

# **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

Wednesday 31 January 2007

Session 2

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## ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

### 4<sup>th</sup> 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)

\*Peter Peacock (Highlands and Islands) (Lab)

\*Nora Radcliffe (Gordon) (LD)

Elaine Smith (Coatbridge and Chryston) (Lab)

#### COMMITTEE SUBSTITUTES

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Trish Godman (West Renfrewshire) (Lab)

Jim Mather (Highlands and Islands) (SNP)

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

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Sarah Boyack (Deputy Minister for Environment and Rural Development)

#### THE FOLLOWING GAVE EVIDENCE:

Mr John Swinney (North Tayside) (SNP)

#### CLERK TO THE COMMITTEE

Mark Brough

#### SENIOR ASSISTANT CLERK

Katherine Wright

#### ASSISTANT CLERK

Jenny Goldsmith

#### LOCATION

Committee Room 4



## Scottish Parliament

### Environment and Rural Development Committee

*Wednesday 31 January 2007*

[THE CONVENER *opened the meeting at 10:37*]

### Aquaculture and Fisheries (Scotland) Bill: Stage 2

**The Convener (Maureen Macmillan):** Good morning. I remind everyone to switch off their mobile phones and ensure that their Blackberrys do not interfere with the sound system. I welcome members of the committee, the public and the press. I have received apologies from Elaine Smith, who is unwell. Richard Lochhead is still travelling—his train is delayed and he is not expected to get here for another 10 or 20 minutes, which is unfortunate.

We continue stage 2 consideration of the Aquaculture and Fisheries (Scotland) Bill. I welcome Sarah Boyack, the Deputy Minister for Environment and Rural Development, who will steer us through stage 2 and give us the Scottish Executive's perspective, and her officials. Members should have a copy of the bill as introduced, the marshalled list of amendments and the groupings of amendments. Our target is to reach the end of the bill today.

*Section 20 agreed to.*

#### Section 21—Rod and line

**The Convener:** Amendment 9, in the name of the minister, is grouped with amendment 9A.

**The Deputy Minister for Environment and Rural Development (Sarah Boyack):** As colleagues will recall, section 25 contains an enabling provision that allows ministers to make subordinate legislation to

“prohibit the use of specified baits and lures”,

such as live vertebrates, in fishing for freshwater fish. However, after many stakeholders voiced concern about the risk of adverse effects on biodiversity in our inland waters as a result of unused live bait, we decided to include the provision in the bill, to make the policy clear. The committee endorsed such an approach during its discussions and in its report at stage 1.

Amendment 9A would amend amendment 9 to provide for the making of regulations to permit the use of live vertebrates as bait in certain circumstances. I am surprised that Richard

Lochhead lodged amendment 9A, given the tenor of the committee's debates at stage 1. However, I acknowledge that pike anglers in particular, who represent a minority of anglers, have passionately expressed the view that the use of live vertebrates as bait should continue.

I want to scotch a few myths that have arisen. The first is that this is a late Executive amendment, which we are trying to sneak through. It is not. The genesis of the proposal that is contained in the amendment was in the Executive's green paper, “Scotland's freshwater fish and fisheries: Securing their future”, which was published in August 2001. The proposal was subsequently debated thoroughly at the freshwater fisheries forum. As a result of the forum's enthusiasm for the proposal, a question on the subject was included in the Executive's consultation document, which was issued in December 2005—it was question 44, for those who are really interested. The response to the question was four to one in favour of a ban—79 per cent to 19 per cent.

The second myth is that the ban is a welfare issue and that perhaps the next step would be to ban maggots or worms, if not fishing itself. I want to make our position clear and put it on the record. The Executive has been consistent on the issue from day one. The issue here is one of biodiversity. Introduced fish can compete with, predate on, give parasites to and spread disease among native fish. The Executive is totally supportive of angling as a sport and a recreation. That needs to be said, given some of the rumours that have been flying around.

The third myth is that using live vertebrates as bait is not a problem. We do not agree with that view. The use of live vertebrates as bait has resulted in the translocation of live fish. That can happen when live fish used as bait are brought in from other sources and at the end of the day are discarded into the water being fished if they are not used. We need only consider the example of Loch Lomond to illustrate that point. Loch Lomond now supports a number of fish species that are new to the loch. One of those species, the ruff, is now the most common in the loch and is thought to pose a major threat to the loch's indigenous powan, which is an internationally renowned species of freshwater fish found in Loch Lomond and Loch Eck. The powan is listed in annex V of the habitats directive, so it is a fish that we want to protect.

It is the Executive's strong view that the use of lures and dead fish, often marine species such as sprat or mackerel, gives anglers a range of different methods that provide a perfectly acceptable alternative to the use of live fish. There is no need to put biodiversity at risk. I remind the

committee that support for the use of live vertebrates is a minority view. It is a powerful view and it is held with passion, but support for a ban was and continues to be widespread. I believe that the case for prohibition is compelling. Support for prohibition is clearly the view of the substantial majority of anglers and it was certainly the view of the committee at stage 1.

As I have given a full explanation, I hope that members will feel informed about why we are doing this, the background to the proposal and the support for it that we have received from the angling community. I hope that, on that basis, amendment 9A will not be moved. I am happy to answer questions in the debate if members would like to raise other issues with me this morning.

I move amendment 9.

**The Convener:** In the absence of Richard Lochhead, I ask Rob Gibson to move amendment 9A and speak to the other amendment in the group.

**Rob Gibson (Highlands and Islands) (SNP):** The consultations at an earlier stage dealt with angling as a whole, so it is not surprising that 79 per cent of respondents were in favour of and 19 per cent were against the proposals put forward by the minister. The 19 per cent probably encapsulates many of the coarse fishers who in some cases fish for predatory species such as pike, whereas the vast majority of people do not fish for predatory species. That is the issue. The fact that the majority is in favour of the position that the minister states is obvious because it reflects what the majority of fisherpeople do, but we are talking here about a different category of fishers, who have a legitimate case. The issue was sprung on the committee when that group realised that they were not being catered for by the amendments proposed and by the discussion that had taken place previously. That is why amendment 9A has been lodged. The issue is not that there is a majority and a minority; there are two different kinds of fishing.

However, I point out that all that amendment 9A would do is to allow exemptions to be made to the ban on the use of live vertebrates as bait. That addition to amendment 9 would mean that the ban would still be included in the bill but the provision would take into account the differences between the sports concerned.

10:45

The committee listened to the contributions from the coarse fishing group and so on without the knowledge of some of the papers that have since been circulated in e-mails. We would do well to take that information on board because, to my way of thinking, some of what the minister has said is a

smokescreen. I can understand why the minister thinks that amendment 9 will be sufficient, but I do not think that any of her comments have addressed the interests of the pike fishermen. It would be a good idea if we addressed their interests and recognised the separate nature of that fishing.

I am not a fisher myself, but I recognise the clear logic of the pike fishermen's case. I think that amendment 9A would help us to tackle the issue.

I move amendment 9A.

**Mr Ted Brocklebank (Mid Scotland and Fife) (Con):** Like Rob Gibson, I am not a fisherman. When the matter came up in our evidence-gathering session, I did not know too much about the subject and I went along with the argument that there appeared to be cruelty in using live bait, so I raised no particular objection. However, although I understand where the minister is coming from, I am not convinced—whatever our individual views on using live fish as bait—that the majority of those whom we are paid to represent want us to take action on the issue. I hold to the view that the Parliament should see fit to ban an activity only where there is overwhelming public pressure to do so. I am not convinced that that is the case on this occasion.

Another reason why I am inclined to oppose the ban is that I fear that by introducing a ban we would be conceding ground to those who would like to see all recreational angling banned on the ground of cruelty. It is argued that using a live fish as bait causes it a degree of suffering, but does angling not result in a degree of suffering by its very nature? A hook in the mouth must tend to be painful, yet angling is our most popular sport. I believe that a ban would send all the wrong signals to the pike fishermen who come from far and wide to fish in our lochs and make a valuable economic contribution to our rural areas. I remind members that pike fishermen need lessons from no one on the welfare of the fish that they catch and take great pride in returning most of the fish to the water to fight another day. I understand that the fish they use for bait come almost entirely from the waters in which they are fishing, so it is not as if they are introducing other fish into those waters.

In addition, it has been drawn to my attention that any ban of this kind would be almost impossible to police. I fear that this may be a ban too far, which could lead us down a dangerous road. I urge the minister not to press amendment 9 today and to consider meeting with interested MSPs to discuss the matter before stage 3.

**Eleanor Scott (Highlands and Islands) (Green):** I support amendment 9, first for the reasons to do with biodiversity that the minister mentioned and, secondly, for reasons to do with

animal welfare—the welfare of the vertebrate that is being used as bait.

As Ted Brocklebank suggested, the biodiversity issue could perhaps be addressed by the practice, which the pike anglers have mentioned, of using as live bait only fish that were caught from the same waters on the same day. I have had a lot of correspondence from pike anglers. I went on to their website and the first thing that I came across was a demonstration of fishing with dead bait, but an angler has assured me that at particular times of year the sport is much better with live bait.

However, I think that using vertebrates as bait raises a fish welfare issue. I want it to be put on the record that I support angling and I would never intend in a month of Sundays to introduce an amendment to ban the use of invertebrates as bait—they are a completely different category. Previous animal welfare legislation that has been considered and passed by the Parliament recognises that different category, but I think that the use of vertebrates as bait raises a welfare issue. Therefore, I support amendment 9 and intend to vote against amendment 9A. I recognise the strongly held views of others, but in all conscience I must support amendment 9.

**Nora Radcliffe (Gordon) (LD):** The minister's opening statement was helpful in setting out what is proposed and why, and the genesis of the proposal. I have thought long and hard about the representations that pike fishermen have made to us and I accept completely that responsible pike anglers would use as live bait only fish that were caught in the same waters on the same day. However, we must consider how on earth we would police any exemption from the ban and cope with irresponsible people. Ted Brocklebank said it all when he said that pike anglers come from far and wide and use fish that are caught “almost entirely” in the same waters on the same day. We know what can happen when an alien species is introduced into an ecosystem, which is what amendment 9 will guard against. If I could think of a method of policing that would allow responsible anglers to use live fish as bait, I would be delighted, but I really cannot think of any way in which to prevent irresponsible anglers from doing something that could be extremely dangerous to indigenous species.

I back the proposed ban, although I do not agree with the arguments about animal welfare, because fishing is fishing and I have no problems with it. As Ted Brocklebank said, a great many people enjoy the sport and I hope that they continue to enjoy it for years to come. However, the dangers of transposition of a species from one ecosystem into another are enough to justify a ban.

**Peter Peacock (Highlands and Islands) (Lab):** I was going to make two of the points that Nora

Radcliffe made, so I will not speak about them, other than to emphasise the point about Ted Brocklebank's comment that people would “almost entirely” use species from the same river or loch system. That implies that they would not always use such species, which is the danger.

I want to ask the minister about animal welfare, which Ted Brocklebank mentioned. It seems to me that the principal motivation for the proposed ban on live bait is not to do with cruelty to the bait but to do with the way in which the practice might affect river systems by introducing alien species. I would be grateful if the minister would clarify the principal motivation for the proposal.

My second point is about the concern in the cogent and well-argued submissions from the pike and coarse fishermen that a ban on the use of live bait could put Scotland at a competitive disadvantage in tourism, because people might choose to fish in other parts of the United Kingdom or the world. Has the minister had an indication from our colleagues in the south of whether they are considering legislating on the matter and whether a ban might be proposed? I will understand if she cannot answer that.

Thirdly, I believe that policing the Executive's proposal will be difficult but that policing any exemption arising from Richard Lochhead's proposal would be significantly more difficult. I would be grateful for the minister's comments on that when she sums up.

**Sarah Boyack:** Several issues have been raised, which I will try to deal with one at a time. In opposing amendment 9, neither Rob Gibson nor Ted Brocklebank engaged on the issue of biodiversity, which is the key reason why we introduced the proposal. I welcome Eleanor Scott's support for the ban, but our proposal is not about animal welfare; instead, it is driven by biodiversity issues. Members will recall that, through other measures in the bill, we are taking action to promote biodiversity. For example, section 28 contains provisions that will enable us to tackle indiscriminate stocking of inappropriate fish. We are trying to tighten up the legislation so that inappropriate fish are not introduced. Therefore, amendment 9 is consistent with other measures in the bill.

The issue of how pike anglers currently fish is a separate one. Like Ted Brocklebank, I am not a member of the fishing fraternity, but I know that pike anglers can use other fishing methods. One or two members have mentioned that pike fishermen already use alternative methods—a briefing that the committee received mentions that pike anglers do on occasion use fish that are not alive. We encourage that practice and other alternatives.

All sorts of difficulties arise to do with monitoring and dealing with non-native species, none of which is easy to resolve. Once an alien species has been introduced into the natural environment, it is difficult to rope it back in. The classic example of that is the introduction of the ruff into Loch Lomond. It is simply not possible to deal with the effects once a new species has been introduced. We therefore need to take a much more precautionary approach, which is the reason for amendment 9.

The proposed ban would be implemented by bailiffs, who have local knowledge, and partly by anglers. We must get out the message that the ban is being introduced for a good reason. Any exemption that was introduced under amendment 9A would be much harder to implement, because it would be hard to know whether somebody was doing what they said they were doing—we could not get proof of that.

Although no consultation on a ban has been proposed down south, byelaws are in place in certain areas to try to tackle the issue. The best example of that is the lake district, where there is a ban on the introduction of live fish through angling. Therefore, the measure is not unheard of down south. Our view is that the ban will not lead to a significant loss of tourism, nor to a reduction in the number of anglers coming up from down south. A particular issue arises for the pike angling community, but it is disappointing that the issue of a code, which is mentioned in a briefing that was issued to the committee, has not been raised at all with my officials, given that the issues have been discussed for a long time, since 2001, and that the specific proposal was produced in 2005.

My officials and I are happy to talk about the issue with the pike angling community, but we do not think that the ban is a big issue. We absolutely do not intend to stop pike angling and we do not think that the ban will do that. The overriding issue is to do with biodiversity, which we cannot ignore and which we have not ignored in other parts of the bill. For those reasons, I hope that members will support amendment 9 and that, now that Rob Gibson has listened to the arguments, he will not press amendment 9A, although I understand the passion that is behind it. I can think of other similar issues that relate to non-native species in water and on land. Such issues excite great passions and they are difficult, but there are times when we have to take a tough decision, and this is one of them.

**Rob Gibson:** I am well aware of the biodiversity issues. My party has supported the protection of the powan in Loch Lomond and we are concerned that, in the Highlands and other upland areas, it is difficult to police the removal of one species, such as Arctic char, from one loch to another. That is an

issue because different lochs often have separate genetic types of the fish that have been there since the ice age. We all agree that measures to protect biodiversity, which are at the heart of the minister's argument, are difficult to police. The question is whether amendment 9 will improve the current situation. To my mind, that is questionable, given the arguments that we have heard about responsibility and irresponsibility and the sort of people in the angling community who tell us that they take care.

I am sorry if the pike anglers did not engage with the Executive on the issue earlier. I suspect that the issue of live bait was raised late on in the debate, which is why we have had such a flow of paper on the issue recently. That is why it is well worth testing the waters, so to speak, and allowing the Government room to make exemptions. As a result, I wish to press amendment 9A.

**The Convener:** The question is, that amendment 9A be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
Gibson, Rob (Highlands and Islands) (SNP)

**AGAINST**

Macmillan, Maureen (Highlands and Islands) (Lab)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)  
Radcliffe, Nora (Gordon) (LD)  
Scott, Eleanor (Highlands and Islands) (Green)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 9A disagreed to.*

*Amendment 9 agreed to.*

*Section 21, as amended, agreed to.*

*Sections 22 to 25 agreed to.*

#### **After section 25**

11:00

**The Convener:** Amendment 10, in the name of the minister, is grouped with amendments 11 to 16.

**Sarah Boyack:** I will explain why we want to introduce a system of administrative penalties for certain sea fisheries offences. We wish to improve the effectiveness of sanctions and to provide a suitable deterrence; to preserve vulnerable fish stocks and to promote compliance; to divert fisheries offences from the court system, where appropriate, and so to reduce uncertainty for fishermen and legal costs to the fishing industry; to provide an alternative approach to prosecution in



the court for minor offences; to increase consistency and transparency; and to protect those who observe the rules and, hence, the communities for which fishing is an important part of the economic fabric.

Amendment 10 provides warranted British sea-fishery officers with the powers to issue fixed-penalty notices to a person whom an officer reasonably suspects of having committed a relevant offence. A relevant offence is an offence that will be specified by ministers from a ring-fenced category of offences related to sea fish and sea fishing.

Amendment 11 provides for the detail that is to be contained in a fixed-penalty notice. That includes the penalty, the time available to pay it, the means by which it is to be paid and a statement to the effect that no criminal proceedings shall be commenced against a person who has timeously paid the amount. It also allows for a reduction in the 28-day period in relation to certain specified cases. Those are most likely to be cases relating to persons who are domiciled outwith the UK.

Amendment 12 allows for a scale of penalties to be prescribed that will be applied by the British sea-fishery officer in relation to certain categories of cases, having regard to the circumstances of the case. The intended proposed maximum on the scale is £2,000.

Amendment 13 provides that, on payment of a fixed penalty, no criminal proceedings may be brought against the person concerned for that offence, and that such payment is not a conviction and is not to be recorded as such.

Amendment 14 provides the method by which a person can intimate before the expiry date of the fixed penalty that they do not intend to pay.

Amendment 15 provides the basis on which proceedings in respect of an offence may be commenced by a procurator fiscal, after a fixed penalty has been offered.

Amendment 16 makes provision to allow in certain circumstances for the withdrawal of a fixed-penalty notice, for the removal of liability to pay and for the repayment of any moneys paid.

I move amendment 10.

**The Convener:** No member has indicated that they wish to speak. It is unnecessary for the minister to wind up, as she has given a full explanation of the amendments.

*Amendment 10 agreed to.*

*Amendments 11 to 16 moved—[Sarah Boyack]—and agreed to.*

## Before section 26

**The Convener:** Amendment 17, in the name of the deputy minister, is grouped with amendment 23.

**Sarah Boyack:** Amendment 17 will increase the maximum fine for an offence under a regulating order from £5,000 to £50,000 by amending section 3(3) of the Sea Fisheries (Shellfish) Act 1967. The amendment will also provide for the discretionary revocation of a licence by the grantee when a licence holder is convicted of one fisheries offence—as opposed to the two offences that are required at present—by amending section 4(7) of the 1967 act.

Members may recall that, in November last year, the Scottish Executive undertook to lodge amendments on the issue, subject to the outcome of public consultation. That consultation ended a few weeks ago, and members should have received a copy of the consultation analysis last week, along with the Executive's further response to the stage 1 report.

Amendment 17 will provide a greater deterrent to illegal fishing in a regulating order area. Fishing in some regulating order areas can be lucrative. For example, vessel fishing on the Solway can generate more than £10,000 in just one day. That is double the current maximum fine, which has been insufficient to discourage individuals from taking a risk. A maximum fine of £50,000 will be a deterrent to illegal fishing. It will also acknowledge both the huge impact that illegal fishing can have on a fragile fishery and the levels of illegal income that can be generated.

I stress that the penalty that we propose will be the maximum; it will not apply automatically. Having that figure in place does not imply that the courts will treat minor offences as if they are more serious. The courts will have the discretion to apply fines at the level that is proportionate to the offence's seriousness.

Currently, licence holders need to be convicted of two offences before their licences can be revoked, which means that some licence holders could be more likely to risk fishing illegally as, even if they were caught and prosecuted, they could keep their regulating order licence. I stress that licence revocation is not automatic on conviction of a relevant offence but is at the discretion of the grantee. The grantee's exercise of that discretion must be reasonable and must be based on the facts in each case. Any decision to revoke a regulating order licence is subject to ministerial consent and to potential judicial review.

The current lack of deterrent makes it more difficult to prevent and deal with illegal fishing in a regulating order area. The effectiveness of a useful fisheries management tool has been

reduced and achieving the aim of sustainable and viable fisheries has been much more difficult. That is why we believe that improving the penalties that apply under regulating orders is important. Amendment 17 will help to discourage illegal fishing in regulating order areas and to secure better-managed local shellfish fisheries for the benefit of local communities.

Amendment 23 is a technical amendment that is consequential on amendment 17. It will repeal the provision in the Criminal Justice and Public Order Act 1994 that required the original fine level to be read as the current level of £5,000.

I move amendment 17.

**Mr Brocklebank:** I am concerned about the proportionality to the offence of the proposed new sanctions in amendment 17. The proposed changes of increasing the maximum fine level from £5,000 to £50,000 and of reducing the potential trigger for a revocation of a licence from two offences to one—if the person is convicted—are disproportionate.

I will ask the minister a series of questions. What are the serious offences to which the £50,000 fine will apply? What right of appeal will exist against a grantee's decision to revoke a licence? Revocation of a licence denies a fisherman the ability to earn his livelihood. Under what other fisheries legislation is that power exercised and for what offences? I understand the minister's goal, but the means that will be employed to achieve it seem more drastic than is necessary. I ask her to respond to those points.

**Rob Gibson:** Following on from Ted Brocklebank's questions, I seek some clarification from the minister about, first, what might trigger the maximum penalty and, secondly, whether she intends to review the regulating order in Shetland—regulating orders as such were the subject of the consultation—with a view to making it more transparent to the fishing community.

**Sarah Boyack:** Ted Brocklebank asked whether similar fine levels apply in other circumstances. Maximum fines of up to £50,000 apply to existing fishery offences, such as fishing without a licence, fishing in a prohibited area and breaches of log book, landing declarations and sales notes regulations.

The key thing to stress is the issue of proportionality. Our reason for seeking an increase in the maximum fine is that, in our view, the current low level of the maximum fine—£5,000—is not proportionate. I do not want to give the impression that absolutely every offence will automatically incur a £50,000 fine. If that is the assurance that Ted Brocklebank and Rob Gibson seek, I am happy to give it. The actual fine will be very much for the judgment of the court when it is

dealing with an offence that is being prosecuted. The nature of the offence would determine the level of fine available to the court. The court will make the decision.

At the moment, we feel that the maximum fine level is not proportionate. Fines are not working because they do not deter certain fishermen who are creating a big problem, especially in the Solway. In such lucrative fishing areas, people can earn a lot of money in one day's fishing. However, if lots of people break the regulating order, we will not have a fishing industry down there. That is what prompted the amendment.

On revocation of licences—

**Mr Brocklebank:** Will the minister confirm whether there will be a right of appeal?

**Sarah Boyack:** The revocation of a licence will be subject to ministerial consent—the revocation will come across a minister's desk; it will also be possible to take such a revocation to judicial review. Therefore, it will not be easy to revoke a licence, as the revocation will be tested through that process. If people feel that a revocation is unfair and that they were unable to raise a point that should have been dealt with, they will have the opportunity both to appeal to the minister and to take the matter to judicial review. For example, if someone felt that their offence was certainly not deliberate, they could make the case that the offence was inadvertent. They would have the right to kick the issue upstairs to ministers or to seek judicial review. It is important to stress that safeguards will be built in.

Also, at the outset, the grantee will need to act proportionately in deciding to revoke a licence. As members can imagine, if a string of revocations that are kicked upstairs to the minister are not then approved, that would indicate that revocations were being sought inappropriately. We do not expect that to happen, but we need that fall-back position so that people have that comfort.

Rob Gibson asked what would trigger the maximum fine. As Ted Brocklebank pointed out, the issue is whether the fine is proportionate. Evidence would need to be put to the court that, given the amount of fish that had been taken out of the fishery, the offence was so serious that imposition of the maximum fine would be appropriate. We are not talking about using the £50,000 fine for minor offences. The court will have discretion to go for a much lower fine for such offences.

Finally, Rob Gibson asked specifically about the Shetland regulating order. A review of the licensing arrangements is currently under way. If members are interested in that, we can ensure that the committee is informed of the results of the

review. I am happy to make that commitment today.

I hope that I have dealt with all the questions that members raised and that members have found it helpful to be able to put their points on the record.

*Amendment 17 agreed to.*

*Section 26 agreed to.*

### **Section 27—Unauthorised introduction of fish into certain marine waters**

**The Convener:** Amendment 18, in the name of Alasdair Morrison, is in a group on its own. In Alasdair Morrison's absence, I invite Peter Peacock to speak to and move the amendment.

11:15

**Peter Peacock:** Alasdair Morrison had to leave the meeting to attend a meeting of the Public Petitions Committee, to which his constituents have submitted a major petition against euthanasia. He wanted to attend that meeting and sends his apologies.

Amendment 18 seeks to amend section 27, which introduces powers to control the movement of live fish between different seawater farming areas, with a view to, for example, reducing the chances of infectious disease being spread between those areas. Salmon farmers already operate a system that they call farm management areas. The intention behind amendment 18 is that the Executive should define its specified areas on the basis of existing FMAs. There is concern that the Executive could draw up specified areas in a way that cut across existing industry structures. Amendment 18, which would simply put into law existing good practice, is aimed at offering the industry an assurance that that would not happen and that existing FMAs would be taken into account. I hope that the minister is sympathetic to the amendment.

I move amendment 18.

**Sarah Boyack:** We very much welcome Alasdair Morrison's amendment to section 27. Peter Peacock is right that the fish farming industry operates in discrete marine areas and that it has a code of practice that requires an assessment of the risk of spreading disease through movements of live fish from one area to another. The amendment will be welcomed by the fish farming industry, as the powers in section 27, as amended, will bring the practice that is outlined in the code of good practice into the regulatory regime. It is entirely reasonable that the industry is consulted on how the boundaries of specified areas are set—that is just good practice from the Executive's perspective. For those reasons, I very

much support Alasdair Morrison's amendment 18, and I hope that the committee will also support it.

*Amendment 18 agreed to.*

*Section 27, as amended, agreed to.*

*Section 28 agreed to.*

### **Section 29—Payments in respect of fish destroyed**

**The Convener:** Amendment 19, in the name of Ted Brocklebank, is grouped with amendments 20 and 21.

**Mr Brocklebank:** I raised this issue with the former deputy minister during a previous evidence-gathering session, and I am not sure that I agreed with her explanation at the time. Section 29 states that ministers may provide compensation for any fish destroyed as a result of a ministerial decision. Amendment 19 would make such compensation compulsory, which is only right, fair and equitable. It would bring farmed fish into the same category as livestock. If the Government were to cause the destruction of fish stocks—I am sure that it would decide to do so only for excellent, sound reasons—it should be obliged to compensate the producer for that decision if the fish farmer did not contribute to the problem, which was simply an act of nature or of God, or whatever else. To be fair to fish farmers, they should have a guarantee of full compensation to put them on a level playing field with livestock producers. In the interests of fairness, I urge the committee to support amendment 19 and the other amendments to section 29.

I move amendment 19.

**Sarah Boyack:** The Executive listened to those who argued that the legislation should include scope for a payments scheme to cover fish that are destroyed, and it set out in section 29 a discretionary power to establish such a scheme. We should record that the Executive made the active policy decision to include that provision in the bill; indeed, this is the first time that such payments will be even an option for the aquaculture industry. That is a step forward. That decision, which should be welcomed, arose from the strong arguments that were made to the Executive and from the fact that the issue has been part of the debate in the run-up to the bill's introduction.

Amendment 19, in the name of Ted Brocklebank, would convert our proposed discretionary power to make payments into a mandatory power. Only 7 per cent of respondents to our consultation paper called for mandatory payments, and only 17 per cent of aquaculture companies stated such a preference. As a result, the Executive's proposals have very strong

support. In any case, given the previous position, surely it is preferable to have a discretionary power to make payments than to have no power at all.

The power in the bill is discretionary for the good reason that there is no provision for it in current spending plans and Scottish ministers will have to consider whether and to what extent the Executive can afford such costs. A good case for introducing such a scheme will have to be made, but still we believe it important to include the provision in the bill. Because the fish farming industry is currently free of any disease that would require compulsory slaughter to be carried out—a situation that we very much hope will continue—there is no immediate pressure to introduce a scheme. Moreover, given that the terrestrial livestock payments scheme is under review, I do not think that it would be either appropriate or sensible to base the design of an aquaculture payments scheme on that scheme.

Instead, we have tried to design something that will best fit the aquaculture industry. At the appropriate time—such as when the outbreak of a serious aquaculture disease requires compulsory slaughter, when changes are made to the arrangements for the terrestrial livestock payments scheme or when some other reason arises—Scottish ministers will consider, under the bill's powers, a payments scheme for aquaculture. Such a scheme would be established by an affirmative instrument to give the committee and the whole Parliament the opportunity to scrutinise the proposal in detail.

Amendments 20 and 21 are technical amendments that are intended to correct an oversight. Given that legislation on diseases of fish applies equally to shellfish and that, therefore, ministers have the power to order shellfish to be destroyed, it is only reasonable that shellfish farmers have equal access to payments if their stock has to be destroyed for disease control purposes. These amendments give us the power to consider whether that approach is appropriate.

Given those comments, I hope that Ted Brocklebank will consider withdrawing amendment 19.

**Richard Lochhead (Moray) (SNP):** The minister said that only 7 per cent of respondents to the consultation supported mandatory payments. Did she mean 7 per cent of fish farmers or 7 per cent of all respondents? If the latter, what proportion of fish farmers who responded to the consultation thought that the scheme should be mandatory?

**Sarah Boyack:** I restate that 7 per cent of all respondents called for mandatory payments. Only 17 per cent of aquaculture companies—if we take

them to be a specific group of fish farming interests—stated a preference for mandatory rather than discretionary payments.

**Richard Lochhead:** That is helpful.

**Mr Brocklebank:** I hear what the minister said and am grateful that she has explained the matter further. The discretionary power is, of course, welcome. Although I might gather more evidence and return with a similar amendment at stage 3, at this stage I am prepared to accept her arguments and am happy to withdraw amendment 19.

*Amendment 19, by agreement, withdrawn.*

*Amendments 20 and 21 moved—[Sarah Boyack]—and agreed to.*

*Section 29, as amended, agreed to.*

*Sections 30 to 34 agreed to.*

### Schedule

#### MINOR AND CONSEQUENTIAL AMENDMENTS

**The Convener:** Amendment 22, in the name of the minister, is in a group on its own.

**Sarah Boyack:** Amendment 22 is a technical amendment to the bill's schedule. It deals with a matter that the Subordinate Legislation Committee raised in correspondence and in paragraph 17 of its annex to the stage 1 report. The Subordinate Legislation Committee recommended that the Executive lodge an amendment to extend the consequential amendments to section 9 of the Diseases of Fish Act 1937 to reflect other amendments that will be made by the bill. I am happy to accept its suggestion.

I move amendment 22.

**The Convener:** Does anyone have great knowledge of the matter?

**Nora Radcliffe:** I accept every bracket and subsection.

**The Convener:** Indeed. We accept every dot and comma.

*Amendment 22 agreed to.*

*Amendment 23 moved—[Sarah Boyack]—and agreed to.*

*Schedule, as amended, agreed to.*

*Sections 35 to 38 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. An amended version of the bill will be printed overnight and will be available tomorrow. The Parliament has not yet set a date for stage 3 consideration of the bill, but stage 3 amendments can now be lodged with the committee clerks.

I thank the Deputy Minister for Environment and Rural Development for attending the meeting.

John Swinney has been waiting for some time to give evidence on the Cairngorms National Park Boundary Bill. We could therefore take agenda item 3 before agenda item 2.

**Rob Gibson:** I would not give him any special treatment at all.

**The Convener:** I hope that Mr Swinney did not hear what Mr Gibson just said.

Do members agree to take agenda item 3 before agenda item 2?

**Members indicated agreement.**

11:27

*Meeting suspended.*

11:28

*On resuming—*

## **Cairngorms National Park Boundary Bill: Stage 1**

**The Convener:** Agenda item 3 is the Cairngorms National Park Boundary Bill. The committee has been appointed as lead committee, and our stage 1 consideration of the bill, which was introduced by John Swinney, begins today. Our task is to consider the bill's general principles and to report to the Parliament, recommending whether those general principles should be agreed to.

There will be a short introductory session with the member in charge of the bill, John Swinney, and his supporting solicitor, Scott Martin. I welcome them to the meeting and thank them for attending.

I invite John Swinney to make a short introductory statement, after which members will have the opportunity to ask questions. I remind members that John will appear before the committee again in a fortnight, at the end of the evidence-taking programme, so I ask them to keep their questions fairly brief.

11:30

**Mr John Swinney (North Tayside) (SNP):** Thank you very much, convener. I thank the committee for giving me the opportunity to set out the background to my member's bill. I am also grateful that the committee has been able to consider the bill and that a meeting of the committee has been arranged in Blair Atholl next week, to take evidence from a range of local representatives and organisations.

The purpose of the Cairngorms National Park Boundary Bill is to extend the boundaries of the Cairngorms national park to include the parts of highland and eastern Perthshire that were omitted from the park in 2002. Let me make it clear that I was a strong supporter of the park's establishment and I continue to support the Cairngorms National Park Authority's work and the park's role within Scotland. My bill is designed not to dilute the authority's work but to enhance it.

In September 2000, ministers made a formal proposal under section 2 of the National Parks (Scotland) Act 2000 to establish a national park in the Cairngorms area. Ministers invited Scottish Natural Heritage to undertake the consultation on the proposal and, for 20 weeks, SNH listened carefully to interested parties' views and opinions on the boundaries of the park and the powers,

functions, governance arrangements and financial provisions of the park authority.

On boundaries, SNH recommended that the park area should include the central Cairngorms and Lochnagar massifs, as well as many of the straths that immediately surround them in Badenoch and Strathspey, Glenlivet, Donside and Deeside and, crucially, in my constituency, the Angus glens and highland Perthshire. The Government's first response to those proposals largely excluded the areas of my constituency in the Angus glens and highland and eastern Perthshire.

After an inquiry by the Parliament's Rural Development Committee and much pressure from outside the Parliament, the Government revised its proposals and, in the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, made provision for the inclusion of the Angus glens. Unfortunately, highland and eastern Perthshire remained excluded. The Rural Development Committee unanimously recommended the inclusion of highland and eastern Perthshire in accordance with SNH's recommendations, but the Government did not accept that view, and the designation order was approved without their inclusion.

It is important to point out that neither that committee nor the Parliament was able to amend the order. It had to be approved or rejected and, therefore, significant concerns could not be addressed. The boundary issue has remained unresolved and concerns have remained about the exclusion of highland and eastern Perthshire. I have taken a number of steps to tackle the issue. I have pursued it through written and oral parliamentary questions and through a members' business debate to try to change ministers' minds. Ministers have remained opposed to change, and I have opted to pursue a member's bill.

I launched the consultation on the bill on 4 November 2005 and distributed it to 34 organisations and individuals in the locality. It was also made available online. The consultation set out the background to the issue and made the case for extending the park's boundaries. Respondents were asked to comment on nine questions that were raised about the park's boundaries and the membership of the park authority. I received 27 responses, which can be viewed at the Scottish Parliament information centre.

On 8 June 2006, a document summarising the responses to the consultation was made available. The majority of respondents felt that extending the boundary would bring economic, social and environmental benefits and would remove anomalies that the current park boundary has

created. Respondents felt that expanding the boundaries would enhance the achievement of the national park's aims, as set out in the 2000 act. There was consensus—although, I readily admit, not unanimity—that Perth and Kinross Council would require a seat on the Cairngorms National Park Authority.

I have opted to use the mechanism of a bill to address the issue, as only ministers have the power to introduce a designation order to specify the boundaries under the National Parks (Scotland) Act 2000. The fact that only ministers have the power to propose a modification of the boundary in a designation order is of equal significance.

The bill proposes to extend the Cairngorms national park's boundary to bring in parts of highland and eastern Perthshire. The areas to be added include the forest of Atholl, the community of Blair Atholl, the Beinn Udlamain mountain group to the west of the A9, and an area around the A93 that includes Glas Tulaichean and Spittal of Glenshee but excludes the village of Kirkmichael. The area that the bill proposes to include in the park is set out in a series of 16 boundary maps at 1:50,000 scale that have been deposited with the Scottish Parliament information centre. For the assistance of members, a summary map, which is provided with the policy memorandum, shows the existing boundary and the proposed extension.

I judged that the only practical way of setting out the proposed boundary was to show it on a map. That is a rather unusual parliamentary convention, but I am sure members understand that to have described the proposed boundary by grid references or in writing would have been impractical, and might have resulted in a bill as long as "War and Peace". I was happy to follow the precedent that the Executive set and delineate the boundary by reference to a map.

As a consequence of adding parts of highland and eastern Perthshire to the national park, the bill would allow Perth and Kinross Council to nominate a member to serve on the Cairngorms National Park Authority, the effect of which would be to reduce the number of members appointed by Highland Council from five to four, to ensure that the authority's membership did not exceed 25, as stipulated in the 2000 act.

I estimate that the costs of the bill could be met from the existing resources of the Cairngorms National Park Authority. I estimate that the one-off costs would be in the order of £48,000, which includes £15,000 to revise the national park plan, £5,000 to £6,000 to revise marketing and communication materials, up to £20,000 to change signage, and minor additional costs in relation to the role of board members and other incidental costs.

On operating costs, there would be minor additional burdens, which I do not consider significant. The park itself does not directly employ individuals to provide a ranger service, which is perhaps the most expensive service that could be provided. The bulk of park activity is provided on a project-by-project basis. It would therefore be for the park authority to determine how it allocated its resources, what spending took place in highland and eastern Perthshire, and resulting cost increases. An expansion of the park area would open up revenue opportunities, through planning fees and other matters to do with applications in the expanded area.

As I said, my objective is to enhance the work of the national park. The aims of the national park, which are set out in the 2000 act, are:

“to conserve and enhance the natural and cultural heritage of the area ... to promote sustainable use of the natural resources of the area ... to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public, and ... to promote sustainable economic and social development of the area’s communities.”

A number of elements of the bill would support and enhance those aims.

The inclusion of the proposed area would provide a natural gateway to the national park at Blair Atholl—and from Blair Atholl through Glen Tilt—which would substantially enhance visitor access to the park. The proposed boundary would draw together sites of special scientific interest and enable them to be managed through the national park’s cohesive management framework. The proposed boundary would enable entire mountain summits to be managed in a more sustainable and cohesive manner over a wider area, which would improve opportunities for the uniform delivery of biodiversity measures. A proposed buffer area, which would be in the control of the national park authority, would be established around the Cairngorms massif. The inclusion of Spittal of Glenshee would enhance visitor access at the southern approach to the park in east Perthshire.

There is a strong and compelling case for the inclusion of highland and eastern Perthshire in the national park. The area is similar in topography to the areas that are included to the north and east. It includes natural gateways to the park at Blair Atholl and through Glenshee. It includes areas of natural character that are worthy of as much protection as are the areas that are already in the park.

The communities of highland and eastern Perthshire want to be part of the Cairngorms national park. I hope that the bill will deliver that result sooner rather than later.

**The Convener:** Thank you. I am slightly puzzled. Why have you introduced the bill, given that the quinquennial review of the park will take place in 2008? The boundaries will probably be considered as part of that review.

**Mr Swinney:** You raise two issues. First, the park’s boundaries have been a source of concern and unease for some time among the communities that I represent. I thought that, having used various means to try to advance the agenda, and having received encouraging support for the concept as a result of consultation, the issue should be pushed up the parliamentary agenda.

The second issue relates to the quinquennial review which, as I understand it, is much more likely to focus on the governance of the national park than on its boundary. Although it might consider the operation of the park, how its internal procedures work, how its board governance arrangements work and how its policies and practices are applied, there will not necessarily be any focus on the issue of the boundary. My judgement was that, given that context, it was important to have the debate at this stage.

**Richard Lochhead:** I say to John Swinney that I speak as a fellow representative of part of the Cairngorms national park and as a former member of the Rural Development Committee, which considered the National Parks (Scotland) Bill and the subsequent designation orders, so I have followed his campaign with extreme interest. Is it your understanding that the key objection from Government ministers is that a review is coming up, or are there other key objections of which you are aware? Given that it seems a weak objection, I am trying to work out what the Government’s other objections might be.

**Mr Swinney:** I am sure that Mr Lochhead has seen the letter from Ross Finnie, dated some time in November 2006, that sets out some of the issues. It is not my place to speak on behalf of the Executive, but one of the issues that he raises is the onset of the quinquennial review. As I said to the convener, I am concerned that that review will focus too narrowly on the governance arrangements of the national park rather than on the boundary question. The Executive also takes the view that the park is still bedding down and therefore it would be premature to consider some of the issues now. Financial and other implications are also set out in the minister’s letter. On the financial implications, the minister deploys some numbers. The committee will be able to inquire of ministers what those numbers represent, but I can shed no light on them.

**Eleanor Scott:** This is probably not a fair question to ask you, because it arises from one of the other witness’s submissions. You talked about bringing in sites of special scientific interest and

having more continuity in respect of the mountain ranges. One of the submissions refers to:

“Abrupt land use management discontinuities”.

Can you give an example of that? It is hard to visualise what it means.

**Mr Swinney:** The existing boundary means that half a mountain can be in the national park and the other half can be out of it. The boundary crosses mountain summits and, in some instances, it crosses areas of environmental sensitivity. That raises a question about the effectiveness of the management regime that can be put in place to cover the entire area.

I refer to the maps that I have provided the committee with—I do not claim exclusivity, because they show what SNH produced after a tremendous amount of consultation and dialogue with a wide range of interested parties. The objective of the design of the boundary was to cohesively delineate the territory, and thereby allow for an effective and sustainable management regime to be created and put in place. The example of literally splitting mountains in two helpfully illustrates the absurdity of the current boundary.

**Eleanor Scott:** Does your proposed boundary avoid splitting mountains in two?

**Mr Swinney:** Yes, to the best of my ability.

**Rob Gibson:** You said that your proposals would naturally involve the inclusion of a representative from Perth and Kinross Council on the national park board. The national park has perhaps worked differently from the way that people envisaged it would work in relation to the role of local government representatives. Would other councils that are represented on the board be disadvantaged if someone from Perth and Kinross Council was included?

11:45

**Mr Swinney:** I have adhered to the principle that has been applied to the composition of the park authority board as it is today, which is that each local authority that has land within the national park should be able to appoint one or more nominees to the board, which has 25 members, 10 of whom are council nominees. I have accepted that important principle and applied it to the inclusion in the park of parts of the Perth and Kinross Council area that do not currently lie within it.

To enable Perth and Kinross Council to nominate a member to the board, I have proposed the mechanism of reducing the Highland Council's representation on the board from five members to four. I did not want to unpick everything that the

National Parks (Scotland) Act 2000 specified. Under my proposal, the total membership of the board would still be 25. I wanted to change only the provisions that relate directly to the proposed addition to the park of areas of highland and eastern Perthshire, so it was logical to take one seat from the council with the largest number of members on the board and to give it to Perth and Kinross Council.

The board of the park authority has tended to operate as one would expect it to—as a board for the whole of the Cairngorms national park. There has been little—if any—evidence that the work of council nominees has been driven by thoughts such as, “I am a Highland Council person,” or, “I am an Aberdeenshire Council person,” or, “I am an Angus Council person.” I have proposed a modest, peripheral change in the membership of the board, which I do not think would be detrimental to the interests of other authorities. I have sought to sustain the important principle that every authority whose territory falls within the national park should have representation on the board so that it can have buy-in to the workings of the park and can participate in a wide variety of partnership initiatives, as the authorities that currently have representatives on the board do.

**Rob Gibson:** Thank you for that detailed explanation.

We will speak to other witnesses in due course, but will we receive submissions from other councils? We do not seem to have done so yet.

**The Convener:** We will get them next week.

**Rob Gibson:** It would have been helpful to have them now.

**The Convener:** Point noted.

**Peter Peacock:** I should draw attention to the interest that I declared at last week's meeting, which is that I once served on the Cairngorms working party, a body that preceded the establishment of the Cairngorms Partnership, on which I also served for a short time prior to the setting up of the national park.

I am interested in the boundary that you have chosen. You said in your evidence that it was one that SNH had proposed, but my recollection is that, after the original consultation, SNH put forward three potential boundaries: a tight boundary around the core mountain area of the Cairngorms; one that enclosed a slightly enlarged area, but which excluded parts of the current park; and one that covered an even wider area. That third boundary appears to be the one that you have adopted. You said that parts of the area covered by that boundary had been omitted from the park but, by definition, anything that lies outside the park's boundary—whatever that



boundary is—has been omitted from the park. Why have you chosen the boundary that you have chosen?

**Mr Swinney:** In your declaration of interests, you mentioned the Cairngorms Partnership. Perth and Kinross Council was always a party to the discussions of the Cairngorms Partnership and the various bodies that were formed to prepare for setting up the national park, which I think were established by the late Secretary of State for Scotland or one of his predecessors. It is not as if Perth and Kinross Council has suddenly come along at the last minute; it was always part of the Cairngorms Partnership that was involved in the foundation work from which the Cairngorms National Park Authority emerged. There was a long five to seven years of history before we got into the formal consultation on the Cairngorms National Park Boundary Bill, in which Perth and Kinross Council was involved.

My recollection is that the Scottish Natural Heritage report proposed different options, but the recommended final boundary was similar to the boundary that I am proposing. SNH recommended the boundary line that I have set out in the highland and east Perthshire area. At the other end of the national park, SNH did not recommend the inclusion of the Laggan area, but it ended up being included.

My recollection is that SNH's preferred recommendation was for the larger area. In my opening remarks, I referred to some of the arguments that underpinned that preference. One of the strong arguments that pointed SNH to the larger territory was that there should be a buffer zone around the central Cairngorms massif. The maps—even the one in the policy memorandum—show the point quite clearly. There is the central Cairngorms massif, a buffer zone around virtually all the area to the north, east and north-west, as well as at the Angus end of the park, but there is nothing at the Perthshire end. That strengthens the argument that SNH made.

**Peter Peacock:** Notwithstanding what you said about SNH, and your argument about Laggan being in the park whereas SNH did not recommend it, do you accept that, whatever boundary we choose, an element of judgment is attached? There is no absolute reason why a boundary should be in a particular place.

For example, you also said that the area that you suggest should come into the park would bring in areas of natural character that are worthy of the same protection as the other areas of the park. I accept that that is your position but, equally, the boundary that you propose excludes Ben Vrackie, which is immediately outside Pitlochry, and Killiecrankie. Are you suggesting that those areas are less worthy of the protection

that is afforded by the park than the areas that you suggest should go in? What is the logic for the boundary?

**Mr Swinney:** I accept unreservedly that there has to be logic to the boundary. My trouble is that I do not see how that logic applies to the current boundary. If we were to walk west through the territory of the Angus glens, all of which is in the national park, and continue on, we would see no change whatsoever in the topographical pattern of the area, but we would be outside the national park. In the process, we would have cut a few mountains in half and excluded one half from the national park.

In relation to the southern boundary—I pass no judgment on any decisions on any other part of the park—the SNH process was successful in retaining the topographical symmetry in different areas, so that we had an integrated attitude about the components of the national park.

Obviously, there will be areas outside the boundary—Peter Peacock mentioned Ben Vrackie and Killiecrankie—and SNH consulted extensively on that, which brings me back to his point that there has to be a line somewhere. I have tried to apply a logical line—okay, Ben Vrackie is outside it—but if we applied the logic that it is impossible to say where a boundary should be, we would not be able to define a boundary for the Cairngorms national park at all, because something would be outside the line. We have to put the line somewhere. The bill's proposal for the park at the southern end is more logical than the current proposition.

**Peter Peacock:** I share your desire to find a logical boundary in all circumstances. However, you have already conceded that it is not always possible to find an absolutely logical boundary. Do you accept that deciding the final boundary involves an element of judgment—on your part and on the part of ministers and SNH? It is not an absolute science.

**Mr Swinney:** Because it is not an absolute science, the logic of any boundary should stand up to scrutiny.

**Peter Peacock:** The judgment should stand up to scrutiny.

**Mr Swinney:** Regardless of whether you call it the logic or the judgment, it must stand up to scrutiny. As I indicated to the committee, if we went on a walk westwards through the Angus glens, we would come to an abrupt, inexplicable line in the sand, which is the county boundary—if I may use such an antiquated phrase—between Angus and Perth and Kinross. The topography, the environment and the nature of the countryside would not change, but the county boundary would get in the way. I submit that there is no logic to

that. I have gone around the houses in trying to understand the logic—and even the judgment—that went into making the boundary what it is. After much questioning and sitting through meetings of the former Rural Development Committee, I was not able to find it.

**Peter Peacock:** If you and I linked arms and walked south, rather than west as you suggested, what would be the immediate logic of the boundary that you propose? Would the topography not look largely the same on both sides of the boundary? Would not the environmental quality, the species and the habitat diversity be very similar?

**Mr Swinney:** The topography begins to change as you go further south. My point is that it does not change as you go west, and that you end up in a very similar environment and countryside.

**Peter Peacock:** All the way to Fort William?

**Mr Swinney:** No, but the boundary must relate in some way to the long title of the bill.

**The Convener:** We do not want to get into the logic of county boundaries, parliamentary constituency boundaries or any other kind of boundary.

**Mr Brocklebank:** I have two brief questions. I hope that John Swinney does not interpret them as indicating any hostility on my part towards the aspirations of the bill.

I want to button down the issue with which the convener started. We have been given an assurance that the quinquennial review that will take place in 2008 may well consider the park boundaries. That is what the Scottish Executive has stated. The member appears to be saying that there is no guarantee that the boundaries will be considered in 2008. Given that the issue seems to be part of the Executive's thinking, why should we deal with it now, when the parliamentary schedule is extremely busy, rather than leave it until 2008?

**Mr Swinney:** The park was established by designation order in 2003. I tried in a variety of ways to change ministers' minds in the early part of the session, but I failed, so I had to consider other devices. After exhausting parliamentary questions and members' business debates, I concluded that the only remaining device was a member's bill. As you will appreciate, it takes time to consult on, prepare and introduce a bill. That is the sequence of events that explains why the committee is considering the bill now.

You suggested that the issue could be left to the quinquennial review, but there is an element of doubt about whether the review will consider the boundaries. On 9 December 2004, the First Minister only went so far as to say,

"I hope that that issue will be considered when the review takes place."—[*Official Report*, 9 December 2004; c 12784.]

That statement is quoted in Mr Finnie's memo to the committee.

As I said, my view is that the quinquennial review is much more about the national park's governance, performance and operation than its components and boundaries. That is why it is important to tackle the issue now, so that the quinquennial review can be informed by Parliament's consideration of the bill.

12:00

**Mr Brocklebank:** My other question relates to submissions that we have received. Some submissions from various groups that agree with the extension that you suggest have been very persuasive, but the view in two submissions is that extending the park might take away from its efficacy, because extending the boundaries might mean that it does not operate as well as they believe it is operating now.

One such submission is from a landowner on Deeside. The other is from the Royal Institution of Chartered Surveyors in Scotland, which is concerned that

"further expansion may water down"

the park's

"current effectiveness."

The institution also says that it has always thought that the A9, which is a major road whose route is unlikely to change, would offer a more sensible topographical boundary to the park than the extension west that you suggest. The institution argues that the park should be kept concentrated and tight rather than extended.

**Mr Swinney:** You raise two issues, one of which is whether expanding the park would dilute its effectiveness. I take a completely different view. It is more important to have a cohesive and well designed delineation of territory for the park's operation. I have described the logic to that, which is that there is a central core Cairngorms mountain massif and a buffer zone around it, which does not exist to the southern end of Perthshire. That has driven my view on the delineation of the boundary.

We return to the point that Peter Peacock made in relation to SNH. If a tighter park had been accepted—the proposition was a much tighter Cairngorms massif national park design—vast areas that are in the national park would not have been included. A judgment must be made. We can go for a narrow base or a much larger base. The much larger base was opted for, but it is incoherent.

If the A9 were used as the boundary to the west, the existing boundary would have to be substantially revised. I propose the addition of perhaps 3 square miles of territory west of the A9. Goodness knows how many square miles of territory west of the A9 is already within the Cairngorms national park boundary that Parliament approved. It includes all of the Laggan area, the area to the west of Kingussie and Aviemore and the area further north than that. We return to some of the issues about other attributes of the park's design, such as accessibility—ensuring that people can access the park conveniently and effectively. I suspect that that drove some of the judgments about the design in the western part of the park.

**Rob Gibson:** I was not in Parliament when the boundary was first discussed. The memorandum on the legislation to create the national park, which came about after detailed consultation and analysis, is silent on the nature and detail of the decision-taking process. Comments made at the time are included in the appendix to the Scottish Parliament information centre briefing. In particular, Professor Charles Gimingham said that

“Under the proposals, the interdependence between the core and its surroundings is to be destroyed.”

Has the minister addressed that point in any response to you? Do you have any indication from previous debates about the nature and detail of the decision-taking process?

**Mr Swinney:** I would make two comments on that. The first is about the consultation process. It is unusual for me to say something like this, but I think that SNH handled the consultation process superbly. It engaged people. Part of the reason why the boundary is still a live issue is that people felt that they had been involved in an excellent process of discussion about the composition of the boundary, what would be in the park and how it would work. They felt involved in the process and were comfortable with what SNH produced, which is not always the case. At the end of the process, however, there was a very different outcome. A lot of good will, public participation and energy were lost because the decision did not support the SNH recommendations, which were the product of a good process that involved local people.

Secondly, on whether I have understood the logic to the argument, the short answer is no. I could point members to one committee meeting on the designation order in which I tried desperately to get an answer to the point I discussed with Peter Peacock about what happens when we walk west out of the Angus glens. I could not understand the rationale for the delineation of the boundary, other than the fact that the boundary

line has to go somewhere. I accept that view, but I think that it should go to the right place.

**Rob Gibson:** Would it be a good idea for the committee to see the situation on the ground? That does not seem to be scheduled at the moment.

**Mr Swinney:** That is a matter for the committee.

**The Convener:** If Rob Gibson is proposing that I walk from the Angus glens to Dalwhinnie, he can forget it.

**Rob Gibson:** A helicopter would do. Seriously, though, we are talking about things that are theoretical to many of us. To those of us who have some idea of what the landscape looks like, it is a different matter. I wonder whether the committee needs a further view, even from a bus.

**The Convener:** I do not know that there are any buses that go from the Spittal of Glenshee to Dalwhinnie. Perhaps we could get some video or photographic evidence to inform the committee. We could certainly explore the options.

**Nora Radcliffe:** I want to come back to the points that John Swinney just made so eloquently about the SNH consultation. To me, it was thorough, wide ranging and inclusive, and it thrashed out all the questions about where the boundary should be and whether certain places should be in or out. SNH went into the questions in detail and got local people involved. I was prepared to trust that the consensus that it won from that process was good, and I was very upset when it was not adhered to.

As Peter Peacock said, there were three suggestions: a tight boundary, a wider one and a wider one yet. The argument for the widest boundary, which roughly speaking is what John Swinney is hoping to achieve through the bill, was presented as the one that might present the Cairngorms and their setting in a way that would make the park more acceptable for consideration for world heritage site status. That is one argument for reconsidering the boundary. You might want to comment on that, John.

I have a couple of practical issues to raise about the consequences of change and the boundaries. First, when do the current local authority nominees demit office? If we are going to change the boundaries and the composition of the national park authority, it would seem sensible to make the change at the same time. That natural break offers an argument for making the change during the current session of the Parliament. Secondly, you have changed the make-up of the nominated local authority representatives, but not of the directly elected local members. Why did the bill not address that? An area that you propose to include

in the park will not have local, directly elected representation.

**Mr Swinney:** The first point was on world heritage status. That point was advanced as assisting the argument for a larger area that creates a buffer zone around the park. It strengthens the case for arguing that the Cairngorms massif should be well insulated, so to speak, and protected. That argument remains strong—it assists the case.

There were two practical points. First, the local members' term in office concludes on 1 July 2007. Assuming that the bill is enacted within the proposed timeframe, section 3(2) provides for board membership to increase to 26 for a period until 1 July. The provision enables all members to see out their term in office before the new members take over.

Secondly, the bill does not reconfigure ward boundaries. Ministers can do that once the bill is enacted. By my calculation, there are 690 electors in the affected area. Obviously, that is a small minority of the electorate of the entire Cairngorms national park area. The issue can be tackled once the bill is enacted. Ministers have the power to do that.

**The Convener:** Richard Lochhead and Peter Peacock have questions. I hope that they can put them briefly.

**Richard Lochhead:** I wish to make only one point: I support the idea that we visit at least one accessible part of the area to which the bill refers—I am sure John Swinney agrees with that—as that would give us an example of where the topography is similar, either side of the boundary.

**Peter Peacock:** I propose that we do two visits—one to the existing boundary and one to the proposed new boundary. That would allow us to see the differences.

I have another, different, issue to raise: the economic impact—the benefits—for Blair Atholl in particular. You spoke about Blair Atholl being the natural gateway to the park. I assume that you see the potential there for economic benefit. You talked about interpretation and orientation. What range of services should be provided in Blair Atholl that is not being provided there at the moment? For example, if Blair Atholl is the natural gateway to the park, should any of the administrative support for the park, which is currently based in Grantown-on-Spey, move to Blair Atholl?

12:15

**Mr Swinney:** The answer to the latter point is no. The principal office of the authority is in Grantown-on-Spey. I see no argument for

relocating that—or any part of it—to Blair Atholl. I do not think that facilities to support interpretation and access would need to be relocated to Blair Atholl. The committee will go to Blair Atholl on Monday and members will see for themselves not only the topography of the area but some of the visitor information and facilities that are available as a result of the efforts of, for example, Atholl Estates and the Blair Atholl area tourism association, sometimes in collaboration with Perth and Kinross Council and other agencies. That infrastructure could undoubtedly be built on.

A strength of how the park authority goes about its business is that the authority tends not to undertake direct provision of services but operates in partnership with others to deliver, for example, visitor services, interpretive services and ranger services. The infrastructure that effective players in the Blair Atholl area currently provide could support the integration of national park related activity.

**The Convener:** Thank you for your evidence, which has been useful. The committee will take evidence on the bill from a range of organisations, including local authorities, in Blair Atholl at 2 pm on Monday. Written submissions will be in members' hands shortly. We look forward to the meeting.

## Subordinate Legislation

### Prohibition of Fishing with Multiple Trawls (No 2) (Scotland) Amendment Order 2006 (SSI 2006/602)

12:17

**The Convener:** Under agenda item 3, the committee must consider two statutory instruments, both of which are subject to the negative procedure. At last week's meeting, we asked the Executive for further information on SSI 2006/602. A response from the Minister for Environment and Rural Development was circulated on Monday. Members should note that because of drafting flaws, which the Subordinate Legislation Committee identified, the Executive has laid a new instrument, which revokes and replaces the order that is before the committee. We will consider the new order in a fortnight's time. The minister's letter will be relevant to our consideration of the new order, which has exactly the same policy intention as the order it replaces, which is revoked with effect from 22 January.

I hope that members followed all that. Are we content to make no recommendation on SSI 2006/602 and to postpone consideration of the matter until we have the replacement order before us?

**Mr Brocklebank:** I read the minister's response with interest. I raised the matter at last week's meeting because it seemed odd that while we were talking about banning multiple gear there should be a derogation to allow three vessels to continue to use multiple gear for an indeterminate period, on an experimental basis, so that it can be ascertained whether multiple gear works for rather than against conservation—the Executive appears not to know the answer to that, which is why it has provided for a derogation. Three vessels have applied for permission to carry on using multiple gear.

How long will the derogation last? How long will the vessels be allowed to carry on using multiple gear for scientific purposes? If the experiment demonstrates that multi-rigs are better for conservation, will the prohibition be lifted? The minister's letter does not answer those questions.

**The Convener:** We could write again to the minister and request a response in time for our consideration of the order.

**Nora Radcliffe:** I thought that the scientific investigation was needed to ascertain what period is needed for recovery from the damage that multiple gear has caused, not to ascertain whether the use of multiple gear aids conservation.

**Mr Brocklebank:** If you read what the minister says and the background to the issue, you will see that there is still confusion about that. Because we will lead Europe in legislating on multiple gear, the Executive wants to present an accurate picture to European colleagues and to demonstrate that its approach is valid. For that reason, three boats have been allowed to continue so far—more might be allowed to do so.

**The Convener:** We can discuss that. In the meantime, are members content to make no recommendation on SSI 2006/602?

**Members indicated agreement.**

### Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2007 (SSI 2007/1)

**The Convener:** I invite comments on SSI 2007/1. Are members content with the instrument and happy to make no recommendation to the Parliament?

**Members indicated agreement.**

**The Convener:** We will move into private session, as we agreed at our meeting on 24 January, to discuss our approach to concluding our inquiry into the marine environment.

12:20

*Meeting continued in private until 12:34.*



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