban on the use of live bait being introduced by subordinate legislation. The relevant provision is in the section on fish conservation regulations, which will allow baits to be specified. It

would be possible to include explicit provisions in the bill—and we could do so if the committee was desperate for us to do so—but the necessary powers to introduce such a ban are in the legislation.

The Deputy Convener: I thank the minister and her colleagues for coming to speak to us.

In the coming weeks, the committee will consider its report on the bill, which is likely to be published in early December.

Subordinate Legislation

Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) (No 3) Order 2006 (SSI 2006/487)

Sea Fishing (Northern Hake Stock) (Scotland) Order 2006 (SSI 2006/505)

12:41

The Deputy Convener: We have two negative instruments to consider. The Subordinate Legislation Committee has made no comments on either of the orders.

I just want to put on the record the fact that this is the third bite that we have had at legislation about the Solway. We hope that, from this point on, we will not keep being faced with bits of subordinate legislation on the same topic.

Are members content with both orders and happy to make no recommendation to Parliament?

Members *indicated agreement.*

The Deputy Convener: At next week's meeting, we will begin our stage 2 consideration of the Crofting Reform etc Bill. The target will be to consider sections 1 to 10 and schedule 1. Amendments to those sections must be lodged by noon on Friday 10 November.

Meeting closed at 12:42.

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