RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Monday 22 June 2009

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
† 18th 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:

Ron Bailey (Clydeport Operations Ltd)
Morna Cannon (Scottish Renewables)
Brian Irving (Solway Coast Area of Outstanding Natural Beauty)
Gordon Mann (Solway Firth Partnership)
Jeremy Sainsbury (Scottish Renewables)
Pam Taylor (Solway Firth Partnership)
David Whitehead (British Ports Association)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Roz Wheeler

ASSISTANT CLERK

Lori Gray

LOCATION

Kirkcudbright Town Hall

† 17th Meeting 2009, Session 3—held in private.

Scottish Parliament

Rural Affairs and Environment Committee

Monday 22 June 2009

[THE CONVENER *opened the meeting at 13:19*]

Decision on Taking Business in Private

The Convener (Maureen Watt): Good afternoon. I welcome committee members, witnesses and members of the public to the 18th meeting of the Rural Affairs and Environment Committee this year. We have received apologies from the local member, Alex Fergusson. He was with us downstairs but, unfortunately, his programme has been changed and he is unable to join us for the meeting.

The committee is pleased to be meeting in the Solway Firth area; it is particularly pleased to be meeting in Kirkcudbright for the first time. Given its remit, the committee has an on-going commitment to take its work to areas of Scotland where the issues that are being considered are especially relevant. Going to different parts of Scotland is also a way of showing the committee's and the Parliament's commitment to making themselves accessible to the public.

The main purpose of the meeting is to take evidence as part of our on-going scrutiny of the Marine (Scotland) Bill, which seeks to put in place a framework for the environmentally sustainable management of the competing demands on the sea. This morning, we enjoyed an interesting fact-finding visit to Mersehead Sands to inform this evidence session. I put on record the committee's thanks to all those who have helped to organise and have attended both events.

We have received apologies from Karen Gillon MSP. I ask everyone present to ensure that their mobile phones and pagers are switched off, because they have an impact on the broadcasting system.

There are a couple of matters for us to deal with before we take formal evidence on the bill. Do members agree to take items 6 and 7 in private?

Members *indicated agreement*.

Subordinate Legislation

Radioactive Contaminated Land (Scotland) Amendment Regulations 2009 (SSI 2009/202)

13:21

The Convener: Item 2 is consideration of a negative instrument. The Subordinate Legislation Committee had no comment to make on the regulations, no member of this committee raised any concerns about them in advance, and no motion to annul has been lodged. Do members have any comments to make on the regulations?

Liam McArthur (Orkney) (LD): The letter from the Cabinet Secretary for Rural Affairs and the Environment says:

"The Subordinate Legislation Committee … asked the Scottish Government for clarification in respect of the functions of Local Authorities and SEPA".

It appears that, although no transfer of functions is involved, a clarification of roles was sought. It is perhaps strange then that the Government consulted only the Scottish Environment Protection Agency and did not consult the Convention of Scottish Local Authorities or local authorities. That does not necessarily affect the implications of the regulations; nevertheless, it is strange that it does not appear that there was any contact with COSLA.

The Convener: Do you want us to do anything about that?

Liam McArthur: I suspect that the time for doing anything about it has passed.

The Convener: We could write to the minister if you want us to do so.

Liam McArthur: We could get an explanation about why only SEPA was contacted and consulted. We can at least clarify with COSLA that it was aware that the measure was being taken.

The Convener: We can do that. Perhaps COSLA was consulted but that is not mentioned in the letter.

Aside from that, do members agree that the committee has no recommendation to make in relation to the regulations?

Members *indicated agreement*.

Marine (Scotland) Bill: Stage 1

13:24

The Convener: Item 3 is our third evidence-taking session on the Marine (Scotland) Bill. The purpose of this session is to hear from a range of stakeholders on parts 1 to 4 and parts 5 to 7 of the bill, and to hear about issues of particular relevance in the Solway Firth area, including nature preservation, offshore renewables, and cross-border implementation of legislation.

I welcome our first panel of witnesses. Brian Irving is manager of Solway coast area of outstanding natural beauty, Gordon Mann is chairman of the Solway Firth Partnership, and Pam Taylor is project manager for the Solway Firth Partnership.

We move straight to questions, which I will kick off. The SFP was originally established in response to formal support for integrated coastal zone management. How do you see ICZM and marine planning linking together in practice?

Gordon Mann (Solway Firth Partnership): There has been a long and not terribly helpful debate about the relationship between marine spatial planning and integrated coastal zone management. It is not possible to produce a plan without that plan having a sound research basis, an analysis of the issues that are involved, and a set of proposals with a reasoned justification for them. In other words, the plan integrates and deals principally with the coastal zone and how it is managed. Therefore, introducing marine spatial planning will bring with it integrated coastal zone management.

The Convener: Does research exist to provide that background knowledge?

Gordon Mann: You have heard evidence that every scientist will always say that they have insufficient data, but that is true in this case. Do we have enough data to plan for the future? The answer is probably no—we still need more. Natural England collected some data using slightly more sophisticated techniques that are more relevant to considering coast issues, particularly sea-level rise. Scotland has a way to go to catch up on the information that needs to be collected. However, we are more aware of the information that we must collect and we need to continue with a work programme for that, particularly on climate change.

Peter Peacock (Highlands and Islands) (Lab): I may have touched on this in an informal setting this morning, so the witnesses should not be surprised if they are asked the same question again. It is important to give you a chance to put your thoughts on the public record.

The bill seeks to create a partnership structure at a regional level that is yet to be determined. As you have been operating a voluntary partnership for some time, could you say a wee bit about the nature of the decision making, the process of bringing all the different partners together and how easy or difficult that is, and whether you think that what you have been doing could provide a model for the proposed new statutory partnerships?

Pam Taylor (Solway Firth Partnership): There are aspects of the partnership's operation that could form part of a new planning partnership structure, but there are aspects that would need to change, because a new planning partnership would be significantly different in nature from the partnership as it stands. Currently, we operate on a voluntary basis and build consensus, but people sometimes do not agree about a particular policy. The policy that informs any new planning partnership will therefore be important in shaping how it will operate.

Peter Peacock: Are you suggesting that there ought to be, say, a firm set of standing orders to cover voting and so on, which you do not have at present?

Pam Taylor: We have a formal constitution, but we have never had to resort to voting on an issue, because we have always been able to find a way forward. I would hope that a new planning partnership would continue in that consensus-building way, but safeguards would need to be put in place for instances when agreement could not be reached.

Peter Peacock: Is there a danger that, in order to get consensus and avoid having to decide matters by votes, the new partnerships will end up with policies that are at such a high level that there is not much detail that affects individual operations or different parties round the table? Is there a danger that matters will be aggregated up to too high a level and that decisions will not be terribly meaningful on the ground?

Pam Taylor: No, I do not think that that need happen. In practice, the planning partnership will need to be built on several levels. There could be a core group to deal with strategic matters and focus groups to consider particular sectoral or geographical issues. Those levels will have to be meshed together to get the integrated planning system that we want to achieve, but not everything will be done in one forum.

13:30

Peter Peacock: The other dimension of the proposed new bodies is that you might be required

to work in a regional partnership, at the same level as at present, within the framework of a previously agreed national plan. We have had evidence in the past couple of weeks about two points that are related to that. The first is that there must be consistency across the different partnerships in Scotland. It is fair to say that the Government is much more relaxed about how the partnerships will be formed and what parties will be around the table; the Government is not too bothered, as long as it suits local people. I would be interested to hear your view on that.

A second point, which has been put to us fairly strongly, is that because the plans are to fit within a national framework and national priorities, the new partnerships must be given clear leadership. It has been suggested that Marine Scotland is the appropriate organisation to provide that leadership. What are your views on that?

Gordon Mann: Under the bill, there will be a national plan that creates the envelope within which the regional plans sit. However, it is interesting that the bill states that the regional plans must conform to the national one

"unless relevant considerations indicate otherwise."

There is a nice fit. There will be a national plan, which must sit with the international obligations. That will then drop down to the local level, but the partnerships at that level will be allowed to fine-tune the approach and to argue for a slightly different position if that is appropriate for the local area. Through our work on the Scottish coastal forum, we have found that the Scottish coast has very different areas that have different communities of interest and issues. It is important that those issues are dealt with in a way that is appropriate for the local area. In our area, we have found that the best solution is for us to work as a partnership across the border. In other areas, the local authority might need to take a lead, simply because there is not the same community of interests that exists in the big firths.

Peter Peacock: Is there a case for Marine Scotland, as the national agency that will try to hold together the national plan and the national framework, to provide the chair of the regional partnerships, or is that best left entirely to local circumstances?

Gordon Mann: I do not have a strong view on whether the chairs should be drawn from Marine Scotland. The important point is that the partnerships that are created at a local level must be truly representative and properly resourced. In the past, most of the partnerships that have been set up have not been properly resourced and therefore have not been able to achieve as much as they could or should. At the end of the day, the important difference is that Marine Scotland will have to approve the plan. Until now, we have had to work with consensus, but we have had no mechanism for making a decision once all the evidence has been heard. We heard this morning that it took 10 years to set up the cockle management arrangements—that was simply because a very drawn-out consultation process had to be carried out. The bill will build in the consultation that we need, but it will provide a mechanism to make a final decision and to cut the process short once the effective end has been reached.

Elaine Murray (Dumfries) (Lab): In our discussions this morning, there seemed to be a fair degree of consensus that the Solway Firth should continue to be considered as one unit and one firth. However, I know that the Solway Firth Partnership has concerns that differences between legislation north and south of the border might make it difficult to have one marine plan covering the Solway. Will you say a little on the record about your concerns?

Gordon Mann: The discussion on what the marine regions should be still has a way to go and work is being done on that. However, the one common denominator that is coming out of that work is that major firths should be treated as single units. We certainly support that argument strongly. Our concern is that the national boundary that is drawn down the middle of the Solway could lead to our work disintegrating rather than integrating. Our argument is that a firth such as the Solway should be the subject of a single plan. It is not a unique situation, because responsibility for the Severn and Dee estuaries is shared between the Welsh Assembly Government and the Department for Environment, Food and Rural Affairs, and those areas need the same consideration. There is also an argument that the Berwickshire and Northumbrian coasts need to be dealt with in a more integrated way, rather than simply have a boundary drawn between them.

Our argument has been that the Scottish bill provides a mechanism that will allow that to happen. The section that allows the delegation of functions relating to a regional plan will allow Marine Scotland to delegate its part of the Solway to a third party. We need the same level of provision in the United Kingdom Marine and Coastal Access Bill to enable one organisation to carry out the stakeholder consultation, the research and other work to prepare a single plan. Each marine organisation can then approve the plan for its own interest and the normal consenting process by the different Administrations can then take place, but that will be based on a single agreed plan.

As we have heard, terrific efforts were made right at the start to ensure that there were single,

cross-border management plans for those European marine sites that straddle borders, and the water framework directive is being implemented on a cross-border basis. The idea that we could not have a single plan for the Solway would appal me.

Brian Irving (Solway Coast Area of Outstanding Natural Beauty): In both the cases that Gordon Mann mentioned—the water framework directive and the European marine sites—Europe holds the cosh. We must meet the European Parliament's legislative requirements, but the bottom line is that we do not have a cosh. Scotland is doing what it should do and England is doing what it should do. I am extremely concerned that the marine bills on each side of the border might mean that we will lose the joined-up working that we have had on the ground for the past 15 years through the SFP. Unless we achieve a level of integration across the border, I feel strongly that a lot of the consensus and local community trust that we have gained right around the firth—we have been around long enough—will go if the situation changes, and the consensus building will have to start again. It is much more difficult to deal with Government than it is to deal with a group of local people who do their daily work in the estuary.

Back in 1995, when the SFP was established, I was one of its first members. Back then, it was no different from how it must have been 2,000 years ago, when people on Hadrian's wall must have wondered what the people on the other side were doing. We do not want to go back to that situation. If the committee takes nothing else away from the meeting, I ask it to take that plea from the English side. We are doing as much as we can to get DEFRA to engage on the same agenda.

Elaine Murray: One possibility would be to amend the UK bill to enable devolution to a third body. If that does not happen, is it possible that Marine Scotland or the English equivalent could be responsible for the whole of the Solway so that it could come under one nation's regime?

Brian Irving: We have talked about what happens on a cross-border basis—the European marine site, the cockling and the developments of various sorts—but on the English side we have Hadrian's wall world heritage site and the Solway coast area of outstanding natural beauty. The AONB has a statutory remit and, although the world heritage site does not, it gets a lot of investment from, for example, the Northwest Regional Development Agency and One North East. We are talking to them about the Marine and Coastal Access Bill and how we can achieve cross-border integration. It is a question of joint ownership. I am fearful of losing the plot. The SFP deals with so many elements—from the minutiae to the big stuff—on an annual cycle that it would be extremely difficult to list them all. We get around the table and we problem solve. We do not walk away. We are always in the process of consensus building and it is always done in a cross-border way.

A simple example is haaf-netting, which is done only on the Solway. It is done on the Scottish side and on the English side. There are differences, but not in the way the fishermen think, in the way the community responds or in the kit that fishermen use, which is still as it was 1,000 years ago—it is extremely traditional and has never been improved. However, what is proposed could change the face of that. Currently, there is camaraderie between the English and Scottish netsmen, but that could change if there were a different framework on each side of the border.

Elaine Murray: You have expressed concerns about the different status of Marine Scotland as a Government directorate and the marine management organisation at UK level as a non-departmental public body. You also expressed concerns about the two bodies working together. Will you explain those concerns? Should we address them through ministers on both sides of the border to ensure that the instruction goes to both organisations that they must be able to record what they are doing?

Gordon Mann: The quick answer to your final question is yes please. We received an undertaking through the House of Lords—Jim Wallace raised this issue when the Marine and Coastal Access Bill was going through the House of Lords—that discussions would take place with DEFRA but, despite our best efforts, we cannot get a date for those discussions to take place. One of the reasons that have been given is that it would be difficult for an NDPB set up under the UK bill to co-operate with Marine Scotland, which is an executive arm of the Scottish Government. That seems to be an artificial and somewhat bureaucratic response. To date, all the evidence suggests that co-operation is going to be very difficult.

DEFRA has recently commissioned a study of the bit of the Irish Sea for which it is responsible to try to identify potential marine conservation zones and marine protected areas. It is looking at the Irish Sea, excluding the Republic of Ireland's waters, Welsh waters, Scottish waters, Northern Ireland waters and Isle of Man waters. It is left busily spending a lot of time and effort looking at a curious little strip that runs down the middle of the Irish Sea. It has given an undertaking to consult but, instead of starting at Irish Sea level and working down, we are starting with the DEFRA bit of the Irish Sea and then looking at all the other bits afterwards. There has to be an acceptance that we need joined-up planning in these areas.

That is the purpose of the legislation. We need a single approach to the Solway Firth and, probably, to the Irish Sea.

Elaine Murray: I would have thought that that would be in the spirit of the new marine framework, which was supposed to bring different countries together, rather than fragment the work that had already been done.

Gordon Mann: Yes.

Peter Peacock: I want to pursue a couple of points that Elaine Murray made. I share the view that getting things sorted at DEFRA and Scottish Government level would be the best thing to do. Notwithstanding that, if you were chairing the new partnership—I am not saying that you will—would you want to be placed under a duty to have regard to what was happening on the other side of the border as a minimum? In other words, you would have to have regard to any plan that existed on the other side of the border. Would you want powers to co-operate and to agree a single plan if that were possible? Are those the sort of things that you would want in the Scottish bill, so that you could move towards the position that you want if that final step had not yet been achieved?

Pam Taylor: Yes. We want joint planning. If we cannot get full joint planning, we want well-integrated planning. The legislation to implement the water framework directive places a duty on the Environment Agency and SEPA to work together jointly. Irrespective of any tensions or issues that might come into play, such as pressures on timescales, the organisations are bound to work together to prepare a plan. A guarantee that there would be an integrated process would be helpful.

13:45

Peter Peacock: So you would cite the example of river basin management planning arising from the water framework directive. Are you saying that that would be an appropriate approach?

Pam Taylor: Not all aspects of that process are necessarily directly transferable to the marine planning process, but certain aspects of it are useful and could be looked to as an example of how to move forward.

Bill Wilson (West of Scotland) (SNP): Gordon Mann mentioned concerns that the marine management organisation that DEFRA proposes might not collaborate with Marine Scotland because the latter is an executive arm of Government. Presumably, if Marine Scotland could delegate functions to a third body that was not an executive arm of Government, there would be no problems.

Gordon Mann: Our argument is for that to be complete—

Bill Wilson: Would that remove the problems for DEFRA?

Gordon Mann: That might be a second-best arrangement, but the important thing is that we end up with a plan that deals with the Solway Firth as a complete unit. However, if half of the area were to be delegated to one body, that would at least be a step forward.

Alasdair Morgan (South of Scotland) (SNP): I have a couple of questions on marine protected areas. Comhairle nan Eilean Siar—Western Isles Council—has provided a fairly brief written submission, in which it highlights the importance of the economy of the islands and concludes that the council is

"therefore strongly opposed to the introduction of additional Marine Protection Areas in the seas surrounding the Outer Hebrides if they would impose restrictions on economic activities."

That is qualified opposition. Given the Solway Firth Partnership's interest in the economy of this area, does the partnership share Comhairle nan Eilean Siar's objection to additional marine protection areas? Do your sentiments have much in common with those?

Gordon Mann: The simple answer is no. I hope that we have been able to demonstrate today the incredible importance of the Solway Firth—in terms of the value of the asset—locally, regionally and internationally. The challenge for us is to ensure that we use the resources wisely and sustainably over the longer term for the purposes of renewable energy, fishing and tourism and in a way that allows healthy communities to live beside, and to enjoy, the shores of the sea. That involves both a negative and a positive: we need to protect the areas that are sensitive and important while we encourage development where it will not damage or destroy.

Alasdair Morgan: My second question results from the Scottish Renewables written submission. It talks about sections 71 and 72, which provide for licensing of marine protected areas. Basically, the submission's take on the type of protection that is suggested—for example, section 72(4) provides that an authorisation should not be granted unless various conditions are satisfied—is that

"this level of protection is too high if the purpose of the introduction of Marine Protected Areas is to increase management of nationally important features."

I do not know whether the Solway Firth Partnership has gone into that kind of detail, but is it concerned about the level of protection that is suggested in the bill? Are you concerned about the restrictions on how authorities can license activities, or do you see the proposals as being fairly sensible?

Pam Taylor: Perhaps a bit of a selling exercise needs to be done with marine planning. There is a lot of concern about what marine planning might mean, but it should mean a better system for everyone, including developers, fishermen and people who have an interest in conservation. We should get better at fitting all those things together. Particular aspects of the bill will not necessarily work against particular sectors because our having healthier marine ecosystems should be better for everyone. That includes a place for renewables developments, where appropriate.

Gordon Mann: We heard this morning about the huge cost for anyone who wants to prepare an environmental assessment, particularly in the marine environment. Marine planning should identify where there is potential for development and, in so doing, should provide some certainty for investors, who are looking to put together some pretty massive investment packages. The plan must help to guide that. We should think of it not as something that prevents things from happening but as something that helps us to make the best use of resources.

Alasdair Morgan: I wonder whether Scottish Renewables is concerned that, although it is easy to articulate such views, the position can be different when we start to put things down in regulations. A cynic might say that the Town and Country Planning Act 1948 started off with the same idea, but the actuality on the ground, when one is faced with trying to get an application through the planning system, does not always seem quite so positive.

Gordon Mann: I spent 30 years trying to make the 1948 act work, so I should spring to its defence, but Alasdair Morgan is right. As terrestrial planners, we have lost our way a bit and have tended to regard the process as a negative one, which is why we need the bill and the new culture that is being discussed. It is important that we learn from that rather than from some things that have been happening more recently. Planning must be about encouraging and enabling while protecting what is of value. As long as we keep that at the forefront, we will end up with a system that is effective and efficient.

Alasdair Morgan: How can we have confidence that, regardless of how many areas there will be around the coast of Scotland, there will not be little empires or kingdoms—as there seem to be in the planning system—where the brave concepts that you have articulated do not come to pass? Is there something in the bill that should give us that confidence?

Gordon Mann: As the national plan has to be approved by Parliament, that becomes your responsibility. [*Laughter.*]

Alasdair Morgan: Thank you.

Bill Wilson: One aim of the bill is to allow communities to propose marine protected areas. However, Dr Sally Campbell suggests in her submission that, because of the caveats in the bill, it is

"clearly a recipe for rarely allowing a community MPA."

Would you care to comment on that? If not, is that because you have no views on whether the bill's caveats will prevent community MPAs or just because you have not given the matter much thought?

Gordon Mann: I struggle to understand why the bill would prevent community MPAs. The proposed system will allow marine protected areas to be designated under all circumstances, if people think it appropriate. That is different from the system for sites of special scientific interest, in which a site has to be designated if the scientific test is met.

The proposal is an appropriate first stage in the creation of marine protected areas. We have legislation that allows marine sites to be designated, but none has been designated, so there is clearly something wrong with that previous legislation. The approach that has been taken—to develop protected areas in the context of the marine spatial plan—is the right one. Given that stakeholder involvement is central to the preparation of each plan at each stage, there are ample opportunities for people to propose what they regard as being appropriate sites in order to create a "coherent network", to use the phrase that is being used. I see nothing in the bill that would prevent a community from making a proposal. We have already seen proposals for the Clyde.

Bill Wilson: Thank you

John Scott (Ayr) (Con): I move on to the prickly field of renewable energy. This morning, we saw the Robin Rigg development and heard from Scottish Enterprise about the proposed development of a tidal barrage. In your submission, you state:

"All aspects of these existing and proposed developments including public consultation, planning and consenting procedures, and assessment of environmental impacts need to be addressed in a Solway-wide context."

Will you explain briefly the procedure for developments such as Robin Rigg and how they are likely to change in the light of the UK and Scottish marine bills?

Pam Taylor: There was concern that the consultation on the Robin Rigg development was not carried out as thoroughly as it might have been on both sides of the Solway, even though the development impacts environmentally and visually on the whole area. We hope that lessons can be

learned from that to ensure that consultation on any future developments is done Solway-wide.

John Scott: I am sure that you are experts on the UK and Scottish bills. Will they help or hinder that process?

Brian Irving: The proposed barrage scheme is a good example of what is happening on both sides of the Solway. Given that a less than C-standard road runs along the coast on the English side, the spring point for any barrage, bridge or whatever would have to be the old viaduct at Bowness-on-Solway. However, the road runs through the Hadrian's wall world heritage site, with all its underlying archaeological riches, and across marshland that is designated as a special area of conservation, a special protection area, a site of special scientific interest and an area of outstanding natural beauty. On the other hand, the footfall on the Scottish side has none of those designations and is very close to Annan and the Annan by-pass. As a result, two completely different sets of problems need to be solved. We need integration because what might be good for England might not be so good for Scotland and vice versa. After all, the problem is not just what happens in the intertidal zone and outwards, but the infrastructure on land, the damage that might be caused and so on. That is why we have cast such a wide net on the Solway: we need to catch and deal with these matters.

A couple of weeks ago, my telephone was red hot because of an article in the press about the barrage. People wanted to know what we were going to do about it. I made it very clear that I would not be doing anything myself; the community groups know that there is a partnership that deals with that kind of thing and they are looking forward to engaging with it on the matter.

We heard from one of the funders of the feasibility study, but even though the issue has been discussed in the press for nearly two years now, and even though the Solway coast is statutorily designated as an AONB, no one has consulted us. That is where the environmental bodies are with the issue; indeed, as members will have seen, not one of those organisations is funding the feasibility study. Nevertheless, the Solway is such a layer cake of cross-border designations that both sides feel confident that these pieces of legislation will get a good hearing and be put through the mangle.

I think that I have answered only half the question: in summary, the UK Marine and Coastal Access Bill and the Marine (Scotland) Bill will lead to the sort of integration that will help us to achieve even more cross-border understanding about all planning development and planning control issues.

John Scott: What framework should be put in place to deal with the kind of irreconcilable conflict that you have highlighted in relation to the barrage, in which people on the English side feel that the land is too precious to be damaged and we in Scotland feel that the proposal is good and that we do not necessarily want to preserve our land?

14:00

Brian Irving: All that we can do is based on our experience, which is of consensus building and dealing with the problem and finding agreement on how to take it forward, through shellfishery agreements for example.

Gordon Mann: From what I can remember, E.ON had to get about 20 different consents for Robin Rigg. It was incredibly complicated and time consuming. Scottish Natural Heritage and the local authorities on both sides of the firth objected to the application, but it was granted without further ado. It is clear that there has to be a better way to do this. Right now, the decision to have a wind farm seems to emanate from the Crown Estate, and everyone is reacting to that.

We need to move to a position in which marine plans are established in places where we think there is potential for wind farms or other renewable energy. That should be the starting point, after which the projects can be considered in more detail. At this stage, we are all running to catch up, but the need for renewable energy projects is so important that we need to bring projects on stream much more quickly than we have done in the past.

Peter Peacock: In the context of Robin Rigg, and the regional partnership's future duty to consider a spatial plan for the area, how different would the outcome have been? From what you have said, the partnership would not have agreed to the space being zoned for that development. If that had been the case, where would that have left people?

Gordon Mann: I do not know what view would have been taken. It would be fair to say that there has been a pretty strong body of opposition to the plans. These are not offshore wind farms, but inshore wind farms—the impact is quite different. Part of the logic for putting wind farms offshore was because of the visual impact of onshore wind farms: "Let's put them offshore, where they're out of sight." However, all the ones that we are talking about are very close to the shore.

The problem here in the Solway was how we would balance the need for more renewable energy with the fact that both sides of the Solway have strong landscape designations—designations that are in place because of the

seascape. What priority should we place on that? It is right and proper that the Government should make such difficult balancing decisions, but local people seem almost to have been excluded from the process when they need to be included.

On the process that the bill envisages for preparation of a marine plan, an area might come forward and say, "Offshore wind farms are not for us." Clearly, that does not fit with national priorities, or with the national need to secure renewable energy targets, so there is an opportunity for the plan to be amended. However, it would be being amended deliberately and positively, and because a democratically-elected Parliament had taken the view that in this circumstance, renewable energy was a higher priority than landscape, and the impact on that landscape of any development.

Peter Peacock: I want to get this clear. If national Government said, through the national planning framework, that it wants X capacity from inshore or immediately offshore wind farm developments, and that it thinks that the Solway is one of the places in which such developments should be considered, is it your understanding that that should guide the local partnership to try to find the space for such developments and to try to reconcile that issue? In what order should things be done? Those things could, I presume, happen under the national planning framework.

Gordon Mann: That is exactly what the bill says. Unless people can argue a strong and compelling case that proposals are wrong for their area—which the bill allows for—that is right. It means that decisions are made clearly and for the right reasons, rather than just slipping through.

Peter Peacock: From a local perspective, you are quite comfortable with the hierarchy as described; you do not feel that that impinges upon the local partnership working that you are trying to generate.

Gordon Mann: Yes—that is right.

Liam McArthur: I will take you on to the issue of marine litter. The conclusion of the Forth Estuary Forum's evidence discusses the possibility of including among "wider seas measures" steps

"to protect the marine and intertidal ecosystems from the effects of terrestrial and marine sources of litter".

I have received many representations from pupils at Glaitness primary school in my constituency about the same issue.

I note, from the Solway Firth Partnership's website, the establishment of the Solway aquatic litter task. When we were on site earlier today, the only litter anywhere was old cockleshells. Do you view litter as an issue that could or should be encompassed in the Marine (Scotland) Bill? Could meaningful or realistic provisions on that be included? If so, where would responsibility lie for taking the necessary steps?

Pam Taylor: The Solway Firth Partnership is active in tackling marine and coastal litter on the Solway. It is a huge problem. The beach that we walked on earlier is pristine now, but a few years ago, before RSPB Scotland was managing the site, it would have been a very different story, with oil drums and plastic containers everywhere. You can imagine the enormous impact that that sort of thing has on the view, as well as the impacts on marine animals and on people walking their dogs and such like. Marine Scotland is in a tremendous position to take an overarching view of marine and coastal litter management. There is no organisation that takes responsibility for that at the moment.

Local coastal partnerships have been quite active on the issue, but it is a massive problem that needs to be tackled on several levels, from the amount of packaging that is used for everyday items to discards from fly-tipping of industrial or public waste. A tremendous amount can be done to tackle the problem at local level. We work with community groups, which are keen to go out and get involved on their own beaches. The issue needs resourcing, and an organisation needs to be prepared to take responsibility. Marine Scotland and the UK marine management organisation might want to take that up.

Liam McArthur: Do you envisage that as part of a regional plan, or does it not fit comfortably within that process?

Pam Taylor: It would fit well with a regional plan. Aside from the direct benefits for the environment, it would provide a way, in which local communities can actively engage, of managing the area. Here in Kirkcudbright, we have established a fishing for litter project, and are working actively with the fishing community on it. It has a number of benefits over and above the obvious ones of removing the litter from the environment.

Elaine Murray: There is a slight difference across the border. The fisheries advisory committees in England will become inshore fishery and conservation authorities; on this side of the border, we will have inshore fisheries groups. The Scottish Sea Angling Conservation Network is concerned that conservation will have a stronger voice under the English arrangement than it will under the Scottish arrangement. Others say that it is just a name and will not necessarily make a great deal of difference to the way in which the groups operate in practice. Do you see any difficulties in the new arrangements? We are not sure whether there will be a Solway inshore fisheries group—there were rumours that the Solway might be included in the Clyde group. Most

of us from down here hope that that will not happen. Do you see conflict arising from the different arrangements north and south of the border?

Pam Taylor: It is inevitable that we will have two different systems, but it is important that those systems mesh together. In England, there is a long history of sea fisheries committees, which were established in the 1800s. In Scotland, we are just starting out with inshore fisheries groups. To get the support of the fishing community, it may be best for the moment if membership of the groups is limited. This morning we discussed the difficulties of finding agreement among different sectors of the fishing community; it can be quite a challenge. Over time, inshore fisheries groups may acquire wider memberships and become more like the inshore fisheries and conservation authorities that are being established in England. The fact that the two systems are different is not necessarily a huge problem, but it is important that they work to similar objectives. That should happen through the wider regional marine plan within which the fisheries plans will sit.

Elaine Murray: Some species of shark are already protected more on the southern side of the Solway than they are on the northern side. If the English groups have a stronger conservation emphasis, could the situation in which species enjoy different degrees of protection on the two sides of the Solway be exacerbated?

Pam Taylor: That is exactly the kind of difference that we want to avoid. Elaine Murray is correct that tope are fully protected from commercial fishing on the south side of the Solway but are not protected on the north side, which is an odd situation. That arrangement has the potential to displace activity to the area that is less heavily regulated, which we should guard against.

Liam McArthur: Regulation is an issue, but what we heard this morning suggested that the level or visibility of enforcement was having an impact on behaviour. Is the challenge not just to match up the regulatory environments but to have consistent enforcement, so that problems are not displaced to the north or south, depending on where enforcement is most visible?

Pam Taylor: The resources that are available to enforce fisheries legislation north of the border differ hugely from those that are available south of the border. We need to redress that imbalance. The nearest base of the former Scottish Fisheries Protection Agency—now Marine Scotland compliance—is at Ayr. It is not as visible on the Solway as sea fisheries committee officers are on the south side.

14:15

Gordon Mann: Marine Scotland's boats struggle to get up to monitor the hand gatherers.

Pam Taylor: It cannot get its boats into the Solway.

Brian Irving: The Environment Agency—another cross-border regulator—has responsibility for rivers and river estuaries. The agency manages, maintains and bailiffs the border rivers—the Esk and the Liddle. The same arrangement applies to the haaf nets on both sides of the border. That cross-border work is happening at present.

John Scott: Scottish Renewables said that the bill should contain climate change mitigation objectives. How will climate change affect your plans in the Solway? Are you factoring the issue into your thinking at this stage?

Gordon Mann: I think that the answer is that we are not. The strategy that we are working with is getting rather long in the tooth. If we were to review it, we would take a different approach to dealing with climate change. We need to be able to start thinking more comprehensively about the challenges of climate change.

The Convener: I thank the witnesses for coming. If you want to elaborate on your evidence or share additional information to inform our future evidence sessions, please write to the clerks.

14:17

Meeting suspended.

14:23

On resuming—

The Convener: I welcome our second panel of witnesses: David Whitehead is director of the British Ports Association; Ron Bailey is harbour-master at Clydeport Operations Ltd; Jeremy Sainsbury is vice-chair of Scottish Renewables; and Morna Cannon is marine energy officer at Scottish Renewables.

In its submission, the British Ports Association raised two issues on dredging and dredgings disposal. You said:

"The effect of the proposed extended licensing regime for dredging will need to be carefully monitored for its impact on port operations".

You went on to say:

"We are … concerned about the bringing into scope of dredging activity and forms of hydrodynamic dredging, which seems incompatible with the objective of reducing the overall burden."

What impact would the proposed licensing scheme for dredging have? How could negative impacts be mitigated?

David Whitehead (British Ports Association): We hope that ultimately the effects will be good. There is a bit of a mixed message in the bill: on the one hand, it extends the licensing regime to dredging activity itself and to hydrodynamic dredging; on the other, it suggests that realistic consideration will be given to exemptions and perhaps a system of registration, neither of which approaches is explained in great detail. Implementation is therefore key.

Ports absolutely depend on the ability to dredge—we cannot have ports without dredging. The Scottish ports industry is hugely significant. Scottish ports handle 100 million tonnes of cargo a year and are a big part of the UK ports scene. Dredging is fundamental to that activity.

We took some encouragement from the proposals, because most dredging is a repeated exercise that has known consequences and impacts. There is a rigorous regime, with environmental impact assessment and so forth. There is certainly the potential to take a different view, which could satisfy all sides. We are looking to the bill to institute a more sensible dredging regime, but the opportunities need to be taken. Discussion between Marine Scotland and the industry will be needed.

The Convener: Currently, there is a rigorous regime for dredging disposal. How do you envisage the bill changing that and what impact would that have on ports around Scotland?

David Whitehead: I am not sure that the disposal regime will necessarily change; it is the dredging activity that is being trapped under the bill. The national and regional plans might start to get involved in dredging issues in addition to Food and Environment Protection Act 1985 consents. There may be impacts in that regard, but that is speculative.

Ron Bailey (Clydeport Operations Ltd): We would like to have a three-year licence rather than the current one-year licence. That would bring us into line with England. A considerable amount of work must be done each year to get our disposal licences.

John Scott: Can I ask a daft laddie question? I do not know the difference between traditional dredging and hydrodynamic dredging. Can you tell me what the difference is, please?

David Whitehead: Traditional dredging is when the dredging is taken out and put somewhere else. Some rather unsympathetically call that dumping, but we call it disposal. However, there are other systems—Ron Bailey is better at the technicalities than I am—in which the mud or sediment in an area is moved around. It is not disposed of somewhere else, so a licence is not needed. The difference is therefore between agitating the dredging and taking it somewhere else.

Ron Bailey: A cutter suction dredger is like a vacuum cleaner: soft material is sucked up, taken to a licensed disposal ground and deposited there. That activity tends to dig furrows, so it has what we call a bed leveller, which is a solid rake that evens out the bottom. However, if a dredger is not available, we can do a quick fix by agitating or raking, which puts the dredging into suspension. That practice is currently not licensed, so we are concerned about how that will work under the bill.

The Convener: Are you advocating that traditional dredging and hydrodynamic dredging should be left out of the bill? Is it okay for those to be in the bill, but you would like three-year rather than one-year licences?

Ron Bailey: We would like three-year licences, but we are happy to see dredging left in the bill. The point that I was trying to make, which I perhaps did not explain too well, is that hydrodynamic dredging or raking is currently not licensed. We do not have a problem if it is to be licensed and brought into the bill or into the marine licensing regime. However, the problem with exempting traditional dredging is that the dredger does marine raking as well. We could therefore create a situation, if we are not careful, whereby we exempt one part of dredging, but the smaller part of it would require a licence. The matter is therefore not quite that easy.

John Scott: So you want permission to carry out any of several techniques, or any combination of them, to be granted for as long as possible in order to cut down the paperwork.

14:30

Ron Bailey: That is exactly the point. As I said, traditional dredging licences in England last for three years.

Liam McArthur: As you might be aware, I previously raised with the Minister for Environment in a parliamentary debate how the bill sits with the responsibility of harbours to maintain navigable channels. I think that there has been some follow-up to that exchange. In its written submission to the committee, Forth Ports plc referred to a meeting with the bill team at which there was discussion of section 24, which deals with exemptions. I do not know whether that cuts across what you said about being happy for dredging to remain in the bill but for there to be a three-year licence. I do not know whether you were involved in that meeting with the bill team or have had feedback from it, but do you know

whether there has been further clarification of how section 24 orders might work and whether dredging may be subject to an exemption? Is that what you would ideally want?

David Whitehead: Yes. If you wanted to remove maintenance dredging from the bill, we would be delighted. It costs a lot of money—it is a big regime. However, we have not gone into detail on how that might work—for example, what the exemptions might be and what registration might add up to. We have not had any feedback on that, but we will obviously have to get to grips with it.

Liam McArthur: This might be an unfair question, but I will ask it anyway. As you say, maintenance dredging is critical for harbours such as those in my constituency and others throughout Scotland, but I presume that there is a body of opposition to it, if not in principle then certainly to some of the practices. What are the principal concerns that are raised about the operations that harbours routinely have to undertake?

David Whitehead: The principal concern is that valuable mud, which provides a resource for wildlife, is moved elsewhere. There is also concern about the creation of sediment in the body of water. As I said, however, those are well-accepted practices. A lot of science goes into the approval of disposal licences and so forth. Many areas come within the Natura 2000 regime, which imposes stricter conditions, and the water framework directive is coming along, under which other restrictions on dredging or mitigation measures might evolve. The processes are therefore surrounded by a strong regime, but it is the movement of sediment from one place to another that is the critical factor.

Liam McArthur: I am sure that Jeremy Sainsbury will testify in his evidence that, the more we find out about the sea bed and what happens in the sea, the more we realise we do not know. However, is it fair to say that your understanding of the impact of dredging is fairly well advanced, given how long you have been doing it? Do we need to put more resources into research in some areas where further scientific underpinning is required?

David Whitehead: That is an interesting question. The point is often made that we need a lot more data about the coast, but I would say that there are a lot of data about dredging. It is probably one of the areas about which the most is known, largely because there is a lot at stake. A lot of resources are put into it, so it is self-perpetuating in that sense. The effects are pretty well known.

Bill Wilson: You expressed a preference for a three-year licence rather than a one-year licence. Would you support three-year licences for well-established dredging sites where it has been happening for a long time, and one-year licences for new applications?

Ron Bailey: There are already two types of licence. Maintenance dredging is done to maintain, and capital dredging is done when new berths are created and areas that have not been touched before are deepened. Yes, I would support that for maintenance dredging.

Elaine Murray: I have a question for Scottish Renewables. The written evidence from Scottish Renewables and Scottish and Southern Energy expresses concern about the designation of marine protected areas. SSE is not convinced that the power to designate MPAs is required at all, and Scottish Renewables says that any designation should take into account environmental, social and economic arguments and not just environmental ones. The current wording suggests that social and economic arguments could be left out and would not necessarily have to be taken into account when designations are made.

Scottish and Southern Energy states that

"MPAs should not become 'no-go' areas for marine renewables"

where sites might be disturbed for only a short period of time, such as during the laying of undersea cables. It also states:

"Further work should be carried out to examine the potential for 'fish regeneration zones'".

That suggests that there is potential for environmental and conservation work to be done in conjunction with renewables work.

I am not sure whether there are any examples of that, but I am interested in your concerns about marine protected areas and whether conservation work can potentially be done at the same time as work around renewables in the marine environment.

Morna Cannon (Scottish Renewables): One of our main concerns, which was alluded to earlier, is that the references to marine protected areas in the bill seem to give the impression that those areas will have the same level of protection as, say, habitats directive sites. That would be quite a high level of protection for their particular features. It seemed clear from discussions that we had in the sustainable seas task force that the idea behind marine protected areas was to give an extra tier of protection for species or specific, nationally important features of interest. One concern is that implementation of the legislation will allow for the designation of an extra raft of sites that would essentially become no-go areas for renewable energy development. Renewables

can be developed in habitats directive sites, but the bar is raised a lot higher.

That concern would be allayed to some degree if the bill explicitly confirmed the Government's intention to have a policy of presumption of use inside marine protected areas. The policy memorandum says that there will be such a presumption, but that is not quite as clear in the bill. Such a confirmation would be useful in allaying our concerns, and would, I think, bring the bill into line with the United Kingdom Marine and Coastal Access Bill. The UK bill does not contain a statement about presumption of use, but it clearly says that socioeconomic considerations can be taken into account in designating marine conservation zones. From our point of view, given that the renewable energy industry is a global, never mind a national, industry, it would be useful if the two bills looked similar in that respect.

On the potential for environmental benefits in and around renewable energy sites, there is a lot of discussion about and a lot of interest in researching potential win-win situations. Obviously, people will not be able to fish on a wind farm site. That raises the question of what that does for stocks in the area. To my knowledge, there are no definite examples of research into that; rather, it is a potential avenue for future research. We do not have too many wave and tidal energy installations in the water at the moment, but that is another area in which we will look for win-win situations.

Can Jeremy Sainsbury give any examples of research that has been done on win-win situations?

Jeremy Sainsbury (Scottish Renewables): I think that I can give examples on both counts. There are certainly examples in the oil industry. The deployment of rigs brings in completely different fish communities. That brings threats and benefits. Sports fishing around rigs is popular, and there is quite a lot of talk with commercial fishing people about such things as lobster habitats at the bases of turbines, where foundations need some form of scour protection or gravity foundation, and about making turbines habitat based, rather than just bland structures, to encourage habitation by different species. That would create different types of commercial fishing opportunities. It is common knowledge that fish and mammals congregate around structures. Therefore, we would expect to see changes in how fish use areas around the offshore wind farms that are being built, including the development in the Solway Firth. Opportunities for more commercial fishing may be produced. However, it is early days.

The oil industry produces large fleets of fishing vessels. The perfect example is provided by the Gulf of Mexico, where there are 200 rigs, around which 250 sports boats fish. There is a great tourism industry there. Some of the biggest catches in the world are produced around those rigs. Before the rigs arrived, no more than a handful of boats were involved in the area.

At the same time, habitat change creates a threat. The possibility of attracting predatory fish to a spawning bed or nursery area for fish must be considered in the environmental impact assessment—there is no gain without pain. If we change an ecosystem, we change not one feature but a series of features of that system.

Developers just want some form of clear guidance on marine protected areas. We all accept that features should be protected—but at a level that is not necessarily a European level. Often we have proved that a development does not impact on the reason for the designation of an SSSI. Liam McArthur mentioned the burden of producing evidence. We do not know much about the sea, so it is a question of how and on what evidence we designate. If a developer has more resources, carries out better surveys and proves that a development will not disturb a habitat that has been designated because of circumstantial evidence, there is no reason for not reconsidering the designation. However, the burden on the developer to prove that must be greater in a marine protected area, which has been created for a purpose, than it would be in a preferred search area that might be identified by a plan.

Elaine Murray: Are the necessary scientific data available, in your opinion? One problem that I have with a presumption of use is that a developer may not realise that it is going to damage the environment until that has happened. This morning we heard about the possibility of a Solway barrage, which sounds great when it is described as a local source of significant amounts of energy and so on. However, there is always the possibility that, by changing the tides, we may seriously damage the habitat. Scottish Environment LINK argues that decisions must be taken on the basis of scientific evidence. Is the science there? Are more resources needed for the research that must be done for us to be sure of the facts before we take decisions that we might regret later?

Jeremy Sainsbury: No renewables project would want environmental damage to be attributed to its existence—that would go against the principle of renewable energy. It is down to how the environmental impact assessment that is carried out for the project is scoped and dealt with. A large number of onshore wind farms are being built and consented on land, but in all instances the environmental damage that they cause is zero or mitigated. Usually controversy centres on issues such as visual perception, which do not

involve hard science and are more difficult to assess.

14:45

We carried out the environmental impact assessment for the Solway Firth project. The client spent more than £2 million on understanding the ecosystem of the firth and of the bank on which it wished to install the project. That included building models that cost £300,000 and enabled the client to model the environment in a very refined manner. We hope that constant surveying of the area will prove its methods to be right.

The burden of proof must be placed on developers. The committee asked what would happen if there were an area of great environmental interest on the English side that would be impacted by the barrage, but no such area on the Annan side.

What Gordon Mann said earlier is extremely sensible, and it is a point that we have raised. If there is agreement at the strategic policy level and consistent guidance is provided in the UK and Scotland, that will create a top level that can be disseminated down to regional level. If there were a single body working out the plan at regional level, it would identify that the English side was extremely sensitive and that, regardless of which jurisdiction applied to any application that was made, a landing point in such a location on the English side would be inappropriate and would have to be moved, whereas the Scottish site could remain where it was. That would be supported on both the Scottish side and the English side. If an integrated planning approach is achieved, EIAs and the proper processes will deal with such situations.

Pressure will arise because we need renewable energy now. We have extremely challenging targets for 2020. The bill will involve the setting up of marine protected areas, but the science that will enable us to do that comprehensively will not be available for between six and 10 years. We cannot afford to wait six to 10 years for fully worked-up arrangements to be developed and devolved down to regional areas, given the pressure for development that exists. That will not happen; it would happen only in a perfect world. We must find a robust set-up that sends out a clear signal and which allows development to happen. We hope that the areas in which development can take place will be easy to define so that the industry can get going. As we find out more science, we will find out more detail and will be able to do more—or fewer—projects.

John Scott: Does the bill run the risk of being a recipe for doing nothing because people will be afraid to do anything, as the science has not been worked out? There are penalties in place—in the past fortnight, we approved a statutory instrument that dealt with long-term damage to world heritage sites, even though we had some difficulty with it. Everyone could be caught in the headlights thinking that it is probably best not to do anything, given all the implications of doing something and getting it wrong.

Jeremy Sainsbury: Again, I think that the onus will be on developers—

John Scott: I know that you represent a developer—good luck to you—but if you were a marine developer in the future, would the bill encourage you, given the burdens that it will place on you?

Jeremy Sainsbury: The investment regime that has been provided by the renewables obligation is a driver, as are the targets. A development community always responds to market pressures. I think that you will find that there will be pressures that will be responded to if an economic case and a sensible investment case can be made for a particular technology. The system needs to be resourced to handle that and needs to have a framework that is built up logically. We cannot have a scenario like the one in Wales that surrounded the development of technical advice note 8, whereby everyone stuck their head in the sand for four or five years while they decided on an area policy that was denounced by all the local authorities within three months of its being announced and which has still created no development. That represents an eight-year sterilisation of development. Given the Scottish Government's targets and its support for wave and tidal developments, that would be an untenable position to be in.

At the same time, no development should happen without people having confidence in how such matters are dealt with. On the Firth of Forth, for example, developers and the Crown Estate, using marine spatial planning tools and various other geographic information system tools, have identified four sites within 12 nautical miles. They have let the Scottish Government know what is going on, so there has been consultation. In addition to those four sites, there is a Crown Estate round 3 site on the other side of the 12 nautical mile boundary, so there is massive potential for cumulative impacts and in-combination impacts in that area. If those developers are to be able to move forward, they must act together to create an ecosystem model that demonstrates that all or some of those projects can proceed. In effect, a mini-marine plan will come out of that process that will enable decisions to be made.

That is the sort of responsibility that developers must take on. They cannot take a blinkered

approach that involves only their project on their spot. If there is an in-combination effect, developers must consider the cumulative impacts. We should have learned that from the early onshore wind farm developments. If developments are to go ahead, a balance must be struck.

The wave and tidal energy developments in the Pentland Firth are another example. A huge number of applications have been made for that area, which clearly has a lot of sensitivity. We must consider how the early projects are to be grouped. We need an approach that allows us to examine the projects to ensure that they do not damage the environment, but which enables some projects to proceed to demonstrate the technology. That balance must be struck. That area might lead on the process of cumulative assessment that goes down to individual sites.

Morna Cannon: The previous two questions probably sum up the main risks of the bill. It is a framework bill, so I guess that whether it facilitates the growth of the renewable energy industry depends on how it is implemented. The first of the two risks is that a precautionary approach might be taken to development. If we had all the time in the world, that would be the logical way in which to proceed, but we have targets to meet for 2020 and we need to grow the industry as soon as we can. The second risk is that delays might arise because of a need to wait until plans are produced. Given that the policy memorandum talks about plans taking at least two years to develop, it could be 2014 before we have a regional plan for the Firth of Forth or the Pentland Firth. If we are to meet our 2020 targets, it is not tenable to wait until the plans are in place before we start to make progress on applications. From a planning point of view, we must try to take a pragmatic approach to allow the industry to grow in parallel with the bill process.

To return to the marine protected area issue, I should have mentioned earlier that Scottish Environment LINK said in its written submission that the bill contains no requirement for MPAs to be monitored. That is an important point, as they should be monitored to check whether they are achieving the objectives that they were established to achieve. In talking about monitoring, it is important to make the point that the localised environmental impacts of wave and tidal energy projects are as yet unknown. It is important for that industry that a pragmatic deploy-and-monitor approach is taken.

John Scott: Will you define the term "pragmatic"? We are long on analysis of the problems for and inhibitors of development that might transpire. When you say that a pragmatic approach must be taken, what do you mean?

Morna Cannon: I am talking about the deploy-and-monitor approach whereby, specifically for wave and tidal projects, the first few projects would be allowed to go into the water and their environmental impacts would be monitored. EIAs could then be used to amend site selection on the basis of what is discovered.

John Scott: That is a bit like the situation with fish farming.

The Convener: We must move on, but Bill Wilson has a small point.

Bill Wilson: I have a quick question to follow up on a comment by Morna Cannon. You said that the UK bill does not have a presumption of use in relation to MPAs, but if I understood you correctly—if I paraphrase wrongly, do not hesitate to say so—you are not too bothered about that because, under the UK bill, social and economic issues could be taken into account in the designation of MPAs. However, section 61(3) of the Scottish bill states:

> "In considering whether to designate an area, the Scottish Ministers may … have regard to any social or economic consequences of designation."

You seemed to imply that that was different from the UK bill, but I wonder why. If a minister has already had regard to social and economic consequences in the initial designation of an MPA—I presume that that means he might well say that a certain area is developable and another area is not—should there still be a presumption of use?

Morna Cannon: I do not know whether I have interpreted the bill incorrectly, but I thought that the Scottish ministers could take socioeconomic considerations into account in designation only when the desirability of designating two sites was equal.

Bill Wilson: My understanding is that ministers will be able to take those issues into account. That was the impression that I got from evidence that I asked for at a previous meeting.

Morna Cannon: That is a very good thing in that case. However, there should still be a presumption of use, insofar as development should be allowed as long as you can prove there will not be a significant impact on the feature of interest in that specific site.

Bill Wilson: So there is a presumption of use, as long as you do not damage the specific thing that you are trying to protect.

Morna Cannon: Yes.

David Whitehead: I am now a bit confused about whether socioeconomic issues can be factored into the identification of a site.

Bill Wilson: Perhaps I should clarify that I asked what the situation was. On the scientific evidence, there is no automatic obligation to bring forward an MPA.

David Whitehead: Okay. There is very fierce competition in renewables for the ports industry generally. If you develop different regimes in Scotland and England, that is something to consider seriously. There is a chance that development could become more difficult or problematic in Scotland and you must realise the consequences of that.

Morna Cannon: In the Scottish bill, there are three types of marine protected area. My understanding is that you could not take into account the socioeconomic consequences of designating a nature and conservation MPA, but it would be possible to take those consequences into account for the other types of MPA, such as demonstration and research MPAs.

Bill Wilson: Strictly speaking, there is no obligation to designate nature and conservation MPAs. The evidence would be used only to say that there was not enough evidence for that.

Liam McArthur: Jeremy Sainsbury touched on some of the pressures in the Pentland Firth. In our previous evidence session, we heard concerns that the siting for Robin Rigg was driven by a Crown Estate perspective that might have been about rate of return on its assets. The developers are under some pressure to get devices into the water and functioning. We have seen examples in which, in pursuit of economic development, often in remote and rural areas, we have not necessarily been as attentive to environmental impacts over the piece. Given that the science is imperfect, how do we strike the balance between data that are accumulating but which fall short of what we want and the pressures that exist on developers and the Crown Estate to get a good rate of return on their investment?

Jeremy Sainsbury: Robin Rigg is quite a good example of pressure and policy, and how they have or have not worked. On the environmental impact assessment, there were no objections in relation to the physical aspects. The issue for the Solway Firth was the potential visual impact of the project; that is what the objections were about. Against that, there were no policies for the middle of the firth. The Town and Country Planning (Scotland) Act 1997 does not permit a policy beyond the low water mark. The Crown Estate opened the round and allowed developers to select areas in which they thought there was wind, they could get access, there would not be an impact on environmental designations and in which they thought that the visual impact would be acceptable, given how far offshore the area was. It was then for the system to deal with that. Because of the weakness, in that there were no policies for the middle of the firth—except the Scottish Government's remit in that area—the issue of objections and overruling came in. The end of the process was a little untidy.

Pam Taylor said earlier that there was no consultation, but there were two years of consultation and five cross-border groups were set up. We had three presentations at Solway Firth Partnership conferences over the years. From that point of view, there was good cross-border consultation on the project. However, the visual aspect was the issue and there was no policy or structure within which it could be dealt with. That is an example for us going forward. You would say that central Government made the decision in the absence of policy, basically.

15:00

Liam McArthur: Do you accept that it is perhaps necessary to define offshore wind farms as inshore or offshore to make clear what is being proposed?

Jeremy Sainsbury: I accept that the wind farm in the Solway Firth is effectively based in a flat piece of landscape between two other bits of landscape, so there is more of a landscape setting than is the case with most offshore wind farms, where there is a coastal view.

However, I disagree slightly with Gordon Mann about the aspects of the Scottish site designation. The intimate coves and everything else are their own landscape, and look across to one another. The reason for the original designation of that area was not so much the views across—although those are important—but the intimate landscape features that the Solway coast offers.

All the visual arguments are subjective, however. The factual arguments about the Solway Firth and the environment were well addressed as part of the Robin Rigg project, so it came down to the subjective stuff. If developments are now moving further offshore, and different types of projects are involved, hopefully that will help to mitigate the less scientific approach with regard to visual intrusion and people's reactions to it.

Peter Peacock: I have a question for the ports people, on marine protected areas. The committee has heard concerns that Marine Scotland would have powers to restrict entry, movement, speed and anchoring within the powers that it has been given, which could have implications for ports. What are your thoughts on that, in relation to marinas, port movement and that sort of thing? Do you have concerns, or are you relaxed about it?

Ron Bailey: I would certainly be concerned, although nothing has so far been flagged up to me

on that matter. It creates a difficult situation with regard to the safety of navigation, established anchorages, RYA Scotland and the right of navigation et cetera. We would have to debate the issue, but we would have strong concerns.

Peter Peacock: I assume that the individual representatives of port authorities—wherever they are located—would be members of regional partnerships in the future, and would therefore have a say at the table. Are you generally comfortable with the notion that the regional plan as it is approved may impact on ports, given that ports have specific statutory rights? What is your view on how you fit in that particular framework?

Ron Bailey: As with all such matters, the devil will be in the detail. We have the Firth of Clyde forum, which was previously the Clyde estuary forum. I have been here for 13 years: we have a well-established framework in which we work with people and our stakeholder partners, but we have statutory duties regarding the safety of navigation and the raison d'être of the ports.

We have been talking about renewables. Our ports have been involved with the East Kilbride wind farm through King George V dock in Govan, and with some of the Ayrshire schemes through Ardrossan. There are always conflicting interests, but the majority of ports work with their stakeholders and try to talk those matters through.

Peter Peacock: I suppose that one difference in this instance is that the stakeholders have the statutory power to refer their plan to the minister, who can say, "I agree with that", and you are pretty much bound by that. A different relationship has developed.

David Whitehead: You are right: the stakes are much higher now, as the marine regional partnerships will make decisions that were not previously made at local level. It is impossible to anticipate exactly what will happen, but there are real concerns, not only about the decisions that the partnerships will make—whether they will influence Marine Scotland's decisions about licences, for example—but about the organisation of the groups. The partnerships could, in theory, consist of enormous gatherings of people with very different interests that are difficult to reconcile. As my colleague said, we have good experience of that type of group, but—as I said—the stakes will be much higher this time round.

Peter Peacock: You indicated in response to an earlier point that Scottish ports could find themselves at a commercial disadvantage. Were you referring specifically to marine protected areas or to the general policy framework that is being created for regional plans?

David Whitehead: I was referring mainly to marine protected areas, because, notwithstanding our discussion about this bill's particular force, I point out that the English bill makes it absolutely clear that socioeconomic reasons should be taken into account. Given that, in England, there will not be an intervening level of marine regions, each of which has its own plan, any system of processing licences that is developed might well be quicker and more efficient than that in Scotland. It is simply something else to factor into the operation of the marine regions.

Bill Wilson: Do you think that any ports will end up as MPAs? Indeed, do you have any particular examples in mind?

David Whitehead: We do not know, because there is very little information or hard evidence about where exactly the MPAs might be. Indeed, we find it a bit curious that, as was discussed earlier, they can be identified without more data being produced about where the best ones might be. That said, we have a lot of experience of Natura 2000 sites.

Bill Wilson: In its submission, the British Ports Association states that section 132, which provides marine enforcement officers with the power to direct a vessel or marine installation to port, is an extension of an existing power. If that power already exists, how often has it been used? Indeed, when has it been used? Has it ever had a significant impact on port operations? You might have to write back to us on that.

David Whitehead: We do not think that the power is being used much; if it is used, it is used only for fishing vessels. Of course, extending the provision to other vessels that are suspected of committing an offence within an MPA might cause the number of incidents to increase and might lead to very different types of vessels, including much larger vessels, being involved.

We are concerned about the impact of the provision on ports. The bill does not seem to say anything about how the port will be contacted, arrangements for dealing with disruption to trade, oil spills and so forth or even how the provision relates to the powers of the secretary of state's representative for maritime salvage and intervention, who has the power to direct into port ships that are being salvaged. We are flagging up the issue as a bit of an unknown area in which consideration of the port side seems to have been left out.

Bill Wilson: So it is unknown in that you do not have any hard examples.

Ron Bailey: I am not aware of any other hard examples. However, we have often debated the issue in light of the Sea Empress incident, which led to SOSREP's creation. The point is that if I am directed by SOSREP, on behalf of the UK Government, to take in a vessel that he has

ordered into port, the UK Government bears the responsibility for anything that might happen or any financial repercussions.

Bill Wilson: You have suggested that there should be some redress if a boat that is brought into port in such circumstances causes disturbance or affects the port's normal activities. What kind of redress are you thinking of? Of course, I am using "you" in a broad way.

Ron Bailey: Of course. We are saying not that every vessel would disturb the port's activity but that such a possibility exists. An increasing number of ports do not have unoccupied berths simply sitting around and problems can arise if a vessel goes into a berth that is contracted to other vessels and, for whatever reason, is not allowed to leave when the next vessel comes along or if the vessel that enters port would normally not be accepted by the harbour-master because of other deficiencies. It all depends on the level of deficiencies.

When we get down to the nitty-gritty, there has to be—as there is anyway—a great deal of consultation on all this. Simply stipulating that marine enforcement officers can direct a vessel into a port is a very broad-brush and potentially dangerous provision.

Alasdair Morgan: I am struggling to think what else the bill would say other than "An officer has the power to direct a vessel into port." How long do you expect the consultation to go on for? Are you suggesting that, while the vessel sits out at sea, we hawk it around every UK port before we find a port that is willing to take it?

David Whitehead: In a sense, that is precisely our point. If the vessel is directed into a particular port, there will probably not be much discussion about the decision. If SOSREP, for example, directs a ship to port, in it goes. However, we have developed a regime to deal with such matters. We are simply saying that giving marine enforcement officers such powers has consequences and we need to work out what redress we can have.

Bill Wilson: Do you have a particular redress in mind?

David Whitehead: The main issue is disruption to business and trade.

Bill Wilson: So you are looking for financial compensation?

David Whitehead: Yes. Pollution clean-up issues can also arise, although they are probably better covered than the disruption-to-business issues.

Alasdair Morgan: Presumably, redress in law exists anyway for such events.

David Whitehead: I am not sure.

Alasdair Morgan: No doubt you have lawyers with whom you can check.

John Scott: My question picks up on an issue that is mentioned in the written submission from Scottish Renewables. The policy memorandum on the bill states:

> "Scottish Ministers intend to streamline the delivery of a range of licences. The Bill provides powers to allow Ministers to deliver a single consent to build each new renewable energy project."

The Scottish Renewables submission suggests that

> "the Marine Energy Spatial Planning Group … recommend a simplified consents & licensing procedure for the offshore energy industries."

Why should renewable energy developments receive special treatment? Morna Cannon mentioned earlier that we need to take a pragmatic approach. I am giving her another opportunity to expand on what she meant by that and to say why such developments should receive special treatment.

Morna Cannon: The sustainable seas task force agreed that one of the first aims of a marine bill should be to streamline the licensing and consents process for all activities at sea, so I do not think that we are asking for special treatment for the renewables sector.

As well as making an application under section 36 of the Electricity Act 1989, developers would need to apply for a licence under the bill. Our concern is that it is unclear what that licence will replace. It has long been assumed that the licence under the bill will replace the FEPA and CPA licences—I am not sure, but I think that they stand for the Food and Environment Protection Act 1985 and the Coast Protection Act 1949—but it is not clear from the bill that the requirement for those licences will be repealed and that they will be replaced by the licence under the bill. That is what we expect, but we would appreciate it if it was made clear.

Even if that point was clearly stated in the bill, however, there would still be some uncertainty in the industry about the application process. Will only one application be required, or will two applications need to be made separately? If only one application is required, which part of the Scottish Government will be responsible for dealing with it? It would probably be either the energy consents unit that currently deals with section 36 consents or some branch of Marine Scotland, but it is unclear which would be the relevant department.

That level of detail is not needed in the bill itself. We recognise that the bill will be around for a long time, so the detailed process should not be pinned down in it but would be better placed in secondary

legislation. As we say in our submission, the details of that process are being worked out by the Scottish Government's marine energy spatial planning group, which is led by Phil Gilmour of Marine Scotland. The group has commissioned some work from consultants who will, basically, draft a process.

We would simply like some clarity about which licences will be replaced by the licence under the bill. We also want the results of the marine energy spatial planning group's work to be published as soon as possible so that people have clarity and certainty.

15:15

John Scott: Obviously, we want to know what that group's recommendations might be and how they will interact with the bill, but until such time as that work is available we still need to make progress with the bill.

Morna Cannon: Absolutely. Whatever recommendations the marine energy spatial planning group produces will need to be in line with the bill. The bill needs to set out in broad terms what the requirements will be for section 36 consents and for FEPA and CPA licences. If those two requirements will be considered together in some way or another, that is fine.

John Scott: When is the marine energy spatial planning group expected to report?

Morna Cannon: By the end of the year.

Jeremy Sainsbury: For consistency, the proposed infrastructure planning commission for England and Wales—although that will be a different regime and a different consenting authority—is looking to provide a single consent.

In the context of investment and signals for investment on both sides of the border, it is currently possible to make an entire application under section 36 of the 1989 act and for issues covered by the CPA and FEPA to be dealt with under section 36. However, that is potentially more complicated than it would be if the provisions were tidied up under the Marine (Scotland) Bill.

Some things would need to be identified. First, what is the bill authorising? To some degree, it is effectively a licence, but it does not say what it is a licence to do. That should be very carefully considered. The bill permits something, but it should say how it is doing so a little more clearly. People need to know, from a legal perspective, what they have rights to do or not to do.

There is an additional issue. Because of the way in which the regime for offshore wind, wave and tidal power generation is being set up, if someone has a single consent, and if a transmission voltage is being used, an offshore transmission operator is sometimes required to build the power circuit to the shore and to the on-land connection. If there was a single consent, the consent and the conditions would, by definition, have to be split up to enable the two independent investments to be made—one for the renewable-energy-power-producing product and one for the cable that runs to the shore and connects it to the national grid. A single consent might exist, but two sets of conditions would have to be written under that consent, one which would have to be assignable to an offshore transmission system owner—an OFTO—to enable the infrastructure to be built.

There are complications with the process. At the moment, the enabling legislation should not go into such intimate detail, which can be dealt with as we go through it, but the principle of having a single consent should be established. In relation to onshore wind farms, a lot of people have objected about the fact that the grid line is to be separate from the wind farm, as they want the two applications to be tied together. There is a certain attraction to getting the infrastructure put together.

Taking into consideration the point of view of ministers, we might consider the perfect example of the 1,000MW project in the Thames estuary. Because the consents were separated, the local authority objected to the substation on land but all the offshore infrastructure was consented. The building of the project was delayed by two years, which cost the whole process and the renewables obligation quite a lot of grief when it came to getting the process completed and allowing the project to proceed. That was because there were two separate processes running on two separate timelines.

John Scott: The intention is for there to be a one-stop shop, as it were, under Marine Scotland, but you are saying that the reality is probably going to be different.

Jeremy Sainsbury: That reality can be delivered, but we must consider carefully the investment that happens on the back of a consent and the possibility for the consent to be worded appropriately to allow that investment to happen.

David Whitehead: We have a similar issue. The bill and the documents that surround it say the right things about making the licensing system better and so forth, but that just refers to the licensing system that Marine Scotland can deliver. There are also harbour revision orders, which are a very important part of the whole system and which will continue to be handled by the ports section of the Scottish Government. There are two bits there, and it is the harbour revision order bit that is usually very slow because there are not enough people dealing with that matter. The

provisions in the bill on licensing deliver only part of the solution.

John Scott: Other pieces of existing legislation are presumably relevant. In effect, will they be superior to the proposed legislation before us? Will they have to be taken note of? Can you give us some detail about a few other pieces of legislation that will not be covered by the bill?

The Convener: If you cannot remember them all at the moment, you are very welcome to write in.

John Scott: In any case, the concept of a one-stop shop seems to be evaporating before our eyes.

Ron Bailey: As David Whitehead has mentioned, there is the habitats directive. As a harbour-master, I use a lot of legislation, including the Harbours, Docks and Piers Clauses Act 1847 and legislation from 1852 for the direction of vessels. I also use the Dangerous Vessels Act 1985. There are all sorts of existing legislation.

I have become a little confused about something during the meeting. Is it Morna Cannon's understanding that FEPA will be revoked?

Morna Cannon: No. The requirement to have a FEPA licence for a renewable energy generating unit will be replaced by a requirement to have a licence under the new marine act.

Ron Bailey: I understand. We are licensed for the disposal of dredgings under FEPA, so we do not see the need for and hope to be exempted from further regulation under the bill in that regard.

Jeremy Sainsbury: The bill will undertake valuable consolidation. We should consider how legislation has built up in our sector. FEPA was about placing structures offshore, whereas the Coast Protection Act 1949 dealt with pipelines and cables. Pieces of legislation were enacted over time to deal with specific users of the sea in specific ways.

When a project is proposed that involves not only placing structures in the sea bed but connecting them with cables, a new beast is brought to the environment. Managing the process requires separate applications, and we have to ensure that conditions run in parallel. There are several sets of administration during the project's development, and the process becomes complicated and unwieldy because the system was designed to deal with other things.

If there is to be a new way forward and a proper spatial plan is created that can be administered by a single licensing regime, proposals will be able to be considered and given consent in an holistic way, against an holistic plan. That is a perfectly logical approach, and the committee should not allow it to evaporate before its eyes—it is an important concept of the whole process.

Morna Cannon: The bill is not clear about the consents and licensing procedure from 12 to 200 nautical miles. The bill refers to "the Scottish marine area", which is more or less the Scottish territorial waters, but we expect the round 3 offshore wind projects to be in the Scottish offshore region.

The UK Marine and Coastal Access Bill provides that the Scottish ministers will make licensing and consenting decisions in relation to the Scottish offshore region, but everyone would be a bit more comfortable if that were made clear in the Marine (Scotland) Bill—even just in the preamble.

Liam McArthur: Let us fast-forward to the end of a structure's long and productive life. Concern has been expressed about decommissioning requirements. For example, Scottish and Southern Energy said in its submission that the

"removal of redundant infrastructure … is an area requiring detailed debate and consideration"

and pointed out the extent to which international maritime law covers issues in that regard—I presume in relation to the oil and gas sector.

Will you talk about those concerns? What should the bill do—or not do—about decommissioning and removal of structures? I suppose that my question relates to the points that were made about habitats for spawning, fish aggregation and so on. Are further concerns worth mentioning at this stage?

Jeremy Sainsbury: There are two points at which a project is at most risk of decommissioning. One is when it is being built, because that is when all the capital is going out but none of the cash has come in. How such considerations should be dealt with in the consenting should be addressed up front.

The second point comes 20 years down the line, when a project has served its useful life and comes to the point of replanting or decommissioning. Several conventions are in place for ensuring that that is done to a high standard, including the Crown Estate lease, which places certain obligations on developers and must be renewed every five years. The industry does not want a new regime that does not replace or harmonise existing regimes. We do not need a third set of people to appease.

Liam McArthur: We talked about whether there are aspects of the regulation that can be taken out if a more streamlined and holistic approach is put in place. Is there anything in the current licensing regime—for example in the Crown Estate's regime—that you would not want to be mirrored in whatever system replaces it?

Jeremy Sainsbury: No developer would disagree with some form of funding or facility rolling forward to enable a project to be decommissioned. The Crown Estate lease requires very detailed plans to be drawn up and revised every five years. I think that what happens on land, with landowners and planning bodies reaching an agreement that forms the decommissioning requirement of an on-land project, is a fair reflection of what should be considered for offshore projects.

The Crown Estate is still a landlord as well as being in effect a Government body, and it considers a clean sea bed to be an essential part of the end of a project's life. On the other hand, developers simply want a single set of arrangements instead of duplicating other very expensive arrangements. Both sides should be able to call on the cash and should not hand it back to the developer until a project has been adequately decommissioned or its life has been extended for some other purpose 20 years from now that we cannot speculate on.

Liam McArthur: So the process might have to move away from the notion that a clean sea bed is of environmental benefit if habitats, for example, have developed around the device or structure and if removing it would therefore cause more disruption.

Jeremy Sainsbury: The intention would be that a developer left the environment in the same condition as it found it in, unless over the project's life certain things had evolved that meant that a structure needed to be left. That is why five-yearly reviews are built into the lease; one cannot predict what will be required in 20 years' time. The lifespan of certain oil structures has for various reasons been extended, and it might well be that the infrastructure for offshore wind farms will last more than one turbine. As a result, the next round of Crown Estate leases are for 40 years, allowing the same infrastructure to be used for two projects. Of course, the issue might be addressed in planning consents and licences but, as I have said, if a lease is for 20 years to match the life of a project, one might well consider replanting the infrastructure at the very end. However, that cannot be decided now because we simply do not know whether renewables and offshore wind will be the answer in 20 years' time. Wave and tidal power might have taken over by then.

The difficulty of taking such decisions now means that we in the development community will not put money down on them, but we can take decisions to cover ourselves during construction and for the first five years of operation because we know what is likely to happen. At the end of those five years, a developer considers the various conventions and the changes that have occurred and makes provision for the next five years, and it repeats the process until the final decommissioning, at which point it will at least be reassured that it has enough funds to take the thing away, if that is what it wants. After all, the chances are that taking it away will be the most expensive option.

The Convener: I thank the witnesses for attending. Please write to the clerks on any issues that you feel require further elaboration, and we will consider the additional evidence.

On behalf of the committee, I thank the broadcasting engineers, the official report and the Parliament's security officers for carrying out the extra work involved in holding this meeting. I also thank the public for attending, the town hall staff for their assistance in organising the meeting and the clerks for putting in the extra work. The committee will next meet after the summer recess to continue its scrutiny of the Marine (Scotland) Bill.

15:31

Meeting suspended until 15:38 and thereafter continued in private until 16:51.

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