

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 17 January 2007

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

2nd Meeting 2007, Session 2

CONVENER

*Maureen Macmillan (Highlands and Islands) (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)

*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, Ettrick and Lauderdale) (LD)

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

*attended

THE FOLLOWING ALSO ATTENDED:

Chris Bierley (Scottish Executive Environment and Rural Affairs Department)

Sarah Boyack (Deputy Minister for Environment and Rural Development)

Ian Hooper (Scottish Executive Environment and Rural Affairs Department)

Jim Johnstone (Scottish Executive Environment and Rural Affairs Department)

Gillian Nelson (Scottish Executive Legal and Parliamentary Services)

Peter Peacock (Highlands and Islands) (Lab)

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

James Simpson (Forestry Commission Scotland)

THE FOLLOWING GAVE EVIDENCE:

Paul Du Vivier (Scottish Fisheries Protection Agency)

Dr Derek McGlashan (Forth Ports plc)

Ian Pritchard (Crown Estate)

Councillor Josie Simpson (Convention of Scottish Local Authorities)

Chris Spray (Scottish Environment Protection Agency)

Graham U'ren (Royal Town Planning Institute in Scotland)

Michael Wright (Scottish Enterprise Ayrshire)

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 17 January 2007

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

Convener

The Deputy Convener (Eleanor Scott): Good morning everybody. I welcome committee members, witnesses, the public and the press to the meeting. I ask everybody to ensure that their mobile phones are off and members to ensure that their BlackBerrys are on silent. We have had no apologies—I understand that Richard Lochhead is on a train and will be here shortly. I welcome Mark Ruskell and Peter Peacock as visiting members.

The first item of business is the choice of convener. Following the appointment last week of Sarah Boyack as Deputy Minister for Environment and Rural Development, she has formally resigned her membership of the committee, which means that the position of convener is vacant. I record the committee's thanks to Sarah for her convenueership over the past three and a bit years. She did very well and we all wish her well in her new post.

Parliament previously agreed to motion S2M-107, which resolved that members of the Labour Party are eligible for nomination as convener of the Environment and Rural Development Committee. I therefore seek nominations from among the members of that party.

Mr Alasdair Morrison (Western Isles) (Lab): I happily nominate Maureen Macmillan for the position of convener of the committee and I reinforce what the deputy convener said in relation to our former convener, Sarah Boyack, with whom we look forward to enjoying constructive relations over the next 11 weeks.

The Deputy Convener: Thank you for that, Alasdair. One nomination has been received.

Maureen Macmillan was chosen as convener.

The Deputy Convener: I congratulate Maureen Macmillan on her appointment. I will move sideways and let her take over.

Marine Environment Inquiry

10:05

The Convener (Maureen Macmillan): Thank you very much, colleagues.

This is the second session of oral evidence in the committee's inquiry into the marine environment, for which we had an extremely interesting round-table discussion last week. We have two panels today, with whom we will explore some of the main themes relating to our inquiry, including the current limits or barriers to managing the marine environment effectively, and possible improvements to that. I welcome the first panel of witnesses: Chris Spray is director of environmental science at the Scottish Environment Protection Agency; Ian Pritchard is head of Scottish marine estate at the Crown Estate; and Paul Du Vivier is chief executive of the Scottish Fisheries Protection Agency.

I am sorry that the Maritime and Coastguard Agency was unable to attend—it could have contributed to our understanding of the interaction between the many activities that take place in the marine environment. However, we thank all the witnesses for their helpful written submissions, which have been circulated to members. I invite questions from members.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I shall kick off by addressing a couple of questions to Ian Pritchard, specifically about the Crown Estate. As I understand it, the Crown Estate suggests that any planning regime that comes out of the committee's deliberations should be non-binding and should presume in favour of development. It indicates that overuse of the precautionary principle should be avoided. Will you expand on those comments?

Ian Pritchard (Crown Estate): It is important to say that the local authorities already have planning powers down as far as mean low-water springs. The issue is the planning powers beyond mean low-water springs. The Crown Estate is very supportive of sustainable economic development in the marine environment. Provided that due process is observed by regulators to ensure that development is sustainable and gives due protection to the environment, we would support the economic development of the resource.

Mr Brocklebank: Is there a need to simplify and consolidate the existing legislation that applies to the marine environment? From the evidence that we have heard so far, there seem to be a great many different bodies at many levels, all of which have some input to management of the marine environment. Is simplification inevitable?

Ian Pritchard: The Crown Estate is supportive of a bill that is able to deliver a means of rationalising and improving existing legislation.

Mr Brocklebank: I am not quite sure whether that was a yes or a no.

Ian Pritchard: Yes.

Mr Morrison: To follow up Ted Brocklebank's question, do you believe that the Crown Estate Commission as constituted and in how it undertakes its responsibilities is fit for purpose?

Ian Pritchard: I believe that it is. The Crown Estate was constituted under the Crown Estate Act 1961, which is relatively recent legislation. That said, it is no longer the body it was then. It has moved on significantly over the years.

Mr Morrison: In what way?

Ian Pritchard: We have a much more open and public focus in what we are doing to meet the needs of our customers and stakeholders around the United Kingdom. We are doing many positive things on our urban, rural and marine estates and interests. We invest significantly in research and development to underpin development and economic activity. We support many organisations in their economic development, particularly around the coast.

Mr Morrison: So, in the context of the bill, you are beyond reform. As an entity, you are fit for purpose. I think you said that you have moved on significantly since 1961. Is that it?

Ian Pritchard: The Crown Estate is committed to moving with the times and to meeting customer expectations. If changes that offer those benefits can be made to the way in which we operate, we are happy to consider them.

Mr Morrison: That is encouraging. Will you remind us what percentage of your income is spent on research and development and reinvested in communities?

Ian Pritchard: We have a number of reinvestment streams. In the past year, approximately 10 per cent of our marine income in Scotland was reinvested in Scottish research and development and other activities.

Mr Morrison: In pounds and pence, that amounts to roughly—

Ian Pritchard: About £0.5 million.

Rob Gibson (Highlands and Islands) (SNP): You will be aware that the Crown Estate review working group produced a report on behalf of several councils in the Highlands and Islands. I believe that you disagree with its recommendations. Will you tell us why?

Ian Pritchard: The review working group's report makes a number of recommendations, including the selling off over time of our urban and rural interests in Scotland, the transfer of our foreshore interests to local authorities and the transfer of ownership of the seabed to the Scottish Executive. We do not believe that there would be any clear advantage in the transfer of our interests. We have a high level of expertise in marine matters, in the management of our rural estate and in our urban interests. We believe that we offer good value to our customers. We work closely with the communities in which we operate by having representatives around the coastline and close to our estates. We have a good reputation, which is supported by the views of our stakeholders and customers.

Rob Gibson: We are concentrating on the marine environment today. Your responsibility for the continental shelf, beyond the 12-mile limit, is coming into focus at the moment. You talk about sustainable development and you have some say in relation to offshore wind farms, pipelines, electricity cables under the sea and so on. Do you also get some income from those?

Ian Pritchard: We have some say as the landowner, but we are not the regulator for development activity. We therefore rely on the bodies that are responsible for regulation to decide whether development may take place. There is economic benefit from development but, by helping to underpin generic research and development, we seek to ensure that the industries that operate in the marine environment have the tools to operate effectively and efficiently.

Rob Gibson: You told one of my colleagues that the amount that you pay back for research is about 10 per cent of your income, so it is clear that there is a large income to be made from both the area up to 12 miles and the area beyond that. Your protestations about investment are somewhat strained, in my view. The Crown Estate could surely spend a lot more money to help us to get a balanced and sustainable environment under the sea.

10:15

Ian Pritchard: When we look at new industries, we will invest higher percentages of our revenue in research and development. For the offshore wind energy sector, for example, the Crown Estate has established a trust fund that is used to carry out generic research into offshore wind energy development. The fund is of far greater value than the income that we currently receive from wind power generation, but it is important that we give the sector a kick-start in its early years.

Rob Gibson: You have disagreed without stating exactly why, but have given us some information about the Crown Estate review working group's approach and you are happy with the marine bill that Ben Bradshaw and his colleagues are involved with in London. As far as I can see, from a letter that I have received from him, there is no intention to reform the Crown Estate. Do you think that that situation is suitable for purpose in Scotland?

Ian Pritchard: One of the concerns that local authorities have expressed through the Crown Estate review working group's report is that they wish to have local control over use of foreshore. However, local authorities already have that control through the planning powers that they operate down as far as mean low-water springs. I am not sure what benefit giving them extra control through divesting the Crown Estate of its interest would offer them. In terms of economic benefit, revenue from the foreshore is very limited, especially in the Highlands and Islands. The cost of managing the estate is significant and the net benefit—if there were any—would be very small.

Nora Radcliffe (Gordon) (LD): I have a question specifically for the Scottish Environment Protection Agency and a more general question for all our witnesses. SEPA's written submission states that,

"in the UK, it is probably illegal, under existing legislation, to bury carbon dioxide from power generation plants".

Can you please clarify that?

Chris Spray (Scottish Environment Protection Agency): The situation is as our submission states, as far as we are aware. We think that that practice is illegal, but it is an area that we would have to examine in greater detail. I would be happy to provide you with further information on that.

Nora Radcliffe: I was slightly taken aback when I read that—given that we are considering carbon sequestration as a useful way forward.

Our three witnesses represent organisations with varying roles in ownership, regulation and enforcement. We would find it helpful if you could each say something about how you use the current structures and mechanisms to enable your organisations to integrate what you do, to work together and to manage the marine environment. How do you talk to each other?

Paul Du Vivier (Scottish Fisheries Protection Agency): The Scottish Fisheries Protection Agency was set up about 15 years ago with the specific focused task of monitoring the industry's compliance with the raft of fisheries rules and regulations that had been generated both by the European Union and nationally. It has required a

considerable dedicated effort to complete that task. However, in my time in the agency, as interest in the marine environment has developed, it has become clear that there is plenty of scope for the capabilities that we have as an agency to be used to cover other aspects of marine environment legislation. That is being considered as a way forward by the Scottish Executive with regard to the response that Scotland needs to make to developments in the marine bill at Westminster.

Although at the moment our task is very focused, there are opportunities for using expensive assets in other ways, as well. That is not to say that we do not deal with a number of other authorities, not the least of which is HM Revenue and Customs, which we help with its anti-drug-running activities. We also provide services to local police forces and local fire services that are responsible for safety issues at sea. Cross-pollination is going on at the moment, but in terms of having a formal remit beyond fisheries, the Scottish Fisheries Protection Agency has a capability that needs to be exploited.

Chris Spray: SEPA has about 100 dedicated marine staff working in scientific monitoring and on the regulatory side. They are working at local level, talking directly to the industries that they regulate and to bodies such as those that are represented by my colleagues on the panel. We are also members of the coastal fora and we play a key part in those, particularly in the advisory group on marine and coastal strategy. We look forward to the outcomes from that group.

Other than monitoring, one of SEPA's key roles comes through the water framework directive, through which we have duties in respect of coastal and estuarine waters. There is a well-established system of consultation of the general public through area advisory groups and the area fora that are about to be set up, and also at national level through the national advisory group, which represents the national view and is trying to get an overview. The area advisory groups represent the regional view and bring in stakeholders in their various forms. We look forward to producing integrated river basin management plans that take into account estuaries and inshore waters. We have a number of formal and informal methods of trying to keep up liaison with our colleagues.

Ian Pritchard: As a single, United Kingdom-wide body, the Crown Estate has the capacity to adjust to differences between the devolved Administrations. In Scotland, we work closely with the Scottish Executive and stakeholders to deliver its objectives and aspirations. We work closely with many stakeholders. The objective is really to minimise bureaucracy and to work as an efficient

and effective organisation to deliver the best for Scotland.

Nora Radcliffe: I want to follow that argument for a bit. It is like belling the cat; people say we should simplify and streamline all the legislation that governs activity in the marine environment. How far is that possible or even desirable? Last week, someone made the very pertinent remark that some things are just complicated. Are we giving too much credence to simplifying and streamlining?

Chris Spray: Through the Water Environment and Water Services (Scotland) Act 2003, we have already seen that the Scottish Administration's approach to regulation of fresh waters and coastal and estuarine waters has resulted in simplification. A lot of European directives have gradually been pulled into one, if you like, and a competent authority—SEPA in this case—has been identified to consider all those. It has helped those whom we regulate because they have only to come to one place or source. We can then co-ordinate our discussions with Scottish Natural Heritage or with the fish-farming communities to get their response out.

We recognise that more European directive legislation is coming, and we understand that that will closely align itself with the water framework directive, so similar benefits can be got through that. Many of our problems within the first 12 nautical miles originate on land, particularly from pollution. A simplified system with, if you like, one port of call that can examine the sources of the pollutants and contaminants and their impacts, and where businesses and others can come for information, is the way we would like to go.

Ian Pritchard: It is important to minimise bureaucracy and to streamline regulation—clearly, those must be everybody's aims. There are two routes to achieving them: the first is by voluntary means, through liaison between organisations and through clear and close dialogue, and the second is by legislative change, which the marine bill offers the opportunity to bring about. We are working closely with SEPA and the Fisheries Research Service on a project that will allow data to be e-mailed to a single point from which organisations will be able to pick out data. The client will have a single point of contact for the submission of data for three organisations. We can do that without legislative change. That is the sort of initiative that we should be thinking about and taking forward.

Nora Radcliffe: That is exactly what the worldwide web is intended for.

I am sorry that I am hogging the questioning a bit.

The Convener: Not at all.

Nora Radcliffe: My final question follows on from that. Do you see any gaps in the baseline data that we have, which we should try to fill? If so, how should we do that?

Chris Spray: There are gaps in the baseline data. Earlier on, our colleagues from Scottish Natural Heritage said in their submission that we do not yet know enough about the marine environment. We have a particularly rich marine environment here because of the geography of Scotland—where we sit in relation to the continental shelf and Europe. That is a key factor. There are gaps in our knowledge of coastal processes, especially in relation to climate change, rising sea levels—particularly the impact of waves—storm tides, storm forecasting and other such areas. It is clear from events since January 2005 in particular that we need more information about such things. Those are the key areas in which there are gaps.

The Convener: I want to ask about issues that cross the borders between devolved and reserved issues, between land and sea, and between Scottish waters, UK waters and other countries' waters. A previous witness posed the question: when did integrated coastal zone management suddenly turn into marine spatial planning, and what is the difference between the two? Perhaps our present witnesses could offer some guidance as to the difference between integrated coastal zone management and—the words that are now on everyone's lips—marine spatial planning.

Paul Du Vivier: I do not have the holy grail of an answer to give you, convener. Marine spatial planning is not yet with us, so we are still in the coastal zone scenario. Nevertheless, marine spatial planning will have to happen because of all the interests that we have to manage in our own exclusive economic zones.

The Convener: How far out does marine spatial planning go? If it goes out beyond the 12-mile limit, or even beyond the 3-mile limit, how can local people get involved in it, as Chris Spray suggested?

Chris Spray: For me, marine spatial planning requires an extra element. It goes beyond the 3-mile and 12-mile limits and tries to integrate the whole area. It looks ahead to the marine strategy and the marine directive, rather than the land-based water framework directive. Also, there is an element of moving from a voluntary approach—everyone being aware and liaising with each other in a mesh that is, I suspect, a nightmare for those who want to get permission to do something—to a clear structure that has a statutory basis and which links to other planning mechanisms. I talked earlier about the water framework directive and our requirement to produce river basin management plans on which we have to report.

That is the sort of thing that we are looking for in marine spatial planning—getting everything integrated on a sound statutory basis, so that people will know where they need to go to get the permissions to develop economic, tourism and other projects.

Ian Pritchard: We see marine spatial planning as the framework—the overlayer, if you like—and ICZM as very much a means of local delivery, with the responsibility for the preparation of local plans with communities and local authorities. The local element is very much a part of the bottom-up approach as well as the top-down approach.

10:30

Elaine Smith (Coatbridge and Chryston) (Lab): I have a question specifically for SEPA. In your submission, you state:

“Global warming may result in sea level rise”.

You go on to mention some of the problems that that might cause. Why did you use the word “may”? Do you agree that global warming is already resulting in sea level rises? Some of last week’s witnesses spoke privately—outwith the meeting—about the problems that they think are happening already. What are those problems? Is global warming already affecting the bird population and fish stocks? How are you monitoring that, if indeed it is SEPA that monitors it?

Your submission also states:

“Arrival of invasive non-native species is being encouraged by the development of the global market which creates avenues for transit from other parts of the globe.”

Do you monitor that and, if so, how? What problems is it causing?

Chris Spray: I will try to cover all those points, but if I forget anything, please tell me.

Your comment about sea level rises is observant. The increase that we expect is fairly small. The figure from the long-running record at Aberdeen is about 6mm per year. Changes in ocean temperature are more critical to coastal communities and habitats. There has already been a 1°C increase. Also significant are wave heights, the storminess of the sea and sea surges. In January 2005, our recording site at Corpach near Fort William recorded a jump in the sea level record of 1.2m, which is higher than it has ever recorded before—and that is not a long-running record. We have much better records for our river systems. We need data from a lot more sites around Scotland on not just sea levels but the things that have a real impact on people—wave heights, storminess and sea surges.

Elaine Smith: Do you plan to put in place recording systems to collect that information?

Chris Spray: We do. We are discussing a coastal flood strategy with the Scottish Executive. Next month, we will launch a coastal flood watch service, which will provide the equivalent of the information about flooding in river areas that you will have seen on television most nights in the past month, I am afraid to say.

There are also plans, which are funded by the Scottish Executive, SNH and SEPA, to take the coastal flood strategy to a higher tier by using the Met Office’s storm forecasting service to consider what happens both around the whole of Scotland and in regional areas. I think that the call for expressions of interest has just gone out. That work might fit nicely with the regional coastal fora. We are liaising closely with SNH on the environmental aspects.

There have also been changes in ocean temperature and changes in ocean acidification due to increasing carbon dioxide levels. We are seeing some dramatic changes in species. In particular, certain species of dolphin are coming further north and there have been changes in plankton. There is good evidence from the centre for ecology and hydrology that there are changing patterns of reproductive success in our seabirds which, interestingly, mirror what is happening to fish populations. In certain areas, the fish population is being maintained and the seabirds that feed on them are doing well. In other areas, sand eels are decreasing dramatically and the species that rely on them, such as kittiwakes and guillemots, are doing badly. Those are dramatic changes.

Elaine Smith: What about invasive, non-native species?

Chris Spray: There is concern about those. Interestingly, the matter is being taken up by the United Kingdom and the European Union in relation to the water framework directive. There is a working group on invasive species, which will meet tomorrow.

We are worried about a number of aspects. First, there is concern about things that are introduced through fish farming and the accidental or intentional movement of not only fish species but invertebrates. Secondly, things that have not happened before are now happening because of climate change. If you want further details, I and my colleagues can provide you with more detailed information on the effects on particular species.

Elaine Smith: Is there a possibility that diseases are coming in with those accidental movements that you do not know about?

Chris Spray: Absolutely. Disease coming in with invasive non-native species is a key issue that we are worried about. One thing that we know about such species is that they tend to have diseases to which they are fairly resistant but which native populations have never seen and are likely to be affected by.

You asked about monitoring. We have 100 marine scientists scattered around the coast of Scotland. We also have two marine-going boats. The newest is the Sir John Murray, which was launched a couple of years ago and is a 360-tonne purpose-built marine monitoring boat. We have a national marine monitoring programme, and as with the freshwater marine programme, we try to co-ordinate what is happening. We obviously work closely with FRS, which tends to do the work further out. We have no expertise beyond 12 miles from the shore, because we do not have large trawlers. However, we do a huge amount of monitoring inland, and we link with Scottish Natural Heritage on that work.

Eleanor Scott (Highlands and Islands) (Green): I have a question on the legal framework, which is initially for SEPA, although I want to hear others' views too. You talked about the marine strategy directive that is being processed in Europe. I presume that you expect it to go through the same process of being transposed into Scottish law as the water framework directive. Do you see that as part of a consolidating marine bill or as something separate, and do you see SEPA as the lead agency? If we had a Scottish marine management organisation, would that body lead?

Chris Spray: To a certain extent, we will have to wait to see what AGMACS comes up with, and I do not want to prejudge what has been a good debate in that group.

The Water Environment and Water Services (Scotland) Act 2003 was essentially the enabling legislation that brought the water framework directive into being. Having been in England at the time, I know that it is much admired south of the border for its clarity and how it implements the directive in a simple way, with general binding rules and regulations. The 2003 act provides the framework and ideal that Scotland can build on. It would not take a lot to change the act to extend the 3-nautical-mile zone to 12 nautical miles, which would include a lot of the issues to do with pollutants and water quality control that we deal with. Beyond that, activities such as gas, oil and gravel extraction and marine fisheries are entirely different and probably outside SEPA's remit, knowledge and control.

We see the marine directive as an opportunity to do similar things to what we have done so effectively with the 2003 act. We could use that act as a model and perhaps just change minor

provisions. We certainly hope to play a key part, as we are the competent authority, and we hope to retain that role and extend it to include the new 12-nautical-mile area. We could then provide a one-stop shop to help businesses get on with their developments.

As I said earlier, a key element of the 2003 act is the controlled activities regulations, in which we have tried to say that the vast majority of activities that occur in the water environment do not need regulation. People need only clear indications of what they can do, so that they can get on and do it. Where there are risks of cumulative effects, we have to consider them, and where they are complex, we have to consider complex licensing systems. However, there is a clear, tiered approach to enable us to get on with the job within the sustainable development framework.

Eleanor Scott: A lot of papers have suggested establishing a Scottish marine management organisation. If we had one, how would you work with it?

Chris Spray: We are a little unsure about what it would look like and about the establishment of yet another body. We would like to explore further with the Scottish Executive the model of the competent authority for the water framework directive and how it can be taken forward. As I said earlier, the vast majority of issues in the 12 miles from the coast are land based, such as contamination, nutrients, chemicals coming down our rivers or erosion. I am sure that it would help developers and assist in finding simple solutions if a single integrated body dealt with such issues.

Eleanor Scott: What do other witnesses think about the desirability of a Scottish marine management organisation? Is SEPA's view correct, or are there particular marine issues, including the issues that Chris Spray mentioned, that SEPA cannot deal with?

Paul Du Vivier: I have reflected further on the convener's question about where marine spatial planning and coastal zone management start and finish. There is a broader horizon to consider, in that we are talking about marine spatial planning that covers the entire 200 nautical mile exclusive economic zone around Scotland—and beyond, if Europe has its way. There is a difficulty to do with the fact that, outwith the 12-nautical-mile limit, only fisheries are devolved to the Scottish Parliament. How does the United Kingdom manage issues outwith the 12-mile limit without encroaching on Scotland's devolved responsibility for fisheries? In that context, the management options are being explored—in governance terms—as we speak. The marine spatial planning process needs to cover the broader canvas and not just what happens in the 12-mile zone, therefore the

requirement for a Scottish marine management organisation speaks for itself.

Eleanor Scott: Is that the consensus view among the people who have been discussing the issue and AGMACS?

Paul Du Vivier: I cannot speak for AGMACS, because I do not sit on that body.

The Convener: A theme that emerged from our discussion at last week's meeting was the need for a set of objectives for managing the marine environment. Is there a consensus on the objectives that we should have?

Chris Spray: Such an approach would be valuable, because I think that we are all looking for a vision under which we can operate and play our key roles, so that the jigsaw puzzle is completed. An overarching objective at national level that takes on board the UK and European positions would be helpful. AGMACS and others have made a number of helpful suggestions that refer to biologically productive seas that are used sustainably, for the various activities that we have talked about, such as fisheries, aggregates, and inshore and marine fish farming. We can easily buy into a single vision, which would help to deliver better regulation and simplify the situation.

Ian Pritchard: I agree that an overarching vision is necessary. To some extent, everything else will fall in behind it.

Paul Du Vivier: Significant constitutional and devolution issues need to be resolved, to determine the extent of our vision for the seas around Scotland beyond the 12-mile limit.

The Convener: I dare say we will return to that point.

Mr Brocklebank: In response to a question from Elaine Smith, Chris Spray said that certain seabird species, in particular guillemots and razorbills, are being affected by a lack of sand eels. Have you been able to judge whether the lack of sand eels is the result of overfishing and industrial fishing or whether it has more to do with climate change?

Chris Spray: You make a good point. It is obvious that you have read a lot of the scientific literature—I congratulate you. It was initially thought that sand eel losses were due to fishing, so the responsible response was to close the Wee Bankie sand eel fishery. However, as a result of work that was carried out, in particular by Professor Sarah Wanless and Professor Mike Harris, at the centre for ecology and hydrology at Banchory, it has been shown that the approach was masking environmental changes and that, as a result of changes in sea temperature, the sand eels' food is disappearing.

The reason that I mentioned that some populations of seabirds have gone up and some have gone down dramatically is that, if we go further north to Norway or the top of the Shetlands, we find populations of razorbills, guillemots and kittiwakes that are reliant on sprat. Those populations have held up, whereas the populations that are reliant on sand eels have not. There is also individual variation from year to year, so it is not an obvious picture to start off with, but we have now teased out fairly well the fact that climate changes are what have changed the sand eel populations.

The Convener: Thank you, gentlemen, for attending. We have enjoyed your evidence and we look forward to reviewing it in due course.

We will have a short break while the next panel of witnesses is seated.

10:45

Meeting suspended.

10:49

On resuming—

The Convener: I welcome the second panel of witnesses for today: Councillor Josie Simpson from Shetland Islands Council, who is representing the Convention of Scottish Local Authorities; Michael Wright, who is the manager of the global connections department of Scottish Enterprise Ayrshire; Dr Derek McGlashan, who is the ports security and environment manager for the Scottish operation of Forth Ports plc; and Graham U'ren, who is the director of the Royal Town Planning Institute in Scotland.

I thank the witnesses for their helpful written submissions, which have been circulated to members. I invite questions from members.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I have a couple of questions for Forth Ports, but it would be useful if the COSLA representative could also comment on the answers.

Forth Ports is a private limited company, so it obviously has commercial functions, but it also has regulatory functions. As a plc it is directly responsible to shareholders. Is it responsible to ministers for its public regulatory functions?

Dr Derek McGlashan (Forth Ports plc): We clearly state that we have two hats, and it is important to emphasise that our primary objective is safety in navigation, which is our statutory function. The Department for Transport regulates that function and can rein us in if we deviate from ensuring safety of navigation.

Mr Ruskell: However, you are structured as a plc, so you have a legal duty to your shareholders. Is that correct?

Dr McGlashan: Yes, but we also have a statutory duty to ensure safety of navigation, which, as I said, is the overriding requirement.

Mr Ruskell: To whom are you responsible on issues of environmental regulation? Are you directly responsible to ministers?

Dr McGlashan: Again, the Department for Transport has placed a duty on all port and harbour authorities—some are public limited companies, some are local authorities and some are trusts—to ensure that conservation is given due regard in any decision. That is included in the Port Marine Safety Code, which is a relatively new initiative that the Department for Transport has developed over the past decade.

Mr Ruskell: On environmental matters, Forth Ports is, in a sense, the regulatory body, because it is the competent authority under the habitats directive.

Dr McGlashan: That is correct.

Mr Ruskell: Does Forth Ports consider that unusual set-up, in which you have public, regulatory and private functions within a private limited company, to be a benefit or disbenefit to the company as a whole?

Dr McGlashan: The way that we have been set up is the way that we have worked and we have not really considered whether it is a benefit or disbenefit. It is important to emphasise that the statutory functions fall within our marine department and are quite devolved from the company's commercial aspects. My remit is to perform an advisory function, so commercial aspects are not considered in my decision making. I provide advice to anyone in the organisation who requires it and that advice must be taken into account. The issue is primacy: if we have environmental or navigation responsibilities, they must be considered before commercial aspects are discussed.

Mr Ruskell: The situation leaves Forth Ports open to criticisms that it is using regulatory functions to safeguard its primary legal duty as a plc, which is to its shareholders. Ship-to-ship oil transfers in the Forth have been commented on. In February, the committee will consider petitions that members of the public have submitted on that issue, but I will raise another example of the mismatch.

I understand that, in the early 1990s, a private company applied to open a harbour in Alloa but Forth Ports plc refused to provide buoys and pilots to assist vessels that intended to reach Alloa because, it was claimed, the commercial facilities

that Forth Ports has at Grangemouth and Leith were adequate to fulfil the trading needs on the river and the estuary. I also understand that, after having refused those services, Forth Ports issued a general direction to close the waters to the west of the Kincardine bridge. At the time, the Chamber of Shipping described those actions as

"vexatious and an unjustified interference with the public right of navigation".

I will not cast judgment on that, but it is surely another example of the public regulatory functions being in conflict with the interests of your shareholders, to whom you have a legal duty, I imagine, even as you sit in the committee today.

Dr McGlashan: Do you have a date for that?

Mr Ruskell: I do: it was 1994, I believe.

Dr McGlashan: That is before I joined the company and it is the first that I have heard about the matter. If you wish, I am willing to speak to some of my colleagues to see whether I can find out a little more.

Mr Ruskell: I am interested in whether COSLA perceives a conflict of interest in private companies holding what in many other countries are public regulatory functions that concern the protection of the marine environment.

Councillor Josie Simpson (Convention of Scottish Local Authorities): Our experience in Shetland with Sullom Voe is that it is important to draw up a strong code of conduct. We worked closely with the oil industry when Sullom Voe terminal was established way back in the 1970s. That has worked well. We must have a code of conduct that is stuck to rigidly. That has made the environment a great success at Sullom Voe.

You touched on ship-to-ship transfers. We must keep a close eye on them. A lot of crude oil comes out of the Baltic, and it must be transferred ship to ship before it can be distributed into the wider world in bigger tankers. We must keep a close eye on that and we must ensure that ship-to-ship transfers take place in controlled waters in port.

Rob Gibson: We are interested in exploring marine spatial planning, which has been mentioned—that involves integrated coastal zone management and so on. We have seen your submissions. We are interested in working out how local priorities would be set and stakeholders would be involved. It is interesting that ship-to-ship transfers have been raised; many other issues exist. How can planning for such activities take place in a fashion that protects the environment?

Graham U'ren (Royal Town Planning Institute in Scotland): We do not have all the answers yet, because the idea of designing a marine spatial planning system has a long way to go and we can

take it forward only one step at a time. We are not 100 per cent certain about the mechanisms to deal with some issues.

It has been important in the debate about marine spatial planning to understand that it comes from a set of underlying principles about spatial planning generally, which we must establish and understand. One important principle is that the process must be inclusive and must secure inclusive outcomes that involve the interests of stakeholders, whether they are a community of interest locally or more widely. That is a fundamental principle of any planning system. The system in a marine environment will be based on similar underlying principles but might operate differently.

It is difficult to say exactly how to ensure an inclusive consultative process. From the work on the different ICZM projects through to the Irish sea pilot marine spatial planning project that was done for the Department for Environment, Food and Rural Affairs, and which involved engagement with Scotland and all the Administrations around the Irish sea, it has been clear in all the debates that have taken place that there is a local dimension. Local coastal communities in the coastal zone have an important interest in what happens offshore. We need to ensure a connection between activities offshore and how we manage land use and other forms of activity onshore. There is no doubt that that connection must be made and that it is an important interest for coastal communities.

However, it is true that, if we take the wider view to which earlier witnesses referred, there is a strong case for marine spatial planning to encompass all UK waters to 200 miles. That may be in a tiered system, involving local as well as wider and national mechanisms. If we take that wider view, we have to accept that there will be some issues about which communities at the local coastal community level will not have an awful lot to say. That said, we have to ensure that a system is put in place that allows the appropriate level of participation at the appropriate time, depending on the circumstances.

11:00

Dr McGlashan: This is where integrated coastal zone management has had a poor run for the past 20 or so years. There is a theory that—a bit like marine spatial planning—ICZM started off as an excellent idea and pulled together the various organisations to come up with one overarching approach. However, the United Kingdom Government decided to take the voluntary approach. Although the approach—using local coastal partnerships or fora—worked in many

ways, the main problem has been the lack of continuous funding for the partnerships or fora.

Funding tends to come from individual lead bodies—Scottish Natural Heritage is often involved. In the local coastal partnerships, other bodies are involved and act as substantial contributors. That is the case for Forth Ports in terms of the Forth Estuary Forum, in which we are particularly active—indeed, we are the second largest contributor. Historically, that approach has been very useful in allowing bodies such as Forth Ports to engage with other statutory agencies and local stakeholders in an informal process, by means of conferences, networking events and the like. However, not only is the continual drag to find finances a challenge, it impedes success.

Clearly, the approach is not logical for the entire marine area out to 200 nautical miles. However, we need to bear in mind the fact that we should not reinvent the wheel. I refer to what was said in the earlier session on the forthcoming European legislation and the proposed UK marine bill. It is important to bear that legislation in mind. We need to ensure that Scotland does not jump the gun and come up with a system that we have to adapt or substantially rewrite because of overlaying European or UK legislation. That is in line with the recent review that emanated from Westminster—the Davidson review—on the implementation of European regulation, which is a timely report.

Rob Gibson: If I may, I will butt in for a minute. Last week, at our round-table session, it was suggested that Scotland has a lot of information—indeed, it was said that our knowledge of and ability to manage the seas may be seen as a benchmark. Does that not suggest that, rather than wait for someone else to do things, a Scottish solution might help others, at other levels and in other places, to put in place a good system?

Dr McGlashan: Absolutely. I am not suggesting that we wait.

Rob Gibson: But you were.

Dr McGlashan: It is one thing to come up with potential solutions and highlight the literature and work that has been done—

Rob Gibson: Just do not do anything.

Dr McGlashan: It is quite another thing to put something in place when, in 18 months' time, we may be required to rewrite it substantially. The distinction needs to be made between that and the beneficial work that has been done.

A classic example is the marine spatial planning pilots under the Scottish sustainable marine environment initiative, which have only just gone into their practical implementation phase. I understand that they are expected to run for another three years or so and yet, instead of

learning from the process, we are going to charge on ahead and come up with our own system. The benefits or disbenefits of these slightly different approaches are still unknown; we are in the early days of this work.

Rob Gibson: We are not talking about charging ahead; we are trying to set up the process whereby aims that are stated at the Scottish level are applied in a process that involves people. Can the existing process be democratised? At the moment, instead of involving people in local communities, it sounds like a bunch of experts are telling people what they should think.

Dr McGlashan: It is inevitable that, if a group of experts is asked what they think on a subject, they will give their academic, ivory-tower view of how something could work. It is important that we think about how things can work practically, on the ground. On that basis, I add my voice to the invitation that our chief executive made for every committee member to come to the Forth and Tay navigation service. We are more than willing for you to do so—in fact, we strongly encourage it. Such a visit would allow members to witness the way in which we safely manage the marine environment of a busy shipping estuary.

Rob Gibson: Thank you.

Councillor Simpson: Maintaining local involvement is important. Many people compete for the same water inside the 12-mile zone, where fish farming takes place and there are shellfish. Over the years, we have frequently been able to resolve problems that have arisen when people have competed for the same piece of water. There must be local involvement.

Rob Gibson: We have not heard from Scottish Enterprise. Are your activities affected by the democratisation of planning?

Michael Wright (Scottish Enterprise Ayrshire): Not directly, as we do not have any statutory planning responsibilities or powers.

The only comment that I can make on the national picture is that we would welcome something that allowed us to integrate our economic development priorities into the planning framework. We are organised to take account of several key industries. It is clear that three of those industries—tourism, energy, and food and drink—have a relationship with the marine environment. Any special planning framework would be welcome. We had a similar relationship with the national planning framework when it was developed a year or so ago.

Mr Brocklebank: As Mark Ruskell said, we will consider issues relating to Forth Ports and ship-to-ship oil transfers in the future, but we may not be fortunate enough to have somebody like Josie

Simpson with us then. I want to probe a little further his thoughts on achieving safe and effective ship-to-ship oil transfers. People on Sullom Voe have a lot of experience of offloading oil into tanks, but do they have experience of ship-to-ship transfers in the sheltered waters there?

Councillor Simpson: Yes. We carried out pilot schemes on the jetties on Sullom Voe around two years ago. Such work is slowly increasing—we are getting more of it—and we must go in that direction. The work should be carried out in controlled harbour waters where booms can be deployed immediately to contain spillages; that is not possible in the open sea. We must be strong on the issue and work inside controlled harbour waters.

Mr Brocklebank: There have been occasional spillages over the years from tankers offloading in Sullom Voe. What has been the impact of those spillages?

Councillor Simpson: They have had a very limited impact. The precautions that are in place, which include booms and skimmers, mean that the environment in the port of Sullom Voe for the past 25 to 30 years has been a credit to that port. There are still otters there and the seaweed is in excellent condition. Ship-to-ship transfers must take place in a controlled environment in which any spillages can be taken care of.

Mr Brocklebank: If Forth Ports decided not to go ahead with the operation in the Forth, would people in Shetland welcome such an operation in Sullom Voe?

Councillor Simpson: I think that we would, but we are not here to take away trade from the Firth of Forth. However, there is something that we can do: we have onshore tanks in which oil can be stored before it is moved into bigger tankers.

Eleanor Scott: I want to return to basics. What is wrong with the current marine planning arrangements and licensing activities? What problems exist? That is probably a question for everybody, but perhaps the Royal Town Planning Institute in Scotland could answer it first.

Graham U'ren: There is continual reporting of the need to resolve conflicting interests on an area basis—in one area as opposed to another—but the real value of spatial planning is in adding value in developing a system that is about not just mapping the constraints better, but sieving out areas where there are opportunities to develop and exploit resources in a sustainable way—areas where certain circumstances prevail and the environmental condition is more robust than it is in the areas where we want to constrain development.

The existing regulatory approach is only about imposing constraints; it does not answer the question, "If we can't go here, where can we go?" The more that examples of that experience are reported, the more the case for marine spatial planning seems to build. We are not necessarily pushing for that; we are here to facilitate the debate on whether a planning system will resolve the problem.

I will say this before anyone else says it: we are certainly not experts on the marine environment as such, but we can see a way of introducing a system that might help to address problems that other people tell us about. That is my view of the need for a marine planning system.

Councillor Simpson: In Shetland, part of our system for marine planning is a marine sub-committee that handles works licences in relation to fish farming and shellfish, which I think works very well. We can work closely with the inshore fishermen. I do not have a problem with the system that we have just now.

Michael Wright: I reiterate a point that was made earlier: it is more about the opportunities than the constraints of the system. We do not have experience of the sharp end of implementation of projects. A practical example is renewable energy, particularly wave and tidal power. The question is whether we can use the planning regimes to be more proactive in promoting the opportunity that exists, not just to meet the needs of sustainable energy for Scotland but as a lever for economic growth.

Eleanor Scott: I note from the Forth Ports submission that you are sceptical about the need for marine spatial planning. Do you acknowledge that, given the increased use of the marine environment that will result from renewable energy developments coming on stream, there might be a need for spatial planning?

Dr McGlashan: There is always the potential for conflicts to arise between various activities, which we see in the coastal environment in particular—hence our submission's focus on the coastal environment rather than the offshore area. It is important to remember that there is an element of marine spatial planning of the offshore area, such as of oil and gas, through Westminster, and of fisheries, through the common fisheries policy. Whether you agree with the outcome is another issue.

A big caveat is that natural processes ignore administrative boundaries. We can draw a line on a map, on land, and the natural processes will still move between the different cells that we have identified. In the marine environment, everything is even more mobile. It is incredibly difficult to draw a circle around something and say that that is where

you can—or cannot—do X, Y or Z, because whatever is of interest there might not be there next time you go. That is something of which you have to be acutely aware. Defining legal boundaries for conservation designations on land or in the coastal-land interface is incredibly difficult. It has proved to be a challenge for organisations such as Scottish Natural Heritage and similar bodies in England, Wales and Northern Ireland since the Wildlife and Countryside Act 1981 came in.

Eleanor Scott: The consensus seems to be that if we were to go for marine spatial planning, we should be looking for opportunities. You seemed to be talking about an overarching thing. Are you talking about a national UK organisation or a Scottish organisation? In the Scottish context, who would you see taking that on, or are we talking about creating a new organisation?

11:15

Graham U'ren: That is a key question, but I am not sure that we are quite ready to answer it. I refer back to Derek McGlashan's point. The issue about the dynamism of the marine environment points strongly to a need to establish a much wider planning unit. That is where some of the issues about the scope of the ICZM partnerships conducting marine spatial planning at a local level come in. With the best will in the world, those partnerships cannot have an overview that is wide enough to encompass some of the ecosystem-wide dynamic issues to which Derek McGlashan referred. That is why much of the work that has been done so far to establish an administrative unit for planning has focused strongly on what is called the regional sea dimension.

Although there is some scope for planning to be carried out at the relatively local level of the coastal and major offshore partnership approach, we are considering how we can invest in that tier of the administration of the whole process that represents a wider regional view. Whatever that regional view is, the debate starts with the regional seas as defined by the Joint Nature Conservation Committee for the UK. They could be amalgamated for economy of scale to get enough administrative critical mass—enough skills and so on—into the authority.

We are not talking about a massive bureaucracy. In fact, we do not want an over-large bureaucracy. If we are going to create a statutory regulatory role rather than the voluntary integrated programme approach through ICZM partnerships, we will have to set up an authority that has enough power, stability and Government clout, and a process of redress to ministers such as local authorities, as planning authorities, have.

Such a body will probably be established at the region level, but it could be done under a UK regime. I know that Ross Finnie, through AGMACS, is looking closely at how it could be done by having regional seas within a Scottish entity. The challenge is that, to get an integrated approach, it will be necessary to consider scoping the range of the plan process not just within devolved powers, but within a number of functions that come under reserved powers as well. To get a properly integrated plan, we must get an accommodation with the UK Government that will allow us to find a Scottish solution to the problem; otherwise, there may have to be a UK network of agencies.

By and large, we are still looking at a three-tier system. The Government—either at the UK level or in Scotland—must have its overview. Below that, there must be a network of planning authorities at regional sea level, run by one or other—or both—of them. Below that, there must be local solutions as well, to enable us to deal with all the local circumstances. It is not an easy answer to give you, but that is, conceptually, the way in which things are going.

Nora Radcliffe: I ask Graham U'ren to expand on the practicalities of that, as he sees them. I suppose that the model is the old structure plan and local plan, but in this case the top level would be UK-wide and the lower levels would be Scotland-wide and local. Do you think that that would work in practice?

Graham U'ren: The practicalities of getting a properly integrated approach to a spatial plan for a regional sea involve an accommodation with the UK Government the like of which we have not seen so far. That is of no surprise to me, as our profession has been debating how we can deal with UK-wide spatial issues. We cannot get away from them—they are there anyway.

The UK's ports policy is a reserved issue, but we know that the implications in the devolved regime are around planning issues. It is a bit of a challenge to get a spatial view across the UK to help us to make more sensible decisions within the devolved jurisdiction. However, spatial issues constantly drive the need to go back and stop demarcation of functions and start talking about how we can co-operate better to deal with the wider UK perspective of what happens where—it is germane to the relative success of the regions in the UK as well as in the European context. There might have to be co-operation the like of which we have not yet seen to allow the Scottish Administration to oversee a properly integrated approach, particularly at a regional level.

Nora Radcliffe: As you say, that is a challenge.

The Convener: We have talked about how the planning process might work with its various layers and structures. Let us think about the objectives, what the planning process wants us to do and what our priorities are. We spoke about democratisation and how people at local level could feed into the process. Does anyone have any indication that people at local level know what the priorities are for the marine environment? What do you see as the priorities? Are they economic or concerned with biodiversity? Does Councillor Simpson have a view on that?

Councillor Simpson: The priority is commercial, but it is also environmental. We work closely with SNH on our shellfish control and on works licences. It is important that we have local involvement because local people know both sides of the argument. We all have to be interested in our environment. I spoke earlier about the port of Sullom Voe, on which we worked very closely with the industry. The same applies in this situation: we have to work closely with the aquaculture, fishing and shellfish industries. Commercial and environmental interests share priority.

The Convener: Dr McGlashan, what about the Forth estuary fora? Does your membership have views on what the priorities are?

Dr McGlashan: It is fair to say that each member has their own priorities. Obviously, as on many of the different fora, the membership is made up of the harbour authorities, the local authorities, other statutory agencies such as Scottish Natural Heritage, and some of the non-governmental organisations such as RSPB Scotland and wildlife trusts.

Although everyone has a slightly different opinion, the common goal is to ensure that everyone can work together to try to ensure that the Forth environment is sustained. The overall aim of the Forth estuary fora, like all the firth initiatives, is to promote the wise and sustainable use of the Forth. That sums it all up. If we go down the marine spatial planning route, it is logical to have that as our aim. Our aim is not to exploit all the resources and we are not trying to take a kid-gloves approach to make sure that no one is allowed to touch it; we are trying to get a sustainable development balance.

In the early 1990s, much was made of trying to separate the polarised perspectives of the conservation movement and the industrialists and we made great strides. Increasingly, however, that polarity could re-emerge in as clear a way as it did after the war. We want to ensure that we keep the balance between protecting our heritage and ensuring that we do not cripple our economy.

The Convener: If the other two panellists have nothing to add on that subject, is it the case that

there is consensus about our objectives for the marine environment?

Graham U'ren: I underline the point that was made at the outset: the priority is to get the balance right between environmental issues and opportunities for economic development. The planning system will need to be part of the strategy but it will certainly not be the whole strategy. Many other aspects of a marine coastal strategy need to be developed.

The Convener: I thank the witnesses for coming. Your evidence was much appreciated.

We will have a break while we wait for the minister to arrive.

11:25

Meeting suspended.

11:32

On resuming—

Subordinate Legislation

Farm Woodland Premium Schemes and SFGS Farmland Premium Scheme Amendment (Scotland) Scheme 2007 (Draft)

The Convener: The committee will consider two statutory instruments that are subject to the affirmative procedure, the first of which is the draft Farm Woodland Premium Schemes and SFGS Farmland Premium Scheme Amendment (Scotland) Scheme 2007. The Parliament must approve the draft instrument before it can be made. I welcome, with great pleasure, Sarah Boyack, Deputy Minister for Environment and Rural Development, and her officials. She is here to move motion S2M-5340, in the name of Ross Finnie.

The Subordinate Legislation Committee considered the draft instrument and made no comment. Before we debate the motion, we will be able to ask officials to clarify purely technical matters or to explain details, but the officials cannot participate in the debate that will take place after the minister moves the motion. I invite Sarah Boyack to introduce her officials and make opening remarks.

The Deputy Minister for Environment and Rural Development (Sarah Boyack): Thank you. I am accompanied by Jim Johnstone, from the Scottish Executive Environment and Rural Affairs Department, and James Simpson, from Forestry Commission Scotland.

The draft instrument is primarily a tidying-up measure as a result of changes to European legislation. It sets out the adjustments that will be made to payments under the Farm Woodland Premium Scheme 1992 (SI 1992/905), the Farm Woodland Premium Scheme 1997 (SI 1997/829) and the SFGS Farmland Premium Scheme 2003 (SSI 2003/209), in the case of land that is set aside from production under the single payment scheme. The instrument also formally closes the SFGS Farmland Premium Scheme 2003 to new applicants.

Since 1992, farm woodland schemes have encouraged woodland creation by providing annual payments for up to 15 years, to compensate farmers for loss of income as a result of converting agricultural land to woodland. The 1992 scheme was closed to new applicants in 1997 and replaced by the 1997 scheme, which in turn was closed in 2002 and replaced by the 2003 farmland premium scheme. However, payments

continue to be made to agreement holders under on-going commitments. Therefore, the three schemes remain in operation but are closed to new applicants.

The first adjustment concerns the relationship between the schemes and set-aside. After July 1995, European legislation specified that woodland used to meet a farmer's set-aside obligations would not attract a set-aside payment. Instead, the woodland would attract payment under the relevant farm woodland scheme. The legislation specified that payment could not exceed the prevailing set-aside rate—in other words, the farm woodland scheme payment rates had to be reduced to the prevailing set-aside rates. Under the new common agricultural policy regime, farmers can continue to use their afforested land to meet their set-aside obligations, but annual woodland payments will be reduced by the amount of the set-aside payments made under the single farm payment scheme for the land in question. The approach in the draft instrument will ensure that there is no double funding, so that the right amount is paid to scheme participants.

The second adjustment closes the SFGS Farmland Premium Scheme 2003 to new applicants. Entry into the farm woodland schemes has always been conditional on the woodland concerned being planted with support under the Scottish forestry grants scheme, which is operated by Forestry Commission Scotland, towards planting and establishment costs. As the Scottish forestry grants scheme is now closed, that means that to all intents and purposes the farmland premium is unavailable to new applicants. The draft instrument formalises that closure.

I hope that I have explained the background to the scheme and what the draft instrument is attempting to do.

Rob Gibson: Thank you for your explanation. Can you give us a ball-park figure for the number of people who will be affected by the change? How many people are served by the farmland premium scheme and the other schemes that are to be changed? Will people have their support cut off? What demand will not be met as a result of the closure of the scheme?

Jim Johnstone (Scottish Executive Environment and Rural Affairs Department): There are about 3,000 participants in the scheme, about 90 to 100 of whom use the set-aside option each year—doing so is purely optional.

Rob Gibson: Do you have any idea how much demand might not be met?

Jim Johnstone: Do you mean demand for the scheme itself, as opposed to demand for the set-aside option?

Rob Gibson: Yes.

Jim Johnstone: The scheme receives a steady stream of applications—perhaps 30 or 40 per month. Applicants will have to wait until the replacement scheme comes into effect.

Elaine Smith: I welcome the minister to the committee in her new role. Will the draft instrument simply make technical amendments and not lead to a reduction in the overall level of payment? I want to be quite clear about that.

Sarah Boyack: Yes, in essence the amendments are technical. What happens next is that the Scottish rural development plan will bring in a new opportunity for woodland grant schemes under part 3 of the land management contract concept. The draft instrument that we are considering deals with the existing scheme and will close it to new applications, before we move on to the new system.

Elaine Smith: Will no one lose out?

Sarah Boyack: No one who is currently getting money will lose out. We will then move on to the new system.

Nora Radcliffe: What is the timescale for the move to the new system? Will it have the capacity to cope with demand, given that there are currently 30 applications a month?

James Simpson (Forestry Commission Scotland): Land management contracts are being worked up. Officials from SEERAD, Forestry Commission Scotland and Scottish Natural Heritage are working together to ensure that an integrated package is developed. Our best guess would be for entry late in 2007. We hope to be able to deal with demand, because the amount of money that will be in the pot will be similar to the sums that were allocated in the past. However, the new scheme will be rather different and there will be more competition for it. Priorities might change over time.

Sarah Boyack: The rural development plan will have to be approved by the European Commission. We are not quite there yet; the draft instrument is part of a process.

Nora Radcliffe: I presume that the optimum time for planting is the end of the year. Will a season be missed, or is that a silly question?

James Simpson: It is a bit early to say, but practical people might guess that there might be a bit less activity during this planting season—the 2007-08 season—than in previous years.

Sarah Boyack: We will keep an eye on the issue as we move from the current scheme to the new one.

Nora Radcliffe: However, if there is a delay, we might end up actually skipping a year.

Sarah Boyack: That is why we need to ensure that the land management contracts are put in place and that we get permission from Europe for the rural development plan. We place a lot of onus on ensuring that those things work.

Richard Lochhead (Moray) (SNP): I, too, welcome the minister to her new role.

Further to Rob Gibson's point and that response to Nora Radcliffe's question, I have heard many concerns from forestry industry workers in Moray—which is the constituency that I represent—about the fact that much of the Government's effort on the financing and policy of the scheme seems to be directed at the recreational, rather than commercial, aspects of forestry. Can we be supplied with figures, either today or later, on how the financing of the current schemes is balanced between the promotion of the recreational aspects of forestry and the support of the commercial aspects?

James Simpson: I cannot give the committee those figures today, but I can certainly supply a breakdown of how the Scottish forestry grants scheme has been allocated across the broad priorities of the Scottish forestry strategy.

Sarah Boyack: We will be happy to send that breakdown if the committee will find that helpful.

Richard Lochhead: I have a quick follow-up question. If I heard correctly, James Simpson said that one might predict that the planting rates for 2007-08 will decline. Can he give us a context—what were the planting rates over the past few years? I understand that planting has declined over recent years.

James Simpson: I think that the decline is dependent on the availability of a scheme to which people can apply. At the moment, there is no scheme to which applications can be made. I should point out, however, that we have fully committed our budget for this year on the legacy schemes, so there will still be a lot of new planting under approved schemes that is not dependent on the new scheme being open to entrants.

Mr Morrison: Following up Richard Lochhead's question about the recreational use of forests, am I right in thinking that, as well as the recreational imperative, there is a straightforward economic benefit to be gained from the recreational use of forests, such as happens at Abriachan, and from all the different ways in which forests are now being used?

James Simpson: Absolutely, yes. In the Scottish forestry strategy, we took the approach that multiple objectives can apply to the use of woodlands. The growing of trees for timber can sit

quite compatibly with the use of forests for tourism.

The Convener: Thank you. Obviously, the committee might wish to keep an eye on some aspects of the issue.

As there are no more questions, we will move to the debate on the motion.

Sarah Boyack: The draft instrument is part of our on-going CAP reform process involving the production of land management contracts and the Scottish rural development plan. I hope that members will be happy to support the motion today so that we can get on with that work.

I move,

That the Environment and Rural Development Committee recommends that the draft Farm Woodland Premium Schemes and SFGS Farmland Premium Scheme Amendment (Scotland) Scheme 2007 be approved.

The Convener: As no member wishes to speak, I will put the question, which is, that motion S2M-5340 be agreed to.

Motion agreed to.

The Convener: We will have a short suspension while the minister's officials change over.

11:44

Meeting suspended.

11:45

On resuming—

Conservation (Natural Habitats, &c) Amendment (Scotland) Regulations 2007 (Draft)

The Convener: The regulations are the second affirmative instrument that the committee must consider. The Parliament must approve the draft regulations before they can be made. A motion in the name of the Minister for Environment and Rural Development, Ross Finnie, which the Deputy Minister for Environment and Rural Development will move, invites the committee to recommend to the Parliament that the draft regulations be approved.

The Subordinate Legislation Committee has considered the regulations and has raised no points on them.

Any purely technical matters can be clarified and details can be explained while officials are at the table. I invite the minister to introduce her officials and to make opening remarks on the draft regulations.

Sarah Boyack: Ian Hooper and Chris Bierley are from the Scottish Executive Environment and

Rural Affairs Department. Judith Morrison and Gillian Nelson are from Scottish Executive Legal and Parliamentary Services.

The draft regulations are wholly technical. They have resulted from two rulings of the European Court of Justice in which it clarified the meaning of the habitats directive on several points. There were rulings on case C-131/05, which dealt specifically with trade in protected species, and on case C-6/04, which dealt with a wide range of issues, some of which related to protected species and some of which related to protected sites. The amendments do not result from any policy changes and we think that they are unlikely to have any significant effect on the level of protection of Scottish wildlife, which is already high. Some of the new requirements are being met in practice, although they are not explicit in the legislation. For example, SNH already carries out significant monitoring of species and habitats of interest to the Community.

The amendment regulations will mean that there will be enhanced monitoring of the effects of exploitation on species of Community interest; the incidental results defence for offences against European protected species will be removed; the offence of keeping and selling the species in annex IV to the habitats directive, not just those that are native to the UK, will be extended; and any defences for the unlicensed possession of European protected species that were taken after 1994 will be removed.

There will be two main changes in relation to European sites, namely, amendment of part IV of the Conservation (Natural Habitats, &c) Regulations 1994 (SI 1994/2716) to include specific reference to the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI 2005/348), and the insertion of a new part IVA into the 1994 regulations that requires appropriate assessment of land use plans when it is likely that such plans will have a significant effect on a European site or sites.

The Executive consulted on the amendments in the summer of 2006, and a regulatory impact assessment has been carried out. The amendments are not expected to have any significant financial effects on any particular sector. For the most part, they merely clarify the law on a number of issues; they will not create any significant new obligations. However, it is expected that there will be some increase in the requirement for species licensing, although that is not expected to be unduly burdensome to any particular sector or group of individuals.

The Executive has held talks with a range of stakeholders in the past year, and it believes that the package of amendments satisfies the requirements of the European Court of Justice,

while taking into account conservation, animal welfare, industry and rural economy interests.

I reaffirm that the draft regulations are technical and are intended to deal only with the requirements of the European Court of Justice, which has clarified the meaning of the habitats directive on a number of issues. I commend the draft regulations to members.

Mr Ruskell: I, too, welcome the minister to her new role.

In a letter of 28 August 2006 to the Public Petitions Committee, David Mallon from the Executive's marine management division, who is not with the minister today, wrote:

"Though the recent consultation on potential improvements to the Conservation (Natural Habitats, &c.) Regulations 1994 in Scotland did not propose amendments in relation to Ship to Ship transfers, the Scottish Executive will assess responses prior to laying draft amendments before Parliament".

We have amendments in front of us, but they do not address ship-to-ship oil transfer. What assessment was made? Why did the Executive conclude that it would not address the issue?

Ian Hooper (Scottish Executive Environment and Rural Affairs Department): As the minister said in her introduction, the draft regulations deal with the issues that two European Court of Justice judgments raised. They were about how UK authorities, including the Scottish Parliament, had implemented the habitats directive. If the regulations need to be amended in relation to ship-to-ship transfer, that will have to be dealt with separately.

Sarah Boyack: The draft regulations deal only with the two cases, which concerned implementation of the habitats directive. They are not meant to address wider issues. I hope that that helps.

Mr Ruskell: The judgment that the minister mentioned—C-6/04—says:

"Member States are under a particular duty to ensure that their legislation intended to transpose that directive is clear and precise ... It follows that the general duties laid down by the United Kingdom legislation cannot ensure that the provisions of the Habitats Directive referred to in the Commission's application are transposed satisfactorily and are not capable of filling any gaps in the specific provisions intended to achieve such transposition."

The general duties on which that ruling judged are an issue in relation to ship-to-ship oil transfers, because only a general duty applies to those transfers. I guess that that is why David Mallon suggested that further consultation would take place before something was brought to Parliament or at least to justify how we still comply with European law.

Sarah Boyack: Officials are considering that issue. Given the complexities of the two rulings, it was felt that the draft regulations should keep to the straight points in the two cases that were before the ECJ and deal with them explicitly. Does Ian Hooper want to add to that?

Ian Hooper: I can add nothing further. Whether regulations should be changed in relation to ship-to-ship transfer is under consideration, but we have an obligation to respond to the European Court of Justice judgments on the provisions, which are now nearly two years old. We need to put ourselves in a position where the court cannot be dissatisfied with how we have responded.

Mr Ruskell: A commitment has been made to consult. The need to change regulations with regard to ship-to-ship transfers flows from judgment C-6/04. I seek reassurance from the minister that a gap analysis will be undertaken of the consenting regimes in Scotland. I also need to know that discussions will take place with the Westminster Government about closing the loophole in the legislation. We have a letter to the Public Petitions Committee, but other commitments seem to be rather vague. I am looking for certainty before I will feel that the draft regulations should be supported.

Sarah Boyack: We give the commitment that the matter is being considered. I return to the points that Ian Hooper made. We were dealing with issues that the European Court of Justice raised two years ago. The ship-to-ship transfer issue arose more recently, but the Executive is examining it and will have to consider it with a range of UK departments.

Mr Ruskell: Will you assure me about the timescale for that?

Sarah Boyack: That work continues. I cannot give an assurance on when it will be completed, but, having just moved into the post, I am keen to take an interest in it.

The Convener: Thank you for that assurance, minister.

Richard Lochhead: I seek a simple clarification. Is it a policy decision not to include in the regulations reference to the issues raised by Mark Ruskell? Is it the case that there is no legal obstacle?

Ian Hooper: The background is that there was reasonable clarity about the court judgment in relation to the way that UK legislation implemented the directive. The Scottish Executive and the other UK authorities have addressed those issues over nearly two years.

The questions about ship-to-ship transfer arose much more recently. They are complex because of the number of different parts of Government that

would need to be involved in any amendment. Apart from anything else, we would not have been in a position to put anything into the current set of regulations within the timescale.

Richard Lochhead: Had you been in that position, you could have used the SSI—there is no legal obstacle to your using this particular SSI.

Sarah Boyack: It was clearly a pragmatic judgment. The consultation was carried out last summer, work was well under way and we wanted to get the regulations in place. We are looking at the ship-to-ship transfer issues and we will come back to the committee on those, although I cannot give you a timescale today.

Rob Gibson: I want to raise an entirely different issue. Regulation 10 substitutes regulation 39 of the 1994 regulations, on the protection of certain wild animals. New regulation 39(1)(a) says that it is an offence

“deliberately or recklessly to capture, injure or kill a wild animal of a European protected species”.

Will the minister tell us whether certain birds that are deemed to be game birds in Scotland and Britain are European protected species? If some of the hints that there will be a review of the laws relating to game birds are true, might that give them more protection?

Chris Bierley (Scottish Executive Environment and Rural Affairs Department): “European protected species” refers to those species in annex 4 to the habitats directive that are native to the United Kingdom. It does not include any birds. The use of the term “European protected species” is specific in this instance.

Rob Gibson: New regulation 39(1)(c) mentions that it is an offence

“deliberately or recklessly to take or destroy the eggs of such an animal”.

However, you say that that refers to animals and not birds?

Chris Bierley: That might have arisen from a direct transposition from the habitats directive, which refers to certain reptiles, such as snakes and other similar creatures. Legislation that protects birds is mainly found in the birds directive.

Rob Gibson: Thank you for that explanation.

The Convener: We thought that we had you there.

Sarah Boyack: That clarification was from informed officials at the top table.

Ian Hooper: The regulation also refers to turtles.

The Convener: I have a question about the same regulation, on dolphins, porpoises or whales. Some protection for cetaceans was

included in the Nature Conservation (Scotland) Bill, but we received a submission to our marine environment inquiry that asked us to consider banning whaling in our waters. Does the provision in the draft regulations to make it

“an offence to deliberately or recklessly disturb any dolphin, porpoise or whale”

include banning whaling? How far out to sea does that protection extend?

Gillian Nelson (Scottish Executive Legal and Parliamentary Services): The protection in the regulations covers Scottish territorial waters, which extend to 12 nautical miles from the territorial baseline. The UK department, DEFRA, is introducing a set of offshore marine regulations, which will protect cetaceans in the offshore area. As you are aware, Scottish ministers do not have any power to do that. The regulations that we are considering today would protect cetaceans only in Scottish territorial waters.

The Convener: However, you said that UK regulations could extend that protection.

Gillian Nelson: That is right.

12:00

The Convener: That is useful to know. If there are no further questions, we will move to the debate.

Sarah Boyack: I will be brief. As I said, the regulations will make technical changes to wildlife legislation and have been brought forward in response to two rulings from the European Court of Justice, which found that, in its view, the UK had not fully transposed into domestic legislation a number of points in the habitats directive.

Although the effect of the regulations is marginal, they will make minor improvements in the protection afforded to our natural heritage. They also clarify the Conservation (Natural Habitats, &c) Regulations 1994 on a number of points. As such, they continue work on the Nature Conservation (Scotland) Act 2004, the purpose of which was to ensure proper protection for Scotland's wildlife and conservation of our natural heritage. The regulations also ensure that Scotland meets its international obligations under the habitats directive.

It is important that the people who will be affected by the regulations are made aware of the changes and their responsibilities. Officials will review guidance, to ensure that people understand their obligations, so that there are clear answers to questions such as those that members asked. It has been useful to consider those detailed points, but a number of other points have not been discussed, in relation to which we want people to

be quite clear about their obligations. I commend the regulations to members.

I move,

That the Environment and Rural Development Committee recommends that the draft Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 be approved.

Mr Ruskell: Minister, your predecessor's defence on ship-to-ship oil transfers was that the Executive has few regulatory powers over activities in inshore waters under Scottish jurisdiction. The draft regulations could have given the Parliament more power to regulate activities such as ship-to-ship oil transfers. If the minister's intention is to consult on how such activities can be regulated, in accordance with the essence of the Executive's letter to the Public Petitions Committee, I welcome that approach. However, an opportunity has been missed. Judgment C-6/04, which the regulations are designed to address, specifically relates to the need to tighten up general duties through much more specific regulation of activities such as ship-to-ship oil transfer, as I said. If the intention is to act in accordance with the spirit and the detail of judgment C-6/04, the Executive must reconsider the issue. I would welcome further detail from the minister on the urgency that will be given to reconsidering the regulation of ship-to-ship oil transfers.

The committee has no alternative but to approve the regulations, to ensure that we are more compliant with the rulings of the European Court of Justice.

Nora Radcliffe: It is entirely proper that the regulations are offered as a coherent whole, because they were consulted on. We must move forward on ship-to-ship oil transfers, but the Executive and the Parliament do business by properly considering consultation responses. It is entirely proper to take two bites at the matter and the regulations represent a considerable bite, which we should welcome.

Sarah Boyack: I want to respond to the points that Mark Ruskell made in particular. We will consider whether changes are required as a result of the debate on ship-to-ship oil transfer, and what any such changes would be. That will require consultation, as there has been on the amendment regulations before you today. The regulations have been through a process. To make other changes, we would have had to stop that process and kick the regulations into the long grass. I hope that you will support the regulations. We will move on to consider the other issues that were raised.

We have to work with other UK departments. Members who have been engaged in the issue of

ship-to-ship oil transfer will know that it is complex and that there is no one key player, so we have to ensure that everybody is getting it right.

General duties were not part of the judgment that went to the European Court of Justice. The point that the court made was that the UK could not rely on general duties in its defence against specific points that were raised.

We are taking the issue seriously in the context of the review. It is a technical matter, but it is important that we get it right. I want us to be absolutely sure that we do what is necessary to ensure that we are in line with the letter and the spirit of the law behind the habitats directive. That is why you are considering technical amendments today. There are wider issues for us to consider. Notwithstanding Mark Ruskell's disappointment, I hope that we can get ahead and that the committee will agree to approve the amendment regulations.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Conservation (Natural Habitats &c.) Amendment (Scotland) Regulations 2007 be approved.

Less Favoured Area Support Scheme (Scotland) Amendment Regulations (SSI 2006/601)

The Convener: We have one negative instrument to consider. The Subordinate Legislation Committee has commented on the regulations. Its report was published yesterday and members have had the relevant extract circulated to them.

Rob Gibson: I welcome the regulations. I realise that there are technical difficulties with their coming into force less than 21 days after they were laid, but recipients of support under the LFAS scheme are delighted that the Minister for Environment and Rural Development has gone ahead as quickly as possible. However, it should be noted that, had he agreed to an earlier settlement, perhaps there would not have been such a rush to act before Christmas. On a lighter note, I hope that the "cash flow proplems" that are noted in the purpose of the regulations are in fact spelling problems.

Nora Radcliffe: I had not spotted the spelling mistake. I welcome the regulations and I think that we should comment on the enormous amount of work that the minister and officials in the Scottish Executive Environment and Rural Affairs Department have done to achieve this outcome. The work was not easy; it took a great deal of tenacity and bargaining at Brussels to produce the change in the regulations, which is widely welcomed in the farming community.

The Convener: Those points are noted.

Mr Brocklebank: We welcome the payment of the £40 million before the end of January, which, as I understand it, is a payment in advance of the remaining £21 million, which will be paid in the autumn. I still do not know whether the intention in future years is to pay the sum in the autumn or whether it will be paid earlier in the year.

Mark Brough (Clerk): I understand that the scheme rules are being changed, so that compliance has to be in the same scheme year as the single farm payments. The minister's intention is to pay in the autumn from now on, not just this year.

Mr Brocklebank: So, in effect, we will move from a spring payment to an autumn payment in future years.

Mark Brough: Yes.

The Convener: Are members content with the regulations and happy to make no recommendation to the Parliament?

Members indicated agreement.

The Convener: The next meeting is on Wednesday 24 January at 10 o'clock in committee room 2, when we will have our third evidence session on the marine environment inquiry and day 1 of stage 2 consideration of the Aquaculture and Fisheries (Scotland) Bill. Amendments to sections 1 to 19 must be lodged by 12 noon on Friday 19 January. The target for the following week's meeting on 31 January will be to complete stage 2 consideration. Therefore, the deadline for lodging amendments to the remainder of the bill, including the schedule, will be 12 noon on Friday 26 January.

Meeting closed at 12:10.

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