

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 10 June 2009

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE **16th Meeting 2009, Session 3**

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)
*Liam McArthur (Orkney) (LD)
*Alasdair Morgan (South of Scotland) (SNP)
*Elaine Murray (Dumfries) (Lab)
*Peter Peacock (Highlands and Islands) (Lab)
*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Rhoda Grant (Highlands and Islands) (Lab)
Jamie Hepburn (Central Scotland) (SNP)
Jim Hume (South of Scotland) (LD)
Nanette Milne (North East Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Lloyd Austin (Scottish Environment LINK)
Ian Burrett (Scottish Sea Angling Conservation Network)
Roseanna Cunningham (Minister for Environment)
Colin Galbraith (Scottish Natural Heritage)
George Hamilton (Highland Council)
Kevin Philpott (Scottish Government Environmental Quality Directorate)
Andy Rosie (Scottish Environment Protection Agency)
Captain Jim Simpson (Scottish Coastal Forum)
Patrick Stewart (Scottish Fishermen's Federation)
Professor Phil Thomas (Scottish Salmon Producers Organisation)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Roz Wheeler

ASSISTANT CLERK

Lori Gray

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 10 June 2009

[THE CONVENER *opened the meeting at 10:01*]

Subordinate Legislation

Environmental Liability (Scotland) Regulations 2009 (Draft)

The Convener (Maureen Watt): I welcome everybody to the committee's 16th meeting in 2009 and apologise for my croaky voice. I ask everyone to turn off their mobile phones and pagers, as they impact on the broadcasting system. The main purpose of today's meeting is to take evidence on the Marine (Scotland) Bill. This will be the committee's second evidence session on the bill and will involve a wide range of stakeholders.

Agenda item 1 is evidence taking on an affirmative instrument. I welcome the Minister for Environment, Roseanna Cunningham, and her officials from the Scottish Government: Stuart Foubister, divisional solicitor from the solicitors food and environment division; Heather McCabe, waste and pollution reduction policy officer; and Kevin Philpott, waste regulation senior policy officer.

The Subordinate Legislation Committee has commented on the instrument and its comments are reproduced in paper RAE/S3/09/16/2. In addition, the committee took evidence on the regulations from representatives of Scottish Environment LINK and NFU Scotland at its meeting on 27 May. A copy of their written submissions and an extract of the *Official Report* of that meeting make up paper RAE/S3/09/16/3, which members should have.

Members may ask questions about the content of the instrument before we move to the formal debate on the motion at agenda item 2. Officials can comment during item 1, but cannot participate in the formal debate. I invite the minister to make a brief opening statement.

The Minister for Environment (Roseanna Cunningham): I welcome this opportunity. Members may be aware that infraction procedures are being taken against the United Kingdom at the European Court of Justice in respect of the European Union environmental liability directive and we are anxious to get the regulations passed.

The regulations transpose the EU environmental liability directive into Scots law. The directive was originally developed out of concern at the damage that was caused to the environment from a number of large-scale incidents throughout Europe in the past 20 years. The aim is to establish a new kind of civil law mechanism that is based on the polluter-pays principle. The regulations will therefore take the burden of costs for cleaning up the environment in cases of incidents relating to significant damage to aspects of water, land or biodiversity away from the Scottish taxpayer and place it solely with the polluting operator.

An important factor to remember is that the provisions in the regulations will apply only when an operator's activities bring about significant damage or the threat of significant damage to water, land or protected species and natural habitats. As the committee is aware, the environment is already protected by existing legislation; therefore, normal day-to-day activities should continue to be dealt with under existing legislation.

The Government conducted two public consultation exercises on the directive. The first began on 21 December 2006, under the previous Government, and ended on 23 March 2007. The second was carried out between 16 May 2008 and 8 August 2008, and took into consideration views from the previous consultation.

The first consultation highlighted specific concerns on extending the scope of the regulations to nationally protected biodiversity sites—sites of special scientific interest—and on genetically modified organisms. In the case of GMOs, concern was raised by respondents about the long-term damage that could be caused by the release of GMOs. Many respondents were not in favour of allowing permit or state-of-the-art defences as an exemption from an incident arising from the release of a GMO.

Around 70 per cent of responses supported the proposal not to go beyond the basic requirements of the directive and include nationally protected habitats and species. Many, including Scottish Natural Heritage, thought that the existing legislation covering nationally protected sites was adequate and did not see any advantage in including those sites in the regulations. I know that there was some discussion last week about what that 70 per cent represented. That could form an interesting part of the debate, given that all those who responded were, as it were, representative bodies, which will always be the case with consultations.

We have designated three competent authorities to oversee the regime: the Scottish Environment Protection Agency; Scottish Natural Heritage; and Scottish ministers. However, regulation 8 allows a

competent authority to call upon the expertise of another public body if the authority feels that that other body is better placed to deal with any incident.

The competent authority will be able to recover costs from the offending operator, including costs that are incurred in performing its duties such as investigating, assessing damage, monitoring and supervising any necessary preventive or remediation measures. Further, an operator can lodge an appeal to the sheriff but any decision that is made by the sheriff will be final.

The regulations include offences if an operator, without reasonable cause, does not comply with certain conditions in the regulations.

I invite the committee to recommend the Environmental Liability (Scotland) Regulations 2009 to the Parliament. I am, however, conscious that some questions have been asked, particularly by Elaine Murray, about the extent of the coverage of the directive in this country. Different countries in Europe have taken different positions on that, and I want to say at the outset that I am happy to make a commitment to come back to the committee in two years—before the election in 2011—with an update of how the directive has operated in practice, if the committee wants to put that into its forward work programme. That will enable us to consider whether the decisions that we are making at the moment with regard to the extension of the directive are the right ones. If they are not the right ones, we will be able to revisit that in two years' time.

The Convener: Are there any questions?

Elaine Murray (Dumfries) (Lab): My question is more of a comment, as I am significantly reassured by what the minister has said.

Obviously, there is an issue for the committee, because the United Kingdom is facing infraction procedures. Further, there is general consensus that the directive is a good thing; both the witnesses to whom we spoke last week were in favour of the directive—there was simply a question about whether it should be extended to SSSIs and Ramsar sites. Scottish Environment LINK argued that, if the directive were extended, it would result in better legislation, which would be fairer to farmers, but the NFUS did not see it in quite the same way. We saw figures that suggested that an extra one to three cases a year might be involved if the directive were extended to SSSIs.

The minister's commitment to come back to the committee is welcome. When would you do that? You said that it would be before the next election.

Roseanna Cunningham: In fairness, I could commit us only up to that point. It might be

appropriate for the committee to consider scheduling a meeting—at a time that is convenient to you—at which I and my officials could discuss the situation with you. That would provide an opportunity to check up on what had been happening over the previous two years.

One difficulty with that is that two years might not be a long enough period. We are talking about significant events, and it is entirely possible that there might not be any in that two-year period—although, I suppose that that would be an experience that would be relevant to the operation of the directive as well. If it turns out that there are a number of significant events in that timescale, we can consider the decision that has been made and think about whether we ought to extend the directive further.

There is a general feeling in Scotland that we do not want to gold plate everything that comes from the EU. I understand that committee members are conscious of that. South of the border, the area of land that has an SSSI designation is an extremely small percentage of the overall area, whereas the figure for Scotland is something like 12.9 per cent of our land mass. That means that we would be considering extending the directive to a significant area of land, and there is a concern that we might be overregulating if we do that.

With two years' experience, we should be able to see whether the extra regulation was needed. We are confident that it will not be needed, but we are willing to discuss the experience of that two-year period with the committee and to reconsider at that point.

Liam McArthur (Orkney) (LD): Our exchanges with Scottish Environment LINK and the NFUS also touched on the regulatory impact assessment. Perhaps unfairly, I asked the witnesses to comment on how the figures might have been arrived at, principally because Scottish Environment LINK was praying them in aid of its arguments.

It would be helpful if you could set out in a little detail how the figure of £316,000 of benefits was arrived at. Is that the investment in maintaining the SSSIs that, were the legislation not to be extended to those sites and Ramsar sites, could be under threat? Can you also say what the £93,000 of costs is made up of?

Roseanna Cunningham: Kevin Philpott will answer that question.

Kevin Philpott (Scottish Government Environmental Quality Directorate): I will, but I am afraid that I cannot give very detailed information.

The figures that appear in the Scottish regulatory impact assessment were based on

English figures that were examined by SNH and its own economists. I cannot really comment on how those details were arrived at. SNH has subsequently examined the figures and has said that the costs of around £10,000 to £60,000 per event are probably true. The difficulty that it has found, however, is that there is no upper limit to what the costs might be. Perhaps we should have emphasised that rather more in the regulatory impact assessment.

Liam McArthur: Is the figure for the benefits to do with the investment that is going into the SSSIs?

Kevin Philpott: I am afraid that I do not know.

John Scott (Ayr) (Con): First, I declare an interest as a farmer and a member of the NFUS—I do so at the beginning of the meeting this week, rather than at the end, which is what I did last week.

It is entirely appropriate that the matter is being considered by the Rural Affairs and Environment Committee, because the information that we have is that agriculture will bear 35 per cent of the costs that we are talking about.

Last week, I expressed concern that people might inadvertently fall foul of the regulations, which I believe—although I appreciate the minister's difficulty regarding infraction procedures—gold plate what is already in place. I appreciate that the regulations are not retrospective, so we will start with a clean sheet, but the accepted wisdom on permit or state-of-the-art defences now may not be the accepted wisdom on them 10 years down the line. I am concerned about farmers, landowners and others committing sins for which they are entirely liable and for which they will therefore have to pay.

10:15

Roseanna Cunningham: I read in the *Official Report* of last week's meeting the exchanges that took place, and I am a little puzzled that you think that there is gold plating. The NFUS has welcomed what has been proposed. There would be gold plating if the regulations were extended to cover sites of special scientific interest, but we have not agreed to do that at this point. I am willing to come back after two years to discuss whether that is necessary. We have gone some way towards meeting our commitment to trying to reduce regulatory burdens and not to gold plate.

We do not have a choice about transposing the directive. We are already at the European Court of Justice because of the delays. We had a choice about how far to extend the regulations and we decided not to extend them beyond what is necessary.

I take on board your concerns about inadvertence and changes in understanding and knowledge, but those matters are covered. On the likelihood of causing environmental damage, the directive refers to knowledge at the time of the emission or activity, not to assessing in hindsight 25 years later. That should alleviate your concerns. Regulation 17(3)(b) of the draft regulations clearly refers to

"the state of ... knowledge at the time of the emission or activity",

not the state of knowledge 25 years later and using 20:20 hindsight. Therefore, there is protection.

John Scott: So should farmers not have to be concerned? If they comply with the current cross-compliance, will that in itself be a protection, or should they think before they do anything that they need to carry out an ELD risk assessment?

Roseanna Cunningham: I hope that farmers are always thoughtful about the activities that they undertake on their farms.

John Scott: I assure you that they are, but another level of responsibility will be put on them.

Roseanna Cunningham: Indeed. I also hope that the NFUS's position on the matter reflects farmers' positions on it. We have said—and it is clear from the regulations—that a crystal ball is not needed; people do not have to know what the received wisdom will be 25 years in the future. People need only undertake the best practice with the best knowledge that is available at the time. As long as farmers do that, they can be confident that they will not fall foul of the regulations.

John Scott: I welcome that assurance.

The Convener: Agenda item 2 is the formal debate on the instrument. I remind members that officials cannot participate in the debate. I invite the minister to make any further remarks that she wishes to make and to move the motion.

Roseanna Cunningham: I do not see any need to labour the point.

I move,

That the Rural Affairs and Environment Committee recommends that the draft Environmental Liability (Scotland) Regulations 2009 be approved.

Peter Peacock (Highlands and Islands) (Lab): The arguments last week were extremely finely balanced. There was no clear case either way. I could easily have bought into the NFUS's argument, but equally, I could have bought into the arguments that Scottish Environment LINK presented. The minister has offered us an entirely fair compromise. Therefore, we should agree to the motion, make the progress that is required,

and keep matters open so that we can reconsider them. That would be a satisfactory outcome.

Liam McArthur: I echo everything that Peter Peacock said. However, I add that the comments on the regulatory impact assessment are somewhat unsatisfactory. I appreciate that the costs are potentially not measurable at the top end, but the lack of clarity on the benefits leaves the committee in a difficult position, particularly as other witnesses used the figures in the regulatory impact assessment to substantiate their evidence. I echo Peter Peacock's comments on the minister's approach of returning to the issue in two years.

Bill Wilson (West of Scotland) (SNP): Like Peter Peacock, I think that the arguments are finely balanced. I am inclined to support the inclusion of SSSIs, but the minister's reassurances are excellent. It is more than adequate to know that we will revisit the issue in two years or so. My only point is that I wonder whether the committee should recommend to a future committee that it revisit the issue in, say, four years. The minister is entirely correct that two years might be a rather short timescale to allow us to make a proper judgment. I certainly think that we should accept the regulations.

The Convener: We can put that in our legacy paper at the end of the parliamentary session.

Elaine Murray: The consequences of voting against the regulations would be pretty significant—that is not an option. As I said, I am happy with the minister's suggestion about coming back within two years. Bill Wilson's suggestion is also sensible, given the timescale over which the matter should be reviewed. I am happy for the Parliament to approve the regulations. However, the committee should note that it has a responsibility to invite ministers back to review the issue in two years, and that that should be done thereafter, too.

John Scott: I associate myself entirely with Elaine Murray's comments, as we face infraction proceedings. However, a two-year timescale is not enough for review, so it might be reasonable to have a review every two years for two or three periods.

Elaine Murray: That is what I said.

John Scott: I agree with you.

The Convener: At that point of consensus, I put the question, which is that motion S3M-4195, in the name of Roseanna Cunningham, be agreed to.

Motion agreed to.

That the Rural Affairs and Environment Committee recommends that the draft Environmental Liability (Scotland) Regulations 2009 be approved.

The Convener: Thank you. We will make a note that we will revisit the issue within two years.

10:22

Meeting suspended.

10:24

On resuming—

Marine (Scotland) Bill: Stage 1

The Convener: Agenda item 3 is our second evidence-taking session on the Marine (Scotland) Bill. The purpose of the session is to hear from a range of stakeholders. I welcome our first panel of witnesses, who are Captain Jim Simpson, chair of the Scottish Coastal Forum; Lloyd Austin, head of conservation policy with Scottish Environment LINK; Patrick Stewart, the bill consultant with the Scottish Fishermen's Federation; Professor Phil Thomas, chairman of the Scottish Salmon Producers Organisation; and Ian Burrett of the Scottish Sea Angling Conservation Network. We will move straight to questions.

Peter Peacock: Does the panel have views on how the membership of the marine planning partnerships ought to be derived? We heard evidence from officials a week ago that implied that they are fairly relaxed about how the partnerships are comprised, provided that people can find an arrangement that suits them at the local level. However, last week, when we took informal evidence in Oban, we heard that there should be consistency throughout Scotland in relation to the size of the partnerships and the membership. I am interested in your views on those aspects.

Professor Phil Thomas (Scottish Salmon Producers Organisation): I thank the committee for allowing us to present evidence.

We must start from the standpoint that Scotland's marine resources are rather special. There are few areas in which Scotland has a natural competitive advantage, but marine resources is one of them. The problem with the current proposals for the partnerships is that they are almost casual. As I understand it, the scale of the bodies is not limited in any way, so they could include half the population of Scotland if they wished. The terms of reference under which they will operate are really quite broad. As yet, they have no dedicated resources to ensure that they will deliver what it is hoped they will deliver, even though they will deal with an issue that is hugely important at the macroeconomic and local economic levels.

We need a clear and identified leadership and, in particular, support function. In some way, the composition of the bodies needs to be balanced and limited in scale, because otherwise they will become totally unmanageable. They must be given a clear remit within the overall framework, otherwise they will not deliver what is required for marine planning, locally or nationally.

Lloyd Austin (Scottish Environment LINK): I join Phil Thomas in thanking the committee for hearing our evidence. I reiterate his point about the importance of our marine resources. From an environmental point of view, Scotland's marine environment is outstanding and we support steps to do more to protect it and ensure its recovery.

The key point about the local planning partnerships and the Scottish marine regions is that the regional plans will be statutory plans to which public bodies will have to adhere in their decision making. Ministers will have to sign off those plans as being consistent with the UK marine policy statement—if that is agreed to—and the national Scottish marine plan. Therefore, however the planning partnerships are formed, there must be a statutory lead body—either a local authority or a Government agency. It must be a body in law that is accountable to ministers and Parliament; it cannot be just the partnership generally that takes the lead and the responsibility.

That said, it is important that the lead body involves all the stakeholders who have an interest in planning in the local area. It is probably appropriate that membership of the partnerships should be flexible, but I agree with Phil Thomas that the partnerships need to be workable. That issue must be resolved, using local knowledge about the appropriate people, to ensure proper coverage of stakeholders' interests. If there is a large group of people, an executive group might need to be formed to take the lead, comprised of lead umbrella bodies that would take responsibility for liaising with and representing a wide range of stakeholders in their sectors.

10:30

Ministers and Marine Scotland could provide guidelines on that through the process of establishing marine regions and by encouraging the lead bodies to establish the partnerships and the planning processes.

I concur with Phil Thomas about the need for resources. We have said that the marine bill could be world leading, in terms of planning and legislation for the marine environment, but the caveat is that it needs appropriate resources and the commitment to achieve and deliver on its objectives.

Captain Jim Simpson (Scottish Coastal Forum): We feel that supplementary guidance is required to determine the make-up of the marine planning partnerships. We know that the bill is attempting to be permissive rather than restricting membership, but we would welcome additional information on how the partnerships should be created. We are concerned about how existing stakeholders and members' groups such as our

own should be incorporated into the partnerships, and how the statutory functions should be accommodated in any new regime.

We welcome any undertaking to involve stakeholders, and we think, as the other witnesses have said, that it is an essential part of the working arrangements that stakeholders are involved with local bodies to plan the resources in their own areas. We are concerned, however, that localised areas may not be fully aware of the larger national picture, and clear national guidelines are therefore required for the local planning partnerships so that they are all working from the same information. That is particularly true in relation to developments in the industry that might affect all of Scotland rather than being contained in one local area.

Patrick Stewart (Scottish Fishermen's Federation): Thank you for the invitation, convener. I associate myself with the remarks about the importance of the project: we should not underestimate it.

We must think about the partnerships, but it is worth remembering that we already have considerable experience of planning partnerships—informal though they may be—in the marine environment. Some are of long standing, such as the Clyde moorings committee, which delivers to the Crown Estate and to Government; and we are about to test some new ones—the inshore fisheries groups—in which a minimum level of involvement is required before admission to the executive committee can be offered.

We should not be prescriptive at this stage, but we should recognise that too much involvement, as well as too little, can be a problem. It is right that the question has been raised, but thought should perhaps be given to consistency in the leadership of the groups. That could come from central Government rather than locally—there is an argument that that would achieve the consistency that the committee is concerned about.

Ian Burrett (Scottish Sea Angling Conservation Network): I echo the thoughts of the other panel members, and, as sea angling has had a very poor voice in Government circles, I thank the committee for the opportunity to give evidence.

The idea of involvement with stakeholders seems to be common, but it is not reflected in current practices. The process of gathering stakeholders' views is not explicitly defined in the proposals.

Peter Peacock: Slightly different positions are emerging from what has been said, but the broad consensus is that greater clarity is needed about leadership and the framework, and that guidance

on that is needed, which should not be too prescriptive and should allow local flexibility. Unless you disagree violently, we will take that as a given.

If we were looking in from the outside, we could be forgiven for forming the view that the process is woolly—it might involve 50 people in one place and 15 in another. How it will work is not entirely clear. Will partnerships be just another talking shop on top of existing mechanisms that work perfectly adequately?

Do you accept any of that? In part, I am being deliberately provocative. I take it that you are all convinced that the benefits that will accrue from the process, which has yet to be finally worked through, are greater than the additional bureaucratic problems that it might involve. Are you clear about that?

Lloyd Austin: We are very clear about the issue. As you know, we have campaigned for a marine planning system for many years. If the purpose of the marine planning system is known, if people accept the principle of the three-tier approach of a UK marine policy statement, a national Scottish plan and a local regional planning system, if we put in place the marine objectives—the Scottish Government recently signed up to the UK high-level objectives—and if we make it clear to partnerships that what is important is having a planning system to deliver those objectives, that will focus the minds of the people in partnerships, whether there are 15 or 50 of them, on the clear objectives.

When a plan is approved, it will become a statutory document that public bodies must subsequently make decisions in accordance with. That is one reason why the bill should include a general statement of the purpose of marine planning and a reference to a UK marine policy statement or an alternative document, if the Scottish Government concludes that it does not want to sign up to a UK marine policy statement. The bill needs to make it clear that national and regional plans should be consistent with a UK marine policy statement or with an alternative statement from the Scottish Government.

If we have the guidance and the leadership from the centre that you and others described about the nature of the planning system, what it is supposed to achieve and what it will do, that will focus people's minds and the right stakeholders will be involved. It is important to involve those stakeholders, but they should not be involved under a false premise that they are there to do something else. That is why clarity of purpose is important. Stakeholders should not be consulted with an open book and asked whether this should be allowed or that should be banned when that is not on the agenda. If people are consulted on the

wrong question, all that we end up with is disappointment and resentment.

It will be the responsibility or duty of the lead body locally to involve the right people locally. In some areas, fewer people will be involved, whereas in other areas, more people will be involved. That will depend on the area. We must live with that. Such a system is appropriate for a country such as Scotland, where areas such as the islands, the south-west and the Firth of Forth differ greatly. Different people will be involved in those areas.

Patrick Stewart: It should not be forgotten that statutory duties will be imposed on the partnerships, with which they will have to comply. Those duties will be imposed not just by the Scottish Parliament, but by Europe, through the marine strategy framework directive. If people sit around talking without doing, they will quickly be held to account.

Professor Thomas: To answer Peter Peacock's question in a slightly broader way, marine planning of itself is extremely important. It comes down to how you find the best mechanism for putting marine planning in place. Lloyd Austin commented on the three-tier approach, which I think that everyone would broadly accept. The difficulty is how you get those tiers to intermesh in a way that makes them efficient and effective. You have to have a local consultation and local and national interaction with stakeholders. To some extent, that process is almost inevitable. The big issue for me is how you lead and structure that process.

When members of the Scottish Government team gave evidence last week, they referred to the success, as they saw it, of the area management agreements under the water framework directive, for example. The groups were clearly led by and resourced from the Scottish Environment Protection Agency right across the country. Although the groups included different individuals in different places, the underlying theme that ran across the framework and structure, and the resources to support it, were being delivered by a national agency. My view is that the regional management arrangements for marine planning really should be led by Marine Scotland.

Ian Burrett: A tremendous amount of theoretical work has been done with the likes of the sustainable seas task force, but the devil is in the detail, especially around regenerating biodiversity, regenerating the inshore stocks, both commercial and recreational, and the make-up of the Scottish marine regions. There should be consistency with the UK marine bill. For example, the sea fishing committees are being replaced with an inshore fishing and conservation authority—there is mandatory membership for conservation and sea-angling bodies. The current Scottish inshore

fisheries groups do not give sea anglers access to them.

Captain Simpson: I agree with the points that Lloyd Austin made about local participation, which is vital. The plans will not work unless there is local participation, which has to reflect the area. As Lloyd Austin said, we could be talking about a big group or a small group; that will depend very much on the marine regions. I stress that the relationship between the regional marine plans and the national marine plan is the key. Our view is that Marine Scotland should drive the regional planning process. That has to be done in close co-operation with the partnerships. Through our network, Marine Scotland could work with the local stakeholders. We believe firmly that the process has to be driven by Marine Scotland.

John Scott: What do you see as the ideal size of a marine region? We visited the Sound of Mull region and the Clyde pilot, which are two completely different sizes of project. Although the Clyde project would claim to take in local involvement, given its size, it cannot take in the same level of local involvement as in the Sound of Mull. What would be the ideal size? Where do you stop or start with local involvement?

Patrick Stewart: I have been involved in both the Clyde and the Firth of Lorne areas and I do not see any difference in local involvement. The involvement sorts itself out in relation to the scale of the area. I have found that in the Clyde the voices that need to be heard are heard. You certainly cannot say that they are not heard in the Firth of Lorne.

10:45

Lloyd Austin: I agree to a certain extent with what Patrick Stewart said. There is no specific answer to John Scott's question. The ideal partnership size is dependent on local circumstances.

I would stress the need for an ecosystem approach; it should be the size of the natural ecosystem that determines the size of the area to be considered. In the firths, a firth-wide approach would be logical; and in the northern isles, an island group approach, whether Shetland or Orkney, would be logical. Around the rest of the coast, there are ways of dividing areas, as has been done with inshore fisheries groups. Indeed, there is logic to having a division along similar lines, so that the two processes can come together and coalesce.

The key thing is to take an ecosystem approach to management. The "Sustainable Seas for All" consultation paper suggested that there would be a duty to take such an approach in planning and in managing protected areas. However, that has not

emerged in the bill. We would like there to be a specific requirement on Marine Scotland to take such an approach and to ensure that ecosystem objectives are built into planning processes.

John Scott: By ecosystem, do you mean something that, in essence, is similar to a river catchment area?

Lloyd Austin: Yes—it would be a marine equivalent to catchment planning on land. You would consider a biogeographic entity that is biologically, geologically and geographically a logical area.

In a marine environment, there is always movement across boundaries, of course, so the situation is not quite the same as that of a watershed between two catchments—water does not flow up and over a barrier. However, it is possible to subdivide the seas. The firths—the Solway, the Forth, the Clyde and so on—are the most obvious areas.

John Scott: That would allow integration with land-based systems.

Lloyd Austin: Absolutely. It would allow a kind of zipping of integrated coastal zone management, involving river basin management plans and terrestrial planning systems.

Professor Thomas: I slightly disagree with Lloyd Austin. The question of what the areas would look like is difficult. Their size could and should vary from place to place. However, it is clear that the areas will not align with local authority boundaries—with the obvious exception of the islands.

The difficult core issue is that of scale. It is true to say that ecosystem areas are almost self-defining, but if you have too many of them, the marine planning system becomes extremely fragmented. That can make it impossible for industry to engage with the system.

The inshore fisheries groups cover relatively large areas, and you have to focus on that sort of scale as a basis for planning. Otherwise, your approach will be piecemeal. I accept the ecosystem argument, but you have to set it in the wider context.

John Scott: Is that an argument for doing away with 32 local authorities in Scotland?

Professor Thomas: I would not wish to be led down that line of argument.

Karen Gillon (Clydesdale) (Lab): We have tried that one.

Captain Simpson: The Scottish Coastal Forum is working with the Scottish Government to determine the options for potential marine regions. In March, we held a successful workshop at which

many people from all around the coast offered many opinions about the marine regions. We are now working through the results of our research, and we hope that they will be available over the summer. We welcome the Government's undertaking that it will consult on the final options. I cannot say too much about it because the work is still in progress. However, the areas were larger rather than smaller. We were not dealing with very small areas; we were dealing with the larger firths and with areas that were much larger than even the Firth of Lorne.

Alasdair Morgan (South of Scotland) (SNP): I had two questions. The first was whether it would be possible to define either ecosystems or marine regions to everyone's satisfaction, but I think that I have got the answer to that.

My second question is for Captain Simpson. You said that you feel that Marine Scotland should have the job of driving the regional plans. You used the word "drive" twice. What exactly did you mean by that? Marine Scotland already has a duty to set the strategic objectives.

Captain Simpson: Somebody mentioned that the regional groups might be locked away in rooms somewhere, doing their own thing, and that they might be large or small bodies. We feel that Marine Scotland should set the parameters within which those groups can operate, so that they do not go off on a tangent.

Alasdair Morgan: Can you give me an example of the parameters that might be set? We seem to be talking in generalities.

Captain Simpson: I know that this is a ludicrous example, but it is the sort of thing that I am thinking of. If a marine planning partnership wanted to build a power station on the coast within its area, but Marine Scotland had a national policy that followed the Government's policy on power production, the partnership would not even start to talk about that because it would know that it was outwith the guidelines. There would be an overall set of guidelines under which the marine planning partnerships would operate, within which they could undertake their own local planning.

Alasdair Morgan: Does the bill not cover that satisfactorily?

Captain Simpson: The relationship between the national and the local is not quite satisfactory at the moment.

Lloyd Austin: The most important things are the setting of the marine objectives and the purpose of marine planning. Those underlie the process in the bill. I highlight the parallel—which Phil Thomas mentioned earlier—with the way in which SEPA has led the area advisory groups on the water framework directive. SEPA has brought

the groups together and has said, "Right. The purpose we're here for is to provide the local interpretation of river basin management planning." In the marine situation, I would expect Marine Scotland to explain the nature of the UK marine policy statement—if the Scottish Government signs up to that—and the thinking behind the national Scottish plan. It would also interpret national marine ecosystem objectives at a local level, and so on. Local decision making would be set in that context.

Equally, as Phil Thomas mentioned, as with SEPA and the area advisory groups, the national marine body will have to provide the resources for data collection, the provision of expertise and so forth. SEPA has been able to resource the area advisory groups to create the river basin management plans, and it is important that Marine Scotland does the same for the Scottish marine regions.

Bill Wilson: I have a quick question for Captain Simpson, following on from Alasdair Morgan's question. Would you be reassured if Marine Scotland took on the role that has just been described by Lloyd Austin?

Captain Simpson: Yes. We would be quite happy with that.

Patrick Stewart: When the committee took evidence from Government officials, I was struck by the question from Mr Peacock about how the regional plans would deliver national objectives. I do not think that the committee received a clear answer to that question, but I have been thinking about it. This is not yet the view of the SFF, but it is something that we are considering. Perhaps Marine Scotland should lead the regional bodies to ensure that there is consistency and that each region plays its part in delivering the national plan. Whether or not there is a UK marine policy statement, some thought should be given to a Scottish policy statement.

Peter Peacock: When you say "lead", do you mean chair?

Patrick Stewart: Yes.

Liam McArthur: There seems to be some disagreement about the bill's compliance with the Aarhus convention on access to information, public participation, access to justice and environmental matters. Scottish Environment LINK raised that issue in its evidence. When officials were asked about that last week, they suggested that the bill is compliant with the convention. Scottish Environment LINK has concerns about appeals not only against the marine plan but against licensing decisions. Perhaps Lloyd Austin could set out the detail of those concerns and what it would take to rectify them. Given what we

heard from the other witnesses about their concerns, they may wish to comment, too.

Lloyd Austin: There are two issues here: appeals against the marine plan, which relates to section 13; and appeals against licensing and other decisions made in accordance with the marine plan. On the first, we think that judicial review of other decisions by Government may fail the third part of the Aarhus convention—the access to justice part—although, as we say in our evidence, that matter is subject to legal debate. As in the case of any legal debate, I suspect that one could find lawyers who support each side of the argument.

The matter is wider than that of appeals against the marine plan—there are also appeals against any similar decisions. Therefore, with regard to the effects on marine legislation, we have suggested that either the committee or other parts of the Parliament or the Government should commit to revisit the issue at some point in future, particularly in the light of the current review by Lord Gill of the civil courts. The Environmental Law Centre has submitted very good evidence on that issue. We are not necessarily proposing any specific changes to the bill, but we raise the issue of appeals against the marine plan as an example of a wider issue that we would argue should be revisited in depth later.

The second part of your question relates to appeals against licensing decisions and other decisions made in accordance with the plan. In a sense, that relates back to the Government's decision to make Marine Scotland part of the Scottish Government—in law, it is simply the Scottish ministers. As with any decision, we think that there should be an open, transparent and independent appeals process that is available to all interested parties. The definition of the level of interest should be as per the Aarhus convention—it should be open not necessarily to all and sundry but to those with sufficient interest. At the moment, the bill simply provides the power to determine by regulation what that process is; it is not defined, described or specific. With that form of appeal, it is important that everyone—all the stakeholders and Parliament—has a clearer idea of what the appeal mechanism against licensing decisions will be. At the moment, it is an open book—we do not know. However it emerges, we would argue that it should be a mechanism that is consistent with the Aarhus convention.

11:00

Liam McArthur: I suspect that there will be consensus around the need for, and the benefit of, greater clarity, but that there will be less consensus around the notion of what amounts to a third-party right of appeal against licensing

decisions. However, I would certainly welcome other comments.

Lloyd Austin: I underline what I said about a third-party right of appeal applying to parties with sufficient interest, as defined in the Aarhus convention. That is not the same as all and sundry, which is what a third party is often interpreted to mean.

Patrick Stewart: As I understand it—I have just found the relevant part of the bill—section 13 will allow an appeal to be made against a plan, but only for a procedural reason and not because of the content. One may feel that, in a democratic society, that is too restrictive.

I support what Lloyd Austin said about appeals against decisions; I think that the bill is extremely unsatisfactory and fails to understand the difference between terrestrial planning decisions and marine planning decisions. On land, anyone who, as an occupier of the planning unit, is affected by a decision has control over the future of that planning unit or may be compensated. That is not the position at sea, where users of the planning unit may be displaced without any form of redress, let alone compensation. I believe that regulations under the Planning etc (Scotland) Act 2006 will impose a statutory duty to hold a pre-application consultation. That provision was designed to deflect the argument that there should be a third-party right of appeal.

In a marine environment, I do not think that that argument can be deflected. Parties with sufficient interest should have a third-party right of appeal. We suggest that that should apply to parties that have an economic interest in the planning unit, whereas I think Mr Austin would suggest a wider interest than that. Nevertheless, we are united in our support for the principle.

The Convener: Does Peter Peacock want to ask a question?

Peter Peacock: I think that Professor Thomas has a comment to make.

Professor Thomas: It is a very brief one. I usually try to keep as far away from lawyers as I can—Patrick Stewart excepted, of course. There is an important issue at stake. It has been touched on, but it needs to be crystallised.

I think that there would be great sensitivity on the part of anyone who used a marine site and who, as a consequence, paid a duty to the Crown Estate if there was a system in which the appeals process was sufficiently open that the long-term nature of their lease might be threatened by an appeal against a licence decision by, for example, the Crown Estate. If someone is involved in an activity and the owner of the sea bed—if I can put it that way—sees the opportunity for a more

lucrative activity, difficulty would be created if that opportunity could be pursued through a licensing appeal. Such a system would contain elements of injustice with which I would be a bit uncomfortable. There is a specific issue in relation to the sea that needs to be taken into account.

Peter Peacock: The SFF has described the territory of law that we are discussing as “a legislative jungle”, to which the bill could add. I find it quite difficult to sort out how the current statutory framework might fit with the new statutory framework that is being created. I am thinking of things such as inshore fishery groups, coastal zone management, port authorities that have independent statutory rights, indicative fish farm plans, offshore energy planning requirements, licensing arrangements and terrestrial planning arrangements in parts of local authority areas that abut the marine environment. Can you help me? Is it clear to you how all those elements fit together in the statutory framework? Is there a hierarchy? Should marine planning partnerships be the superior bodies, or should there be equality?

John Scott: Which will take precedence in law?

Patrick Stewart: It is a bit of a jungle at the moment and I see no sign of the rainforest being cleared. We are making a new start and should do so as simply as we can, with one planning authority for the marine environment. Obviously there must be arrangements at the shore, to zip together the terrestrial and marine systems, but everything that can be done within the competence of the Scottish Parliament to plan in the marine environment should be in one body, with one set of rules. I would be interested to hear an argument for making the system more complicated than that, which the bill does. For example, it says that local authorities may retain the terrestrial planning system that applies to marine fish farms. In our view, that is utter nonsense. We are making a new start—let us start as we mean to go on, with a sensible, straightforward system.

Peter Peacock: What does that mean for the likes of inshore fishery groups? Is the implication of what you are saying that current coastal zone management should be consigned to history and replaced by a new system?

Patrick Stewart: I can deal with the fisheries side quite simply. The bill has nothing to do with the recovery or management of fish stocks—that comes under the common fisheries policy and the associated international and national legislation. Inshore fisheries come under that heading. It is clear to me that the management of fisheries must work closely with and be part of the management of the marine environment, but conceptually it is different. There will be marine protected areas that are designed to achieve the recovery of fish

stocks; such zones exist now. They are quite different from marine protected areas that are designed to protect or ensure the recovery of the marine environment.

Professor Thomas: I will comment specifically on aquaculture—marine fish farming. As Patrick Stewart said, everything must come within one framework. At the moment, the arrangements, regulations and planning process for fish farming are horrendous—they are extremely complex and bureaucratic. That point was identified in the consultation document that led up to the bill. Unfortunately, the bill has snatched defeat from the jaws of victory, because it makes the position even more complex.

If the bill is passed in its current form, everything in the marine environment will come under a licensing system of marine planning. The exception is fish farming, which will sit with local authorities, under town and country planning procedures. The two are incompatible. Even worse, responsibility for fish farming may revert to Marine Scotland, as local authorities will be able to opt out of the town and country planning arrangements. There is the potential for two entirely different planning and licensing systems to operate in one marine region—in the same stretch of water. I suspect that that would happen quite quickly in some areas. We will even have to decide how to extrapolate local authority boundaries to the sea—a somewhat complex matter that is not addressed anywhere in the bill.

The system that is proposed at the moment is horrendous. It is logical to bring everything into a single marine licensing system, to streamline the system—which is the objective of the bill—and, if the Government is concerned about local democracy and returning activities to the control of local authorities, to devolve the relevant elements of the licensing system.

Some island councils and island operators—the best examples are in Shetland and, to a lesser degree, the Western Isles—are concerned about anything that looks as though it is simply sitting in Edinburgh, if I can use that terminology. We must be sensitive to that. The solution that the bill comes up with is entirely intellectually incoherent and illogical, as it gives us a mixture of systems operating in the same area. That is an impossible situation.

John Scott: Does your argument extend to the shellfish growers? Where do they fit in? Walter Speirs has made the point that they do not appear to fit in anywhere.

Professor Thomas: I think that the shellfish situation will be pretty much the same as the finfish situation. I do not see too much distinction between the two. However, there may be other

sorts of marine activity—some, frankly, as yet unannounced. I am thinking of seaweed production, for example. At the moment, there are a few cases of that which are mainly land based; nevertheless, the opportunities and technology exist to grow seaweed offshore and such developments will come under the licensing system. We could end up with a seaweed farm coming under the marine licensing system while the finfish farm that is right next to it comes under the Town and Country Planning (Scotland) Act 1997. It seems to me that the systems are mutually incompatible.

John Scott: I welcome your view on that.

Elaine Murray: This is an interesting point. We had a debate in Parliament just the other week about the importance of aquaculture to the Scottish economy, especially in rural areas. I understand from conversations that I have had with the SSPO that the Government was trying to find a compromise because, earlier in the consultation, there was disagreement between different parts of Scotland. As you mentioned, Shetland was a bit uncomfortable about things being run from the mainland. My understanding is that there is now general agreement around the proposals that you have come up with—that the activity planning consent should come through Marine Scotland but that, where local authorities want it, the licensing should be devolved to local authorities. Can you confirm whether that is now the industry's view?

Professor Thomas: Yes, I can confirm that we have put that to the industry in Shetland and that it is happy with that arrangement. You must understand that Shetland had a works licensing system way before the Town and Country Planning (Scotland) Act 1997 was in place. There is a history in Shetland of operating marine licensing, irrespective of the act.

My perception—I must be careful about how I put this—is that Shetland Islands Council has simply rolled the former works licensing system into the format of the Town and Country Planning (Scotland) Act 1997 procedures, so that operators have not seen any major difference and are comfortable with the local arrangements. We included that in our submission, as we thought that it was important.

In my view, the solution that is being devised to solve the problem simply makes the situation worse.

Elaine Murray: Do the other members of the panel agree with the alternative proposals from the SSPO?

Lloyd Austin: In simplifying and sorting out Peter Peacock's jungle and Patrick Stewart's rainforest, it is important to distinguish between

the planning system and the licensing system. I will comment briefly on both.

It is vital that every issue in the marine environment is incorporated in the plan. As Patrick Stewart said, it would be absurd if one or other of the different things were not included. However, the bill does not bring every issue in the marine environment—every decision process—under the new licensing system. It would be positive if it brought more things under the marine licensing system, and I agree with Patrick Stewart and Phil Thomas that marine fish farms should be included in that, but decisions on things such as offshore renewable energy developments, which are covered by the Electricity Act 1989, and other decisions will come not under the new marine licence, but under other decision-making processes.

11:15

The very important issue is the stipulation in section 11 that

“any authorisation or enforcement decision”

taken by “a public authority” must be “in accordance with” the marine plan. If any decision on a marine licence, any decision under the Electricity Act 1989 or the Food and Environment Protection Act 1985 or any other authorisation has to be “in accordance with” the plan, the plan itself must be all-encompassing and cover all activities that might impact on the marine environment or might help it to recover. We have a minor quibble with the last bit of section 11(1), which we can come back to if members wish, but the new system must in its entirety simplify things and create an all-encompassing—if you like, holistic—approach to how we look after the marine environment.

Peter Peacock: Is that not slightly different from Patrick Stewart’s view that a marine planning partnership that brings together the sea anglers, the fishermen, the fish farmers, the shellfish farmers, the recreational users and all the other interests is almost bound at some point to take a view on fish stocks and fishing, but that such issues should be nothing to do with the partnership and should instead be dealt with by the inshore fisheries groups? If I have understood that correctly, how do you reconcile those positions?

Patrick Stewart: I am not clear about the question. If you are suggesting that that is what I would say, you are correct, but I do not see how that view conflicts with Lloyd Austin’s comments on marine planning, which is ultimately about consenting to activity.

Lloyd Austin: Just to clarify, I agree with Patrick Stewart that there is a distinction to be made between the planning process, which I believe should be all-encompassing in its approach to the marine resource and environment and its examination of what we do with them, and individual sector-based consent procedures, some of which will be covered by the marine licensing system, existing fisheries mechanisms such as inshore fisheries groups, existing Scottish Government processes such as those for renewable energy and so on. For example, terrestrial systems cover development planning, river basin management planning and so on but, although such systems take a holistic approach to what those responsible want a particular area of land to look like, there are also separate and individual decision-making processes to take into account.

Peter Peacock: Forgive me for pursuing this issue, but we are also talking about a spatial planning concept. What if, for the sake of argument, the marine planning partnership in a particular part of Scotland took the view that the area should be closed to fishing? That would be a planning view; in other words, it relates to the spatial concept of the use of that marine resource. In such circumstances, would the inshore fisheries group have to operate within that framework?

Patrick Stewart: Yes.

Peter Peacock: And you are quite comfortable with that.

Patrick Stewart: I would not say that I am comfortable with it, but that is the way it will operate. The fisheries legislation and everything that flows from it will determine what you may catch, when you may catch it, what you may catch it with and, indeed, where you may catch it, but the marine planning system will say where you may not catch it.

Lloyd Austin: The local marine planning partnership might say that, in a certain area, fishing should not happen or should be restricted in some way because of seasonal circumstances. If that proposal is consistent with national planning policies and so on and is signed off by the Scottish ministers as part of the regional plan, all decisions taken thereafter by ministers about fisheries, renewable energy and so on—or by Marine Scotland on marine licensing—should be in accordance with that plan.

Alasdair Morgan: I have a deal of sympathy with Professor Thomas’s point, but I am trying to work out how his solution does not still give rise to certain problems. If you are saying, professor, that the actual licensing should be devolved to local authorities, which, under the bill, would be the Scottish ministers, unless that licensing is simply a

rubber-stamp exercise, like the arrangements for television licences, will you not still get cross-boundary differences, potentially within one marine planning region?

Professor Thomas: No, I do not think so. The discussion that we have just had is illustrative of why Marine Scotland needs to lead those regional groups. We are talking about something that is extremely complex and needs a lot of resources and expertise to guide it.

As for what would be resolved by the proposals, we would end up with one licensing process, which would be exactly the same as what would be determined by Marine Scotland to be the national scheme, if I may put it that way. As far as operators are concerned, there would be one point of application, and operators would get a single licence. For example, for aquaculture, they would get a licence to fish farm in a particular area.

The devolution to the local authority would take account of the need for local access and local discussion about how measures are implemented. An alternative proposition, which would seem to solve the problem in a different way, would be for Marine Scotland to be a devolved organisation. If it had offices in Shetland, for example, it would address the issues in Shetland. Given the way in which Marine Scotland has been established, that is not the case. The scheme needs to be designed in such a way as to be a national scheme for the marine area everywhere; who handles the paperwork and the actual process is a secondary consideration as long as the scheme operates in the same way.

If one local authority reverts responsibility to Marine Scotland and another local authority in the same marine region does not, as long as they are operating under the same scheme, the same system will still determine events in that region. From the fish farm operator's standpoint, the system would look entirely the same. The point of application would be different, but the operation of the system would be the same. That is the key issue.

Alasdair Morgan: The most obvious example is, I presume, at the boundary between Argyll and Bute and Highland, which might share a common marine region. Would you be quite sanguine about an aquaculture project at one place being allowed a licence, with another project one mile down the coast not being licensed, despite the two places being in the same marine region? That could come about simply because the two local authorities may take a different view about processing licences.

Professor Thomas: I do not think that it would come down to that. If they are operating the same process, that process would give rise to a

consistent result between the two. The circumstances might well differ, so the applications would be judged according to a different set of criteria, but the process would be exactly the same.

Alasdair Morgan: You are effectively saying that you would expect a local authority simply to follow a flow chart. There is no discretion in that.

Professor Thomas: It would be inconsistent to have a process that varied from place to place. A licensing system must apply to the whole of the marine environment. Otherwise, there will inevitably be inconsistencies, and that would be illogical.

Bill Wilson: But different local authorities could demand different conditions; local authority A might state that it does not really like fish farms in its area, so it could insist on extra roads, nice lighting or whatever instead, whereas local authority B, just up the road, but in the same marine region, might not feel the same way and not put in the same conditions. You would be okay with that, would you?

Professor Thomas: That would come under the overall planning exercise rather than development planning. You must recognise that, distinct from the situation now, whoever does marine licensing in future would be working to a marine plan for the area. Some of the conflicts that you are identifying would be resolved in the planning process.

Bill Wilson: Some would be, but licensing can be done either by Marine Scotland or the marine planning partnership—in which case, licensing is standard throughout the region—or by the two councils within the same regional planning area. If there are two different licensing bodies, either the bodies must be able to make very different decisions or they must have no discretion whatsoever. In essence, that is the point behind Alasdair Morgan's question. If the two licensing bodies have discretion, presumably one licensing body could say, "No, we don't like this, so we'll attach lots of conditions", while the other might not. Would you be comfortable with that?

Professor Thomas: My preference would be for the marine licensing system to rest entirely with Marine Scotland—in my personal view, that would be easier to manage—but I recognise that there are substantial issues of local accountability for fish farmers as well as for the wider population in particular areas of Scotland. The system in the islands has historically worked and been seen to work, so people do not see much need for change, but there is not a consistent pattern across the whole of Scotland.

If there is a licensing system, whoever makes the licensing decision must employ the same criteria. If two local authorities employed the same

criteria and came up with different answers, the logical conclusion would be that the two cases were different rather than that the two local authorities acted differently. I do not think that there is an inconsistency in that argument.

Much more problematic is the situation—which exists at present—in which a development application in a zone identified for fish farming is refused by the local authority, under the town and country planning system, against its own plan. That seems an almost impossible situation, but it happens from place to place because we have inconsistencies. It will get worse as more marine activities come into the frame and the decisions get finer. For me, the logic of having a single planning licensing system that covers everything is inescapable.

Patrick Stewart: In our view, it would be best if the policy was delivered by the planning partnership, of which local authorities will be part. That would deal with the question of consistency across local authority boundaries. We must remember that, if local authorities are involved, a planning decision is quasi judicial and not political, so the question of discretion does not arise.

Elaine Murray: On a rather different topic, I have a question on the lack of data on the marine environment, which was highlighted in Scottish Environment LINK's submission. I am aware that the SACN is undertaking research following previous discussions with Government about the lack of data and that it is in the process of tagging sharks, rays and skate in the Solway this weekend as part of a project to increase the data that are available on threatened species. In light of the current lack of data, should the precautionary principle be included on the face of the bill?

Ian Burrett: I should say that the BBC was out filming with us yesterday for this weekend's sharktag event, which will also be filmed live on breakfast TV on Friday.

From our point of view, the bill should be a new opportunity for our oceans. Its starting premise is that the environmental status of most seas around Scotland is currently good or excellent, but that is not what we find. The UK Government's consultation on a marine bill said that the seas are generally health and biologically diverse. Our members find that that is not true either: on the west coast of Scotland, 20 species either have disappeared or are now found only as juveniles.

A local, well-known fisheries leader stated recently that his members

"do not want to see the regeneration of whitefish ... in the Clyde, because they eat shellfish"

larvae, which his members depend on. Considering the people who run the IFGs, it is like

putting the fox in charge of the hen house. We feel that the bill has missed an opportunity to listen to stakeholders and have a different emphasis. The focus has always been on primary commercial exploitation. The bill needs to take more account of the social and economic benefits of fishing for a region, and the needs of the recreational and tourism sectors must be considered in that regard. The combined recreation and tourism income from fishing is equal to the total commercial income, and it has a sustainable basis.

On data gathering, the European Community recently produced the plan of action for sharks, to which Richard Lochhead signed up a few weeks ago. We are heavily involved in data gathering, which is why we are doing the likes of the shark-tagging programmes. However, I would like more research to be done on inshore stocks in order to see the true state of our seas. I am afraid that lots of the seas are now barren, and something has to be done. The Marine (Scotland) Bill is an ideal opportunity, but I am not hearing the right words to address the problems.

11:30

Elaine Murray: Do you believe that, in the absence of data, the inclusion of the precautionary principle would strengthen the bill?

Ian Burrett: Yes. There has to be a precautionary approach.

Lloyd Austin: As you might expect, I agree whole-heartedly with Elaine Murray's comment about the lack of data. That is one of the things about which we have made our view known. That said, we are pleased that the Scottish Government and all the various agencies are coming together to develop a science strategy and identify the new work that needs to be done. While it is good to identify that work, the most important thing is to provide the resources to get it done. The committee's predecessor, the Environment and Rural Development Committee, conducted an inquiry into the marine environment and the potential for legislation. It made strong recommendations about the need to resource marine science, survey work, monitoring and so forth. I certainly endorse those recommendations.

What we do in the absence of full knowledge—other than try to fill gaps in data availability—is a big question. It must be said that, over the past 200 years, we have made many decisions without full knowledge of what goes on in the sea. We have put all our pollution into the sea and have carried on fishing and running a marine fish farming industry, an oil and gas industry and so on, without full knowledge of all the data. It is therefore important to stress that the insufficiency of data is not such that it is impossible to make

conservation decisions—it is possible to do that without full data availability. As more data become available, we can adjust the decisions, just as we adjust decisions about economic activity as more data come forward.

It is important that the precautionary principle is recognised in the bill, just as it is important to recognise that the precautionary principle is already UK law, because the UK is a member of the EU and the precautionary principle is in the treaty of the Union. It is also one of the principles of sustainable development to which the UK and Scottish Governments have signed up.

It is important that the bill should have a generic sustainable development duty in much the same way as the Flood Risk Management (Scotland) Bill, which the committee recently supported. That bill states that ministers and other authorities must

“act in the way best calculated to contribute to the achievement of sustainable development”.

We think that that is the most important overarching generic duty. I am personally relatively neutral about whether aspects of sustainable development, the ecosystem approach and the precautionary principle should be individually specified in the bill.

I think that it is important that ministers accept what sustainable development means, and they have done that in the national performance framework and the sustainable development strategy. The position could be enhanced by being in the bill, as that would give it greater weight, so I would support its inclusion. It is important to recognise that, although it is important to put right the lack of data as quickly as possible, we have to make decisions about economic activities and conservation, and we should not hold up either of those because of the lack of data. Those decisions must be made in accordance with sustainable development principles, including the precautionary principle.

The Convener: I know that Patrick Stewart and Phil Thomas want to speak, but I think that Liam McArthur has a question on this issue.

Liam McArthur: While fully accepting the basis of the precautionary principle and the consensus around it, I should point out that the marine renewables industry is finding that the more that they learn, the less they know. Where is the point at which you think you have enough data?

The west of Scotland fishery has been effectively closed on the basis of some pretty depressing science about white fish stocks. From my constituency's point of view, I am concerned that that decision was made in the absence of a clear understanding of the make-up of the stocks on the west coast. The fact is that, as we have no

boats operating in that area, one of the best chances that we have of gathering those data will be denied us, which means that the decisions that we take in future years will be made on the basis of even less sound science. I do not know whether that issue is addressed by Lloyd Austin's comments about proper resourcing, but the fact is that economic activity often gives us the data on which we can base our decisions.

Lloyd Austin: I certainly agree with your latter point. Quite a lot of the information that we have comes either from fishermen or from the type of work that is being carried out for environmental impact assessments by both the oil and gas industry and the renewables industry. I am not going to comment on the specific issue that you mentioned, but, in generic terms, it is important that the political decision makers make decisions in accordance with scientific advice. People can argue about whether that scientific advice is based on good data or good analysis of the data, but I think that it is important that the argument is had on a basis of the quality of the science and that the decision is made in accordance with sustainable development principles, including the precautionary principle. If you could put that in the bill, it would greatly improve it.

The most important thing to recognise is that we make decisions in relation to economic activity in the absence of data, and we should make decisions about conservation in the absence of data as well, while recognising that both those sets of decisions will become better or more robust if we have more data and that, as more data become available, we can review and amend the decisions.

Patrick Stewart: I think that we have moved on quite a bit from the original comments but, on the precautionary principle, I accept the difficulties. The phrase “precautionary principle” is like the phrase “democratic process” in that it means what it means to you rather than what it means objectively. We must resolve the difficulty that we face, though, because there is no doubt that the fishing industry that is exercising the public right of fishing on your behalf needs healthy and productive seas, which is what we want to achieve as a result of this process. However, I say to Mr Burrett that, although his concerns are serious and need to be addressed, this is not the forum to do that. His concerns must be addressed within the context of the common fisheries policy.

On the point about a leader of the fishing industry making a statement, I think that you will find that it was a former leader of the fishing industry, who is consulting his lawyers.

Professor Thomas: My view as a scientist is that there will never be enough data; we will

always have to make decisions against a background of some uncertainty.

The precautionary principle is often misunderstood. Essentially, it says that, if we do not have enough data, we move ahead with caution—it does not imply that we should do nothing.

I disagree with Lloyd Austin on the point about putting something about the precautionary principle in the bill because all the elements that would need to be built into the bill are already in the marine strategy framework directive, which is currently being transposed. I think that it will be transposed on a UK basis, not a Scottish basis.

The Convener: I thank our witnesses for their attendance. Any supplementary material that you would like us to consider should be with the clerks by 17 June, so that it can be circulated to members to inform the next evidence-taking session on the bill, which will be on 22 June.

11:41

Meeting suspended.

11:46

On resuming—

The Convener: I welcome our second panel of witnesses—George Hamilton is the manager of the countryside heritage and national resources team at Highland Council; Colin Galbraith is the director of policy and advice at Scottish Natural Heritage; and Andy Rosie is the acting head of environment protection and improvement, north region, at the Scottish Environment Protection Agency. We will move straight to questions.

Elaine Murray: As the witnesses probably know, in a couple of weeks the committee will visit the Solway Firth to take evidence. In evidence this morning, witnesses have told us of the need to take an ecosystem approach; it was argued that a firth should be a single marine planning area. In the Solway, an obvious issue that arises is that the firth lies on both sides of the border. What sort of cross-border issues will have to be addressed? How can differences between the proposals in the Scottish and UK bills be resolved? In the Solway, the two pieces of legislation will operate together, but the local desire is that the Solway should be one marine planning area.

George Hamilton (Highland Council): I will answer first, although I am not involved in the Solway. Our local partnership is the Moray Firth Partnership, so we do not have to deal with the England-Scotland border issues to which Elaine Murray refers. However, the Moray Firth area looks to us to be a potential marine planning area

or regional planning area. We would therefore be looking for suitable and effective liaison between the regional planning area and the adjacent marine planning area. Such liaison would be important no matter where marine plans and regional plans were in place. There should be effective liaison and implementation.

Elaine Murray: Do you mean that that should be the case irrespective of whether a marine planning area crosses the border?

George Hamilton: Yes.

Andy Rosie (Scottish Environment Protection Agency): We have already wrestled with this very problem in the river basin planning process under the water framework directive. We have a requirement to develop two river basin plans—one for the bulk of Scotland and one for the Solway-Tweed area, for which we share responsibilities with our colleagues south of the border. We have area advisory groups that deal with cross-border issues and reach consensus so that we can develop a plan that meets the needs of parties north and south of the border. That work may provide a template for the challenge that Elaine Murray raises.

Colin Galbraith (Scottish Natural Heritage): Thank you very much for the invitation to give evidence.

There are important principles here: the cross-border sites bring the matter to a head. I endorse comments that were made earlier about the value of the ecosystem approach. It is about taking a large-scale holistic view. In that regard, a site's being a cross-border site should be no impediment to taking the ecosystem approach. There will have to be a dialogue about boundary setting in Scotland and England to ensure that it is done the same way. There will undoubtedly also need to be a dialogue about management in respect of how the approach is put in place. Alongside the legal aspects, there is a communication issue, which takes us on to what bodies will be set up to manage any MPA. I come back to the ecosystem approach being the driving force in that setting, as in any other.

Elaine Murray: Let us move on to scientific advice. At the end of the previous evidence session we talked about data. Do you believe that sufficient data are available to designate all types of MPAs under the bill? If not, what sort of data gaps exist?

Colin Galbraith: I could perhaps have a go at answering that, to begin with.

We at SNH are, of course, continually examining data and information. We have upped our effort in that regard over the past year or two and it is clear that there are sufficient data in the system,

between all Government agencies, to allow a view to be taken on particular areas. For example, we know that there are some good areas and some less good areas in respect of biodiversity. I echo the comment that was made earlier that there are never enough data; we can always have a better and more complete picture, but there are data in the system.

There are two levels of future activity. The first is to collate all the existing information. That needs to be done fairly urgently to give us a better overview. Beyond that, there is a need for new survey work. We are working actively with other bodies to establish what the gaps are. Could we currently designate MPAs? Yes, we could. Could we identify every potential MPA? No, because that would require more data and more information.

Bill Wilson: With regard to data at, say, community ecology level, I presume that with climate change and communities already showing some sign of shifting, that might make the issue more complex. I would be interested to hear comments on that.

If you are building an MPA because you think the community ecology of an area is of great use and it changes slightly, how will that affect the MPA? Do you have to have a flexible system that can move MPAs?

Colin Galbraith: We face the same challenge in the terrestrial environment. A bit of thought still has to be given to mobile boundaries and how we might move with climate change. The reality is that if an estuarine area, for example, on the coast of Scotland is seen to be a good area now, it will probably still be a good area in 20 or 50 years, although it may be good for a slightly different community. In respect of ecosystem processes, we would argue that, for example, good nursery areas for fisheries will probably still be good in 20 or 30 years, albeit with some variation in the community. The question raises real issues. There are issues not only within Scotland but across the European Union and the whole of Europe that we still have to bottom out.

Peter Peacock: You said that you would have enough data to identify MPAs and you touched on one tiny bit of the criteria for designating an MPA. Can you say a bit more about the criteria that you think should be taken into account in designating MPAs?

Colin Galbraith: What has been interesting in the thought process has been that, in essence, what we are doing in the bill—in relation not only to MPAs, but to the whole planning system—is something that has taken 25 or 30 years to do in the terrestrial environment. There has to be learning from the terrestrial experience for the

marine areas, although we must accept that marine issues are different in scale and nature.

That said, from a classic scientific perspective, we would go down the route of looking at rarity, but rarity would be only one aspect. We would look at typicalness—what is typical of a Scottish marine environment—and we would probably want to look at representative samples from those areas.

In recent years there has been much greater consideration of the ecosystem on a global scale, and, behind that, of the processes that are involved and what the environment gives to us, whether that is in relation to fisheries or energy capacity. We would want to examine the ecosystem processes—the example that I used was nursery areas for fisheries—as well as considering the need to represent rarity and typicalness. That would lead to a discussion about numbers and scale in relation to any one site.

Peter Peacock: You will be more aware than most people of the controversies that often surround the proposed designation of any terrestrial or marine area. People think that designation might impinge on their particular interest or activity. Once you have taken into account the criteria that you have suggested, X number of sites will come out above the line, and you will say that they should be designated. Should they then definitely be designated? Should designation be an absolute on the basis of those criteria? How much discretion should exist?

Colin Galbraith: People are central to the process, and we have learned over the years that they need to be involved at a very early stage. Where a user community is completely dependent on a healthy marine environment—as we heard earlier, encouragingly—we must involve people early in the process. We must also ensure that the data and information are objectively and scientifically collected. A system can be envisaged in which we identify potential MPAs and then select the most suitable based on science, while involving people in dialogue and discussion throughout the whole process.

Designation is not essential. We have to recognise that we are in completely new territory. We should seize the opportunity to learn from the issues that have arisen in relation to the terrestrial environment and put in place measures that involve people and take a common and more involved approach to the user community in the case of individual MPAs.

John Scott: Section 17 details licensable marine activities, and ministers may add to or change the list. Should any other activities require a licence under the bill?

Andy Rosie: A significant licensing process already covers a range of activities in the marine environment—for example, we use the controlled activities regulations in the river basin planning process. Around 95 per cent of the contamination of our coastal waters comes from activities on land, therefore the regulation of the coastal strip is already taken care of in many cases.

We are not coming at the issue afresh. Section 17 reflects what is already present in our FEPA licensing system: it refreshes the Coast Protection Act 1949 and the FEPA regime and will sit alongside the controlled activities regulations that we presently apply.

In the case of one or two activities—the introduction of offshore renewables, for example—the issues are largely unknown and we are still considering what the effects will be. That might be dealt with under the licensing regime that the bill sets out, but we are not starting from scratch.

John Scott: Should any activities other than marine energy extraction be added to the list?

I see that the panel members are shaking their heads.

12:00

Alasdair Morgan: I have a supplementary question. Renewables were mentioned. You will know about the power for the minister to designate a single process for renewables applications. What is your view on that proposal?

Andy Rosie: There is some merit in it. Where the same sort of activities will have the same sort of impact, it might make sense to develop a common approach from which the industry can learn the developing wisdom and design to take account of the issues. That could lead to certainty in the regulatory process, therefore it would be sensible.

Colin Galbraith: I have a general comment on licensing. We do not see the need to add any specific licensing requirements, but we support the streamlining that was outlined earlier. There is an important bit of work behind that, on the environmental thresholds in the bill. We would like to be involved in the thought process on them, the result of which could have quite a bearing on what is licensable and what is not licensable. It would be good to have a realistic consultation period to allow us and others to comment on any proposals as they come along. We welcome the process that the bill lays out and highlight the environmental thresholds issue behind it, which will take a bit of further evaluation.

John Scott: So you would like there to be a consultation in order to define or better define the

activities that should be licensed as opposed to registered and vice versa.

Colin Galbraith: Yes. I return to the fact that a whole raft of new ways of working and thinking will be introduced, which will take a little bit of development through the implementation phase. The details of what it is and is not appropriate to license in a particular way will need to be considered.

John Scott: Notwithstanding that, do you have views on what an appropriate threshold might be?

Colin Galbraith: No, not at this stage. That must necessarily come further down the line.

Liam McArthur: On renewables, I have been made aware of concerns about the requirements relating to the decommissioning of marine devices. Obviously, there is no advantage to be gained from leaving the seas cluttered with debris after wave or tidal devices have reached the end of their useful life, but there seems to be evidence from the oil and gas sector in particular that the creation of artificial reef shelters, for example, can benefit spawning grounds. Is there flexibility? Do we need to build flexibility into the licensing regime so that requirements exist, but reviews can, in due course, establish whether the removal of a device or the clearance of a site is in the best interests of the marine environment? Is that approach reflected in the bill as it stands or should we fix things through the bill or subsequent guidance?

Colin Galbraith: We are still learning across the globe about the principle of reef creation. In particular locations in some circumstances it can be beneficial. From what I know of the matter, it very much depends on the structure that is deposited. Obviously, the chemical side must be dealt with separately, but in some circumstances artificial reef creation can be advantageous. We would like to consider the matter with the industry beyond the enactment of the bill to find out how things can best be done.

I should say in passing that we hope to work with the renewable energy industry to ensure that it can develop in a way that minimises impacts on the environment. We hope that the discussions that we are having now will continue in parallel with those on the bill.

Andy Rosie: There may be another useful parallel with the controlled activities regulations, under which a licence will remain in force until the operator applies for a surrender. At that point, decommissioning and any clear-up that must take place can be talked about. The licence will remain in force until a conclusion is reached. Those arrangements are flexible enough to take account of the possibility of equipment staying put or being removed because it poses a risk.

The Convener: You mentioned the regulations on controlled activities. Will you expand on their pros and cons? Are they fit for purpose? Can they take account of cumulative impacts and different sensitivities in different locations, or could they be adapted to do so?

Andy Rosie: The legislation is much improved from previous legislation, because it allows us to take account of activities that affect the water environment. The legislation's terrestrial application is expanded to dealing with impoundments and abstractions, which were not controlled in Scotland before.

The legislation provides us with additional tools for taking account of cumulative impacts. Even registration is used very much to allow us to know where things are. Activities that are small and fairly low impact on their own might exert a significant impact when taken together. The registration level allows us to take account of that. If a problem exists, we can escalate from registration to licensing, so that we can apply conditions that might address the cumulative impact. The mechanism is better.

What the bill proposes could have the same proportionality. It is important that regulatory intervention is proportionate to the degree of environmental risk. That is a sound premise for any regulatory approach.

The Convener: Will you expand on the benefits of a tier of general binding rules and how that might add to the existing proposals? Would adding such a tier create additional costs?

Andy Rosie: The bill identifies a lower tier, which is more loosely defined as orders that might be issued to identify activities that do not require even registration. That approach is more informal.

General binding rules have the benefit of being identified and going through a consultation process. Awareness of them might be greater up front, so anybody who proposed an activity would see clearly that, as long as they conformed with the general binding rules, that would be fine—no regulatory intervention would be made. Under the arrangements in section 24, a gradual build-up takes place. There is nothing in the bill just now, but Marine Scotland might identify activities that would attract a similar approach to that of general binding rules. However, that would not be built into statute. The bill's approach is similar and is perhaps more flexible, but it might not be as overt for people who work in the environment and who want to know what they will face.

Peter Peacock: I will move on to marine planning partnerships. All the witnesses were present during the earlier discussion about partnerships and their make-up in particular. Views were not unanimous, but I got the sense

that people wanted clearer guidelines and leadership, clarity about where the resources to support all that would come from and a clear framework on what was and was not to be considered. Having heard that earlier conversation, do you have views to add?

Andy Rosie: I have been lucky enough to be a part of the water framework directive river basin planning process. I have chaired the west Highland area advisory group since its inception and I have now moved on to chairing the north Highland area advisory group. Such groups bring together a range of interested parties—people from local industry and commerce who work in the area and who represent activities there; port authorities; local authorities; and agencies such as SNH, the Forestry Commission, the Scottish Government's rural payments and inspections directorate and us.

Our group includes representatives of the Scottish Landowners Federation, fisheries trusts and district fishery boards. We all come together to talk about issues in the area. There are 10 area advisory groups covering Scotland. Each group covers quite a big area; I am mindful of the comments that were made earlier about scale.

There are opportunities to align—and possibly, to realign—the advisory groups that we have set up with marine planning partnerships, so that both pieces of businesses can be dealt with by the same characters. Forum fatigue is an issue, as the same people are required to sit around many tables. We have an opportunity to simplify the process. The area advisory groups already deal with aspects of the marine environment up to the 3-mile limit, so we are already involved in discussions about coastal waters, setting objectives and identifying what must be done to meet them.

There is an overarching national advisory group that includes representatives of the Convention of Scottish Local Authorities, the Confederation of British Industry and the national agencies. It seeks to bring a consistent approach, so that the areas work within clear guidelines, while taking account of local interests. It has been interesting to see how the set-up works. Everyone around the table in the west Highland area advisory group came with their own interests and agendas, but it is amazing how many different interests can reach consensus when they buy into the process. There is already a successful framework that is guiding the new approach.

Colin Galbraith: We endorse Andy Rosie's comments. The experience that he has outlined has been productive for us and seems to bring the right people together. In principle, we welcome the development of that approach, as it provides local

involvement and buy-in. We need a mechanism that allows for that in the implementation of the bill.

George Hamilton: I agree with everything that has been said. Important points have been made this morning about the resources that will be available to partnerships, who will give a lead and the clarity of partnerships' objectives. Highland Council is keen to get involved in partnerships and sees itself as playing a lead role in some respects, although that is yet to be decided. If the structure that is already in place is ideal, I see little point in changing it, but it may not be ideal.

Peter Peacock: Andy Rosie described what happens in the area advisory groups. I understand that all of them are chaired by SEPA. We have heard arguments for Marine Scotland playing the equivalent role within the new framework. In light of your experience, do you commend that approach as a way of ensuring that there is clarity of purpose within the partnerships? I presume that you resource the area advisory groups. Do you commend the extension of that approach to the new framework?

Andy Rosie: I was going to make the point that you have just made—you are absolutely right. It would be sensible for Marine Scotland to lead and co-ordinate the marine planning partnerships. I suggested that the partnerships be aligned with area advisory groups—we would swap chairs with Marine Scotland when dealing with marine business.

I agree that the approach needs to be resourced. We must be able to provide information for members, so that when they come to meetings they are well informed and have the data that are available. That takes significant resources; we have been resourced for that purpose and have found that we have needed every penny that we have been given. I endorse the suggestion that Marine Scotland should lead, and that it should be properly resourced to do the job.

Peter Peacock: My next question is directed at George Hamilton in particular, but I will be interested to hear other witnesses' comments. For many years, you have been involved in coastal zone management, producing indicative fish farm framework plans and dealing with inshore fisheries issues.

When we were in Oban recently, we heard that the Sound of Mull project, which combines Argyll and Bute on the one side and Highland on the other, had encountered some issues about how to merge the project's process with Highland Council's existing processes—in fish farming, for example. You will have heard the earlier discussion about how all that fits together. Can you give us some perspective on how you think everything will fit together, on your current

responsibilities and on the new responsibilities of the regional partnerships?

12:15

George Hamilton: There are opportunities to build relationships within the marine planning partnership or regional areas. You spoke about the potential use of artificial reefs. That is a good opportunity to work with inshore fisheries groups regarding an MPA in connection with the science and research issue that has been identified.

We produce aquaculture framework plans. If we had a national marine plan and regional marine plans, the latter would include aquaculture. If we are to be part of a regional marine planning partnership process, I do not see the need to produce framework plans too, and I imagine that the whole thing would become integrated. We would put more of our efforts into the regional marine plan, which would involve broader-based coastal zone planning. Other activities would be involved too, but I think that the aquaculture plan would move into the regional plan.

Peter Peacock: From your experience, and given the interests of your local authority, you think that all that can be made to work quite satisfactorily and you see no particular conflict between the responsibilities of the different groups that operate.

George Hamilton: I would not say that it is that clear. The proposals can be made to work, but they are entirely new, as has been said many times today. As time passes, operations will begin to bed in and will become the norm. Yes, the system can be made to work, but it will take a long time to get things organised properly. There needs to be a close working relationship between Marine Scotland, local authorities and stakeholders—we have been through that already this morning.

Andy Rosie: Experience from the area advisory groups that we have been involved in suggests that they are effective in identifying the issues that have to be addressed. We do not talk about individual activities or businesses, which would not be appropriate as there might well be vested interests around the table. However, we do talk about sites that must be improved, and we identify them when we are setting objectives. The regulatory process is a statutory process that has a fairness element built into it. Therefore, there is a public advertising process that is separate from the area advisory groups. There is no conflict of interest, and we are careful that nobody on the area advisory groups can use their influence to affect somebody else's interest. The system seems to be working very well, and I have not identified any conflict of interest that has cropped up in such a way so far. However, we are very

much aware of the issue and it is important that it is addressed in the constitution and make-up of the groups.

Colin Galbraith: Any local partnership grouping in which we have been involved has been very productive. However, to make a simple observation, it is quite time consuming to get consensus and find a way forward and the results are medium term. It is right to examine the medium-term and long-term resource needs to ensure that any local grouping is effective. Such groups work at a very significant level with regard to the implementation of what we are discussing today.

Andy Rosie: The size of groups is another issue that has concerned members. Our area advisory group has about 25 members and is made up of representatives. For example, if there are distilleries in the area, we have a representative from the whisky industry, but we do not have representatives from individual companies.

A forum sits beyond the area advisory group—it is a wider stakeholder interaction, in which the area advisory group holds meetings in different localities, inviting members of the public and interested parties to come and give us their views. We listen to and take account of those views. That mechanism for a wider forum would perhaps address the difficulty that would arise if 50 people wanted to be on the marine partnership. We have developed the approach. It has taken us two or three years, but it now seems to be working. We are getting some good feedback from the forums.

John Scott: You are confident that, given time, patience and money, you can integrate the marine spatial element with the terrestrial planning element. You think that that can be achieved quite easily and you see no real problems with that. That will be an essential part of the overall ecosystem approach.

Andy Rosie: Indeed. The marine environment presents particular challenges, which are separate and different from catchment management. As was said earlier, the water can move always, whereas when you are managing a catchment, you start from the top of the hills and go out to the coastal zone. On the business of what size you have to be to take account of the ecosystem, you take account of the fact that many of the species that you are interested in spawn and have a planktonic phase and move over wide areas before they develop into larger entities. You take account of that when you are planning your system and sizing your management zones. There are definitely challenges there. It is up to all the agencies to work together closely and it is up to all the interested parties to make things work.

Elaine Murray: You heard the exchanges about the aquaculture industry's concerns about remaining within the remit of the Town and Country Planning (Scotland) Act 1997 and its preference that planning activities should be consented by Marine Scotland, with the possibility of licensing being devolved to local authorities. SEPA also has functions in relation to the regulation, licensing and monitoring of the aquaculture industry. I understand that there were discussions about whether those functions should remain with SEPA or be transferred to Marine Scotland. Mr Galbraith, why do you think that the functions should remain with SEPA? Will you comment briefly on the proposals that the aquaculture industry has made about its preferences for the planning system?

Colin Galbraith: I would be delighted to, but I had better not, because I am from Scottish Natural Heritage. I had better pass over to Andy Rosie to answer that.

Elaine Murray: Sorry.

Andy Rosie: We have a long history of developing a regulatory approach with the industry. As it has grown up, we have grown up with it. We have developed approaches that are very much risk based; they are about licensing the activity where it has potential impacts on the marine environment. We have quite a mature regulatory process in place, which has allowed the industry to develop quite successfully to a point where, in relation to the length of its coastline, Scotland produces more farmed fish than any other country does—it is not behind the game in terms of spatial distribution.

We feel that the regulatory process has served the industry very well and we would certainly like that to continue, because it is an integral part of our river basin planning approach to the coastal zone. It would make no sense for us to lose the regulatory function for the coastal industries, given that we are obviously working to meet the objectives in the coastal zone already. We see the interface between Marine Scotland and SEPA as being very much where the water framework directive meets the marine strategy directive. It is clear that Marine Scotland will take on board the challenges of the marine strategy directive. At the moment, the boundary is at the 3-nautical-mile limit. It is therefore important to continue the coherent approach that manages activities on the land and in the coastal zone to meet the water framework objectives. The new approach very much takes it from there and moves out to the 200-mile limit.

George Hamilton: The aquaculture planning in the town and country planning system is not nearly so mature, although local authorities have had long experience of planning for aquaculture,

whether that is through the aquaculture framework plan forward planning or through the consultation processes that have been in place since about 1986 for Crown Estate leases. My local authority is of the view that the planning process should stay with local authorities. I would like more clarity on what the industry proposed this morning, so that I can think about it more carefully. Not all local authorities are convinced that they want to keep on the development planning aspect—they want to look more to enforcement. However, Highland Council is keen to keep that planning power.

John Scott: I will raise an issue on behalf of the shellfish growers. At our meeting in Oban, Walter Speirs mentioned that the designation of shellfish-growing waters, which currently falls under the shellfish waters directive, will come under the river basin management plans as part of the water framework directive, but that no designation for shellfish-growing waters has yet been specified in the river basin management plans. How will specific designation for shellfish-growing waters be continued and maintained and under which legislation?

George Hamilton: That is a question for Andy Rosie—I am not sure.

Andy Rosie: I will attempt to answer that. The shellfish waters directive has a mechanism for designation of waters where shellfish growing is important, and such designations have taken place for several years. The directive is to come to an end and will be subsumed into the water framework directive, but the requirement to carry on the designation process will carry into the water framework directive and a similar approach will be applied. Where water is important for shellfish growing, the designation will continue and the protection measures will be brought to bear.

The important aspect is that, with better coastal zone planning, we have the opportunity to diffuse some of the conflict that the shellfish industry has where, for example, it works fairly close to a settlement that has sewage discharges. Coastal zone planning will perhaps identify potential conflicts. Sometimes, we can improve the quality of the sewage treatment to meet the shellfish industry's requirements but, in other cases, it might make sense to put a bit of geographical distance between the two conflicting interests. The other aspect is that activities inland are also a potential threat to the shellfish farming industry, as a result of diffuse pollution from agricultural sources, for example. We must take account of that, too. We do not envisage any diminution of the approach when the shellfish waters directive comes to an end. However, it is important that we take account of the industry's interests, as we recognise that it is an important industry for Scotland.

The Convener: I thank the witnesses for coming to give evidence. Any supplementary information should be sent to the clerks by Wednesday 17 June, so that it can inform our next evidence-taking session, which will be on 22 June in the Solway Firth area. That concludes the public part of the meeting. I thank all the interested members of the public for attending.

12:29

Meeting continued in private until 12:56.

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