



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Rural Affairs, Islands and Natural Environment Committee

Wednesday 9 March 2022

Session 6



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Pàrlamaid na h-Alba

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**RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE**  
**8<sup>th</sup> Meeting 2022, Session 6**

**CONVENER**

\*Finlay Carson (Galloway and West Dumfries) (Con)

**DEPUTY CONVENER**

\*Beatrice Wishart (Shetland Islands) (LD)

**COMMITTEE MEMBERS**

\*Karen Adam (Banffshire and Buchan Coast) (SNP)

\*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)

\*Ariane Burgess (Highlands and Islands) (Green)

\*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)

\*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

\*Jenni Minto (Argyll and Bute) (SNP)

\*Mercedes Villalba (North East Scotland) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jackie Baillie (Dumbarton) (Lab)

Allan Gibb (Marine Scotland)

Mairi Gougeon (Cabinet Secretary for Rural Affairs and Island)

Dr Coby Needle (Marine Scotland Science)

**CLERK TO THE COMMITTEE**

Emma Johnston

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Affairs, Islands and Natural Environment Committee

Wednesday 9 March 2022

*[The Convener opened the meeting at 09:01]*

### Subordinate Legislation

#### Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No 2) Order 2022 (SSI 2022/35)

**The Convener (Finlay Carson):** Good morning, and welcome to the eighth meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind members who are using electronic devices to switch them to silent. I welcome Jackie Baillie MSP, who joins us for this meeting.

Our first item of business is an evidence session on the Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No 2) Order 2022. I welcome Mairi Gougeon, the Cabinet Secretary for Rural Affairs and Islands, and her Scottish Government officials. Allan Gibb is the deputy director for sea fisheries at Marine Scotland. Dr Coby Needle, the chief fisheries advisor for Scotland, from Marine Scotland science, will give evidence remotely. Lucy McMichael is a senior lawyer.

I invite the cabinet secretary to make a brief opening statement.

**The Cabinet Secretary for Rural Affairs and Islands (Mairi Gougeon):** Good morning, and thank you for inviting me to speak about the seasonal closure in the Firth of Clyde. I appreciate that it has elicited really strong feelings, and I welcome the call for evidence that the committee put out as well as the opportunity to pick up the legitimate concerns with you.

The long-standing seasonal closure aims to provide an area of protection for cod during their spawning season, from 14 February to 30 April. Since its introduction, in 2001, the Scottish statutory instrument has included exemptions to allow nephrops trawlers, creelers and scallop dredgers to continue to use the area, due to the low numbers of cod that they catch.

We initially intended to continue those exemptions for 2022 and 2023, and we laid an SSI to that effect. However, on further reflection, we considered that the approach should be adapted and the exemptions removed. The stock has shown little sign of recovery under the present measures and there is evidence that any activity

within 10m of the sea bed has the potential to disturb spawning cod. Moreover, removing exemptions brings the Clyde cod closure into line with other management measures in Scottish waters, including the national cod avoidance plan and measures in the Inner Sound.

We therefore decided to remove the exemptions to increase the chances of boosting the west of Scotland cod stock. However, we recognise that removing the exemptions will have a short-term effect on fishers. We have listened to the concerns of stakeholders and, on the basis of scientific evidence, we have made the closure more targeted, reducing its overall size by 28 per cent compared with previous years while providing comprehensive protection to the cod in areas where they are most likely to be spawning. The revised closure areas are a pragmatic and evidence-based solution that reflects our commitment to protecting the spawning cod while, at the same time, mitigating potential socioeconomic impacts on our vulnerable coastal communities.

I accept that the process around the closure has been far from ideal, and I sincerely apologise for that. On this occasion, our approach has fallen short of our co-management principles and practice. It has been a really complex issue to balance, and we will ensure that we learn the lessons from the way in which this closure has been managed. Nevertheless, I believe that we have made the right call in adapting the closure this year and that the measures that we have put in place offer better protection for spawning cod.

Going forward, we will keep the measure under review. Marine Scotland Compliance will closely monitor activity in the Firth of Clyde over the coming weeks, and we will arrange a meeting with stakeholders after the closure ends, to reflect on its effectiveness and practicality.

The Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No 2) Order 2022 SSI was laid on 1 February, and I hope that the committee can support it. I am happy to take any questions that members might have. I draw the committee's attention to my letter and the submission from Dr Coby Needle, the chief fisheries adviser for Scotland, who is here today and is also happy to take questions.

**The Convener:** Thank you, cabinet secretary. The order is a bit of a mess, and that is reflected in the unprecedented number of responses that we had to the call for evidence. There were concerns about the scientific evidence, data collection, monitoring, the socioeconomic and environmental impact of the closure and the proportionality of it.

The first area that we will ask questions about is the scientific evidence. The written and oral

submissions from all sides of the argument suggest that there is a lack of evidence to support the removal of exemptions, the inclusion of creel and dive in the removal of those exemptions, and the assertion that spawning does not occur on muddy areas of the sea bed—the list goes on. What scientific evidence was used to inform your decision?

**Mairi Gougeon:** As I said, we based the decision on the best scientific evidence that we had, which suggested that any disturbance within 10m of the sea bed would have an impact on spawning cod. It would be appropriate to bring in Dr Coby Needle to explain that point from the scientific perspective.

**Dr Coby Needle (Marine Scotland Science):** Good morning. I apologise that I cannot attend the meeting in person.

Marine Scotland science was asked to consider whether the existing Clyde cod closure was sufficient to achieve the policy objective of protecting spawning cod. That was our remit. It has to be said that good, consistent, detailed time series of data regarding the distribution of spawning cod in the Clyde are hard to find and do not really exist. Therefore, we have taken a risk-based approach. Existing scientific literature highlights the preference for Atlantic cod to spawn in areas of gravel or coarse sand, with sandy mud or muddy sand—it is an interesting definition—being less optimal and fine mud being the least suitable for spawning cod—[*Inaudible.*]

**The Convener:** I am afraid that we appear to have lost our witness.

**Mairi Gougeon:** I will bring in Allan Gibb to give more information on that.

**Allan Gibb (Marine Scotland):** I will carry on from where Coby Needle got to. Although there is a lack of defined data on spawning cod in the Clyde, clear scientific evidence from numerous papers suggests that any disturbance of the spawning cod or the habitat that they spawn on is likely to reduce or completely remove their ability to successfully spawn on the types of ground that Coby mentioned. It is not necessarily just about the ability to catch.

The definition of disturbance in the scientific literature is any disturbance on the ground or up to between 5m and 10m from the sea bed. We think that there has been a bit of confusion about the disturbance point. It is not about catching or the amount of impact that a method has on the sea bed; it is about whether it can cause disturbance. A prawn trawl, a scallop dredge or creels on the sea bed and a diver going down and swimming through the cod on the sea bed all clearly cause disturbance. It is not about catching.

One of the correspondents claimed that, in his estimate, there were between 4,000 and 5,000 creels in that area. If 4,000 to 5,000 creels are being hauled up and shot down every day, that will clearly generate disturbance, and the disturbance was the key feature of the scientific rationale behind taking the closure for all methods.

I think that Coby Needle is back.

**The Convener:** Dr Needle, would you like to come back in? You were cut off in your prime.

**Dr Needle:** I apologise. I think that I had got as far as the closed areas and the sediment-type argument that we—[*Inaudible.*]

I was going to move on to the fishing gears that should be included in the closures. As you know, originally, nephrops trawls, creelers and dredgers were exempt from the closures. Further scientific literature highlighted the spawning behaviour of cod, in which the male cod mark out on the sea bed territories known as leks, which they defend against other males, and use grunting noises—they contract their swim bladders very quickly—to attract females to those leks. They are very territorial. Once they have found a female, they get into a mating routine that involves moving up off the sea bed to spawn. Generally, they spawn 5m to 10m off the sea bed. In my judgment, and in our opinion, it was important to limit any fishing activity that operated within 10m of the sea bed, to give maximum protection to that spawning activity should it be occurring. That is why we concluded that fishing types that were initially exempted from the closure should be included.

It must be said that those conclusions are not definitive. There remains a lack of data and observation that are specific to the Clyde area. We have therefore, as I have said, taken that risk-based approach. On the balance of probabilities, it is my judgment that the measure that is being taken is appropriate and, probably, sufficient for protecting spawning cod, which was what we were asked to do.

**The Convener:** Okay. Thank you. However, that does not get away from the fact that, almost without exception, nobody agreed with the position that you had taken, and it was a very quick decision. Is that more about politics and the Bute house agreement that you had with the Greens? It was a knee-jerk reaction, it has not resulted in a reasonable set of regulations, and it puts at risk the economy and sustainability of coastal communities.

**Mairi Gougeon:** As I highlighted in my opening statement, I absolutely accept that the process has been far from ideal in this case and is not the normal means by which we would like to engage or make decisions. However, ultimately, we have ended up in the right place when it comes to the

decision that has been taken and the SSI that has been laid.

As you will have seen from the evidence—both written and oral—that you have received, the issue is very complex and there are lots of different perspectives. We have done our best to base the decision on the best scientific evidence that is available to us and to take into consideration the precautionary principle.

The decision is not political. It is only right that anyone in a position such as mine takes the opportunity to reflect—which is why the initial decision was changed and why another SSI was laid—and to listen to the many different perspectives of the many stakeholders who are involved. We have laid this SSI in order to take account of their different perspectives and to protect the correct areas. As a result of the work that was undertaken, we were able to reduce the overall closure by 28 per cent. It is important that we took the time to reflect on and undertake the work on that, to make sure that we were ultimately achieving the policy objective, which is to protect spawning cod. It is only right that we did that.

**The Convener:** Cabinet secretary, I am a bit confused, because we have had two revisions. An instrument was laid that was then changed. Between changing it and consulting again, what scientific evidence did you get that was not political—that was not a result of the Bute house agreement? I fail to see what scientific evidence changed in that short time.

**Mairi Gougeon:** Again, it was our further reflection on what we had received through the consultation and on the different correspondence that we had received about the exemptions. As I have said, when the initial SSI was laid, it was intended that those exemptions would roll over to 2022 and 2023, and we reflected further on that. Of course, the Bute house agreement is part of that, but representations were made by other organisations about the ultimate impact on spawning cod of not removing the exemptions. That is why we decided to look again and to take that further advice. The position that we have ended up in on the back of that is the right one, given the revision of the closed area while, ultimately, achieving the policy objective, which is to protect spawning cod.

09:15

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** My question is for Coby Needle, I think. It was said earlier that the monitoring of the areas and of cod stocks will continue, certainly in the coming weeks. However, will you say a bit more about how, in the longer term, we will measure the

effectiveness of the interventions and the impact on cod stocks more generally?

**Dr Needle:** In the meantime, while we await further development of method and so on, catch data from vessels operating on the Clyde this year will be critical for determining whether cod are starting to recover. We conduct annual surveys in the area as part of the overall west coast demersal survey that we run every year in quarter 1 and quarter 4. It is not a comprehensive survey of the Clyde area as such, but it includes two or three hauls within the Clyde each year. That can give us an indication whether cod are starting to recover.

I should also note that, in collaboration with a team at the University of Strathclyde—I believe that the committee had a session with Professor Mike Heath from the team last week—we are co-supervising a PhD project to develop a stock assessment model and method that are applicable to Clyde cod. That has not existed previously. We are hopeful that the model will be available towards the end of this year. It will enable a quantitative evaluation of the progress of any Clyde cod recovery, which previously has not been possible.

The Clyde cod is rather peculiar. It is thought to be a distinct sub-stock of the west coast population. In the opinion of the International Council for the Exploration of the Sea, which runs the west coast assessment, the data availability in the Clyde is not yet sufficient to enable the cod there to be assessed as a separate stock. That is why we are developing data and methods to achieve that.

**Dr Allan:** What would be the future implications for conservation of identifying a separate or distinct sub-stock?

**Dr Needle:** I think that it would give us a much better handle on the stock dynamics in the Clyde. The stock would not be subsumed within the overall assessment for the west coast. In the wider area, we are undergoing the same process for many cod stocks around the British isles. For example, there is evidence that cod in the northern North Sea might be a different sub-stock from the cod in the southern North Sea and should therefore be assessed separately. That is a scientific initiative, and we are attempting to get a better idea of cod stock dynamics in different areas in the Clyde as part of that. That then feeds into the management process—that is where we can advise managers on how to manage the stocks. However, it is not really a scientific determination to say exactly how to do that.

**Dr Allan:** I appreciate that you have to maintain your independence, but, given the amount of data that one would think would be gathered, at least anecdotally, through the fishing industry, how will

you co-operate with fishers to gather information in the future?

**Dr Needle:** That is a good point. In an area such as the Clyde, which is a discrete inshore area for which we have historically not had as much data as we might have had for the general North Sea or west coast, there is a strong argument for more of the sort of collaboration that we have seen in the recent past, such as the work on the PhD that I mentioned to develop the stock assessment method. We were also involved at the beginning of the surveys that were run by the Clyde Fishermen's Association and the University of St Andrews. That sort of collaboration between Government science, academia, industry and other stakeholders is a fruitful route for trying to develop a wider database and stronger information for areas such as the Clyde.

**Mairi Gougeon:** I reiterate Dr Needle's point that, as we move forward, it is really important that we take that collaborative approach with the industry and with academia.

**Dr Allan:** Thank you.

**Jim Fairlie (Perthshire South and Kinross-shire) (SNP):** On your earlier point about the science with regard to disturbance of the sea bed, it is my understanding that it is not aggregations that are causing the problem, as they were done away with a long time ago. Last week, I ask Professor Heath about the sensitivity of cod and whether any disturbance would lead to fewer young cod being hatched, and I was told that only two eggs needed to be hatched out of the million or so that a female lays. Just to reiterate the point that you made, cabinet secretary, I would imagine that any disturbance of a sensitive animal, whether it be a bird, a fish or whatever, during its spawning or breeding period would reduce the numbers of available youngsters that could go on and thrive. Is that a fair assessment?

**Dr Needle:** I agree. The purpose of this measure is to maximise the potential for cod to spawn. As Mike Heath said, an adult female cod produces maybe a million eggs or probably more in a spawning season, and, in order for the population to be sustainable, only two of them have to survive. There is an enormous amount of mortality in eggs and juvenile cod.

Although this measure does not directly address that, the fact is that, if you do not have any eggs to begin with, you are definitely not going to have any recovery in the stock. It is a first step to encourage as much spawning and as many eggs as we can in the hope that that will feed through into the adult population in subsequent years. I think that you are right—if you do not protect the spawners from disturbance, they will not spawn, you will not have eggs and the stock will certainly not recover.

**Jim Fairlie:** Thank you. That is the point that I was making.

**The Convener:** On that line of questioning, one cod can produce between a million and 2 million eggs, and you need only two of those eggs to survive to adulthood in order to sustain the population. Is the impact of noise or the potential impact of a hand diver or creels in any way significant with regard to sustainability? We heard that the fish still generally spawn—the issue is the mortality after the eggs have hatched. Is disturbance of any significance at all to spawning?

**Dr Needle:** In my judgment, it is strongly significant. As I was outlining, the fish have a complicated spawning behaviour, with males and females getting together, as happens in general in the animal kingdom. If the preferred spawning area is disturbed, the males might not be there in the first place, having been scared off and having gone elsewhere. If the males are not left in situ in the spawning areas for long enough, they will not be able to attract females. So, the males and females need to be in the area at the same time, and then they have to go through this complicated courtship ritual that involves circling round each other and rising off the sea bed in order to spawn. All of that takes time, and it is that behaviour and activity that is potentially being disturbed by the sort of fishing gears that we are talking about.

**The Convener:** That was really interesting, Dr Needle, but the crux of the matter is whether you have any evidence that the sustainability of the cod stock in the Clyde is being affected by the lack of spawning. Is there more of a lack of spawning now than there was previously? Do you have any evidence to suggest that there are fewer eggs and less spawning by cod?

**Dr Needle:** We do not have evidence in terms of egg counts in the water, so the answer is no. However, it seems logical to me that, if spawning is disturbed, the eggs will not be produced in the first place.

**The Convener:** But there is no evidence that that is the case.

**Dr Needle:** In terms of egg counts, no. We do not have that evidence.

**The Convener:** So there is no evidence. I call Beatrice Wishart.

**Beatrice Wishart (Shetland Islands) (LD):** We have heard about the lack of historical data on and observation of Clyde cod. However, the Clyde box has been in place for 20 years now. Given that we seem to have got to this position today because of a lack of evidence and support, what has been happening for the past 20 years?

**Mairi Gougeon:** I can probably answer for the activities that we are undertaking now and that we



are looking to undertake. The policy objective that we are pursuing is the protection of spawning cod and, ultimately, boosting the numbers of cod in the Clyde. That is the objective that we are pursuing.

**Mercedes Villalba (North East Scotland) (Lab):** Good morning, cabinet secretary. I apologise for the fact that I cannot be there in person. I have a couple of questions on the scientific evidence. I will try to keep my questions short, and I would be grateful for succinct answers.

The Scottish Government's consultation on the spawning closure cites a study that was undertaken by the Scottish Oceans Institute and the Clyde Fishermen's Association. Are you aware of that study?

**Dr Needle:** Yes, I am.

**Mercedes Villalba:** Have Dr Needle and the cabinet secretary seen a final version of the report on that study?

**Mairi Gougeon:** No, I have not.

**Dr Needle:** The report is on surveys that were conducted by the University of St Andrews and the Clyde Fishermen's Association. I believe that, between 2016 and 2018, four surveys were done. Marine Scotland science is currently considering and reviewing what was done in those surveys, and I believe that the survey results will subsequently be published by the University of St Andrews. That is where that process is at.

**Mercedes Villalba:** The consultation website says that a final version of the report can be requested from the Clyde Fishermen's Association. As far as you are aware, is that correct?

**Dr Needle:** Not as far as I am aware. I believe—

**Mercedes Villalba:** Cabinet secretary, is that correct?

**Mairi Gougeon:** I think that Allan Gibb wants to come in on that point.

**Allan Gibb:** That was an error on our part, but it was made in good faith. We had seen a draft version of that report and believed that it was to be published imminently. We referenced a factual element about the existence of spawning cod, but that science work is not about spawning cod; it is about surveys in general and has nothing to do with spawning cod per se. I admit and acknowledge that we referenced that in error, in the belief that the report was to be published imminently, but, clearly, it has not been published. There were various delays for numerous reasons. The CFA and the University of St Andrews have asked Marine Scotland science to have a look at it, but it is not a Marine Scotland science report. We have looked at it and we understand that it is

due to be published by the University of St Andrews in the coming days.

**Mercedes Villalba:** When do you expect a correction on the website to be made?

**Allan Gibb:** Our understanding was that the report was to be published imminently. If the website still says that, I will get that corrected today.

**Mercedes Villalba:** Last week, we heard from Elaine Whyte of the Clyde Fishermen's Association. When I asked her about the report, she said that those four reports were "nothing to do with" the Clyde Fishermen's Association. She also said:

"we have nothing to do with the science. We just let the others use our vessels."—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 2 March 2022; c 18.]

If it is not the responsibility of the CFA, the Government or Marine Scotland science, whose responsibility is it to publish those findings and make them publicly available? Is it the responsibility of the University of St Andrews?

**Allan Gibb:** Yes—as I understand it, the University of St Andrews is going to take on the publishing remit. The comments by the Clyde Fishermen's Association are in direct response to a bit of an urban myth that a report informed the policy decision, but it did not inform it. The report has no material relevance to the policy decision. With regard to what was said about it not being a Clyde-inspired survey, as the cabinet secretary said, the Clyde Fishermen's Association collaborated with academia—in this case, the University of St Andrews. The CFA provided the platforms—the boats to get the scientists out to sea—and the university provided the scientific experience and the personnel to carry out the work.

**Mercedes Villalba:** It is interesting that you say that there is no material basis or connection, because, as it is written, the Government's consultation implies that the study was used as a basis for the decision. It says:

"Early results from the study show the presence of spawning cod in the closed area during the closure period, indicating that the closure is in the right place at the right time."

Are you saying that that study has had no effect on the decision that has been made?

**Allan Gibb:** Yes, that is correct. That is a factual reference. People were out doing general survey work and, during the spawning period, they came across spawning cod in that area. All that we are saying is that that implies that the closed area is the right area, because that was where the

spawning cod were, but that was not the basis of the policy decision.

09:30

**Mercedes Villalba:** Are you able to share with the committee exactly where the spawning cod were found? The consultation document says that they were found “in the closed area”. From what you have seen in the study, are you able to give us a specific location?

**Allan Gibb:** I am sure that the scientists will have recorded that data, but I do not know whether that has been published.

**Mercedes Villalba:** Do you know how the study was funded?

**Allan Gibb:** I do not. I think that it was done in collaboration with, and was promoted by, the University of St Andrews. I will pass over to Dr Needle, who might know how the study was funded. It was not funded by Marine Scotland.

**Dr Needle:** I am not sure about the funding. I am familiar with the reports, having been through them myself. The spawning cod—not very many—were caught in some of the quarter 1 hauls, but the area in which they were caught is not specified spatially. The data must exist, but where the spawning cod were caught is not specified in the reports.

It is worth noting that the surveys were very much developmental. The work involved trying to see how surveys could be done on cod, haddock, whiting and hake in the Clyde. The authors of the reports were at pains throughout to emphasise that they never intended the reports to be used as the basis for policy and advice. The work was very much developmental and about how people might consider developing a specific survey in the Clyde.

**Mercedes Villalba:** I have a final question for the cabinet secretary. Do you agree in principle that research that is conducted using public funds should be made publicly available?

**Mairi Gougeon:** Yes.

**Mercedes Villalba:** Thank you.

**The Convener:** Rachael Hamilton has a supplementary question.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** Given the lack of evidence on the distribution of spawning cod in the Clyde, I cannot understand why more resource was not provided on the issue. I understand that the CFA’s study was developmental and exploratory. Cabinet secretary, why did you make the decision on the basis of a complete and utter lack of evidence?

**Mairi Gougeon:** The decision is based on the best available scientific evidence. In the time that

was available, it would not have been possible to conduct all the scientific research to fill the gaps that have been identified while ensuring that the SSI was in place to provide protections for the spawning period. We have based the decision on the best available scientific evidence and research.

**Rachael Hamilton:** That means that the best available scientific evidence is deficient—you have made a decision without the Scottish Government having resourced evidence-based studies on which to base decisions. There has been a failure of the Scottish Government to provide evidence.

**Mairi Gougeon:** I do not agree with that.

Allan Gibb would like to come in.

**Allan Gibb:** It is important to focus on the point that we have used strong scientific evidence about the impact of disturbance on spawning cod in that habitat. That was the policy objective. There is a lack of evidence and data on the numbers of cod, mortality and various other things, but the decision was about protecting spawning cod and their habitat. Dr Coby Needle has explained that the evidence on that, which is what the policy relates to, exists. We accept and acknowledge that we are short of evidence in other areas, but the evidence that was required for the decision does exist.

**The Convener:** I am confused. There were no egg counts, so how does the evidence suggest that such an intervention will help? I will put that on the record and move on.

**Jenni Minto (Argyll and Bute) (SNP):** I am interested to hear how the Scottish Government could improve current scientific evidence, data collection and monitoring to support future closures and inshore fisheries management more widely. Moving on a wee bit, we have heard a bit about evidence collection. Scientific research costs money, so I am interested to know what additional resources the Scottish Government would benefit from being allocated in relation to its ability to support opportunities for future research.

**Mairi Gougeon:** At the end of the closure, we want to meet our stakeholders to discuss its effectiveness, or otherwise, and determine how we move forward from there. We touched on what other collaboration we can undertake with industry and academia in relation to data collection and research. We can work together and move forward on that basis. We are undertaking increased monitoring during this period to assess the effectiveness of the closure. Allan, do you want to come in with any further information on that process?

**Allan Gibb:** There will be an increased presence in the Clyde of large and small Marine

Scotland patrol vessels. As everybody is aware, the weather has been really bad, so there has not been much activity in the early period, but, to date, in the inspections of catches being hauled up, there has been zero cod identified, which implies that we have got it right so far in relation to opening up fishing in the right places, where the spawning cod are not.

Collaboration will be key. Resources are finite. We can do anything, but we cannot do everything. Dr Needle can correct me if I am wrong, but the Marine Scotland-sponsored University of Stirling PhD looking at cod stock analysis and trying to find a model will be a really positive step forward. It is important that the cabinet secretary and I explore all avenues for collaborative work, because that is how you get over resource hurdles in that area.

**Jenni Minto:** Would Dr Needle like to add a bit more on the University of Stirling PhD work and collaboration with fishers?

**Dr Needle:** Yes. Sorry, but it is the University of Strathclyde, Allan—you were almost right. That is an on-going project. It is a PhD studentship in its third year. Two of my colleagues are co-supervising it along with two of the academic staff at Strathclyde, and we are very hopeful that it will result in a functional working stock assessment model in the Clyde. Like any science, it is not guaranteed because, as we have discussed today, the Clyde is on the data deficient side, so it is proving difficult to develop a stock assessment for the area, but that is what we are attempting to do and we will continue to do that.

Throughout the process and for many years, we have been very supportive of academic work in the Clyde and in the areas in which academic colleagues can contribute to the underlying research that we can take on and implement in our management advice. It is incumbent on us to make best use of the resource that we have in Scotland. We have a fantastic set of universities, and research scientists within them, who are very willing to collaborate and are very helpful in those processes.

**Dr Allan:** The use of the precautionary principle in Government science has been discussed throughout. Will Dr Needle articulate what that means in this context and what its aims are?

**Dr Needle:** Yes. The precautionary principle states in general that, if you are uncertain about something and data is lacking, that is not necessarily a reason to do nothing. We have applied that principle to this issue. As Allan Gibb said, we lack firm data on the stock dynamics of cod in the Clyde. However, we have good evidence in the scientific literature that cod prefer a certain type of sediment on which to spawn and

that they are very prone and sensitive to disturbance. We have used the wider literature to develop the precautionary approach to managing cod in the Clyde for the time being.

**Dr Allan:** Does the cabinet secretary want to add anything to that? Perhaps Allan Gibb might want to come in, because my question is about the science.

**Allan Gibb:** I can comment on the precautionary principle. Dr Needle is right to say that the lack of data should not be a reason to avoid doing something. We need to have due regard to not only the precautionary principle but to other elements, such as regulatory, socioeconomic and environmental obligations.

Taking that package into account is how we ended up with the proposal before us today, in which 28 per cent of the area remains open for fishing. We believe, on the basis of a risk-based, precautionary approach, that that will not risk disturbance of the spawning cod or of the habitats. We have taken a pretty balanced approach on that basis.

**Beatrice Wishart:** We have heard about the decisions being based on the best available science, but we have also heard that there is a lack of historical data, including there being no egg count. The written and oral evidence has highlighted the lack of scientific evidence on which to base the removal of exemptions, as well as on other aspects, including the assertion of where spawning occurs and the lack of dedicated monitoring programmes to assess effectiveness. That all leads me to ask whether Marine Scotland is sufficiently resourced to provide the robust scientific evidence that we need for inshore fisheries management.

**Mairi Gougeon:** First, it is important to bear in mind that all resources are finite and Governments must make decisions on how best to allocate them. We also need to bear in mind the expansive area that Marine Scotland must look after, monitor and evaluate. It collects data, and provides analysis and advice, on a wide range of ecosystems and fisheries across Scotland's seas, which cover 470,000 km<sup>2</sup>.

We would like to undertake research on a lot of different areas, but we have to ensure that we get the balance of resources right. A host of work could be undertaken in the Clyde. However, if we decided to undertake it, we would have to consider what to deprioritise and how to resource that work.

**Beatrice Wishart:** If we want to ensure that the decisions that are taken are led by science, we need to put in the resource.

**Mairi Gougeon:** Again, that is something that we must consider as part of the decision-making

process. If we were to prioritise that area, we would need to consider what other area to deprioritise.

I return to the point that Allan Gibb made. We know that there are gaps in some of the scientific evidence. However, in terms of our policy objective, the evidence is strong on the point about disturbance.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** A challenge lies in the fact that we must maintain data collection that allows us to understand not only how marine systems function at various levels and locations, but how various human activities affect our seas and what action is required in different contexts. In terms of Marine Scotland's resources, how is the methodology of capturing evidence challenged by various competing bodies, sectors and interests in a world that is—rightly—dominated by concerns about climate change? What is the potential consequence of not using the best available evidence? What would be the consequence of not taking a precautionary approach?

09:45

**Mairi Gougeon:** I think that the ultimate consequences of not basing decisions on the best possible evidence would be that you could take the wrong decisions. If we do not take the precautionary approach, we could end up doing more harm than good to the stock.

I missed the first part of your question. Was it about the methodology?

**Karen Adam:** Yes, it was about how that is affected by the various competing bodies.

**Mairi Gougeon:** I am not sure that I understand the question.

**Karen Adam:** Is there any effect on—

**Mairi Gougeon:** Are you talking about the methodology on which we have based these decisions and the views of other bodies in relation to that?

**Allan Gibb:** If I understand the question correctly, I can say that the current methodologies of data collection for fish stock analysis surveys and so forth continue. There is a twofold element. Can the process equally contribute to other requirements, such as environmental and climate change considerations—and vice versa? As the cabinet secretary said, the methodologies do not change, although they will evolve and get better over time, as we learn. However, it is the competing resource element that is important. If we have to do more work on environmental impact elements, that does not mean that the methodologies for stock surveys change; it means

that there might be more pressure on the facilities that we use. That drives us back towards looking at maximising our collaborative approach with academia, local stakeholders and so on.

With regard to the lack of evidence and the precautionary approach, although we contend that the evidence is robust and fixed in relation to disturbance and this policy, it is right to say that, for other elements, if there is a lack of evidence, you are going into the risk-based approach and the precautionary world. In such a situation, working with stakeholders who understand what is going on on the ground, whether in relation to agriculture or fishing, can help to inform any management decision that needs to be taken, and those managements decisions are invariably the hardest ones to take.

**The Convener:** I now bring in Jackie Baillie.

**Jackie Baillie (Dumbarton) (Lab):** Thank you, convener. I am grateful to you and the committee for the opportunity to participate in this morning's session. I should confess at the start that I am not an expert on fish or fisheries, but I have constituents who are academic experts in the field.

Cabinet secretary, you and Dr Needle seemed to suggest that there is no robust evidence, based on what is going on in the Clyde, although you might have evidence from elsewhere. I think that there is also acknowledgment that cod stocks in the Clyde could well be different to cod stocks elsewhere, yet the cabinet secretary says that the decision is evidence based. I am not quite clear who is right. Has it been a risk-based assessment, which is one thing, or has it been evidence based? If it is evidence based, will you publish that evidence?

**Mairi Gougeon:** We have published all the evidence and information on which we based our decision, and it is all publicly available on our website.

This has predominantly been a risk-based approach that has been based on the evidence and science that we have. That comes back to what Dr Needle and Allan Gibb said about the science around the impact of disturbance, on which we have, ultimately, based the policy decision. Dr Needle might want to say more about that.

**Dr Needle:** On the point about cod being different in the Clyde, by that we generally mean that they are a distinct sub-stock. The young that come from the reproductive activity of cod in the Clyde do not necessarily go off and join or mingle with other cod stocks. However, that does not take us away from the fact that they are still from the Atlantic cod species. The evidence suggests that the spawning behaviour and the preferences of

cod are similar all the way around the United Kingdom and, specifically, Scotland.

We believe that the cod in the Clyde may form a distinct sub-stock, but that does not mean that their spawning behaviour is different from that of cod elsewhere—they are still the same species.

**Jackie Baillie:** I think that the reality is that we do not know, because there have not been studies—that is the point that I am making. It is a risk-based assessment because you do not have the evidential knowledge that would inform the decision.

**Dr Needle:** There is no basis on which to do something different. We have no reason to expect that the spawning behaviour of cod in the Clyde would be different from the spawning behaviour of cod elsewhere.

**Jackie Baillie:** Allan Gibb said that, where there is a risk-based assessment, you would obviously rely on what stakeholders say. However, as far as I can see, your stakeholders have said that the measure is wrong. Why have you not listened to them?

**Allan Gibb:** Again, it is important to maintain focus on the issues. We believe—as Coby Needle has just said, there is no reason not to believe it—that the Atlantic cod species spawns in the same way in similar habitats, whether those habitats are in the Clyde or the North Sea. That might be different in other parts of the world, but not there.

The risk-based management that I was talking about concerns situations in which evidence did not exist and in which we would therefore look to engage stakeholders in co-management. We do that successfully across lots of forums in lots of areas of Scotland.

The issue here is not about stakeholders disagreeing with our approach; it is about them not being willing to accept the basis on which we have removed all exemptions, because there are different views around levels of impact and so on. We have very much based our policy on the disturbance element of the scientific report, which has been published on the website for some time.

**Jackie Baillie:** Why does the new proposal exclude historical areas of cod spawning? As I understand it, you have removed 28 per cent of the area. I do not understand how that is a precautionary approach when you have no evidence to justify that.

**Allan Gibb:** My simple answer is that we were looking at the existing cod closure, rather than carrying out another series of pieces of work to determine whether there should be further cod closures or the existing cod closures should be expanded. That would require quite a lot more analysis. That might happen in the future—we

might have to consider that—but the policy objective was to review the existing closure and to maximise the protection of the spawning cod that is being achieved by removing disturbance.

**Jackie Baillie:** Okay. However, an academic said to me that the size of the most important area “mysteriously reduced by almost half”. Why would it be “mysterious” if, as you say, it is an evidence-based decision?

**Allan Gibb:** I am not sure what that is a reference to. We were looking at the existing cod area. We have allowed 28 per cent of that area to remain open—quite a bit less than half. The evidence that we have used to justify that is that that is the mud area where cod will not be spawning or are unlikely to be spawning. We have not yet found any cod in that area in any of our observations.

**Jackie Baillie:** That area was included before, however, on the basis of the same evidence. Your evidence has not changed.

**Allan Gibb:** That area was included, which is why the cabinet secretary has asked us to review, on the basis of evidence and certainties, whether there is a need to close that entire area. We want to find out whether the evidence that we have now, which is in the report that Dr Needle is referring to about disturbance, and our understanding of the habitat and the ground—whether it is coarse gravel, or whatever—can be used to deliver the policy objective to maximum effect without having to close the entire area. That was just another reflection that we considered. The cabinet secretary, on the basis of consideration of that evidence, has arrived at the conclusion that we can do that by letting a small area remain open.

**Mairi Gougeon:** I was looking at the areas where cod are most likely to spawn. I am reliant on the evidence that I receive from people such as Dr Needle in that regard. That is why we reached our conclusion and, ultimately, ended up reducing the overall area by 28 per cent.

**Jackie Baillie:** I am still unclear whether that was a result of lobbying and representations that were made or of actual scientific evidence. It strikes me that it was the former.

I will move on to my final question. At the end of January, there was a stakeholder meeting with Marine Scotland in which you were specifically asked whether the measure could be reviewed. Marine Scotland’s response was that it could not, because it had no resources to do so. What has changed? What form will the review take? Will it be done before 2023? Will it be done this year, so that it can inform what happens next?

**Mairi Gougeon:** Yes. We have already committed to collaborating with stakeholders and coming together after the closure this year to assess its effectiveness and to see how we can move forward.

**Jackie Baillie:** Can that be fed into changes for 2023, if the evidence suggests that that is required?

**Mairi Gougeon:** The closure is for 2022 and 2023. I do not want to prejudge the meeting that will take place. We will, of course, consider any views that come out of that meeting.

**The Convener:** There was outrage when the first order was laid, and it was very quickly withdrawn. You then undertook some sort of consultation, which resulted in a change. I have struggled to find any of the respondents or stakeholders whom you have talked about consulting who think that the solution is the right one. Have all the stakeholders, including the scientists, got it wrong and you have got it right?

**Mairi Gougeon:** I do not agree with that assertion at all. If members look back to the results from the consultations that we held between September and October and between October and November, they will see that there were strong representations in them, and the overwhelming majority wanted the exemptions to be removed in their entirety. It is important that we take all those views into consideration, but I go back to what I said earlier. I believe that the position that we have reached meets the policy objective and strengthens the objective of protecting spawning cod by removing potential disturbance to the areas in which we believe the cod are spawning, while balancing that with the socioeconomic impacts.

I highlight what I said at the beginning of the meeting. The whole process has been far from ideal, and I have apologised for that, but it is important for me, in this role and position, to listen in order to ensure that we balance the objectives. I believe that we have, ultimately, ended up making the right decision with the revised closure area that we have proposed.

**Mercedes Villalba:** I have a quick follow-up question for Dr Needle. You have mentioned today, and you have written to us about, scientific literature on the spawning behaviour of cod—specifically on movement up to 10m from the sea bed—which has affected the decision. Can you share with the committee the specific papers that you were referring to, please?

**Dr Needle:** In the submission to the committee, there is a reference list that includes all the citations relating to the scientific literature that we used. One of the papers includes information from data storage tags that showed male cod coming

up off the sea bed while spawning. That was quite clear in the evidence. The scientific literature that we used as the basis for the decision is included in the submission.

**Mercedes Villalba:** There are seven papers. Was a mixture of all of them used?

**Dr Needle:** If you will bear with me, I will give you the specific ones. Let me scroll down. I apologise: I am getting to the end of the paper.

**Mercedes Villalba:** You could always follow that up afterwards.

**Dr Needle:** Yes—I can follow that up afterwards. I can identify that for you and pass the information on to the committee.

**Mercedes Villalba:** Thank you very much.

**The Convener:** We will move on to look at the impact of closure.

**Rachael Hamilton:** We have received evidence that says that the business and regulatory impact assessment did not follow the correct processes that are described in the Scottish Government's online BRIA toolkit. The BRIA should be

“transparent, accountable, proportionate, consistent and targeted”,

but it was not, was it, cabinet secretary?

10:00

**Mairi Gougeon:** I do not agree with that. I believe that the BRIA has followed the correct processes in terms of how it was brought together and how it has been presented.

**Rachael Hamilton:** Why have stakeholders said that the BRIA did not follow the correct process with regard to the impact that the closure was going to have on fishermen?

**Mairi Gougeon:** The BRIA was based on the information from our marine analytical unit. Are you referring to the number of vessels that we had outlined would be impacted?

**Rachael Hamilton:** You took the figure from 2018 rather than the figure from 2020, which was significantly reduced, given the reduction in the number of vessels due to the Covid pandemic.

**Mairi Gougeon:** We have figures in there from 2021, not just from 2018.

**Rachael Hamilton:** Okay. The evidence suggests that the number of fishing vessels that were considered to be impacted was much smaller than the number that you put in the evidence paper.

**Mairi Gougeon:** I know that there is a discrepancy between what we outlined in the BRIA and the number of vessels that some stakeholders

say have actually been impacted. I am keen to look at that, to see why there is such a divergence of views. It might be helpful if I hand over to Allan Gibb to talk about how that information was collected and how it fed into the BRIA process.

**Allan Gibb:** From looking at the evidence, I think that the point about whether the process was flawed might be a reference to diving not being mentioned in the BRIA. Of course, diving was not an exempted element beforehand, so that would not represent a shift in policy.

Quite a lot has been said about the BRIA not being accurate on values and numbers of vessels and so forth. We are very keen to understand that, because we do not see, in our analysis, the number of vessels being impacted that has been suggested to us.

There are two things to consider. Any vessel over 12m in length carries a vessel-monitoring system, so our understanding of the activities of vessels that are 12m and more is 100 per cent accurate. We know that. Vessels that are under 12m in length are not required by law to carry a vessel-monitoring system. They submit landing declarations, or catch forms, on which they have to self-declare where they caught the majority of their catch. That is recorded in our local offices and is available to our statisticians. It seems that that is where the discrepancy lies.

I do not know whether what was reported to us was exactly right so our figures are 100 per cent right, whether there is some kind of breakdown in how individuals reported, or whether the figures are not broken down into various areas, because lots of people move about. I have committed some of my staff to explore that with fishermen on the Clyde. They will say, "This is the information that we have: why is it so different from what you are saying?" If there is a reason for that, they will find that reason and fix it.

**Rachael Hamilton:** To develop that, will you say why were you not able to differentiate between management measures for different gear activities to protect spawning cod?

**Allan Gibb:** We can readily identify the different gear types, but the location seems to be the issue, in terms of justifying how many boats operate in each area. Identification of the different gear types—scallop dredge, diving, creel, nephrops trawl, demersal trawl, pelagic, or whatever it happens to be—is relatively straightforward. The conclusion, as you heard earlier this morning, was that disturbance is the issue: those gear types cause disturbance and would therefore minimise the chance of achieving the policy objective. I think that the challenge is that the BRIA is suggesting that there is far less activity in the area than people in the area are claiming. We are using the

information that has been declared to us; we need to understand why it is different from what is claimed.

**Rachael Hamilton:** Cabinet secretary, is this fair, compared to the support that was given through furlough when businesses were shut down due to Covid regulations? Your Government gave such short notice to stakeholders that exemptions would be removed and, therefore, that people's livelihoods would be removed. As one person described it, it would be three months without income, but it is not just that, is it cabinet secretary? It is about the processors, the hauliers and the skippers' families. Other than the pleas from the stakeholders, I cannot see anything in the information that shows that the Scottish Government has taken account of the economic impact of removing the exemptions.

**Mairi Gougeon:** I recognise the impact of the policy change. I have already talked about the process and how we want to learn lessons from it to ensure that we are not in the same position in future. I have also apologised for the process that has led us to where we are in this instance.

Comparing the impact of the order to the impact of Covid is not a fair comparison. We have not offered compensatory measures or payments for similar closures elsewhere, whether it be the North Sea cod avoidance plan or the Inner Sound MPA. The closure is also short term. I recognise the impact that it might have, but vessels can go elsewhere and I know that some do so regularly. Reducing the overall area by 28 per cent means that we have enabled more activity to take place than would normally be the case under the closure.

**Rachael Hamilton:** I am sorry, cabinet secretary, but displacement can cause safety issues and some fishermen cannot move, so their livelihoods are being completely cut off. We have heard evidence from individuals who have had to take loans or dip into savings because they are still having to pay for insurance and other costs that are associated with fishing. If your salary were removed for three months, I am sure that you would feel it.

**Mairi Gougeon:** Again, I understand the impact that the closure might have on some fishers but, as I say, it is a short-term measure. I know that many will move. I realise that that is not necessarily the case for everyone who will be impacted by the closure, but, by achieving the policy directive, we will open up more opportunities after the period of closure has ended.

**Rachael Hamilton:** Has any assessment been made of the future financial benefit that fishermen will get for forgoing their income for 11 weeks?

**Mairi Gougeon:** We do not know what the overall impact of that will be. As I say, I hope that the period of closure will have a positive effect, but it is not possible for us to map out what that might look like.

**Rachael Hamilton:** You are asking the fishermen to trust the Scottish Government, without evidence, and to put their livelihoods on the line with no future benefit.

**Mairi Gougeon:** We are taking a measure that we hope will ultimately boost the stock, and we have strengthened the policy objectives this time around for the overall protections that we are looking to put in place, but, of course, it is just not possible for us to quantify what that will look like. I hope that we will see increased opportunities in the future.

**The Convener:** Cabinet secretary, you told us that the measure might increase stocks. Rachael Hamilton was referring to the fishermen that are currently in the Clyde. Are you talking about an increased stock of scallops or prawns? You said that there would be a benefit from an increase in stock. How will that benefit Clyde fishermen?

**Mairi Gougeon:** I hope that it will provide more fishing opportunities beyond the point of the closure.

**The Convener:** In what way? What fishing opportunities? I am confused.

**Mairi Gougeon:** I am sorry, but I do not really understand what point you are trying to get to.

**The Convener:** You said that the closure would bring more opportunities. What additional opportunities will there be for creel fishermen or scallop fishermen after the closure?

**Mairi Gougeon:** Again, the overall policy objective is to protect spawning cod. Not allowing any activity in that area throughout that time will better protect the areas where we believe the cod to be spawning. If we close those areas and stop fishing taking place there during that time, I hope that we will see an increase in the stock from that point. I hope that it will provide better opportunities.

**The Convener:** Do you have any idea how many cod fishermen are in the Clyde?

**Mairi Gougeon:** I do not know the answer to that. I will ask Allan Gibb.

**The Convener:** I am interested to hear how many cod fishermen there are in the Clyde.

**Allan Gibb:** We do not have cod fishermen; we have fishermen. There is no dedicated cod fishing on the entire west coast of Scotland.

**Dr Allan:** The Government has moved some of the way to meet fishers' concerns. From what you say, that was clearly motivated by a desire to mitigate the impact on the industry. Is the Government open in principle to introducing any other mitigations in future should the evidence merit it?

**Mairi Gougeon:** Absolutely. That is why we want to meet stakeholders after the closure period to consider how we can move forward. However, in essence, we are open to considering mitigations with stakeholders.

**Dr Allan:** The drift of some of the questioning has suggested that to respond to representations made to the Government is an unscientific act. How do you respond to those accusations? I am asking for your view, but you seemed to indicate that to respond to representations is reasonable for a Government to do.

**Mairi Gougeon:** It is. In my role, it is critical to recognise that there are a lot of things to balance. People's livelihoods are on the line and we need to balance the socioeconomic impact with the environmental impact. We want to strike the right balance. I would not be doing my job if I did not listen to representations or take them on board throughout the decision-making process.

Ultimately, that is why we have ended up where we are on the SSI. The process by which we have reached this point has not been ideal. Only through further reflection and trying to work with stakeholders, whether fisheries interests or environmental interests, have we reached the current position, which I believe has struck the right balance between the socioeconomic impact and the policy objective of protecting spawning cod.

You will have seen from the evidence that you have taken that there is nothing by any means easy about reaching such decisions. However, I believe that we have taken the right one with the SSI that is in front of you.

**Dr Allan:** I have a question for Mr Gibb and Dr Needle about the impact that the precautionary principle could have on the industry and environment. I ask them to say a bit more, not so much about the reasoning behind the use of the precautionary principle, but what the scenarios might be if it were not applied and every decision waited for evidence that might never come. Will they give an indication of their thinking about what would happen if the precautionary principle were not applied?

**Allan Gibb:** It is relatively straightforward. There is a precautionary approach and the formal precautionary principle. It is clear from the discussion that there are different opinions and



emphases on the evidence. However, we are very clear on the disturbance point.

If you take a position that you cannot do anything until you have empirical, 100 per cent, consensually agreed evidence across the board, you would not do anything. There would be no stock management or environmental management. We cannot manage the stocks. We do not manage the fish at all—stock management is an often misleading concept. We manage the human activities—the fishing and whatever other activities there are. If we did not take a precautionary approach, there would be no management and negatives would be bound to flow from that. That would be the ultimate consequence.

**Dr Needle:** I do not have anything to add to what Allan Gibb said. He is right.

Fishing science is intrinsically uncertain. You are trying to estimate the numbers and dynamics of animals that you cannot see. You have relatively small samples on which to base your estimation of stock dynamics—that is the same for any fishery, not just the Clyde cod—but you are still expected or requested to supply advice to managers as to how best to manage that resource. That is what we are doing.

In this case, the information that we are using is sparse from the Clyde, but clear on the spawning preference of cod. That is what we have used and that is the basis on which we have provided the advice. Therefore, we are using the precautionary principle in the right way.

10:15

**Karen Adam:** Although the creelers do not catch cod, I am sure that they understand the reasons for protecting cod spawning areas. They will understand that no man is an island and that, when it comes to protecting our seas and our environment, we are all in this together. I am sure that they do not take a selfish view.

How important is it that we have on-going dialogue with stakeholders, and everyone else, so that we ensure that we all understand that the closure is for the greater good of our seas and of the economic environment of our coastal communities?

**Mairi Gougeon:** That is vital and critical to our ability to move forward. The meeting that we had to talk about the closed area was positive, in the sense that environmental stakeholders and fishers were all at the table. We would like more work to be done to bring people together to consider how we can move forward. Environmental protection is absolutely critical, but we must consider the socioeconomic impact of the measures that we

take, too. You raise an important point and we are committed to having such dialogue.

**Ariane Burgess (Highlands and Islands) (Green):** I have a number of questions, one of which Karen Adam has just asked. I appreciate the cabinet secretary's response.

This morning, we will consider a motion to annul the instrument. I would love to understand what the impact of that would be on the area in question.

**Mairi Gougeon:** If the instrument were to be annulled, we would not have the closure in place, and the protections for spawning cod that have been in place since 14 February would be removed.

**Ariane Burgess:** Without that protection, what could we see happening in the area?

**Mairi Gougeon:** We could see an increase in activity by creelers, and in relation to nephrops and scallops as a result of the reopening of the area.

**Ariane Burgess:** What would be the long-term impact of having no protection for the next two years? I know that that might be a hypothetical question, but I am concerned about the possibility of having no protection in place.

**Mairi Gougeon:** As I have set out, ultimately, the policy objective is to protect spawning cod and to try to increase the overall stock. If we did not have the closure in place and activity was to resume, there could be a further impact on the stock, which, so far, has not recovered, despite the closures in previous years. We want to give the stock in the Clyde the best chance that we can to recover. Ultimately, removal of the closure could put that at risk.

**Ariane Burgess:** How would our fishing sector be impacted if the instrument were annulled?

**Mairi Gougeon:** As I said, activity could resume, so, in the short term, there might be less of an economic impact on fishers. However, we are trying to protect the species, and that is where, ultimately, the damage would be done.

**Ariane Burgess:** Thank you. I have a few other questions.

The evidence that we received last week from Mike Heath on the need to allow the stocks to recover and to mitigate unintended bycatch and discards was compelling. What will the cabinet secretary do to address those issues through the future catching policy?

**Mairi Gougeon:** I think that we are due to make announcements on the future catching policy in the coming weeks. I would be happier to talk to the

committee about that at that point rather than go into further detail today.

**Ariane Burgess:** Thank you. The regional inshore fisheries groups are required to establish a management plan for the fisheries in their patch. Is the west coast and Clyde management plan sufficient to achieve a sustainable fishery? It seems not, given that the SSI that is being debated is not part of that plan. So, what else is needed?

**Mairi Gougeon:** Again, that is where the ongoing dialogue that we have with our different stakeholders is important. We want to take forward that collaboration, monitor the effect of the closure, and see—to touch on Dr Allan's point—what other mitigations there might be in the future and how we take that forward. That is the conversation that we want to have after this period of the closure is finished, so that we can assess its effectiveness and how we can move forward from there.

**Ariane Burgess:** It has been good to hear that there is great consideration of the collaboration that has been taking place and that will go forward, and a recognition that that needs to be underpinned in future activity.

Does the cabinet secretary consider that the RIFGs are suitably democratic? Why are community and environmental voices not present at their meetings? Where should those voices make their arguments, if not in the RIFGs?

**Mairi Gougeon:** I will ask Allan Gibb to talk about some of the structures that we have in place for that but, to touch on a point that I mentioned in response to Karen Adam, one of the positive measures has been the ability to get all stakeholders together to discuss the closure and to assess how we can move forward from that. I am keen to do that as we move forward. Allan Gibb can provide more information on some of the other structures.

**The Convener:** This agenda item is specifically about the cod box regulations. Given that we are short on time—we are actually behind time—it might be helpful if you wrote to the committee on Ariane Burgess's question.

**Mairi Gougeon:** I will be happy to provide that further information.

**Mercedes Villalba:** I understand that the latest proposal is that the Clyde cod closure area be reduced and that all fisheries will be able to operate outside that area, including in parts that were previously designated as closure areas.

The Scottish Government commissioned research that found that better spatial management of the trawl fishery and greater access for the creel fishery in the Clyde would generate significantly better gross value added

and employment opportunities. Why has spatial management not been applied to the Clyde?

**Mairi Gougeon:** Again, that is an approach that we are committed to taking forward through our future fisheries management strategy. The basis on which we took the decision about the Clyde closure that is in front of us was, ultimately, to meet our policy objective. We asked for further advice on the area in order to give the best protection to spawning cod where they were most likely to be spawning. I come back to the point about getting the right balance between meeting our policy objectives, the environmental considerations and the socioeconomic considerations; however, ultimately, the policy objective is about protecting spawning cod—which is what we have done through the closure.

**Mercedes Villalba:** So, rather than allow—

**The Convener:** I am sorry, Mercedes, but we need to move on.

**Jim Fairlie:** I apologise to my fellow committee members and to the panel. Unfortunately, my internet connection has been terrible and I have lost large chunks of the evidence session, so I apologise if my question has already been asked. It is specifically for Dr Needle and the scientists.

Clearly, cod is a very sensitive animal when it comes to its spawning. We have differing and competing challenges in the cod box area. Do we want to save the cod in a way that means the socioeconomic impacts are not felt by humans, or is it better to find a solution that saves the cod, given its sensitivity to all the other activity that is going on around it?

**Dr Needle:** I am not sure that I understand the question. You asked whether we want to save the cod, but you also said—

**Jim Fairlie:** Let me rephrase the question. I am looking for the balance between the mitigations that we have to take in order to save the cod and the socioeconomic impacts that we are being told about by the fishing community. Should we just let the cod be fished out of existence, or do we actually want to save it?

**Dr Needle:** It is for society to take a view on that. As a scientific adviser, my role is to provide scientific advice against any question that we are asked. If we are asked how best we can protect spawning cod, we will provide advice on that. If society in general decides that cod in the Clyde are not worth saving and that it would not be worth the socioeconomic hardship, such as there would be, a different piece of advice will need to be given. Scientists do not manage the fisheries; we provide advice to enable managers to manage the fisheries as best they can.

**Jim Fairlie:** That is a fair point. However, in the evidence that we heard last week, everybody told us, “We want to save the cod.” It appears to me that, given the sensitivity of the animal that we are trying to save, the precautionary principle is the one that we would have to take. Is that correct?

**Dr Needle:** Yes. That is true, given the sensitivity of the animal and also, to some extent, the uncertainty of the information on which we are basing the decision.

Although it is a societal decision whether we need to save the cod, that is a bit blunt. It is also true that cod are a top predator in the area and, if we start ruining too many top predators, we will have unintended consequences further down the food chain and further into the ecosystem. From that perspective, in general, it is important to try to maintain the balance between predators and prey, and cod are key predators in the area.

From a scientific perspective, I would personally argue that we need to try to protect cod in the area and, indeed, in other areas, but it remains a societal decision how much we want to do that.

**Jim Fairlie:** Are you saying that there would be unintended consequences for what would be available in the cod box if we allowed the cod to be fished out and it disappeared?

**Dr Needle:** We cannot necessarily predict very succinctly what the consequences would be for the rest of the ecosystem. If a predator is removed from a system, it will have knock-on effects in terms of prey abundance and availability. We would need to be careful in that respect.

**Beatrice Wishart:** We have heard about the socioeconomic impacts of the closure. Is the Scottish Government going to offer any compensation to the individuals who have been unable to fish during the closure? It is a short-term measure, as you said, but people’s livelihoods are on the line.

**Mairi Gougeon:** As I said in a previous response, we have not been looking to do that. That is consistent with other measures that we have taken in other areas where we have prevented activity from taking place, such as with the North Sea cod avoidance plan. It is also consistent with the Inner Sound MPA, where we prevented any activity from taking place. We are not looking to introduce compensation.

**Dr Allan:** I appreciate that, as Dr Needle says, it is for others to decide whether we seek to save the species, but he hinted at consequences. We have not talked very much today about the ecosystem or biodiversity. Can you say anything about any modelling that has been done of the impacts on the wider ecosystem in the Firth of Clyde were there not to be spawning cod there?

10:30

**Allan Gibb:** Coby Needle might be able to comment on whether any modelling has been done, but I will comment on the point about just fishing the cod out.

To an extent, it is a societal question, but we have a legal regulatory obligation to manage fish stocks that are at low biomass level in order to recover them to a healthy level. That is what we do across a number of stocks on the basis of advice from ICES, which Coby Needle mentioned. It is a management decision—it is interfering with nature and the environment. I recall that, when the North Sea cod stock was in a perilous position, there were calls for the banning of nephrops fishing so that there were lots of nephrops for cod to eat, as more food would help cod stocks to recover. We did not do that, because there is a balance of activities. I am not a scientist, but it is reasonable to expect that, if you fish a stock—particularly a top-level predator stock—to extinction or depletion, you will change the natural order in that area of the sea in some way. Who knows whether that will be good or bad, but I am not comfortable about giving up on anything. We should be trying our best to support, enhance and recover. Coby Needle will know whether there is modelling on that.

**Dr Needle:** Marine Scotland science colleagues of mine are certainly developing models on the west coast ecosystem, determining what the likely consequences would be of that sort of action. Specific to the Clyde, you would be better addressing the question to Professor Michael Heath, who gave evidence to the committee last week. He will be leading on that work and will know more about the specific details.

**Dr Allan:** I am content to hear about a model for the west of Scotland, if you want to speak about that.

**Dr Needle:** As I say, it is one of my colleagues in Aberdeen who is leading on that. The model is in development, so we are not using it to provide advice yet. It is quite difficult to do so. ICES in Copenhagen has been going through this process for a number of years. It tends to provide advice on a single stock—North Sea cod, west coast cod and so on—at a time, and it is finding it much more difficult to develop ecosystem-based advice. That is a general feature of marine science. It is relatively straightforward to provide advice on single stocks but much more difficult when we start to consider all the interacting features of an ecosystem. Those models are in development, so I am not in a position to speak in detail about them right now.

If you start removing top predators, you are removing a key part of the commercial fishery. In

my experience of such things, you tend to end up with roughly similar biomass at the end of the process but it might well be biomass that is not particularly palatable to humans. There are areas in which, if you fish down the top predators, you end up with a lot of jellyfish, for example, for which there is not a big market in this country. That is why we need to be careful about maintaining the natural order and predator-prey relationships, where possible. Given that humans are one of the key predators in any marine ecosystem, we have to factor those things in.

**The Convener:** Cabinet secretary, you suggested that there would be a short-term impact on local fishers and that there would be no compensation. You compared the situation to cod closures in the North Sea, but this is completely different. We have heard from one fisherman who will have to move 430 creels from the area for 11 weeks. Given the normal size of a creel boat, fishers are not able to fish as extensively as they might wish—they have to keep to inshore waters and so on. Moving a large quantity of creels risks the stability of vessels from capsize, putting the lives of fishermen at risk. That is 11 weeks without income. I could not survive losing my income for 11 weeks—it just could not happen.

However, it is more than that. We hear your Government talking about the impact of climate change and a just transition for the oil industry and for farmers. Our coastal communities are already feeling the pinch and they cannot just get up and move. We have coastal communities in which families already have no income because of this U-turn in policy. Why can you not consider compensating families, saving their livelihoods and, potentially, saving the economic sustainability of our rural coastal communities?

**Mairi Gougeon:** It is consistent with closures that we have introduced elsewhere, and we have reduced the overall size of this closure by 28 per cent, which allows some of that activity to take place. It is for a period of 11 weeks, which is why compensation has not been considered.

**The Convener:** So, it is okay to lose all your income for 11 weeks.

**Mairi Gougeon:** I am not saying that that is okay—that is why we undertake impact assessments of what the overall impact will be—but it is consistent with measures that we have introduced in other closures, which is why compensation has not been considered.

**The Convener:** Should fishermen be considered in a different way from oil workers or farmers when they are trying to do their best for the just transition?

**Mairi Gougeon:** I am not saying that at all. I reiterate that we have not provided compensation

in relation to other closures that we have introduced, where we have prevented similar activity from taking place. We have reduced the overall size of the closure, and it is for a short period, until 30 April.

**Jenni Minto:** You said in your previous answers that you listened to stakeholders, including the scientists, fishers and environmentalists. You also said that you acknowledged different positions on the issue and took action according to those views and the evidence. What lessons would you draw from the process and look to apply in the future?

**Mairi Gougeon:** I will definitely take a few lessons from the process. It was hard to read and hear the evidence about the lack of trust, because that is something that I am keen to rebuild. Throughout our work with stakeholders and the co-management process that we normally strive to achieve, the approach has not been ideal. There has traditionally been strong collaboration with our different stakeholders. Those are the lessons that I will take away from the process.

There were a number of different impacts that meant that we were very constrained in the time that we had in which to deal with the matter, which is why we have ended up in this situation. We hope to meet with stakeholders after the closure so that we can assess the impact of that. From that, I hope to foster greater collaboration and make sure that we learn the lessons from this process, so that we are not in a similar situation again. I will definitely take that away, and I look forward to increased and further collaboration with our stakeholders.

**Jenni Minto:** Mr Gibb, you mentioned that you are doing a piece of work that involves looking at the records of your vessels and discussing with the fishers how to marry the two up. Could you expand on that, please?

**Allan Gibb:** That particular element is about recognising, through the consultation, the challenges in the BRIA and some of the evidence that has come forward, that assertions were made about a level of activity that we simply did not recognise from our data. It is quite clear from what the committee has heard that one of the judgments that the cabinet secretary makes is on the overall socioeconomic impact of this versus the importance of protecting the cod. I will be concerned if there is a huge discrepancy, and I will need and want to understand why that would be the case. If it is about how records are completed, we will help fishermen to get them done properly. If it is about Marine Scotland not recording data properly, we will fix that. I genuinely do not know the answer.

That is one part. The lesson for me, as the head of sea fisheries, is that we have to do a formal

consultation. There is a legal obligation, but that gives polarised views and often does not help. There are camps, and sometimes those camps do not understand why other people take different views. We need to make a step change in how we consult. There will be competing challenges for space in a number of areas across the whole marine environment. This is not a one-off—we already have lots of closed areas, hence the consistent approach on compensation.

There needs to be a step change not just in the formal consultation but in getting all the voices in one room—which I can facilitate—with no lobbying or throwing brickbats at each other. I do not expect everyone to agree with each other, but they should at least understand where other people are coming from. We have lots of positive examples of that working in other areas, so I hope that we can come to a compromise and a consensual approach that is fit for purpose. That process will not allow a veto over Government, which has to govern, but that is the step change that is required.

**Jenni Minto:** It sounds as though that would pull together all the different voices to get a much more balanced approach in advising the Government what its policy should be.

**Allan Gibb:** Exactly.

**Jenni Minto:** I am pleased to hear that.

**Karen Adam:** Overall, what has been clear today is that Scotland's marine environment is one of this country's greatest treasures, and it is right that we continue to take robust steps to ensure that it remains a prized asset for our future generations. However, it can often be quite complex to get the balance right between competing interests, and there are potential tensions. Has there been a reasonable level of recognition of the complexity involved in taking these decisions—carefully balancing environmental, social and economic interests and using the best evidence that is available to you to protect marine species while allowing fishing activity?

**Mairi Gougeon:** As Allan Gibb alluded, the committee has probably been able, through this discussion, to see the sheer range of views and the competing and complex issues that we have to balance when we take such decisions. What Allan has just set out about moving forward and about where that step change is needed is critical. Today, we are looking at one difficult area, and there will be more to come in the various other measures that we are looking to introduce. Getting the foundations for such decisions right will be critical.

**Rachael Hamilton:** Can I take you back to the co-management process that you mentioned,

cabinet secretary? In the evidence that we took, it was thought that co-management is the gold standard. However, we heard that fishing families want to be able to feed into the process instead of having to accept last-minute policies and compromises that they do not understand and that they fear because they fear that not accepting them might lead to something worse. Are you aware of such a culture of fear in that so-called gold standard of management?

**Mairi Gougeon:** I do not want people to be scared or to have that fear about the process. That is very much not where we want to be. As I said, we want to have the gold standard of co-management. We want to engage with the people who are impacted by such decisions and with all the various interests that are represented. That is absolutely critical for us. That is why, as I said, we are keen to address the points and learn the lessons from this process, in particular. We aim to achieve that gold standard of co-management.

**Rachael Hamilton:** Will you accept as true the accusation that you put the Bute house agreement before fishermen and their livelihoods and families?

**Mairi Gougeon:** That is not true. As I said, a variety of different factors have fed into our change in position and have ultimately led to the SSI that is before the committee today. Through listening to all those different points of view, and through going over the science and the evidence that are available, we have reached the best outcome, which is achieving the policy objective of giving enhanced protection to spawning cod while trying to balance those other interests.

**Rachael Hamilton:** Will you provide the committee with details of all the publicly funded organisations that, within those stakeholder inputs, campaigned for the removal of the exemptions?

**Mairi Gougeon:** I do not know that information off the top of my head, but, if there is information that I can provide to the committee, I will be sure to do that.

**Rachael Hamilton:** Thank you.

**Dr Allan:** We have heard about the financial impacts of the closures, and I do not doubt that those are real.

Many of us around the table represent fishing communities and we are familiar with the biggest issues that people in those communities bring to us. Those are around the financial impacts on businesses, families and individuals that have been caused by difficulties in accessing European markets and in finding a workforce for fishing and fish processing. Where do some of the issues that we have been talking about fit into the

Government's response to the realities of Scotland being dragged out of the European Union?

10:45

**Mairi Gougeon:** I recognise that the measure comes on the back of a really challenging time for people. The loss of EU markets has had a stark impact, including in relation to labour issues. I met you and some of your constituents to talk about those very issues.

We have talked through the process of how we reached the decision and the financial information that is taken into account when looking at decisions such as this. Undoubtedly, this has been a particularly difficult time for the industry because of some of the other issues that you outlined.

**Dr Allan:** The only thing that I would add to that is a certain word that you are too polite to mention: Brexit. That has had a real impact on those communities.

**Beatrice Wishart:** This discussion is all about the Clyde cod box. However, will the cabinet secretary tell us what consideration has been given to wider spawning grounds when deciding on offshore wind areas? I do not expect you to answer that today, but perhaps you could provide a written response.

**Mairi Gougeon:** Yes, I can. Again, that touches on some of the difficult and complex decisions that we will have to take in the future, as we will have to balance those interests, too.

**The Convener:** I call Jim Fairlie.

**Jim Fairlie:** Can everybody hear me?

**The Convener:** Yes.

**Jim Fairlie:** I am working very remotely and using a phone, which is quite tricky.

There are, undoubtedly, huge pressures on the fishing community right now, and, as Dr Allan just mentioned, Brexit is one of the biggest of those pressures. Through the earlier questioning, we have already established that the right thing to do, from an ecological point of view and to ensure that we do not take out a top predator, is to try to save cod. That being the case, we must take action to do so.

I do not know whether you were included in this, cabinet secretary, but, this week or last, all committee members were tagged in a Twitter thread in which competing interests in the cod box issue were—I will be polite—talking to each other. They were being less than polite; they were like ferrets in a sack. As far as I can see, that is because they simply cannot agree on anything. Maybe I am missing something, because I am not in a coastal community—I do not know. However,

there seems to be a huge divergence of opinion on what the right way to go is to protect individual species and individual industries. How does the Government manage all those competing factions? Some folk want there to be no fishing, and other folk want their sector to be protected but are not too worried about other sectors. How can the Government be the guy in the middle and find the solutions to make sure that all interests are protected?

**The Convener:** Before you answer that, cabinet secretary, I ask that we try to stick to the cod box issue, which is what we are discussing today, rather than spreading things a little bit wider, given the time constraints.

**Jim Fairlie:** Convener, I am absolutely talking about the cod box. I am talking about the pressure that families are feeling across the industry. They do not care where the problem comes from; they just know that they have a problem. I am very much thinking of those people who have an interest in the cod box—that was the basis of my question.

**Mairi Gougeon:** We have to try to manage that as best we can. I am dependent on the advice that I receive, which includes advice from the likes of Dr Needle. I also speak to people and listen to different representations. Ultimately, we try to take the best decision that will meet the policy objective, and will protect and, I hope, increase the cod stock biomass. However, we must also recognise that there are socioeconomic consequences to that, so we must balance those aspects as best we can.

I think that we have achieved that with the SSI that is in front of the committee today, by reducing the closure area and allowing more activity to take place, while ultimately protecting the spawning cod.

**The Convener:** I call Mercedes Villalba.

**Jim Fairlie:** Can I follow up on my question, please?

**The Convener:** If you are very brief.

**Jim Fairlie:** I do not know whether you addressed this earlier. You have to find a balance for all the competing sectors. Does that mean that you will consult over the coming year in relation to 2023? Will you be able to get everybody in the room to thrash out the problems?

**Mairi Gougeon:** I go back to what Allan Gibb said about lessons that we are looking to learn and making sure that we hear all the different interests and perspectives so that we can understand people's positions and find a way forward. That is a positive action that we can take away from the current process.

**The Convener:** Finally, we come to Mercedes Villalba.

**Mercedes Villalba:** I have a straightforward yes or no question for Mr Gibb, the cabinet secretary and Dr Needle. Is it your view that trawling and dredging have a bigger environmental impact than creeling and diving?

**Mairi Gougeon:** They have a different impact. We have not tried to say that they all have exactly the same impact.

In relation to the cod box, all activity has been prohibited because any activity has the potential to impact on spawning cod. That is why all activity has been stopped throughout the closure period.

**Mercedes Villalba:** Do Mr Gibb and Dr Needle agree?

**Allan Gibb:** I agree with what the cabinet secretary said about the cod box and disturbance, but, in answer to your basic question, yes, mobile activity has a larger impact than some other activities.

**Mercedes Villalba:** Dr Needle, you are nodding.

**Dr Needle:** Yes, I would agree. Benthic disturbance—disturbance of the sea bed—in particular has a bigger impact.

**Mercedes Villalba:** Based on that, following the reduction of the closure area, why has all fishing activity in the border area—the area that is outside the new closure area but within the original closure area—been treated equally?

**Mairi Gougeon:** Do you mean activity within the closed area?

**Mercedes Villalba:** When you reduced the closure area to make it smaller, on what basis was the decision made to allow all fishing to take place in the area that falls outside the present closure area but which was part of the original area?

**Mairi Gougeon:** All activity was prevented because of the issue of disturbance, which I talked about.

**Mercedes Villalba:** That is the case in the new closure area but, outside that area, all fishing is now allowed. The original closure area has been reduced. In an area where all fishing activity was previously excluded, all activity is now allowed. Why has there been no variation between different types of activity?

**Allan Gibb:** I do not think that that is right. We looked at the existing closure area. That remains—it has not been reduced, apart from a section in the middle of it; 28 per cent has been left open. We have not changed the boundaries anywhere else.

The part that is closed has not been reduced. It is the right area. The part that is closed is closed to everybody, because cod can or may spawn there. That is where the point about disturbance of habitat comes in. Part of the original closure area has remained open, following reflection by the Scottish Government. That is because we have a high degree of belief, if not certainty, that there will not be any spawning cod in that area because of the habitat. So far, the monitoring has proven that to be case. We have not reduced the area elsewhere.

**Mercedes Villalba:** So, the precautionary approach has not been applied at all in that 28 per cent of the area that you have taken out—there is no precautionary approach there; there is just a free-for-all, with any type of activity allowed.

**Allan Gibb:** No, not at all. It is entirely precautionary. It is precautionary in relation to the policy, not in relation to fishing, mobile or otherwise. This is about protecting the spawning cod. I think that getting everyone to stay focused on the objective has been part of the challenge. It is not about types of fishing and so on.

The bit that is open is precautionary in the sense that spawning cod will not be there. It is only mud. There will not even be scallops, and therefore there will be no scallop dredging; there will only be nephrops. It is a nephrops habitat; it is not for scallops or spawning cod. The approach is precautionary and evidenced.

**Rachael Hamilton:** I would like some clarification of the 28 per cent area. Was that area previously closed?

**Allan Gibb:** Yes, but with exemptions.

**Rachael Hamilton:** Well, I rest my case.

**Jackie Baillie:** I find this entirely inconsistent. That area was previously included. You said that you do not have much evidence about that area of the Clyde, yet you have taken it out. We hear that it is because of representations made—I accept that—but it is not based on the science, and I think that we should be honest about that.

**Allan Gibb:** What I said was that the entire area was closed, with exemptions that permitted nephrops trawlers, scallop dredgers and creelers to fish in some areas. The evidence that we are using suggests that any disturbance, including that which is created by those methods, is detrimental to the spawning activities. The decision to leave an area open is science based, because that area is mud habitat. Spawning cod will not be there, so there is no need to close that area.

**Jackie Baillie:** But it was closed previously, on the basis of the same science.

**Allan Gibb:** It was not based on the same science.

**Jackie Baillie:** Is there new science?

**Allan Gibb:** We are looking at the best available science that we have now.

**Jackie Baillie:** So, there is no new science.

**Allan Gibb:** The original closure was based on collaboration with Government and industry around the issue of what area would be the right place to close.

**Jackie Baillie:** But there is no new science.

**Allan Gibb:** We are being far more directive in order to deliver the maximum protection.

**Mairi Gougeon:** That is part of the extra advice and information that we sought from Dr Needle in relation to looking again at the closure to find out whether we are closing off the correct areas and prohibiting the right fishing measures in that closure.

**Jackie Baillie:** I entirely accept that. However, what I want is a degree of transparency about where the decisions are based on risk, where they are based on new science and where they are based on lobbying by stakeholders. I think that that is important information. If we do not have it, you could find yourself in a situation in which you could be destroying livelihoods and protecting the wrong area, which would be a disaster in everybody's book.

**The Convener:** That opens up some questions about what additional science-based evidence was introduced between order number 1 and order number 2.

Jim Fairlie would like to ask a final and very short question, and then we will need to move on.

**Jim Fairlie:** My question has been answered already.

**The Convener:** Okay. Cabinet secretary, I thank you and your officials for staying with us for this extended period. We really appreciate it. As you can understand, there are a lot of questions to be asked.

Agenda item 2 relates to motion S6M-03543, in the name of Rachael Hamilton, which asks the committee to agree to recommend that the instrument be annulled.

I invite Rachael Hamilton to set out her reasons for lodging the motion. The cabinet secretary will have an opportunity to comment and can bring in her officials as necessary. We will debate the motion formally at item 3.

**Rachael Hamilton:** Thank you for allowing me to explain my reasons for lodging the motion to annul the instrument.

The Firth of Clyde closure is an expected yearly event that fishermen have supported since its initial implementation to ensure sustainability. Fishermen have supported that for their livelihoods and to encourage sustainability of cod and other fish in their fishing areas so that that tradition can continue. This year is different, with there being no exemptions for any fishermen, which means that those who would normally continue to have some income now have none.

11:00

Last week, Elaine Whyte of the Clyde Fishermen's Association told the committee how removal of the exemptions is detrimental to the fishermen who are proud to call the Firth of Clyde their home waters. She said that fishermen are having to find other sources of income because they simply have no alternative. According to other witnesses, the Scottish Government did not follow the business and regulatory impact assessment guidance for policy officials.

Last Thursday, in response to my colleague Jackson Carlaw MSP, the cabinet secretary said that she had listened to the industry, but it appears that the reality of the situation is different to what was said in the chamber.

The committee will be aware that fishermen are struggling to find any source of income, and they were told bluntly by the cabinet secretary that there would be no financial help or compensation from the Scottish Government. Again, to quote a witness, a seemingly "knee-jerk reaction" without consultation or evidence concluded that there was no need for compensation.

At a time when living costs are rising, we cannot afford to abandon our fishing communities as the Government is doing. The removal of the exemptions will result in reduced income for vessel crews and will have a knock-on effect on the livelihoods of families and the coastal communities that some people in this room represent.

I urge members to think about the evidence that we have heard and to imagine themselves in the position of the fishermen who will be left without work for 11 weeks or be forced to work in unsafe surroundings and conditions or, which would be even worse, not be able to move elsewhere. The truth is that the Scottish Government did not consult the fishermen properly. Elspeth Macdonald from the Scottish Fishermen's Federation suggested that, given the outcome, the consultation document misled the industry and effectively gave it a false sense of security without



providing any real opportunity to argue against the removal of the exemptions.

The committee heard that stakeholders had insufficient warning about changes to proposals, and that there was a lack of stakeholder engagement in advance of the announcement of the removal of existing exemptions. Furthermore, stakeholders said that there was a lack of collaborative working from the Scottish Government and, worryingly, they did not have equal access to the information that others had access to.

I suggest that that was not a level playing field. Consultation responses were published only at the end of January 2022, after two orders had been made. That shows a serious lack of transparency in the decision-making process. The committee should be worried about what we have heard today and from witnesses in the past. I have been motivated to seek annulment of the order because bad regulation cannot be the cornerstone of the Scottish Parliament.

The Bute house agreement has been raised as a concern. The committee has a duty to hold the SNP-Green collaboration to account. We cannot allow this badly executed process, which is clearly detrimental to Clyde fishermen, to impact on socioeconomic, environmental, safety and proportionality considerations. Ultimately, each of us should heed our witnesses' warnings of the Scottish Government's decision-making process.

As was said by Simon Macdonald at committee:

"If you want to hear from a conservationist, ask a fisherman, because their livelihood and their future as well as their family's future depend on ... conservation".—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 2 March 2022; c 5.]

The Scottish Government has failed to do that.

I will finish by quoting the words of Elaine Whyte, because they perfectly summarise my decision to lodge a motion to annul.

"We are moving to managing fisheries by campaigning as opposed to by data, science and process, which sets a very worrying precedent."—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 2 March 2022; c 9.]

Colleagues should consider supporting my motion to annul the order. Thank you.

**The Convener:** As no member of the committee wishes to ask Rachael Hamilton any questions, I turn to the cabinet secretary.

**Mairi Gougeon:** I will reiterate some of what I have said throughout the meeting. The committee has heard from a cross-section of stakeholders and has heard a diverse range of views. I have already talked about the complexity of the issue; the evidence that you have heard outlines that.

It is a difficult situation to find a solution to; in this case, it is impossible to find one that would make everyone equally happy. As the cabinet secretary who is responsible for fisheries management and protection, it is my job—as I outlined in response to Jim Fairlie's question—to take on board and try, no matter how well-intentioned they are, to balance all the competing interests.

Rachael Hamilton talked about some of the comments that I made in response to Jackson Carlaw's parliamentary question last week. In that response, I said:

"Responsible fisheries management means ensuring that we get the right balance between socioeconomic and environmental outcomes."—[*Official Report*, 3 March 2020; c 60.]

In this case, we have done that by increasing protections for spawning cod while also ensuring that fishing can continue to take place in surrounding areas.

The committee has also heard a variety of scientific opinions about what constitutes protection. However, on the advice of Dr Needle, who is the chief fisheries adviser for Scotland, we are applying the precautionary approach and minimising disturbance of the sea bed during the spawning period in the known spawning area. That is the fundamental objective and it is important that we not lose sight of it.

As I said in my opening comments and have said throughout the meeting, the process that led up to the SSI being laid before the committee was by no means ideal, but I firmly stand by the closure decision and believe that we are doing the right thing to contribute to protection of spawning cod.

I have outlined the next steps that Marine Scotland will take. Allan Gibb also talked about monitoring and compliance. We will meet stakeholders after the closure ends this year to hear their thoughts on how it has worked. As we also said, we will look to learn lessons on how the processes can be improved. However, ensuring that the closure was in place from 14 February until the end of April was the right decision and was our number 1 priority.

I hope that Rachael Hamilton will consider not moving her motion and, failing that, that the committee will not support it.

**The Convener:** We move on to formal consideration of the motion to annul. I ask Rachael Hamilton to speak to and move motion S6M-03543.

**Rachael Hamilton:** I thank you for giving me this opportunity, convener. I listened carefully to what the cabinet secretary had to say. I believe

even more that my arguments for annulling the order are justified, because neither the cabinet secretary nor Marine Scotland has justified the Scottish Government's actions. The process is utterly botched. There is a complete lack of evidence. There is a lack of engagement, fishermen are fearful and questions need to be asked about the intent of the Bute house agreement, which seems to be behind what has happened and the devastating impact to the fishermen on the Clyde.

I move,

That the Rural Affairs, Islands and Natural Environment Committee recommends that the Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022 (SSI 2022/35) be annulled.

**Mercedes Villalba:** I am not sure how everything works, but I will say what I think.

The closure has not been introduced fairly. I would like the Government to go away, rethink it and bring it back, if that is an option. If we need to annul the order for that to happen, on balance I support that.

I am concerned about the evidence base. I am supportive of a precautionary approach, but that needs to be balanced with economic factors and livelihoods. The Government has not got the balance right on that.

During the meeting, I have been looking at the research papers that were cited, and I cannot even see that thing about 5m to 10m above the sea bed; it seems to be based on tidal activity rather than fishing. I just do not feel that, on the whole, the approach is right. I therefore support the motion to annul.

**Dr Allan:** I do not think that anyone would underestimate the difficulties around the issue and the balancing acts that are involved, but I think that we are dealing with a Government that has attempted to meet concerns, so I will vote accordingly.

**Jim Fairlie:** I am sorry, but I am hearing only bits and pieces of the conversation.

I urge the cabinet secretary to get the fishing communities into the room to talk to each other about what needs to be done for next year. I will not support the motion to annul, because the precautionary principle is correct in trying to protect the cod stocks. We have heard from every stakeholder. They have all said the same thing, which is that they want the cod stocks to be protected. Clearly, there have been issues with the process, so it would be great if that could be improved, but, at this point, I will not support the motion to annul.

**Beatrice Wishart:** I think that we all agree that this has been a botched process and that how it

has been handled does no credit to Marine Scotland or the Scottish Government. Fishermen's livelihoods—which are not about one individual—are at risk. We have all heard the evidence. We have also heard that, in the past 20 years, the cod stocks have not recovered. There is therefore an imbalance in the understanding of how the new approach will make any difference. I have to say that I am finding this issue extremely difficult.

**The Convener:** Does any other member wish to speak? I call Jackie Baillie.

**Jackie Baillie:** Convener, I was staying quiet because I do not have a vote, as I am not a member of the committee. My opening position is that I share the ambition to protect cod stocks. However, the way that the process has been done has led to a lack of confidence in Marine Scotland's thinking and evidential base, and that has harmed the debate.

There is a lack of specific evidence about the Clyde. That has been acknowledged by everybody. It is being rectified, and I welcome that. However, it is the case that cod in the Clyde are different. On the west coast, juveniles occupy shallow coastal habitats, whereas, in the North Sea, they occupy offshore banks. Their behaviours are different, and we have not taken the time to understand that.

I understand the risk-based approach, but the Government appears to be muddling the evidential and the risk-based approaches, because evidence in relation to the Clyde is simply not there. I am genuinely worried that we are excluding areas that we previously thought it important to include. Whether that is based on evidence, discussion or debate, I genuinely do not know. We are at risk of taking away people's livelihoods but might not be protecting the areas that we need to protect. On that basis, I genuinely ask whether the cabinet secretary would withdraw the SSI and bring it back, because we share the ambition of protecting the cod stocks. However, we need to do that properly; the exercise has not been done properly, on this occasion.

**The Convener:** As the cabinet secretary has admitted, the process has been flawed from the start, and I believe that it is still flawed at the finish. The unprecedented numbers of responses about the first order that was laid, and the subsequent very short timescale before the second order was laid, are of concern, and there is a lack of transparency over what factors contributed to the orders being changed. We have heard of concerns about scientific evidence, data collection and monitoring, a lack of appreciation of the impact of the closures on socioeconomic aspects and environmental safety, and proportionality. One fisherman suggested that the comment about a

short-term economic impact on local fishers showed an “almost flippant attitude”.

I have concerns that, given the new Bute house agreement, this will not be the last order of this type that we see in front of us. On that basis, there needs to be some recognition that, along with other sectors, whether that is oil and gas, transport or farming, a transition to a more sustainable way of fishing needs to be compensated for or supported in some way. There is a complete lack of appreciation of the impact on fishers as they try to do the best thing, which is to create sustainable fisheries. On that basis, I will support the motion to annul.

11:15

**Ariane Burgess:** From the evidence that I have heard today, I think that protecting future cod fisheries is paramount, and I agree with the precautionary approach, so I will not support the motion to annul. However, going forward, we must get all the voices in the room, which you have indicated that you are planning to do. Assessing the closure after this period of time is important. Something that has come to me very strongly in the course of these evidence sessions and other ones that we have been taking on the marine space is that there is a lack of resource for an increasing amount of responsibility for Marine Scotland.

That needs to be reviewed, and we need to have the right resource for data gathering and monitoring so that we understand the spatial issues, the spawning issues and whatever other issues we need to understand, so that we have fisheries for the future. What we are talking about here and what we are trying to do for the long term is ensure that people who need to fish to make a living have fish in 10, 20 or 100 years from now. The precautionary approach is the right approach, because we are looking for a long-term impact.

**Karen Adam:** I will not support the motion to annul. After hearing the evidence, I am in favour of protecting the cod spawning grounds for future generations and the future sustainability of fishing for coastal communities. I hear and understand that there are competing views on the matter and the Scottish Government has been reflective in its process, and I am glad that there will be discussions about that. I am glad that Rachael Hamilton is concerned about the wellbeing of and socioeconomic implications for fishermen in coastal areas, and I hope that we see more of that.

There are long-term implications for our fishing and coastal communities—I represent one—in relation to Brexit and the rising cost of living. Adding an environmental disaster on top of that

and reducing the potential amount of cod for future generations would be too big of an impact, so I will not support the motion.

**Jenni Minto:** I have found this process incredibly difficult. I represent Argyll and Bute, which is one of the constituencies that are impacted by the decision. I have thought long and hard about this. I have spoken to all the communities that are impacted, and it is clear that we have to strike the right balance between sustainability of stocks and sustainability of communities. What the Government and Marine Scotland have done in relation to the process could have been better, but they have listened to what stakeholders have said.

I agree entirely with what my colleague Ariane Burgess said about ensuring that we continue to pull the right people around the table and listen to them. I appreciate that there are polarised views, but we have to come to some agreement and strike the right balance to ensure the sustainability of the fish and the communities. I will vote against the motion to annul.

**The Convener:** As no member has any other points to raise, I ask the minister to respond.

**Mairi Gougeon:** I have covered a lot of these comments in my previous remarks. I understand where Mercedes Villalba is coming from in relation to some of her points. However, I re-emphasise the point that agreeing to the motion to annul the instrument that is before the committee today would remove all protections.

I recognise members' points about the process. As I have said previously, we absolutely want to ensure that we learn lessons from this.

**The Convener:** On that point, I presume that, if the instrument was to be annulled, the Government would need to lay another instrument. Are you suggesting that, if the instrument was to be annulled, you would walk away from protecting cod altogether?

**Mairi Gougeon:** Of course, we would not want to do that, but that is essentially what the committee would allow to happen if the SSI were annulled. If more work was to be done, that would take time, during which the protection would not be in place. That would be during spawning time, which is a short window.

I have covered the other issues in my previous remarks, so I draw to a close in highlighting that aspect to the committee.

**The Convener:** I invite Rachael Hamilton to wind up.

**Rachael Hamilton:** I thank committee members for setting out their stall. Of course, we want to

protect cod stocks; so, too, do fishermen—they call themselves conservationists.

I am disappointed that some colleagues are not considering the issue seriously enough. They are just getting behind the Government. It is a spineless approach by SNP back benchers. In particular, I am afraid that I have to call out my colleague Jenni Minto, as she called for compensation for her constituents in January over this. I am sorry, Jenni, that your Government does not support you or your constituents on that.

It is imperative that the cabinet secretary takes our concerns at face value. I will press my motion. The matter is urgent and the Government must quickly come back to the table with new proposals.

I know that my motion to annul will fail today because I do not have the numbers behind me. The odds are stacked against me because SNP back benchers will support the Government's position, which is regrettable. However, I urge the Government to urgently carry out a review and come back with new proposals.

**Dr Allan:** Convener, can I ask if it is—

**The Convener:** No, sorry.

**Dr Allan:** No, can I ask if it is entirely parliamentary—

**The Convener:** Is it a point of order?

**Dr Allan:** On a point of order, convener. Is it entirely parliamentary for members on the committee to describe each other as “spineless”?

**The Convener:** I have no comment to make on that.

We will move on. The question is, that motion S6M-03543, in the name of Rachael Hamilton, be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division. As we are meeting in hybrid format, I ask members who are attending virtually to vote via the chat function by putting yes, no or abstain and members who are in the committee room to vote by raising their hands.

#### **For**

Carson, Finlay (Galloway and West Dumfries) (Con)  
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

#### **Against**

Adam, Karen (Banffshire and Buchan Coast) (SNP)  
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)  
Burgess, Ariane (Highlands and Islands) (Green)  
Fairlie, Jim (Perthshire South and Kinross-shire)(SNP)  
Minto, Jenni (SNP) (Argyll and Bute) (SNP)

#### **Abstentions**

Villalba, Mercedes (North East Scotland) (Lab)  
Wishart, Beatrice (Shetland Islands) (LD)

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

*Motion disagreed to.*

**The Convener:** The committee must now produce a report on the instrument. Are members content to delegate responsibility to me to sign off the report on behalf of the committee? It will be a brief factual report, with a link to this and last week's *Official Report*.

**Members indicated agreement.**

**The Convener:** Under item 4, I ask whether any member has any comment on the Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No 2) Order 2022. Please raise your hand or type R in the chat box if you are participating remotely.

Committee paper 2 sets out options for our following up the instrument, including in relation to the joint fisheries statement, which we will consider on 23 March, any related future inquiry work and the instrument for next year's fishing ban, when it is laid. Do members agree to follow up the issues that have been raised in the instrument in those future areas of our work programme?

**Members indicated agreement.**

**The Convener:** I thank the cabinet secretary and her officials for attending today.

### **Ivory Prohibitions (Civil Sanctions) Regulations 2022**

11:26

**The Convener:** Item 5 is consideration of the Ivory Prohibitions (Civil Sanctions) Regulations 2022. I refer members to committee paper 3.

Under the protocol between the Scottish Parliament and the Scottish Government, the consent notification has been categorised as type 1, meaning that the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the United Kingdom Government making secondary legislation in areas of devolved competence.

Does any member have any comments on the consent notification? Please raise your hand or type R in the chat box if you are participating remotely.

I see that no member wishes to comment.

Is the committee content that the provisions set out in the notification should be included in the proposed UK SI? Please raise your hand or type N

in the chat box if you do not agree; otherwise I will presume that members are content.

As no member objects, that is agreed.

That concludes our business in public, and we now move into private session.

11:27

*Meeting continued in private until 12:25.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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