

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 9 September 2009

Session 3

£5.00

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

20th 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:

John Eddie Donnelly (Clyde Scottish Sustainable Marine Environment Initiative)

Stuart Foubister (Scottish Government Legal Directorate)

Richard Lochhead (Cabinet Secretary for Rural Affairs and Environment)

David Mallon (Marine Scotland)

David Palmer (Marine Scotland)

Linda Rosborough (Marine Scotland)

Dr Billy Sinclair (Clyde Inshore Fisheries Group)

Howard Wood (Community of Arran Seabed Trust)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Roz Wheeler

ASSISTANT CLERK

Lori Gray

LOCATION

Committee Room 1

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 9 September 2009

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

Decision on Taking Business in Private

The Convener (Maureen Watt): Good morning, everyone, and welcome to the committee's 20th meeting in 2009. The main purpose of today's meeting is to continue to take evidence on the Marine (Scotland) Bill. This is the committee's fifth and final evidence-taking session at stage 1.

I ask those present to ensure that their mobile phones and pagers are switched off, because they impact on the broadcasting system. Karen Gillon has intimated apologies.

The first item is a decision on taking business in private. Do we agree to take in private item 5, on consideration of the committee's approach to scrutiny of the reform of the common fisheries policy?

Members indicated agreement.

Subordinate Legislation

Rural Development Contracts (Rural Priorities) (Scotland) Amendment (No 2) Regulations 2009 (SSI 2009/233)

10:02

The Convener: The second item of business is consideration of a negative instrument that was on the agenda last week. The Subordinate Legislation Committee has made no comments on the instrument, no member has lodged any concerns in advance, and no motions to annul have been lodged. As members have no comments to make on the instrument, do we agree to make no recommendations in relation to the instrument?

Members indicated agreement.

Marine (Scotland) Bill: Stage 1

The Convener: We move to item 3. We will hear from a range of stakeholders first, and then from the Cabinet Secretary for Rural Affairs and the Environment and Scottish Government officials.

I welcome the first panel of witnesses, who are John Eddie Donnelly, project officer for the Clyde Scottish sustainable marine environment initiative; Dr Billy Sinclair, chair of the Clyde inshore fisheries group; and Howard Wood, chair of the Community of Arran Seabed Trust. We move straight to questions from members.

Bill Wilson (West of Scotland) (SNP): In its written evidence, COAST argues that the bill fails to acknowledge

"the dire state of Scotland's seas."

It is concerned that provisions on environmental recovery are poor. Do the witnesses agree that Scotland's seas are in a "dire state" and that the bill should put more emphasis on improving the ecological status of Scotland's seas?

John Eddie Donnelly (Clyde Scottish Sustainable Marine Environment Initiative): In the work that we did for the marine spatial plan in the Firth of Clyde, we found evidence of some issues that need to be addressed. In addition, potential issues—specifically for the Firth of Clyde—to do with the number of species that are found on the sea bed have been identified in the work on the water framework directive classification. Fewer species are found in certain areas of the Firth of Clyde. That is the impact of some activity, but we are not sure what. There are therefore issues in the marine environment in the area, but part of the difficulty is finding out what is causing the problem and getting evidence.

Dr Billy Sinclair (Clyde Inshore Fisheries Group): First, I want to thank the committee for inviting us along this morning. We can associate ourselves with many of John Eddie Donnelly's comments. Inshore fisheries in the Clyde have noticed the changing paradigm of the fishery. Many environmental, ecological and climate factors impact on that, some of which are anthropogenic and some of which are not. We recognise that further evidence is required to illustrate how the changes are impacting and what that means for the future. The inshore fisheries group in the Clyde is cognisant of that fact and is happy to support the putting in place of any measures to which it can contribute.

Howard Wood (Community of Arran Seabed Trust): I thank the committee for inviting COAST to give evidence. My best evidence is my experience, which has been mainly of the Clyde.

Having dived in it for 36 years, my experience is that it is in a dire state. The fish that I saw as a teenager diving in the Clyde no longer exist. They are ecologically extinct.

I have some figures here for bycatch. In my opinion, bycatch is one of the major reasons why the Clyde is in such a poor state. As far as I am concerned, bycatch in the Clyde has been unacceptable for at least eight to 10 years. The Clyde sustainable development project report for 2007 showed that overall prawn-trawling bycatch of white fish—small fish of 5in—amounted to more than 31 million. At present, there is no white-fish fishery in the Clyde or on the west coast. The International Council for the Exploration of the Sea recommendations for the west coast and the Clyde for 2010 are exactly the same as they have been for the past three years—in other words, that there should be no catching of white fish. The sea that is right in front of my house has therefore no viable fish to catch, which is unacceptable to the community that I represent.

Bill Wilson: Can I just clarify that? You are saying that there are no white fish to catch, but you have not given me figures. You have given me anecdotal evidence, which is that you have noticed from diving that there are fewer white fish and that there is a high bycatch. Do we have any figures to show that there is a significant drop in the white-fish catch in the Clyde? Is there, or is there not, a viable commercial fishery? Do you have figures?

Howard Wood: The Clyde fishery has relied on prawns since 2002-03. Prawns now account for 80 to 90 per cent of the fishery catch—it is basically all that the fishery catches in the Clyde. I can think of only one other thing that is caught: juvenile fish. I know that the juvenile fish are there because I see them with my own eyes. In 2006, the Clyde was full of juvenile cod. I want to know what happened to those fish from 2006. They should now be cod of about 18in, but there is no cod of that size in the Clyde. Where have they gone? I noted on numerous dives throughout this summer—on every dive except one—that the Clyde was full with juvenile cod, which is good news. The maximum extent of my vision when I dive is 8m to 10m. On most of my dives, I see thousands of juvenile cod, which is exactly what I saw in 2006. I want to know where those fish go.

The Convener: Are you saying that they are moving out of the Clyde or being caught by the prawn fishers as bycatch, or that other fishers are using nets that are far too small?

Howard Wood: In my opinion, it is a mix of bycatch and a sea bed that has been totally destroyed. You have to remember that the only two forms of fishing left in the Clyde to the mobile sector are bottom prawn trawling and scallop

dredging. Both methods impact on the sea bed. As the juvenile fish grow, they are either caught as bycatch or have no habitat. As I can see with my own eyes, the whole Clyde sea bed is a desert. The areas in which I see juvenile fish are the few areas on which scallop dredging has not yet managed to impact. The areas for juvenile fish are getting smaller year on year because of what I would call a free for all: the Clyde is a free for all, especially for scallop dredging. With the exception of the small area in Lamlash bay, there are no areas where scallop dredging is banned, so there are no areas for juvenile fish.

The Marine (Scotland) Bill is the last chance for the Clyde, which is in a poor state. If we go back many years, to before 1984, the Clyde had a large marine protected area called the 3-mile limit, within which mobile fishing or trawling were not allowed. None of the sea angling festivals, which were a major income generator in Arran and other local communities—indeed, there were five on the mainland Ayrshire coast—existed after the mid-1990s. Local communities that are not involved in commercial fishing have suffered for 15 to 20 years.

Bill Wilson: Do the other witnesses have any comments on that?

Dr Sinclair: We would like to remind Howard Wood that there is also a static gear fishery within the Clyde limit; it is not just mobile gear.

There is no getting away from the fact that bycatch is an inherent part of trawl fishing, but it is not viable to say that stock decline is solely due to bycatch. There are lots of different impacts that can affect juvenile fish apart from bycatch. We have to remember that this is not just an insular problem on the Clyde. We are facing a global problem and we have to deal with it. Many other countries have been trying to deal with it for the past 20 years.

We agree with Howard Wood that the Marine (Scotland) Bill must make an impact on the state of the stocks in our seas, not just in the Clyde but nationally and globally. That is why the inshore fishery, as an essentially artisanal fishery, is more than happy to contribute to and work with the bill. However, we must bear it in mind that the United Kingdom and Scottish inshore fisheries have contributed a significant amount to the economy of Scotland's coastal regions. We cannot forget that, because of the nature of the fisheries and conditions in Scotland, the sea represents one of our most highly valued resources.

Bill Wilson: Prawn fisheries are found quite widely in the British isles. Are the techniques that are used in the Clyde the same as those that are used elsewhere? I am thinking of net size and measures to avoid bycatch.

Dr Sinclair: More or less, yes. The Clyde fishermen operate exactly the same systems as are used by fishermen in the outer Hebrides. Parameters, such as the size of the trawls, are set and we work within those limits.

10:15

Howard Wood: I welcomed the introduction after last December of fish escape panels in the nets, but that was too little, too late. Fish escape panels in nets are not a new invention; they have been around for six or seven years. They could have been put in by the Clyde fishermen if Marine Scotland and its predecessors had told them to do that. Why did we have to wait for Brussels to impose that on the fishermen when it was a quite obvious solution?

The other thing that needs to be remembered about the escape panels is that they are designed to let only certain species escape. Some species swim upwards in a net, whereas others swim downwards, and the panels make only a small impact. The white-fish species that were prevalent in the Clyde—and which are still prevalent as juveniles—are cod, whiting and haddock, and the panels do not do anything for the whiting. The 2007 inshore fisheries review showed that the bycatch of whiting in the Clyde was 11 million fish of 5in or less.

The Convener: We are straying into the common fisheries policy. Can we stick to how the Marine (Scotland) Bill can help?

Alasdair Morgan (South of Scotland) (SNP): That was going to be my question. We seem to be going into the past a bit, which may be helpful if it informs what we do in the future. However, for whatever reasons, we are where we are. By and large, are we agreed that the Marine (Scotland) Bill provides the best way forward?

John Eddie Donnelly: There are opportunities in the bill to create marine protected areas, which will allow us—once we have identified the most appropriate areas to protect—to put in place a mechanism to stop whatever damaging activity is taking place.

There have been some successes in the Clyde. We have noted an increase in the number of species that are found in the Clyde, and measures have been taken to improve the water quality, especially in the river as it comes from Glasgow. Things are improving already through mechanisms such as the water framework directive and the river basin management plans, and the bill has the potential to assist in enabling greater improvements to be made in the future.

Dr Sinclair: I totally agree with that. We are where we are and we cannot go back. Hindsight is

wonderful, but we must look to the future sensibly. We must consider not only the environmental impacts and the work that John Eddie Donnelly has been doing, but the socioeconomic impacts of the changes that we make. The inshore fisheries groups are not against the designation of marine protected areas; in fact, we support that. However, we need to consider the designation of MPAs for fisheries management as opposed to the headings that are currently in the bill. There is not one for fisheries management purposes. It is the remit of the inshore fisheries groups to look at local fisheries management issues and the future of fisheries management, so we strongly support the inclusion of such a designation.

The Marine (Scotland) Bill has a future as far as we are concerned, but it must be encompassing and valid.

Peter Peacock (Highlands and Islands) (Lab):

I would like to pursue the point about species recovery and the condition of the seas. Dr Sinclair says that the bill must make an impact. COAST has said that the environmental recovery provisions in the bill are

“poor, with no ambition to improve or recover the ecological status of Scotland’s seas beyond the boundaries of marine protected areas.”

Is the bill strong enough in what it requires ministers to think about and do in all their policy thinking about the seas to ensure that, above all, the health of the seas and research to support that are a primary consideration, with everything flowing from that? Is that a reasonable contention?

Dr Sinclair: Yes, I agree with that. Given my background, I believe fundamentally that we need to carry out the research to know what we are dealing with. We cannot attempt to control or manage an ecosystem such as the marine ecosystem, which is one of the most complex on the planet, without the fullest possible understanding of it. We could never gather all the data—they change all the time—but we need to understand what we are dealing with and what impacts the conditions that we impose on the marine environment will have. I spent five years working with a marine park authority in Australia, which has been trying for 20 years to do that and is now starting to achieve some success. We are building on what that authority has developed and the knowledge that is out there, but we must apply it locally and nationally in Scotland to achieve the results that are starting to be achieved in Australia. My primary concern about what we do and how we consider developing the resources in the marine environment is that that must be underpinned by sound, valid research.

Peter Peacock: The first part of my question was about what ministers will be required to think about in setting policies for the seas and whether it

would be appropriate to make the health of the seas a primary objective.

Dr Sinclair: I agree.

Howard Wood: I will come in on that. Although I agree that we need as much scientific knowledge as possible, we will never have full scientific knowledge of what goes on in the sea. In the 15 years for which I have been campaigning for marine protected areas, the excuse that we need more scientific evidence before we can do anything has been trawled out to me time and again. In that 15 years, I have seen the marine environment degrade in front of my eyes because people have been saying that we need more scientific evidence. We will always need scientific evidence, but that should not stop the precautionary principle moving forward.

Dr Sinclair: No, it should not, but we have to ensure that we make valid assessments of the information.

The Convener: We have definitely got the point.

John Scott (Ayr) (Con): Are the existing and proposed structures, such as marine planning partnerships, that are required to enable involvement and effective decision making adequate? If not, what else might be needed?

Dr Sinclair: The inshore fisheries groups are happy that we can fit into those structures. We consider that Marine Scotland is best placed to lead those developments and to act as the conduit for future developments.

John Eddie Donnelly: In the Clyde, we have worked closely with the Firth of Clyde forum, the local coastal partnership. The main aim of the Scottish sustainable marine environment initiative is to inform the debate through carrying out different activities and doing marine planning on the ground. Our aim was to bring in the local coastal partnership, which consists of the main regulators and stakeholders in the Firth of Clyde. That would give quite a good structure to a marine planning partnership, which would develop a marine plan. The approach that we took is interesting in that there was no lead body. We took a consensual approach; we got agreement around the table from a vast range of different stakeholders, such as RSPB Scotland, the Clyde Fishermen's Association, Scottish Natural Heritage and the Scottish Environment Protection Agency. That was an interesting way of developing a plan, but it is something that we could move forward with within the Firth of Clyde to ensure that most stakeholders have their views put forward and we get the most sustainable way of developing different activities in the Clyde.

Howard Wood: COAST agrees with the regional management group. Our worry is, as it is

with the IFGs and numerous bodies, about a lack of community involvement. We have had to battle for years for non-fishing communities to be heard. It was only in 2006, when COAST came before the previous committee, that our proposals were taken seriously. The community of Arran's proposals were ignored by the Government for more than a decade. The proposed regional management groups have to have some mechanism that allows interested communities to have their say. At present, we are worried about how the IFGs have been set up. We have to acknowledge that the sea and what it produces are a common resource. There is a public right to fish in it, so it is a common resource. How the IFGs have been set up means that they are verging on illegality. There is an executive committee that is comprised solely of commercial fishermen; communities and other stakeholders are allowed only to be advisers. We are challenging that at the moment. We have been in discussions with Marine Scotland about that over the past six months. We are not happy with the constitution of the IFGs.

John Scott: It seems only fair to give the IFG gentlemen a chance to respond.

Dr Sinclair: We appreciate COAST's concerns, but the IFGs were set up to look at inshore fisheries management for the inshore fishermen. Their constitution states that inshore fishermen are approved for membership of the executive committee. I strongly dispute the claim that we do not have local community involvement. In the advisory group, through which all management plan actions developed by the executive committee have to be approved, we have representation from a number of different bodies. We have representation from the Scottish Sea Angling Federation.

We also invited COAST to join the advisory group; it declined to do so, but our invitation is still open. We want an encompassing approach in the advisory committee to help to steer, guide, provide information and give consideration to local management plan items that the executive committee brings forward. It is not the case that the advisory committee simply rubber-stamps the executive committee's decisions; there is a feedback loop in which the advisory committee can express concern or question the relevance of management plan items before they go up the approval chain to the Scottish inshore fisheries advisory group and then to ministers. The executive committee itself comprises commercial fishermen from the inshore fisheries, because it was set up to give them a voice at a higher level and allow them to make a valid contribution by drawing on their expertise in the industry.

Howard Wood: Can I come back on that—

John Scott: I do not think that we need to get into any more of a debate about the rights and wrongs of this at this time.

COAST says in its submission that, under section 85,

“it is a defence for a person who is charged with an offence within a MPA, if”

the act was

“done while the person was in the course of sea fishing.”

COAST—and indeed other organisations—feel that

“if this section is included in the act it is debatable whether there is value in setting up MPAs in the first place.”

Would the inclusion of section 85 and this defence reduce the value of MPAs?

Dr Sinclair: Neither I nor the IFGs have a problem with section 85. Fishing boats have many opportunities to enter MPAs without fishing. It is very difficult—indeed, nigh on impossible—to determine the impact of an individual fishing boat in an MPA without physically seeing the damage being done. As we have said, the IFGs support and will continue to support MPAs, given the validity of their designation.

John Eddie Donnelly: This kind of provision is necessary because if it is not in the bill, all activities will be excluded from an MPA. After all, there will always be some activities that do not damage these protected areas and not having the provision will make it difficult for planners to plan such activities.

Howard Wood: Section 85 is extremely important to the bill and I am worried that if it remains, Scotland will become the laughing stock of the world. No other country has an exception that gives fishermen an excuse to be in an MPA. They can of course have an excuse for going through such an area—that is not a problem—but the fact is that, since the no-take zone was introduced in Lamlash bay last September, we have had a lot of experience of dealing with fishery protection issues and incursions. For example, within a month, two scallop dredgers had entered the zone. After reporting the incursions to the Scottish Fisheries Protection Agency and the local police, we managed within another month to arrange a meeting in Lamlash of the SFPA, Strathclyde Police’s marine policing unit and the Scottish Government marine directorate. At that meeting—

John Scott: Can you please be brief?

Howard Wood: Okay. At the meeting, the SFPA’s operations manager said that because of the wording of the Inshore Fishing (Scotland) Act 1984, which bans not fishing but the taking of fish, it was almost impossible to get a procurator fiscal

to bring a prosecution and there would be major problems proving whether the fish, shellfish or scallop came from this or that area. We must ensure that enforcement of this legislation is relevant, strong and fair to everyone. At the moment, the law simply does not work. After 15 years of campaigning—

The Convener: Okay. That is fine.

Bill Wilson: John Eddie Donnelly seemed to be talking about boats passing through MPAs. I presume, however, that they would not cause any damage and, indeed, that there would be no offence unless it was alleged that damage had been caused. Is there any comparable example on land of individuals having a catch-all exemption from causing damage to a protected area such as a site of special scientific interest?

10:30

John Eddie Donnelly: The biggest example is recreational activity. Footpaths go through SSSIs. People can stray from footpaths, and horses, for example, go along them. That can cause inadvertent damage. Boats might moor within an MPA. There are a number of important pieces of infrastructure on the Firth of Clyde, such as Hunterston and the Finnart deep oil terminal, and boats have to anchor before they go to areas around those pieces of infrastructure. If an anchorage is also an MPA, anchors could cause damage, although that damage would be limited to a certain area. Moving through and stopping in an MPA could therefore require an exemption.

Alasdair Morgan: Is it the case that the defence of fishing would not be an absolute defence? Section 85(2)(b) states that it is a requirement of the defence that

“the effect of the act on the protected feature ... could not have reasonably been avoided.”

The person who seeks to use that defence must show that they could not reasonably have avoided doing what they were doing, which was the alleged offence that they committed. Therefore, it would not be an absolute defence to say, “I was doing this in the course of fishing.”

The Convener: Perhaps if the witnesses have a thought about that, they could write to us and let us know.

I think that Peter Peacock has a question.

Peter Peacock: The question that I was going to ask has been answered.

Liam McArthur (Orkney) (LD): The issue that I want to ask about has probably been touched on, too. In its written submission, the Clyde inshore fisheries group stated:

"certain sections of the Bill could unduly impinge on ... legitimate activities"

of its member stakeholders. Will you expand briefly on what those legitimate activities are and on how the bill could impinge on them?

Dr Sinclair: The designation of MPAs is a primary concern as far as inshore fisheries activities are concerned. We have repeatedly stated that we support MPAs, but it must be recognised that when they are designated and boats are no longer allowed to fish in those areas, those boats must be removed to somewhere else if people want to carry out their natural activities. That impinges on their ability to carry out those activities.

The Clyde is a finite resource. It contains a finite number of fish, scallops and prawns, and a finite number of boats can earn people in the area a living. We cannot simply say to people, "You can't fish in that section. Move somewhere else." There is nowhere else to go. Most of the fishing boats in the inshore fisheries on the Clyde especially are artisanal. They were not built to go out into deeper waters, and there is nowhere else for them to go. When we consider MPA designations, we must take into account how they will impact on the ability of inshore fishermen to earn a living. Their other impacts must be addressed. If people can no longer fish, what else can they do? How can they be supported?

Liam McArthur: Further evidence that we received from the Cabinet Secretary for Rural Affairs and the Environment suggested that the MPAs should be designated on scientific grounds, but decisions about permitted activities would take into consideration social, economic and other factors. Is that a reassurance to the extent that is possible that legitimate activities will not be proscribed unless there are good, overriding scientific and environmental reasons for activities not to continue?

Dr Sinclair: That is a reassurance to the extent that is possible. When the designation process for a particular area is under way, we hope that further consultation will take place and that there will be clarification to members of the inshore fisheries fleet about exactly what the situation is and how it will impact on them. We hope that they will be given the chance to comment.

Howard Wood: What the fishermen will do is a difficult issue, but we must start to manage both the fisheries and the marine environment for the long term. For too many years, they have been managed only over one or two weeks or for the next year. I hope that we will start to look at the future as a result of the bill. We must start to do that at some point. Choosing what will happen to fishermen over the next few years will not be easy,

but that choice should have been made 10 years ago.

Elaine Murray (Dumfries) (Lab): We have had evidence suggesting that the inshore fisheries group regions should be the basis for the Scottish marine regions, but we have also heard suggestions that an ecosystem-based approach that is co-ordinated with river basin management plans should be taken, or even—because of the planning issues—that local authority boundaries should form the basis for the marine regions. What are your thoughts on the optimum arrangement?

John Eddie Donnelly: If we tried to split up the Clyde, for example, by local authority boundaries, it would become a difficult area to manage, as there are seven local authorities. In the terrestrial environment, local authorities come together, for example in the Glasgow and the Clyde valley strategic development planning authority. There is a history of authorities working together to take a more strategic approach in larger areas. In Scotland, one size will not fit all, so probably several different approaches will be taken to the marine regions. The Firth of Clyde management system is a good model. Local authorities and stakeholders have been brought together and there is a stakeholder and regulator-led process. However, in other areas, it might be more appropriate for the local authority to be the lead agent. There will be more debate on how the regions are to be made up, but the approach will probably be different in different areas. The Clyde system provides a good model for the firths.

Dr Sinclair: The Clyde inshore fishery stretches from the Mull of Galloway to the Mull of Kintyre, so the inshore fisheries group would be happy if the boundaries of the region were set along the IFG boundaries. That would make sense to us, but the issue is not prescribed as far as we are concerned. We are happy, as long as the boundaries that are designated take into account the fact that the marine environment is significantly different from the terrestrial environment. Having five or six local councils working in an area compounds what is already a difficult issue. The primary concern is not about where the regions should be specifically; it is that the size of the marine regions and partnerships should be workable and that the regions should be objective and functional.

Howard Wood: Among the regions in Scotland, the Clyde is probably the easiest of the lot to plan for in that, as William Sinclair said, the area between Corsewall Point and the Mull of Kintyre, including the whole Clyde, is an obvious area to take. What happens in the rest of Scotland is much more difficult. I have no problem with the IFG areas.

The Convener: As there are no further questions, I thank the witnesses for attending. If you want to submit supplementary information, could you please send it to the clerks by Monday 14 September, so that we can have it before we start drafting our stage 1 report?

I suspend the meeting for a few seconds so that we can change over the witnesses.

10:38

Meeting suspended.

10:40

On resuming—

The Convener: I welcome our second panel of witnesses: Richard Lochhead MSP, who is Cabinet Secretary for Rural Affairs and the Environment; Stuart Foubister, who is a divisional solicitor in the relevant division; David Mallon, who is head of the marine environment branch; David Palmer, who is head of the marine strategy branch; and Linda Rosborough, who is deputy director of marine planning and policy. All of them are from the Scottish Government. In addition, we have Gordon Barclay, who is head of policy at Historic Scotland.

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

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): I thank the committee for the invitation to give evidence today and for the opportunity to make some quick opening remarks. I have endeavoured to follow the committee's proceedings closely and I look forward to the committee's report and the subsequent debate in Parliament. The Government looks forward to the committee's comments on how Parliament and the Government can manage our marine environment through effective legislation.

I will of course be interested in the committee's views, but it seems to me that previous oral evidence sessions—including this morning's, I am sure—have gone very well, in respect of both the evidence provided and the constructive approach that has been adopted by witnesses. That is testament to not only the committee's approach but the helpful way in which stakeholders have approached the opportunity of dialogue.

I wrote to the committee to set out my views on some key points of evidence that have been received thus far so, rather than reiterate those views, I will simply highlight two relatively new developments. First, the United Kingdom Marine and Coastal Access Bill has been amended to deal with a shellfish farming issue that arose from

a case in the Menai Strait. The amendment to the UK bill will apply to England and Wales only and will allow the Crown Estate to compensate shellfish farmers who wish to put to another use an area set aside for shellfish farming. Our examination of that issue over the past few days and weeks has highlighted a number of other areas in the 1967 fisheries legislation where it would be appropriate to bring UK and Scottish law into line. I will write to the committee soon to spell out in detail our proposed amendments, which are largely technical in nature.

Secondly, the Subordinate Legislation Committee published its report on the Marine (Scotland) Bill on 3 September. We are considering the points that are made in that committee's report and will respond in due course.

In addition, I hope to receive a report from the Scottish coastal forum in the near future on the outcome of a stakeholder workshop that discussed issues associated with the selection of Scottish marine regions. I will be happy to share that with the committee.

The Marine (Scotland) Bill aims to provide a balanced framework within which we can protect the sea and ensure that it makes a greater contribution to sustainable economic growth. The bill has received widespread support, with thousands of people taking the trouble to respond to the consultation in one form or another. The challenge is to ensure that the new procedures—marine planning, streamlined licensing and enhanced marine protection—are balanced and that they are cost-effective, future proofed and soundly based.

In conclusion, I will be interested to hear the committee's views. I am sure that the way forward involves giving different sectors and communities the space and opportunity to contribute and creating frameworks flexible enough to cope with the diverse character of Scotland's seas and marine environment.

The Convener: Thank you very much. We have a number of areas of questioning, which Alasdair Morgan will kick off.

Alasdair Morgan: I want to ask about the objectives behind the national marine plan, which will obviously filter down to the regional plans. As might be expected, Scottish and Southern Energy is very keen that renewable energy and climate change mitigation objectives should be included in the objectives behind the plan. In its written evidence, Scottish and Southern Energy asked for

"Confirmation that economic and climate change mitigation objectives will be included in the marine plans."

I note that section 3(3) provides that

"A national marine plan may in particular include economic, social and marine ecosystem objectives."

It strikes me that renewable energy and climate change mitigation do not necessarily fit into one of those three categories. Would you consider adding "climate change mitigation" to the list?

10:45

Richard Lochhead: The objectives cover a variety of ways in which we must manage our marine environments in future. All Government policies must take account of the impact of climate change, as is clear from the Parliament's passing of the Climate Change (Scotland) Act 2009. The duty to take account of the impact of climate change will apply to Marine Scotland, which will be the champion of the national marine plan, and will be reflected in other Government policies.

I am not sure whether we need to add "climate change mitigation" to the list, but I am happy to reflect on that and I will wait to hear the committee's view. It is inconceivable that the national marine plan would not refer to the country's climate change objectives in the context of the marine environment. I assure the committee that the issue will be reflected in the national marine plan.

Alasdair Morgan: I want to ask about boundaries between Scottish marine regions. I accept that you addressed the issue in your letter to the committee last week, when you referred to the consultation that will take place. However, a particular point has been made about the Solway Firth, where there is jurisdictional crossover with England—the issue is of interest to me and probably also to Elaine Murray. The Solway Firth Partnership takes the view that there should be a single plan for the area. Would that be a sensible approach? How would we achieve a single cross-border plan in the Solway or anywhere else where such a plan was necessary?

Richard Lochhead: We must address the specific needs of the Solway. On the one hand our European obligations mean that we must follow our regional seas approach—I am sure that the committee supports that sensible concept. On the other hand we must acknowledge that there are separate bills north and south of the border, given the constitutional settlement.

Currently, we are taking an administrative approach to the future management of the Solway. It is worth bearing in mind that the UK Marine and Coastal Access Bill is different from the Marine (Scotland) Bill in a number of ways. For example, our bill will give ministers the opportunity to delegate planning powers to regional marine planning partnerships, whereas there is no such power in the UK bill, so it is difficult to identify a

vehicle for setting up a specific plan for the Solway.

The Scottish Government and the UK Government have agreed to work closely to address such issues, in particular in relation to the Solway. I have full confidence that we will get round the issue. It has been suggested to the UK Government that a joint forum should bring together representatives from north and south of the border. That seems to be a sensible approach, but we might find an alternative one.

It is perhaps too early to say what will happen, given that we will consult in Scotland on factors to do with the Scottish marine regions, such as how many regions there should be. No doubt the future management of the Solway will feature in the debate. It will be perfectly possible to come up with an administrative arrangement with the UK Government that ensures that we have the best possible arrangements for the Solway Firth.

Alasdair Morgan: I take it that the Isle of Man Government and the Northern Ireland Executive would be included in the arrangements.

Richard Lochhead: Of course. The current arrangements involve not just the Scottish Government but all the devolved Administrations and the UK Government.

The Convener: Does Elaine Murray want to comment on the Solway?

Elaine Murray: The cabinet secretary mentioned the main issue of contention. The Solway Firth Partnership will meet Hilary Benn in the near future to discuss a possible amendment to the UK bill to facilitate arrangements for the area.

Given the stage that both bills have reached and your discussions with the UK Government, when do you expect issues to be resolved?

Richard Lochhead: Our priority is to get the Marine (Scotland) Bill through the parliamentary process, after which we will consult on the setting up of Scottish marine regions and marine planning partnerships. As I said to Alasdair Morgan, the future of the Solway will feature in the consultations and the debate that takes place then. The consultations will take place in the next year or two—I expect that the consultation on the setting up of marine regions will take place sooner rather than later. We will consult first on the national marine plan. If all goes well in Parliament, and with the committee's support, that could begin in a few months' time. We will consult on the marine regions straight afterwards. That is the plan of action.

Liam McArthur: I will take you to the other end of the country, to circumstances that on paper perhaps appear to be a lot less complex. I know

that the potential for each of the island areas to be designated as standalone marine regions has been raised with you. In the case of Orkney, there might be a joint region with Highland Council, spanning the Pentland Firth. Have you reflected on island designations, and is there a way to make clear in the bill the specific status of the island authorities? Can you reassure the island authorities, which have each expressed much the same view on the matter, that it is likely that their particular interests will be taken on board in early course?

Richard Lochhead: I thought that you might take me up to the other end of the country. I assure Orkney and Shetland and other communities that, as I hope they will see from the bill, we are attempting to be as flexible as possible.

With regard to the setting up of marine planning partnerships and marine regions, the bill says that we can appoint a public authority or a group of persons to take that forward. That recognises the fact that our country and our marine environment are diverse. In some cases there is one local authority, such as Orkney or Shetland, while in other parts of the country five local authorities may be involved in one marine region. We must be flexible, and I assure the people in Orkney and elsewhere that we intend to be. It is clear that the islands are marine regions, and the consultation will involve getting the views of local authorities and others on how to define the size of the regions. Our guiding principle—with which the committee may agree or disagree—is that five marine regions may be too few for Scotland, but 15 or so might be too many. We need to find the right balance, and I hope that the committee will offer us its views on that.

Liam McArthur: I will follow up on Alasdair Morgan's initial question about the national marine plan. It is interesting that the bill does not create a duty to produce a national plan, although I accept that it is inconceivable that one will not emerge in some shape or form in due course. It is perhaps of more concern that there is no duty to set out objectives in the plan; Alasdair Morgan indicated the various views that have emerged on that.

The Scottish Association of Marine Science pointed out in its socioeconomic report that effective marine management requires a clear set of objectives against which management actions can be identified, implemented and monitored. I wondered whether you might reflect on that and see to it that the bill creates a duty to set objectives in the national plan.

Richard Lochhead: I will reflect on those points, but it is important to strike a balance in the approach that we are taking in the bill between duties and powers. As you point out, there is a lot

of emphasis on powers and not so much on duties. That has been done on purpose. We want to maintain flexibility for some of the reasons that I have mentioned. Scotland is a diverse country with a diverse marine environment, and various sectors use different parts of our seas. We do not want to have long lists of duties prescribed.

We have laid out clear commitments to consult and the launch of the consultation will be exciting. We have seen huge interest in the bill that we have introduced to manage Scotland's marine environment and bring a planning regime to our waters. People are excited by the bill and believe that it is the way forward for the 21st century. Given the debates that you and Alasdair Morgan have highlighted in relation to climate change, renewable energy and so on, there will be huge interest in the consultation process on a marine plan for the future of Scotland's seas.

I think that the consultation process will work well and I hope that it will give us the answers that we seek on what the marine plan should look like and the form that it should take. The bill contains some outlines of what that should be, but it is much better for the detail to come from the people of Scotland through the consultation. If we had put certain duties in the bill, other people would immediately have said, "Don't forget these other duties." It would become a bit complicated. We need to strike the right balance.

Liam McArthur: I accept that there is a balance to be struck and that flexibility will enable diversity to come through. I am perhaps struggling to understand how the setting of some objectives would not provide a degree of clarity and some shape for the consultation. It seems strange to have a plan but no objectives.

Richard Lochhead: As I said, the broad objectives are outlined in the bill. The question is to what extent to place duties on ministers. I hope that I have explained the approach that we are taking and our reasons for it, but we are open to any views that the committee expresses in its report.

John Scott: To continue on the planning theme, what level of detail do you envisage? An amendment was made to the UK bill that imposes a duty on marine planning authorities to "seek to ensure" whole coverage of their marine planning regions. Seafish believes that there is a need for such a duty, but the bill states:

"The Scottish Ministers may ... prepare and adopt in accordance with schedule 1 a national marine plan for the Scottish marine area".

What is the Government's intention? Will the whole of Scotland be covered by a plan or will bits of it be left out? How detailed will your planning exercise be?

Richard Lochhead: Will the whole of the country be covered by a marine plan? Not necessarily. The national marine plan may well lay down some objectives that we hope as a country to put in place for our marine environment, but we might then delegate the powers to regional plans. There is no prescriptive approach to that whereby we will lay down that there will be X number of regional plans covering 100 per cent of Scotland's seas. Many stakeholders asked whether there would be any point in going through all the surveying exercises that would have to be conducted, and all the bureaucracy, for areas of the sea where there are no activities and there is no foreseeable potential for activities. If the situation in such an area were to change, the bill provides ample opportunities to amend the plans and recognise that new opportunities have arisen.

In the first instance, it is not necessarily the case that the whole of Scotland will be covered by regional plans.

Peter Peacock: I want to develop the theme that Liam McArthur and John Scott touched on. You indicated that the European Union requires a regional seas approach to the development of the work and you also touched on the important relationship between Scotland and the rest of the UK on the matter. I understand that a marine policy statement will emanate from the UK bill that sets out priorities for marine planning regions in the UK. Will the marine plan that you talked about be the equivalent Scottish policy statement—the statement of objectives, perhaps, that Liam McArthur mentioned—or will there be a separate Scottish marine policy statement?

Richard Lochhead: That is a good question. How can I best illustrate the position? First, during the debate on the extent to which powers over the marine environment should be devolved to the Scottish Parliament, as part of the negotiations to ensure that there is a common understanding between the UK Government and the devolved Administrations, we agreed with the UK Government to set out what were at that time referred to as high-level marine objectives. I hope that the committee has a copy of those objectives, which were produced in the context of the negotiations on marine policy to ensure that we were all going in the same direction.

In addition, we have agreed that, in due course, a more detailed marine policy statement will be developed that will apply to the UK Government and the devolved Administrations. We will have to agree that. Let me rephrase that—the objective is that we will agree that. We will have the opportunity not to sign up to it if the UK Government were to incorporate in it some policies that we were not happy with, but of course the objective is to find a common sense of

purpose on protecting the marine environment and using our seas appropriately. A marine policy statement will be produced that should apply to the UK and Scottish Governments, which will be reflected in the individual marine plans.

11:00

Peter Peacock: If the joint statement that you have just mentioned is agreed, will all of Scotland's interests be covered by the UK objectives? You will not publish a separate set of objectives for Scotland, which would shape the marine plan in Scotland and the local regional plans.

Richard Lochhead: The marine policy statement will apply if there is UK-wide agreement and all the UK Administrations sign up to it. It will be delivered by our marine plan and the other aspects of our respective bills, and will apply across the UK, unless we do not agree on its contents.

Peter Peacock: I imagine that you would be able to agree to the vast majority of the statement, but there might be some things to which you felt that you could not agree. Is it reasonable to assume that if you were to fail to agree a UK-level document, there would be an equivalent document for Scotland?

Richard Lochhead: Yes. If we fail to agree a UK marine policy statement, a Scottish marine policy statement would be produced, which would be reflected in our plan, the purpose of which is to deliver our policy—[*Interruption.*]

Peter Peacock: That is fine, unless the minister has anything to add.

Richard Lochhead: My colleagues have pointed out that our policy statement would not necessarily be published as a separate document; it would just appear within the plan.

Liam McArthur: In that context, it would perhaps be helpful for the reasons for any such disagreement to be set out. Is it envisaged that the Government will undertake to do that, perhaps by reporting back to the Parliament at an appropriate juncture?

Richard Lochhead: Prior to the publication of the plan, there will be a debate and a consultation on the marine policy statement across the UK. We will look for input on what Scotland's policy should be. The policy will be quite detailed. For example, in theory, it could lay down how many megawatts of energy we as a country want to produce from offshore renewables. Some of those policies may already exist, but we will pull them together in our marine policy statement. There will be a debate about Scotland's policy so that we are sure that

the marine planning that takes place in Scotland achieves our national policy objectives.

Liam McArthur: But in the unlikely event of there not being alignment between UK and Scottish objectives, which Peter Peacock has described, will the Scottish ministers set out the reasons for that disagreement and perhaps report back to the Parliament?

Richard Lochhead: I am happy to give such an assurance to the committee; that would certainly be part of our plans.

John Scott: We are concentrating on the negative aspects. I presume that the balance of probabilities suggests that there will be a jointly agreed marine policy statement. Do you expect that to be the case, or do you envisage difficulties?

Richard Lochhead: I am hopeful that that will be the case. It is clear that our approach to the future management of our seas is set in a Scottish, a European and a regional context. In addition to our policy commitments at European level, there are policy decisions that we will take here in Scotland. There will be a regional element to the process as well, whereby people in local communities and at regional level will be able to reflect their priorities in their local regional plans. When it comes to what we sign up to with the UK, I hope that there will be a lot of agreement.

Peter Peacock: I will move on a bit to the number of plans that will exist, of which there seem to be a great many. I know that you do not like lists, but I have a small list of plans. There is the national marine plan, regional marine plans, a regional seas conservation plan, seal management plans, management schemes for marine protected areas, and there might be plans under the river basin planning system, inshore fishery group plans, fish farming framework plans and so on. There are a lot of plans and, in one sense, the process that has been set up creates another plan on top of those. Consistent with another Government policy, which seeks to reduce plans—I will not comment on how successful it is—will there be any scope under the auspices of the marine regions and the marine planning partnerships for rationalising the number of plans that will be required?

Richard Lochhead: My official says that the answer to that is yes, which coincides with the answer that was just about to come out of my mouth.

Peter Peacock: Can you say which plans will go?

Richard Lochhead: First, it is worth bearing it in mind that the reason why we have a Marine (Scotland) Bill is that there is in effect no planning at sea. There is cross-party support and support

across Scotland for the proposal that we should have plans for our waters and seas. There is a recognised need for planning at sea, so there will be new plans for the sea—that is the purpose of the bill.

We have been careful throughout the process to minimise any new bureaucracy and there are steps within the bill to reduce bureaucracy. The process, particularly for industries that want to apply for consents to carry out activities at sea, will be dramatically streamlined, which will cut the level of bureaucracy for industries that want to carry out such activities.

There will be an opportunity to review the fact that we currently have coastal forums and that all kinds of bodies and forums are in existence. Once the regional marine planning partnerships are up and running, we can take stock of what exists and establish whether there is a need for them all because of the new forum and the new focus for marine planning on a regional basis throughout Scotland. An important point is that they are marine planning partnerships; they are bringing existing bodies together and are not creating new bodies. We have been careful to ensure that that is the case.

Peter Peacock: I will come on to the structure of the partnerships shortly, but first I want to tie down some points about the plans. One question that has arisen from the evidence, based on observation of the number of plans and the interrelationship between all the different groups, is what is the highest order plan? In other words, is there a hierarchy among the plans? At one level, if you, under the powers in the bill, approve a regional plan, it will have statutory force. Am I correct in assuming that it will therefore be the highest in the hierarchy of plans in terms of its authority and ability to deliver? If that is the case, what will be the mechanism for reconciling, for example, a difference between what is in the regional marine plan that you approve and an inshore fishery group plan or, indeed, any other plan?

Richard Lochhead: The first point is that the bill lays down that there will be a national marine plan for Scotland. That is our starting point, and there is huge support for that proposal. I know that the committee agrees that that is a very exciting development for Scotland. Because the Government treats the input from local communities very seriously and because—as I explained—we have a diverse country, we want there to be a local dimension to planning so that local communities, local stakeholders and public authorities that are familiar with local needs and the local seas can influence the planning regime for their own waters. An enabling power in the bill will allow that to happen if there is a desire and a

demand for it. We cannot say at this point how many regional plans there will be in Scotland, because that will depend on local communities, local authorities and so on saying that they would like one for their area. We can then discuss that and see where it goes.

That covers the local dimension, but there will be a national marine plan for Scotland—that is the starting point. I do not want to get into a debate about hierarchies and which level is more important, but a national plan will clearly be in place.

As for interaction with stakeholders, it will vary across the country. Fisheries legislation has its own mechanisms and roots. The feedback that we got from the sustainable seas task force and from the brainstorming and thinking that has occurred over many years is that those mechanisms should remain. A decision was taken not to incorporate fisheries legislation into marine planning, not least because the common fisheries policy applies beyond 12 miles. If there is a hierarchy, the CFP is certainly at the top of the tree when it comes to fisheries legislation beyond 12 miles out.

Peter Peacock: I want to tidy something up before I move on. Let us assume for the moment that you decide that there will be a regional plan for a particular area, because of local demand. You would not sign it off, however, if you believed there to be unreconciled differences between the different plans that already exist in the area. Do you see it as your role—as the minister and with your officials—to acknowledge that there might be a desire for something to happen, but not to sign off a plan until some accommodation or reconciliation of competing issues is achieved? Is that fair?

Richard Lochhead: That is fair comment, yes. It is an important aspect of the debate. We will have a national marine policy and the main policy settlement, I hope, then we will have a plan for putting policy into practice in Scotland's seas. Regional plans will be obliged to take account of the national plan. If they do not, the Government will have the opportunity not to sign them off, to send them back and seek amendments. There is a lot of discretion for the minister in that regard.

Peter Peacock: Let us move on to the structure of the marine planning partnerships. In your letter, you mention that you are undertaking further work with the Scottish coastal forum to help sort out the regions. You are talking about a system for creating partnerships, bringing people together to interact with one other and sort out their thinking for the future, reconciling differences and so on. We heard evidence from your officials that they are taking a fairly relaxed approach to the matter. For example, people will be able to come together, and if the partnership in an area has 50 people in

it and is led, by agreement, by the local council, that will be fine. If another area takes a different approach, and the partnership comprises 20 people and is led by the coastal forum, that will equally be fine. On one level, that is commendable, as it allows a lot of flexibility.

However, such arrangements will create uncertainty in people's minds. How will they know whether they will be part of the partnership? What stake will they have in the future? One witness described the arrangements as "casual". Some people desire more tightly defined partnerships, with it being determined in advance who will definitely be a member, who might be a member, what the scale of the membership will be and so on. What is your thinking on that in the light of the evidence that we have received?

Richard Lochhead: I want to reflect on the comments that have been made to the committee in relation to our future thinking on the composition of marine planning partnerships. It is a matter of being sensible about the whole issue. Most committee members probably consider their own areas—if they represent coastal areas—and will be able to think of obvious candidates to be part of marine planning partnerships. I am sure that common sense can prevail.

The sector is diverse—fisheries are diverse, never mind the wider marine environment. There are no simple answers. I am sure that there will be debates in some parts of the country about who should be in marine planning partnerships. You make a good point about the Scottish Government directing who some of the members of marine planning partnerships should be. I expect that that will be the case. The question facing the Government is the extent to which membership of local partnerships might be pre-empted. There will certainly be some obvious candidates. Because the marine regions and the planning partnerships will be established by secondary legislation, that will all be consulted on at the time.

Peter Peacock: So you are open to creating a clearer framework—I do not want to use the term "direction"—while leaving flexibility for local areas to add to it in light of their local circumstances. You are not against that in principle.

Richard Lochhead: Yes, I am.

Peter Peacock: Yes, you are against it?

11:15

Richard Lochhead: Sorry—I was responding to your initial question. We have an open mind.

We are talking at the moment about the next stage of legislation, not the bill, which is the first stage. A lot of work is in progress to work out what the marine planning partnerships will look like and

the boundaries of their membership. We will keep the committee up to date on that work, and we look forward to any views that it has on the partnerships.

Peter Peacock: Apart from the membership, do you intend to develop how the partnerships might be structured and how they might operate, or will you leave it largely to them? Will matters such as voting procedures—in the event that a vote is necessary in a partnership, although we hope that that will not occur—be set out in the secondary legislation too?

Richard Lochhead: I will ask the officials for feedback from stakeholders, because there are continuing discussions about such issues. My inclination is that such matters will not be in the secondary legislation, because we are talking about partnerships that will bring together existing bodies, not about establishing new elected bodies. If we started discussing that kind of approach, it would take us into a whole new debate.

Perhaps the officials can give me an update on the latest conversations with the coastal forum.

Linda Rosborough (Marine Scotland): The situation is different in different parts of Scotland. The maturity of the existing coastal partnerships varies a lot: in some places, they are non-existent; in others, they are mature and have substantial responsibilities. The amount of capacity building that might be needed to create an effective marine planning partnership varies markedly from place to place. In some places, telling the partners how to run the business of the partnership in every detail might not be the best way to encourage them to take on new responsibilities; in others, support will be welcomed. We envisage variable support, depending on the maturity of local partnerships in different parts of Scotland and the extent to which they are used to managing coastal and marine matters.

Peter Peacock: In an earlier answer, minister, you hinted that, once the marine planning partnerships are established, some organisations might think about whether they need to continue to exist—you mentioned coastal partnerships in particular, but you may have had other things in mind as well—because the new arrangements may take over their objectives with more force. Will you say a bit more about that?

Richard Lochhead: I am not trying to pre-empt what may happen once the marine planning partnerships are established. I am simply making the point that, if some fora evolve into marine planning partnerships, there will not be extra bodies. There is a variety of circumstances, and I am not pre-empting anything. Many good organisations do good jobs but, once the marine planning partnerships provide a new focus in their

areas, the circumstances might change in some cases.

Liam McArthur: In earlier evidence, it was suggested that the involvement of Marine Scotland would help to ensure consistency, or at least manage expectations, in marine planning partnerships. Some witnesses even suggested that a chairing role might be appropriate for Marine Scotland. Are you considering that?

Richard Lochhead: There will be a close relationship between Marine Scotland and all the marine planning partnerships. Marine Scotland will be the champion of Scotland's seas and the champion of the legislation, so a close relationship is inevitable. It would be nice to think that Marine Scotland will not have to chair some marine planning partnerships to get them going, but I have no fixed view on such suggestions.

Liam McArthur: I would like to return briefly to Peter Peacock's point about the hierarchy. As you will be aware, there are some concerns about the overlap between the Marine (Scotland) Bill, the Orkney County Council Act 1974 and the Zetland County Council Act 1974. I know that the issue has been raised with you over the summer. Have you had an opportunity to reflect on potential clashes? I know that there is a concern that, as a result of the bill, certain activities that the harbour authorities are allowed to undertake under those 1974 acts will no longer be automatically permitted. Can you offer any reassurances in that regard?

Richard Lochhead: I am sure that there is a lot more reflection to be done, but we have reflected on the matter and we are going to bring forward a list of exemptions in relation to activities that should be licensed. For example, we are looking at the threshold for environmental impact, with a view to including in a list of exemptions those activities that do not go above the threshold. We are conscious of the concerns of some local authorities, and we want to get the best outcome for those areas. I hope that we will be able to give some comfort to those councils in future.

Liam McArthur: Have you had legal advice on the possible impact of the bill on the 1974 acts?

Richard Lochhead: Obviously, we do not comment on legal advice on any particular issue, but I will ask officials whether there are any legal obstacles.

Stuart Foubister (Scottish Government Legal Directorate): I do not believe that anything in the 1974 acts needs to be amended. The main part of the bill that might impact on the 1974 acts is the licensing part, but the provisions are a combination of the Food and Environment Protection Act 1985 and the Coast Protection Act 1949. No provisions in the 1974 acts specifically

exempt them from the requirements of the 1985 and 1949 acts.

John Scott: A plethora of plans is going to be developed. How will they be paid for? To whom will you allocate funding for the plans?

Richard Lochhead: The financial memorandum lays out our estimated costs at this early stage. Clearly, much will depend on how many plans are developed. Marine Scotland will incur much of the cost of setting up the plans. It will be the linchpin for the national plan and the regional plans.

John Scott: Will you allocate money to local authorities? They have concerns about the increased planning load that they might have to bear.

Richard Lochhead: No doubt that will be taken into account. However, my point is that Marine Scotland will carry much of the cost for a lot of what will happen. I cannot sit here and say that a room has been hired for a marine planning partnership to meet in—that is a matter for Marine Scotland. Generally speaking, the costs of the plans and so on are taken into account in the budget projections. The financial memorandum lays that out. I am happy to clarify the point in writing, if that would be helpful.

John Scott: It would be, thank you.

The Convener: We will move on to deal with marine licensing.

Peter Peacock: Before we do, I would like to ask about shellfish. The minister raised issues about shellfish in his recent letter to us and in his opening statement.

We have been told that, under current provisions for shellfish farming, areas can be designated as shellfish-growing waters. However, there seems to be some confusion about whether, under the new regime, it will be possible for those designations to continue. I asked you a parliamentary question on this matter, minister, and the answer somewhat reassured me, but it did not reassure the industry, which is anxious about the situation. Can you make it clear today that you intend to accommodate the current arrangements for designated shellfish-growing waters in any future arrangements?

Richard Lochhead: I would rather write to the committee on that point. I am not aware of any intention to frustrate that process or create any conflict. There is European legislation on the designation of shellfish-growing waters, which I understand will not be interfered with, but I am happy to write to the committee, if that will help to reassure the industry.

John Scott: Various people have expressed concern about the licensing system. A witness told the committee that the licensing system is

“intellectually incoherent ... as it gives us a mixture of systems operating in the same area.”—[*Official Report, Rural Affairs and Environment Committee*, 10 June 2009; c 1747.]

He went on to describe that as “an impossible situation.”

The concerns primarily relate to how the provisions in section 54 could lead to different procedural rules and rights of appeal. Can you reassure us that the licensing system that you propose is not intellectually incoherent, or at least respond to the witness’s comments?

Richard Lochhead: I am not sure that I am 100 per cent clear about what it is that might be intellectually incoherent.

John Scott: I think that it is to do with the fact that the section contains many different licensing arrangements and opt-outs. It is felt that the licensing scheme has too many pieces.

Richard Lochhead: The first point to make is that one of the successes of the bill is that it will streamline the licensing system. I will explain the position using the example of a renewable energy company that wishes to develop in our seas. Currently, as a first stage, the developer has to identify the consents that are required and apply to the relevant bodies, which involves making applications under the Food and Environment Protection Act 1985, the Electricity Act 1989 and the Coast Protection Act 1949, and often securing a wildlife licence. That process will be replaced with the requirement to submit one application to Marine Scotland. I hope that the committee appreciates that that will streamline the system significantly, as opposed to making it less coherent.

There have also been efforts to identify situations in which licenses will not be required, which will result in exemptions. There are numerous examples of that. Marine Scotland will deal with the various aspects of those matters internally.

Alasdair Morgan: I think that the particular concern involved planning applications for marine aquaculture, with regard to which there is an opt-out to allow local authorities to voluntarily relinquish their responsibilities. The argument is that, if not all of them do so, there will be two regimes—one in which local authorities have maintained their powers and one in which they have relinquished them—therefore the industry will be faced with different landscapes in different areas.

Richard Lochhead: That is a fair point. I should have mentioned the aquaculture sector earlier.

The Government has been involved in a debate on that matter with the industry and other stakeholders. As I said with regard to the example of the renewable energy company, we have created a streamlined process. However, the odd one out is the aquaculture sector.

As the committee will be aware, in recent years, in order to enhance local accountability, responsibility for consenting to aquaculture developments was transferred to local authorities under the Town and Country Planning (Scotland) Act 1997. We have thought hard about the way forward. At the moment, we hope to give local authorities the power to delegate to Marine Scotland responsibility for consenting to aquaculture developments, which will streamline the process in those areas. However, a number of local authorities strongly take the view that local accountability can be protected only if they are allowed to keep their responsibility for consenting to aquaculture developments in their waters, and we respect that.

It is worth pointing out that amendments to the Town and Country Planning (Scotland) Act 1997 will mean that regional marine plans have to take account of terrestrial development plans and vice versa. It is my understanding that the Town and Country Planning (Scotland) Act 1997 will take precedence, although I will ask my legal colleague to clarify that. The granting of aquaculture consents will remain with the local authority, but the process will require it to pay regard to the marine plan. Likewise, the marine plan will have to pay regard to the 1997 act. It is hoped—it cannot be guaranteed—that that will prevent situations arising in which the marine plan says one thing for aquaculture and the local authority takes a different view when consents are applied for. It is no guarantee, but it is an attempt to ensure that some joined-up thinking is involved and that that is reflected by local authorities.

I ask my colleague to clarify that or to confirm that I have got it right.

11:30

Stuart Foubister: It is correct that, in connection with aquaculture consents, where the responsibility remains with the local authority under the Town and Country Planning (Scotland) Act 1997, the terrestrial plan and not the marine plan will take precedence.

Bill Wilson: I wonder whether you can clarify something for me. It is possible that some marine regions will cover more than one local authority area. Does that mean that, within such a marine region, where one local authority decides to

surrender its responsibility to Marine Scotland and another local authority decides to keep its responsibility, there will be two different methods of applying for an aquaculture consent?

Richard Lochhead: Each local authority will have a right to grant consents for its local waters. A marine region may be quite a large area but, within that, individual local authorities will have their own decision-making rights. If one local authority chooses to delegate the matter to Marine Scotland, Marine Scotland will have to pay due attention to the marine plan in deciding on aquaculture consents. I do not think that it is much more complicated than the existing situation.

John Scott: You say that terrestrial plans, which are in the gift of local authorities to determine, will take precedence over regional marine plans. That issue was raised in evidence last week. If a local authority such as Highland Council decided that, instead of fish farming or aquaculture, it would prefer marine leisure developments, but that was not what the marine plan wanted for that region, would the local authority's plan or the marine plan take precedence?

Richard Lochhead: In that circumstance, Highland Council would have the ultimate say. Unless it had delegated the power over aquaculture consents to Marine Scotland, those consents would remain within its gift and it would get the outcome that it wanted. The terrestrial plan would take precedence.

Where local authorities have power over consents, they will keep it. That power is in the Town and Country Planning (Scotland) Act 1997. If we did not give terrestrial plans precedence, we would not really be allowing local authorities to keep their power over consents—we would be transferring it.

John Scott: Might that risk thwarting the overall intentions of the marine plan?

Richard Lochhead: No. It is a question of local accountability. The feedback from local authorities that have an interest in aquaculture is that they want to keep their power over consents in the interest of local accountability. However, if they change their mind, there is a power in the bill to allow them to delegate responsibility to Marine Scotland. In that circumstance, the process will be more streamlined than it would be otherwise.

Liam McArthur: Let us move on to a slightly less vexed issue. The letter that you sent to the committee earlier this week discussed licensing exemptions. You say that you are prepared to look again at some of the dredging functions that the British Ports Authority and all three of the islands authorities have raised with us in oral and written evidence. Can you describe your current thinking in relation to maintenance dredging?

Richard Lochhead: Our current thinking is that we do not want to stand in the way of accepted techniques for dredging, so we are considering what exemptions could be provided for existing activities. Dredging per se will be included in licensing, but we will ensure that there are exemptions for appropriate dredging that has been taking place for a long time.

Liam McArthur: Do you plan to initiate consultation on that in the coming days? What is the timeframe?

Richard Lochhead: Clearly, the exemptions will not be delivered until the licensing regime is in place. That issue will be part and parcel of the consultation on licensing.

The Convener: Liam, do you want to ask about the appeals procedure?

Liam McArthur: Yes, although the issue is also perhaps dealt with in the letter that the cabinet secretary sent the committee on 8 September. Cabinet secretary, you state that you are

"happy to commit to consulting on the fully worked up appeals process in due course."

However, you go on to say that you

"have difficulties with the proposed third party right of appeal."

When we pressed witnesses on that in earlier evidence sessions, there was a surprising amount of consensus among environmental non-governmental organisations and the Scottish Salmon Producers Organisation on the benefits of a third-party right of appeal. Will you explain your misgivings and say whether you or your officials have had discussions with the NGOs and the SSPO on how a third-party right of appeal might operate effectively?

Richard Lochhead: That debate is very much an offshore version of the debate on the onshore third-party right of appeal, which Parliament considered in the previous session and under the previous Administration. The decision was taken then to reject a third-party right of appeal in the terrestrial context. We take a similar view in the offshore context, and for the same reasons. Such a right could frustrate the progress of appropriate developments and would open up the possibility of vexatious third-party appeals that would slow down the process enormously. We will have rights of appeal for some people, such as those whose licence applications are rejected, but we are ruling out a third-party right of appeal.

Liam McArthur: I accept your analysis, but I was surprised that the SSPO was fairly comfortable with the notion of a third-party right of appeal. I presume that that organisation's members would be in the firing line of objections through the appeals process.

Richard Lochhead: Sure. I will consider the SSPO's comments, but a third-party right of appeal would, of course, be available not only to the aquaculture sector. If we gave it to one sector, it would have to apply to all kinds of developments at sea, so as far as I am concerned, the argument remains.

Alasdair Morgan: I have a question about the remediation measures in section 35. The UK bill will allow remediation notices to cover compensation for damage caused and for restoration of damaged sites. The point has been made to us—I think that it is correct, although, frankly, section 35 does not exactly get the clear English mark—that the remediation procedures in section 35 will not allow that, but will simply allow the order of further steps to protect the environment. There is nothing about restoring the environment or providing compensation. Are we correct that there is a difference between the UK and Scottish bills and, if so, is it intentional?

Richard Lochhead: I will ask the officials to respond, as they might have a better understanding of the UK bill in that context.

Stuart Foubister: That is one of the provisions in the UK bill that has been amended during proceedings at Westminster, either since our bill was introduced or maybe shortly before that. To an extent, we have not caught up with those amendments. The intention is to give serious consideration to what has been done to the UK provision and, probably, to match it.

Alasdair Morgan: One would think that a remediation notice, by its very nature, should remedy the defect rather than just stop what somebody has been doing.

Stuart Foubister: There was a fair bit of debate about that in Westminster.

Richard Lochhead: We will write to the committee on that point, too.

John Scott: Shetland Islands Council raised concerns about potential double charging for dredging, as there is the cost of a licence fee plus the sea-bed lease cost. Have you had discussions with the Crown Estate about that and, if so, can you tell us about them? Will there be double charging?

Richard Lochhead: The only general comment I can make is to allude to what I said to Liam McArthur. Tried and tested dredging techniques that are recognised and have been in place for some time would be candidates for exemption from the licensing scheme. Although I cannot pre-empt where we will be once the secondary legislation is put in place, I can say that it is certainly not our objective to implement double-charging schemes for local authorities or anyone

else. However, I cannot say that that will definitely not happen until we have the consultation on the secondary legislation and the exemptions list is decided. I will take that point away with me.

John Scott: That might be a yes or a no.

The Convener: We move on to marine protection and enhancement, which is part 4.

Elaine Murray: In the submissions and the evidence sessions before this one, concern has been expressed about the level of input from community groups in coastal communities and their participation in the process. COAST's written submission said that it was pleased with the suggestion in the consultation document that coastal communities might be able to nominate marine protected areas, but that does not seem to have been translated into the bill. Is there a reason why that is no longer considered to be appropriate?

Richard Lochhead: I have been following the campaigning activities of COAST for some time. It has achieved a lot in highlighting some very important issues about local waters. I have met representatives from COAST on more than one occasion, but I do not necessarily agree with all the evidence that it has given to the committee. For the record, a couple of its references were inaccurate. One was about many wrecks on our sea beds being wrecked by trawling and other activities, but we have a list of many identified wrecks that are still in a natural condition on the sea beds.

I dispute the assertion that there is no avenue for communities to nominate marine protected areas. It is important that we have set criteria by which areas can be nominated as candidates for marine protected area status, and we have to have some consistency. An important element of the bill is its attempt to achieve that. Of course, we are saying that marine protected areas should be established on a scientific basis, so that is a prerequisite for any area that is nominated.

There is a route for communities. They can go to the marine planning partnerships and propose any area that they think should be a candidate to be a marine protected area. If the local community in the form of the marine planning partnership agrees with that, it can contact Marine Scotland, which would set the proposed area against the criteria and do the necessary investigations to see whether the science exists to back up the proposal. It is extremely important to give communities an avenue. Lamlash bay is already subject to regulation through other means, which is obviously of direct interest to COAST. It is important for communities to have a say over their local waters. On the other hand, although we want to put that in place, we also want to ensure that

objective criteria exist for any designation, along with the appropriate science.

Elaine Murray: I want to press you on one of the differences between the Scottish bill and the UK bill. The UK bill sets up inshore fisheries and conservation groups whereas the Scottish bill refers only to inshore fisheries groups. Again, we heard concerns this morning that, although community and conservation groups could advise the IFGs, they would not have an executive place on the IFGs. Why is a different approach being taken here in Scotland to the level at which the conservation voice is heard?

Richard Lochhead: We are starting from a different place than they are south of the border, and there are some fundamental differences in the UK bill. It addresses some of the issues that our bill seeks to address, but it also contains coastal access elements and other issues that you have mentioned. The bills are different in that respect.

We have set up the inshore fisheries groups in the past year or two, and there has been a lot of heated debate about the membership of those groups. We have set down the membership at the moment because it was important to move the groups forward. Environmental organisations have the opportunity to provide input to the groups, although they are not members of the executive committees.

As I said to the committee previously, the debate has taken place on the sustainable seas task force. Other forums have fed back to the Government that fisheries should continue to have their own mechanisms and legislation because trying to incorporate fisheries legislation into the marine environment legislation would become immensely complicated and difficult to administer.

11:45

Elaine Murray: Your reply suggests that you would be prepared to review the membership of the groups in the future. You have fairly recently had the report on the importance to the Scottish economy of sea angling. I can understand your desire to get things moving, but circumstances change. Is it a matter that you would return to—for example, to allow the sea anglers a seat at the table?

Richard Lochhead: Do you mean in terms of inshore fisheries groups?

Elaine Murray: Yes.

Richard Lochhead: Inshore fisheries groups are established on the basis of commercial fisheries—that does not include the sectors that Elaine Murray may be thinking about. In all issues such as this, the question is where we draw the line. If we set something up to give commercial

fisheries the opportunity to introduce fisheries instruments to manage their local fisheries, that is clear and understood. If we start expanding the role of inshore fisheries groups, they become different beasts and it gets incredibly complicated. I am sure that all of us around the table know that even within inshore fisheries groups, debates are taking place, and that there are complications from time to time. To compound that is not an attractive option.

Marine protected areas are the avenue for all kinds of protection. There is nothing to stop anyone who has a concern about the impact on the environment of any activity at sea to use MPAs.

Peter Peacock: I want to follow up on a slightly different dimension of marine protected areas. There is general agreement—including from you, in announcements that you have made—about the degraded state of our marine environment over many decades. Indeed, the motivation for the bill is, in part, to address that. However, outwith MPAs, there is no great force in the bill to do anything to restore the health of the seas, which would benefit us all in the long term, help to sustain our communities and so on. Would it be helpful to strengthen the bill by requiring ministers, as a sort of overriding duty in all that they do about the seas, to think about the health of the seas as a primary objective of all our activity in the marine environment? Would that help to give some force to our aim of ensuring that, in decades to come, we have a better marine environment than we have today?

Richard Lochhead: You have gone to the core of the issue. The role of the Government in this, as well as that of everyone else who uses our seas, is to ensure that we have healthy seas for the future. We are already committed to that and we are already signed up to obligations under European legislation to achieve that. Those obligations mean that we have to work through established networks of MPAs, through elements in the Marine (Scotland) Bill and through international commitments to achieve a healthy status for our seas in the years ahead. That does not just apply to Scotland—that is European Union policy.

Peter Peacock: This legislation will hopefully endure for decades to come, and throughout those decades Governments will inevitably change. Would it complement EU obligations for Scottish law to place a duty on ministers, as a primary consideration in all they do about the seas, to have regard to the impact of the decisions that they make on the health of the marine environment? That would be a comparatively simple mechanism to put in the bill, which would

put beyond doubt the duties of Scottish ministers in these matters.

Richard Lochhead: I will certainly reflect on that suggestion. As a former minister, Mr Peacock will be aware that ministers always take the view that, if something is already the case, they do not have to reiterate it in new legislation.

Peter Peacock: Ministers do not always take such a view, I have to say.

Richard Lochhead: The fact is that Scotland has already signed on the dotted line, which means that we are now responsible for achieving a good, healthy status for Scotland's seas. Perhaps we can reflect on whether we should repeat that in the bill, but it is already the case.

Bill Wilson: I have a few questions, both on the duty and on something that Wendy Kenyon from the Scottish Parliament information centre raised previously, so I suppose I might as well bring them in together. First, I have just a quick question on the inshore fisheries group's membership, which you said consisted of commercial groups. I understand that there were over 100 commercial charter boats in the Clyde about 20 years back. If there is such a presence of commercial charter boats, could they count as a commercial group for the purpose of inshore fisheries, given that millions of pounds are involved?

Richard Lochhead: By commercial fisheries, I mean people whose livelihoods depend on going out to catch commercial fish stocks. A debate can always take place about whether people who take out anglers and the sea-angling fraternity can be regarded as having a commercial fisheries operation. However, we already have commercial fisheries legislation. I can only reiterate that the MPAs in the Marine (Scotland) Bill cater for the general protection of Scotland's marine environment. There is therefore a tool to provide an avenue for any public authority or community to pursue action to protect a part of Scotland's marine environment from whatever activity, if it thinks that that is necessary.

It is important that we recognise that inshore fisheries groups are covered by commercial fisheries legislation and that those groups can come up with their own fisheries management plans for areas for commercial purposes, and they can propose to the Government that they wish new measures to help protect stocks to be adopted through the Inshore Fisheries Act 1984. The 1984 act covers that policy, while the Marine (Scotland) Bill covers the wider marine environment.

Bill Wilson: To return to the MPAs, there is no duty to designate MPAs—none has been produced for discussion. Previously, when I asked officials about section 59, I was informed that an

area had to meet the scientific requirements to be designated as an MPA, but that an area's meeting the requirements will not necessarily mean that it will be designated as an MPA. Leaving aside the provisions in section 59(5)—that is, assuming that there is only one site and not two of equal value, and that ministers are not considering designating it as an MPA for another, sufficient reason—can you give me an idea of the reasons why a site that met the scientific criteria would not be designated?

Richard Lochhead: There is a difference of approach north and south of the border, and within the wider debate. We have very much not taken the view that we must achieve certain targets and percentages of closed areas. Such a view is being taken elsewhere, and some people may think that it is valid, but I do not. I think that we should start from the need and the case, and not simply say that we want to find 30 per cent of our seas to close, or whatever. We should start from the bottom up. For that reason, we have avoided going down the route of duties which, by their very nature, are prescriptive. To impose a duty would mean that it would be incumbent on ministers to go out and identify areas of sea or the marine environment, and protect them if they met certain criteria.

Someone earlier asked a similar question to Bill Wilson's, and I said that there may be areas of sea that do not have any uses, so there are no activities that could threaten the marine environment. However, there may be many important areas that have no activities, but which we want to designate to acknowledge their ecological value. We therefore believe that it is right to give discretion to ministers on when to designate.

Bill Wilson: To continue on that theme, you referred in your letter of 8 September 2009 to

"an ecologically coherent network of ... MPAs".

I note that the Convention for the Protection of the Marine Environment of the North-East Atlantic—or OSPAR convention—has guidance on the description of an ecologically coherent network, which refers to "representativity", connectivity, replication and resilience.

Do you recognise that as your definition of an ecologically coherent network, or is your definition different? If you accept OSPAR's definition, would you consider including in the bill a duty to ensure that there is an ecologically coherent network? If such an approach were taken, you could still decide not to designate a particular area.

Richard Lochhead: We are subject to OSPAR—that is one of our international commitments—so we are obliged to establish a coherent network of marine protected areas. We pay attention to any definition of "coherent

network". David Mallon has done a lot of work on the issue, so perhaps this is a good opportunity for him to contribute.

David Mallon (Marine Scotland): In the context of our signing up to the OSPAR commitment to develop an ecologically coherent network for the north-east Atlantic, it is important to highlight that the characteristics of ecological coherence to which Bill Wilson referred are guidelines. All the countries around the north-east Atlantic are considering the guidelines in order to ascertain which elements they want to apply when they contribute to the network.

The MPA guidelines that we are developing in co-operation with the Joint Nature Conservation Committee and SNH will be based on science and will take account of the OSPAR guidelines. The Scottish guidelines will articulate elements that we regard as being valuable for the purposes of the creation of an ecologically coherent network.

We were asked earlier for an example of an instance in which we might not accept a proposal, even though it might meet the criteria. I think I can give an example. Representativity is a difficult concept. It is trying to get at the idea that although common features will be found in lots of places, coherence might require one or more sites for that feature. If a feature is very common, it is conceivable that many areas would meet the criteria, but there would be no need to designate them all as MPAs, especially as we would be taking a three-pillar approach to nature conservation and recognising the role of wider species protection, the wider planning system and wider marine policies.

Bill Wilson: As I understood it, you were saying that there is a requirement under European regulations only in relation to a certain section of the sea. I presume therefore that the bill could include a duty to ensure an ecologically coherent network—however you defined that—for all Scotland's seas. You would have an obligation to create a network of MPAs, but you would not have to specify exactly what spot they had to go in, which would allow for the possibility of saying, "There are three or four examples of this, and this is the one that we are going to keep."

David Mallon: Yes, but as the cabinet secretary said, we have taken the view that the bill does not need to repeat what we have already signed up to. We have included a duty to report the extent to which the designated MPAs contribute towards an ecologically coherent network. We think that that is sufficient.

John Scott: Perhaps that takes us nicely to our next question. Why have the Scottish ministers adopted a policy of presumption of use within MPAs? On one hand, sea anglers, for example,

want to adopt the precautionary principle in MPAs, to provide greater protection; on the other hand, the renewables industry is afraid that there will be too much protection and that it will not be able to build offshore platforms. Can the cabinet secretary reassure both parties? Can you say on one hand that the approach will not render MPAs pointless, while reassuring the renewables industry on the other? How will you strike a balance?

Richard Lochhead: I will do my best. Let me talk about the purpose of the marine policy statement, which will be reflected in the marine plan for Scotland. The nation, the Government and the Parliament want to set out what we expect from Scotland's seas and our aspirations to protect our seas. We want to ensure that our seas continue to sustain hundreds of thousands of jobs in Scotland. I think that most members believe that our seas can contribute towards tackling climate change and supplying food for the table, and that through wildlife tourism we can enjoy the fantastically rich natural heritage that exists below our waves—and above, in our seabird populations. That is our starting point as a nation.

12:00

We must ensure that we can strike the right balance between the competing interests that use our waters. The purpose of the Marine (Scotland) Bill is to bring the planning system to our seas; ensure that the competing demands can exist side by side; protect our waters; ensure that where we are responsible for being good stewards of our marine environment we can introduce MPAs; and, at the same time, meet our international obligations. It is all about striking a balance and I hope that the bill provides the tools with which we can respond to competing demands, pressures and challenges.

Once the marine plan for Scotland is up and running, we will review it within five years. We will work with our stakeholders and communities around Scotland's coast to ensure that we are achieving the plan's objectives, and Parliament will of course have a major opportunity to scrutinise the bill's success or otherwise. As I say, it is a balancing act. I hope that the tools in the bill achieve that balance and give some reassurance that any future decisions are taken for the right reasons and according to criteria that we can justify.

Liam McArthur: Where there has been resistance to MPAs, it has been born out of the fear that any activity or development will be prevented in them. However, you have tried to reassure us on that point this morning.

In arguing for a presumption of use, Scottish Renewables has said that although the

presumption is fairly clearly set out in the policy memorandum, its presence in the bill is far more ambiguous. Will you take away that concern and find out whether more can be done to reflect in the bill the policy memorandum's intentions?

Richard Lochhead: I will reflect on that. However, as ministers and indeed the Parliament need to remember, a balance must be struck between policy and the legislation that delivers it. Policy evolves and when it evolves to the point that the original legislation does not contain the necessary tools to deliver it, the legislation needs to be changed. In this case, however, we have laid out our policy in the policy memorandum to which you referred, and we hope that the bill will deliver the tools with which to achieve it. The fact is that the more that policy statements are put in the bill, the more the possibility is raised of all kinds of legal debates in the future.

I will reflect and come back to the committee on the matter, but my instinct is that putting something like presumption of use in the bill will affect the balance that we are trying to strike. If it is set out as a policy, we can say that we hope it will be achieved with the tools in the bill. We have to draw the line somewhere.

The Convener: I am conscious of the time and the fact that we still have two sections to discuss.

Alasdair Morgan: Sorry—I want to raise a small technical point that I hope will prove intellectually coherent.

With regard to the offences in part 3, which are set out in sections 82 to 85, the witness from COAST suggested that section 85(2) exempted anyone who was fishing from the provisions in sections 83 and 84. It struck me that the exemption was not quite as blanket as that, but the fact is that sections 83 and 84 contain exemptions for people who commit damage to a protected feature or marine historic asset if they are carrying out a lawful operation, and so on. Given that sections 83 and 84 already contain such exemptions, why was the further exemption in section 85(2) thought necessary? It seems only to add an unnecessary exemption when, under sections 83 and 84, someone who commits damage incidentally or accidentally can plead that as a defence.

Richard Lochhead: I will give that interesting point some more thought and come back to you. It has not been brought to my attention before, which, I suppose, justifies the process of evidence taking by committees.

The Convener: As I said, I am conscious that time is marching on and that we still have two sections to discuss. I ask members for brief questions and panel members for brief answers.

Bill Wilson has a question about the conservation of seals.

Bill Wilson: Will you impose any conditions on the licences, such as marksmanship, range or seasonality? Will the licences be issued on a group or an individual basis?

Richard Lochhead: The bill gives us the opportunity to modernise the legislation to protect seals. We have taken the view that although we will not prevent the culling of seals full stop, we will ensure that all situations are licensed. The licence conditions can be varied. The bill explains to some extent the kind of factors that could be taken into account. It is perfectly possible to take into account marksmanship or training and so on as part of the licence conditions. We are considering where to go with that.

You asked whether the licences would be for groups or individuals. The Moray Firth seal management plan has been very successful and has influenced our thinking on the future of seal legislation, and the changes that we could implement. My understanding is that the plan has promoted the concept of licences for groups. We would be keen to take that forward as an option, so the licences could be for either groups or individuals.

Elaine Murray: Obviously, the culling of seals is quite a contentious issue. Some animal welfare groups would like all non-lethal methods of deterring seals to be used before shooting, and believe that shooting should be the last resort to deal with seal attack. As a licensing condition, would you seek some form of pre-scrutiny so that you could be assured that all other forms of deterrent had been tried, such as acoustic methods and anti-seal netting, before we got as far as issuing a licence to kill the seals?

Richard Lochhead: The short answer is yes. The bill outlines conditions that already have to be taken into account, and some of the conditions under which the killing of seals is permitted. We would want to learn from the Moray Firth seal management plan because it has been good at addressing alternative means of controlling seal populations. For example, the plan has a code of practice that people have to follow. It is policies such as that that we would want to take forward. We would be keen to explore your suggestion.

Elaine Murray: The bill considers only the condition of having a licence in a seal conservation area rather than in the seas in general. Is that still the case?

Richard Lochhead: To clarify your question—

Elaine Murray: Is it the intention that a licence to shoot a seal would apply only in seal conservation areas or would it apply throughout

the seas? There was some doubt about that when we were taking evidence last week.

Richard Lochhead: The requirement for a licence?

Elaine Murray: Yes.

Richard Lochhead: It would apply throughout.

Peter Peacock: The legal position is that no one is allowed to shoot a seal unless by licence, so getting a licence to shoot a seal is a major step. We have had conflicting evidence about how seal kills should be reported. On the one hand, the salmon farming industry suggests that seal kills should be reported annually. On the other hand, other groups and individuals say that it would be helpful to monitor what is going on if it was reported much more frequently. The bill says that a report to Scottish ministers should be done

“as soon as reasonably practical”

after the shooting incident. That is open to wide interpretation. Would you be happy to tighten that, not only so that there was more regular reporting than annually for the purposes of monitoring and so on, but to reflect the seriousness of shooting a seal?

Richard Lochhead: I will certainly reflect on that. There is, of course, no obligation to report at the moment. The debate that is going on in the media always interests me. Some organisations claim that thousands of seals are shot dead every year in Scotland by certain individuals, companies and organisations, but there is no evidence whatsoever that that is the case. However, it might be argued that there is no evidence whatsoever that that is not the case, so the key is to get information to hand and make it the law that people must report seal kills. I ask members to bear in mind that the starting point is that we do not have such information.

On the timescale for reporting, we will certainly reflect on whether the phrase

“as soon as reasonably practical”

requires to be tightened, but the starting point is that there is no way of getting the relevant information at the moment.

Peter Peacock: I gladly acknowledge your point. The provision is new and welcome, but it might be helpful to everybody if there was a more precise definition or if guidance was issued that said what is meant by the phrase

“as soon as reasonably practical”.

Richard Lochhead: That is a fair point, and I will reflect on it.

The Convener: You may be aware that, in its written evidence, the Hebridean Partnership stated:

“Summary conviction is insufficient and may prevent ‘case law’ improvements. All penalties are too lenient.”

Are you content that the provisions on seals in the bill will be effectively policed and enforced? You have said that the police will be responsible for policing and convictions in most cases, but you have also said that Marine Scotland officers could occasionally become involved. Will you give an example of when the police and Marine Scotland officers will be involved and how there will be enforcement?

Richard Lochhead: There have been high-profile cases in Scotland in which people have been prosecuted for shooting seals when they were not supposed to do so. Therefore, it is clear that there is enforcement. I am happy to write to the committee about the matter—perhaps we can speak to the police, for example—but my understanding is that, given the nature of such activities, there is a lot of local intelligence in some of the communities in which such offences take place, as members can imagine. I am therefore confident that the provisions can be enforced. It is clear that Marine Scotland will have a role because it will be able to enforce the legislation. Likewise, the police will be able to take enforcement action under the existing legislation. As I say, I am confident about enforcement, but I am happy to get back to the committee with more views on it.

The Convener: Okay.

We move to the final part of the bill, on common enforcement powers.

Liam McArthur: Section 132 provides the power to marine enforcement officers to direct a vessel or marine installation to port if the officer believes that an offence may be being committed. We received oral evidence on that matter from the British Ports Association and from Orkney Islands Council last week. The concern is that there is a lack of clarity about the terms under which the power would be used. There also seems to be a lack of clarity about how the power would operate alongside the power that the secretary of state’s representative currently has to direct a vessel into port. I think that the United Kingdom Government financially underwrites SOSREP’s decision. It would be helpful to hear the cabinet secretary’s views on the circumstances in which the power would be used and on where liability would lie should there be any environmental damage or any other cost relating to such action.

Richard Lochhead: Again, I will speak to our lawyers and get back to the committee on that. My initial comment is that the powers are largely

similar, if not very similar, to the existing powers that we have in fisheries legislation. We are not reinventing the wheel with the bill. However, I will double-check and get back to the committee on the issue for clarity.

12:15

The Convener: I have a general question. Do the common enforcement powers in the Scottish bill parallel those in the UK bill so that the enforcement system for planning and conservation is wholly consistent from zero to 200 nautical miles? Indeed, do we need such consistency?

David Palmer (Marine Scotland): The powers are very close to the ones that are set out in the UK bill. Indeed, the power to direct a ship to port, which was mentioned in the previous question, came to the Scottish bill through the UK bill, so that will be a UK-wide power.

John Scott: The Finance Committee’s report expresses concern about how some of the costings and financial estimates were determined, and particularly the costs to local authorities. Argyll and Bute Council estimates that it will require four full-time professional staff for regional marine planning, but Government estimates in the financial memorandum suggest that only two will be required. How valid are the estimates in the financial memorandum? Can you give more clarification of what will be expected of local authorities?

Richard Lochhead: Any costs that fall to local government will be taken into account, as ever, by the settlement with local government. We will have our own budgets within Marine Scotland to fulfil many of the measures that will have to be taken in setting up the plans. Clearly, a lot of the work will fall to Marine Scotland, particularly the scientific aspects of the marine plans.

At this early stage, we have done our best to outline what we believe the costs will be for local authorities, and they are making their own estimates. The two sets of estimates do not always match, but we will remain in close contact with local authorities. I will certainly write to the committee if we have any more information on how the local authority that was mentioned reached its figure and how we reached ours.

John Scott: If local authorities’ estimates prove to be more accurate than yours and there is a shortfall, will you be happy to reimburse them?

Richard Lochhead: I am saying that that will be taken into account.

Linda Rosborough: Argyll and Bute Council’s evidence perhaps contained a slight misunderstanding of the details in the financial memorandum. We identified £100,000 in relation

to the partnership costs and another £100,000 in relation to the costs of implementation. That would equate to at least four staff. Over and above that, we identified separately the full cost of preparing a marine plan, including data collection, environmental assessment and the plan process. Taken together, the separate sums that we have identified add up to considerably more than four staff.

Liam McArthur: Argyll and Bute Council was mentioned, but other councils have expressed concern that the lack of clarity about the responsibilities that will fall to them makes it difficult to establish costs.

The cabinet secretary said that a lot of responsibility for delivering aspects of the bill will fall to Marine Scotland. That was certainly echoed during our visit to its offices in Aberdeen at the beginning of our evidence gathering. Marine Scotland appeared to be seriously concerned about the resource implications for its organisation of the increased powers and responsibilities that it will have under the bill. Has that been resolved in recent months? Are you confident that Marine Scotland has the wherewithal to deliver on its responsibilities out to 200 miles and all the other functions that it has?

Richard Lochhead: Yes. I know from speaking to staff on the vessels in particular that they are excited about the new responsibilities that they will have and the fact that they will play a role in protecting the wider marine environment as well as implementing sea fisheries legislation. There is no evidence that there will be a huge increase—at this point, in the changeover time—in the enforcement measures that will have to be taken beyond 12 miles. Most of the activity at sea occurs from zero to 12 miles.

As part of its day-to-day operations, Marine Scotland will have extra responsibilities under the bill and more responsibilities from zero to 12 miles. It is difficult at this stage to pin down exactly how much greater its resources will have to be for it to meet the requirements of the bill.

Liam McArthur: There is no doubt that Marine Scotland was excited about the new responsibilities, be they for mapping or enforcement, but it certainly expressed concern that it would struggle to meet them with the resources that it had available. You are confident—

Richard Lochhead: I am unaware of that concern. It has not been expressed to me. Clearly, when there are new responsibilities, it is always a matter of concern to ensure that adequate resources are in place. We are all concerned about that. That is why we are ensuring that the resources will be in place.

Bill Wilson: Part 3 of the bill regularly refers to “legitimate uses of the sea”.

I suspect that anybody who uses the sea or plans to do so will consider what they do to be a legitimate use. It might help to have clarification of what a legitimate use is.

Richard Lochhead: Yes. We have been thinking about that. To put it on record, we will put it in writing to the committee, because I know that some organisations may find that helpful.

The Convener: I thank the cabinet secretary and his officials for their attendance. If we could have any supplementary evidence that you promised by Monday 14 September, that would be helpful. It can then be circulated before we start drafting our stage 1 report.

That concludes the public part of today’s meeting. I thank the press and public for their attendance.

12:22

Meeting continued in private until 12:33.

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