

# **RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**

Wednesday 25 November 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:  
[licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley.

---

## CONTENTS

Wednesday 25 November 2009

Col.

<b>INTERESTS .....</b>	<b>2173</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE.....</b>	<b>2173</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>2174</b>
Feed (Specified Undesirable Substances) (Scotland) Regulations 2009 (SSI 2009/373).....	2174
Rural Payments (Appeals) (Scotland) Regulations 2009 (SSI 2009/376).....	2174
<b>MARINE (SCOTLAND) BILL: STAGE 2 .....</b>	<b>2175</b>

---

### RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

29<sup>th</sup> 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

Rhona Brankin (Midlothian) (Lab)  
Jim Hume (South of Scotland) (LD)  
Nanette Milne (North East Scotland) (Con)  
\*Sandra White (Glasgow) (SNP)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Robin Harper (Lothians) (Green)  
Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)  
Stuart McMillan (West of Scotland) (SNP)

#### 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 25 November 2009

[THE DEPUTY CONVENER *opened the meeting at 10:03*]

### Interests

**The Deputy Convener (John Scott):** I welcome everyone to the 29<sup>th</sup> meeting in 2009 of the Rural Affairs and Environment Committee. The main purpose of today's meeting is consideration of amendments at stage 2 of the Marine (Scotland) Bill. I ask everyone to turn off their mobile phones and pagers, as they impact on the broadcasting system.

Apologies have been received from the convener, Maureen Watt, who is unable to be with us. We look forward to welcoming her back next week. I welcome Sandra White, who is substituting for Maureen Watt, and ask her to declare any interests that are of relevance to the committee's remit.

**Sandra White (Glasgow) (SNP):** I have no relevant interests.

**The Deputy Convener:** Thank you. I hope that you enjoy your time with us.

### Decision on Taking Business in Private

10:04

**The Deputy Convener:** Under agenda item 2, we must decide whether to take in private agenda item 5, which is consideration of the committee's approach to a letter to the Cabinet Secretary for Rural Affairs and the Environment on fishing opportunities in 2010. Are we agreed?

**Members indicated agreement.**

## Subordinate Legislation

### Feed (Specified Undesirable Substances) (Scotland) Regulations 2009 (SSI 2009/373)

### Rural Payments (Appeals) (Scotland) Regulations 2009 (SSI 2009/376)

10:04

**The Deputy Convener:** Item 3 is consideration of two instruments that are subject to negative procedure: the Feed (Specified Undesirable Substances) (Scotland) Regulations 2009 and the Rural Payments (Appeals) (Scotland) Regulations 2009.

The Subordinate Legislation Committee has commented on both instruments and the relevant extract of that committee's report has been circulated to members in paper RAE/S3/09/29/3. No member has raised any concerns in advance on the instruments and no motions to annul have been lodged. Do members have any comments on either instrument?

**Liam McArthur (Orkney) (LD):** I welcome the Rural Payments (Appeals) (Scotland) Regulations 2009, as I am sure the deputy convener also will. Although there has been a delay in implementation of the regulations, we all understand the reasons for that and the need to get it right.

The Executive note was perhaps a little disingenuous, in that the current procedure had been criticised by the agricultural industry and was put in place with a three-stage approach that was based on consultation of the industry. That needed to be reflected more accurately in the Executive note. That said, the regulations will be widely welcomed by agriculture, as they address needs and concerns that have been present for some time.

**The Deputy Convener:** I agree. John Kinnaird and his team have done a good job and I am very glad that the new appeals system is at last in place.

No other member would like to comment, so do we agree not to make any recommendations in relation to SSIs 2009/373 and 2009/376, as detailed on the agenda?

**Members indicated agreement.**

## Marine (Scotland) Bill: Stage 2

10:07

**The Deputy Convener:** We move to consideration of amendments at stage 2 of the Marine (Scotland) Bill. It has been suggested that we might be pushed for time in respect of consideration of the draft report and the letter. We therefore aim to stop consideration of the bill at 10 past or quarter past 12; we will try to stop at the end of a group.

Members should have in front of them their copies of the bill, the marshalled list and the groupings. I welcome the Cabinet Secretary for Rural Affairs and the Environment and his officials.

*Sections 56 and 57 agreed to.*

### Section 58—Marine protected areas

**The Deputy Convener:** The first group of amendments is on marine protection and enhancement: surfing marine protected areas. Amendment 194, in the name of Robin Harper, is grouped with amendments 208, 220, 221, 223, 225 to 227, 229, 232, 241, 244 to 246 and 248 to 251.

**Robin Harper (Lothians) (Green):** Thank you, deputy convener. I have taken your restrictions to heart: I have already edited down this speech and will edit my other ones as far as I dare.

Scotland can boast world-class conditions for sailing, kayaking and kite surfing and is—most important for today's debate—home to some of the best surf in the world. The sport of surfing is unique in its vulnerability to inappropriate near and offshore development, to inadequate water quality and to restrictions to access. My amendment 194 seeks to address those issues by enabling ministers to designate certain areas as surfing marine protected areas, to develop conservation objectives and to bring in conservation orders for such sites. It is not intended that the power should be used extensively.

I would suggest starting with the break at Thurso East. Thurso's reputation for world-class waves started in 1981, when it was chosen as the venue for the European surfing championships. Since then, it has hosted the Association of Surfing Professionals world qualifying series competition and the annual O'Neill coldwater classic, which attracts to that remote spot hundreds of world-class surfers from around the world. Other potential spots may be found on the islands of Lewis and Tiree, and I believe that Orkney might also be suitable.

Surf-related tourism makes up 25 per cent of Costa Rica's economy—more than coffee and

second only to bananas. A little closer to home, surfers in Cornwall spend 8.5 per cent more per head than do other visitors to Cornwall. It is also interesting to note that about 40 per cent of British Surfing Association members who take surfing holidays choose to take those holidays in the United Kingdom.

Surf breaks face unique threats from near and offshore developments. Inappropriately placed harbours and jetties simply kill waves, and surfers cannot just go 100m down the coast in the way that sailors, kayakers or kite surfers can do. It is more than possible for development and surfing to exist in harmony, when development is done properly. The wave hub in Cornwall provides an excellent example of offshore development and surfing working together.

There are issues to do with water quality at Pease Bay in the Borders which is one of Scotland's most popular breaks. John Scott's colleague John Lamont has been involved in the campaign on the issue. The break is heavily used by surfers all year round, but Scottish Water reduces the level of sewage treatment from September to May, which creates a significant health hazard.

If members agree to amendment 194, Scotland will join the growing number of nations that have realised the importance of supporting surfing assets through such protection. The approach will help us to build a healthier nation, which is more in touch with its environment, and it will help to build healthier seas by protecting a few of our most valuable—and underestimated—natural marine assets.

I move amendment 194.

### **Peter Peacock (Highlands and Islands) (Lab):**

I know that Robin Harper is an aficionado of music, but he has taken his love of the Beach Boys a little further than I expected.

I understand Robin Harper's argument about the economic importance of surfing in, for example, Thurso and some of the islands off our west coast, and I understand the benefits that can be gained from the marketing of modern surfing, so I know where Robin Harper is coming from. However, I have difficulty with amendment 194 because I do not know whether it is necessary. Why pick out a particular activity? It could be argued that other activities should also be included.

I will be interested to hear what the minister says. I would have thought that a marine plan in the Highlands, for example, would take specific account of Thurso or any other beach that is important for surfing, and I would expect that there would be attempts to market, protect and support the activity through mechanisms in the plan. Such an approach might reassure Robin Harper and

people who have an interest in surfing. I have strong reservations about including in the bill the provision in amendment 194, although I readily acknowledge Robin Harper's intention in lodging the amendment.

**Bill Wilson (West of Scotland) (SNP):** I agree with Peter Peacock. If surfing is particularly important to a local economy, I think that it would be mentioned in the regional marine plan and in the spatial plan. It is not clear to me why the provision needs to be included in the bill.

**Liam McArthur:** I agree with Peter Peacock and Bill Wilson. In parts of my constituency surfing is an important and growing activity. In a sense, marine spatial planning is all about managing competing interests in, and uses of, the sea. By lodging amendment 194, Robin Harper has raised the profile of the issue, but to include the provision would simply give rise to competing claims for special reserves from the diving sector, the fishing sector and people who represent a range of other economic activities. It would be better to leave the matter to marine planning partnerships.

**Elaine Murray (Dumfries) (Lab):** I concur with what Robin Harper and other members have said about the economic importance of surfing in parts of the country, and I agree that there are problems to do with sewage. However, like other members, I am not convinced that designating a "surfing marine protected area" is the right way to go.

We took extensive evidence at stage 1: if we were to change the bill significantly at stage 2 as is envisaged through amendment 194, I would be concerned because people who have legitimate interests in the sea, such as the fishing fraternity and the renewables sector, have not been consulted about the proposal. I would be nervous about introducing such a change at this stage.

10:15

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** Good morning. I am happy to speak to amendment 194 and the other amendments in this group, which, as members have pointed out, seek to provide for the designation of surfing marine protected areas.

I well understand the purpose behind the amendments, which is to protect our waves. After my summer holiday with my family on Tiree, I am certainly aware of the importance of surfing to that island's economy.

Scotland has world-class surfing beaches; for example, Thurso hosts an annual world qualifying series event that attracts hundreds of the world's best surfers. I want surfers to continue to access beaches, including the important beaches at Thurso, Tiree and East Lothian. Just as important

is the need to look for opportunities to ensure that our wave resource is recognised, valued and promoted. Surfing has quickly grown into a well-established sport in Scotland, and a great number of Scots and visitors hugely enjoy our beaches and make a significant contribution to local economies.

However, although I support surfing, I do not think that a power to designate surf MPAs is the best way forward. As members have pointed out, if we grant special status to one activity, many other organisations and individuals will no doubt line up to secure similar status for the activities that they represent.

The bill already sets out a better approach. Its new framework for marine planning at national and local levels will involve discussion and planning to ensure that the right activities take place in the right places. I fully expect those discussions to identify the parts of our coast that are important for recreational uses, including world-class surfing opportunities. Marine plans will be able to identify objectives for recreational uses, so I am sure that there will be opportunities to promote our world-class surf resource. Public bodies will then be expected to take decisions based on the plan.

In my view, marine planning is the best way to promote surfing and other leisure activities in our waters, so I agree with the members who have suggested that the amendments be resisted.

**Robin Harper:** I have clearly failed to persuade the committee or the cabinet secretary about the amendments. However, I repeat that surfing is singularly vulnerable to wave disturbance or restriction in a way that no other water sport or activity is. I hope that marine plans take account of the fact that, even at its most ambitious, our proposal for giving ministers the ability to designate surfing MPAs would affect only a minuscule fraction of the more than 4,000 miles of our coastline.

Given the committee's view, I will not press amendment 194. However, I very much hope that my point will be borne in mind in the future by ministers and in marine plans, and I reserve the right to bring back the amendments in some form at stage 3 if I see any hope or prospect of their success.

*Amendment 194, by agreement, withdrawn.*

**The Deputy Convener:** The next group is on designation orders: procedure. Amendment 178, in the name of Liam McArthur, is grouped with amendment 193.

**Liam McArthur:** With regard to amendment 193, orders designating an MPA should be subject to parliamentary scrutiny, and I do not think that it

is too onerous a burden for approval to be sought of a Scottish statutory instrument

“designating a Nature Conservation MPA, a Demonstration and Research MPA or a Historic MPA”.

On amendment 178, although the act of designation will in itself not give rise to any restriction on existing activity, ministers should have a duty to demonstrate that the designation is in line with the relevant policy and satisfies legal requirements for designation. If ministers have any restrictions on activity in mind, it seems only reasonable that they declare their hand when designating an MPA.

I appreciate that Scottish Environment LINK and other bodies have expressed concern about the potential for precluding the introduction of further marine conservation orders in due course, but it is not unreasonable for future ministers to respond appropriately as our knowledge of the marine environment increases. However, it would be unfortunate if stakeholders and communities were encouraged to embrace MPAs on the basis that they posed little or no threat to existing activity if it was clear that ministers intended at the time to introduce MCOs that somehow contradicted that belief or perception.

Having set out the rationale behind amendments 178 and 193, I move amendment 178.

**Alasdair Morgan (South of Scotland) (SNP):** I struggle to follow the logic of Liam McArthur's amendment 178 because it strikes me that, regardless of whether the minister designates a demonstration or research MPA, a marine conservation order can always be introduced. The arguments that he makes seem to apply to any marine conservation order. It may be that the minister decides that a marine conservation order is necessary only as a result of the research that is done in the demonstration or research MPA—I do not know. If I understand the logic of the amendment correctly, in the case of an MPA that is designated for research, we would be asking the minister to give the results before the research was undertaken, which would not be particularly sensible.

**Bill Wilson:** I have similar concerns. We agree that we lack knowledge of the seas. Therefore, I presume that we will push to acquire more knowledge, and I would be concerned if we could not introduce a marine conservation order in the light of that knowledge. I understand Liam McArthur's desire for the designation of an MPA to go through the Parliament, but I worry that our hands are being tied in relation to new knowledge.

**Richard Lochhead:** I had difficulty in picking up all Liam McArthur's comments. I am not sure whether his microphone is working, although I can hear everyone else okay.

I agree that it is difficult for the Scottish ministers to see into the future. In most cases, it will not be possible for the Scottish ministers to foresee, at the point of designating a marine protected area, whether the MPA will require the protection of a marine conservation order, bearing in mind that marine conservation orders will be the option of last resort in most cases. Given that fact, and the fact that any marine conservation order is subject to annulment by the Parliament, I urge the committee to resist amendment 178.

In line with the processes for other conservation designations in Scotland, the designation of a marine protected area is intended to be primarily science led. That follows the consensus position of the sustainable seas task force. MPA designation by itself is unlikely to have significant effect on any legitimate use of the sea. Therefore, no parliamentary process is needed for such designation. That point was raised by the Subordinate Legislation Committee, which was content with the Government's explanation of the position.

Where there is a need to regulate activities through a marine conservation order, the order will be subject to scrutiny in Parliament. Similarly, if regulation of fishing activity is required, that will be done under existing fisheries legislation. Again, that is likely to involve a statutory instrument.

For those reasons, I urge the committee to resist amendment 193.

**The Deputy Convener:** Perhaps we should all try to speak up. I am aware that I am mumbling; perhaps others are too.

**Liam McArthur:** I blame my beard.

I am still reeling from the admission that ministers cannot see into the future. To respond to the minister's comments on amendment 178—which follow on from Alasdair Morgan's and Bill Wilson's—I acknowledged in my opening remarks that our knowledge of the marine environment will develop over time, partly through the research MPAs that we seek to sanction through the bill. I do not agree that amendment 178 precludes that, but in light of those concerns, I will not press the amendment and will attempt to find another formulation that addresses the concerns that have been raised.

On amendment 193 and the cabinet secretary's example of designations being based on science, one has only to reflect on the evidence that we took in relation to the fisheries council to realise that science is rarely an absolute. I do not think that the parliamentary process that my amendment 193 would entail is an insurmountable obstacle. It would at least allow for some of the science to be scrutinised by the committee and the Parliament, so it could provide a valuable



safeguard. I intend to move that amendment at the appropriate point.

*Amendment 178, by agreement, withdrawn.*

**The Deputy Convener:** The next group is on marine protected areas: definition of “island”. Amendment 195, in the name of Liam McArthur, is the only amendment in the group.

**Liam McArthur:** Amendment 195 represents an attempt to provide greater clarity on what is or is not intended under the bill. Members will appreciate my vested interests in the matter, although I hasten to add that Orkney Islands Council’s current policy is not to support the rehabilitation of currently uninhabited islands.

I have attempted to clarify the fact that the provisions deal with a particular type of island: a rocky or partly submerged one. I appreciate that there are definitional issues, and that I am perhaps clearing the way for geological lawyers to cash in. However, as the bill stands, more detail is needed.

I note that an adviser to the Government recently observed—albeit in another context—that Scotland does not lack sad “lonely islands”. On that occasion, Professor Salter recommended blowing up some such islands in order to unleash greater tidal energy resources. It would be helpful if the minister could allay any remaining fears among sad, lonely islanders in my constituency about the application of the bill.

I move amendment 195.

**Richard Lochhead:** I am happy to confirm that the Government has no plans to blow up any part of—or any uninhabited islands in—Liam McArthur’s constituency. That might help to persuade him to withdraw his amendment.

Amendment 195 would restrict the ability to include islands in MPAs. The purpose of the provision as drafted is to allow features that extend above the high-water mark to be included in an MPA if they are connected to the feature in the sea. In particular, historic assets could be found above high water in some places, and those would not be covered by the amendment. Some of those assets might have features that extend beneath the waves. Unless the part above high water was on a reef, for instance, we could not, as a result of the amendment, include it in an historic MPA, despite the two parts being connected. The use of other legislation would be required. The proposal in the amendment would add to bureaucracy and cost, and it would be confusing to the public. For that reason, I urge the committee to resist amendment 195.

**Liam McArthur:** I note what the minister says. More detail is required. I was wrestling with about three or four variants of the amendment, and I opted for the one that is before us as there was

some feeling that it was more romantically drafted than the other versions that I was considering—it is indeed a sad, lonely life that I lead.

**The Deputy Convener:** No man is an island.

**Liam McArthur:** There is a need for more clarity so I am prepared not to press the amendment at this stage. However, I would welcome a commitment from the minister to get his officials to work with me, Orkney Islands Council and perhaps other organisations to see where more clarity might usefully be brought to the bill. If he is happy to do that, I will withdraw the amendment.

**Richard Lochhead:** I welcome Liam McArthur’s confessional before the committee about his sad, lonely life. I assure him that we will look into the issue that he has raised. If there are further details that we can give, we will certainly give them.

*Amendment 195, by agreement, withdrawn.*

*Section 58 agreed to.*

#### **Section 59—Nature Conservation MPAs: additional requirements relating to designation**

10:30

**The Convener:** The next group is on role of appropriate statutory authority: designation and objectives. Amendment 196, in the name of Liam McArthur, is grouped with amendments 198, 203 and 219.

**Liam McArthur:** Colleagues will recall from our stage 1 deliberations the basis on which nature conservation MPAs should be designated. We agreed that communities need to feel involved in a process that could have significant impacts on a resource on which they have been highly reliant. The concern was to avoid MPA designations being viewed as just another example of things being done to remote communities in particular. Nevertheless, we were clear that the only grounds on which nature conservation MPA designation could take place were robust scientific ones.

Amendment 196 and amendment 219, which is also in my name, seek to reinforce that understanding, while finding a way to involve as many people with an interest in the matter as possible by making the list of candidate sites widely available through a register to be held by Scottish Natural Heritage. The process of designation by ministers would require sites to be taken from the register, and would involve input from SNH regarding site boundaries and other relevant criteria.

Elaine Murray’s amendments 198 and 203 seek to address similar issues, essentially by making clear the role of SNH. I have no problem with supporting those amendments. I acknowledge the

deputy convener's amendment 197, which we will debate in the next group and which covers similar ground. However, I feel that the amendments in my name in this group offer greater scope for securing a transparent process, which I hope will command widespread public support.

I move amendment 196.

**Elaine Murray:** Amendment 198 requires the conservation objectives that are stated in the order designating a nature conservation MPA to be

"specified by Scottish Natural Heritage".

I appreciate that that will probably be the procedure anyway, but the amendment would clarify SNH's role in the bill with regard to the specification of the objectives.

Amendment 203 reflects concerns that were expressed by the Scottish Fishermen's Federation that community MPAs are not added to the total number of sites designated following recommendations from SNH and, possibly, the Joint Nature Conservation Committee. It is reasonable for any third party to make proposals for nature conservation MPAs, but such proposals should meet the same stringent requirements that would apply to proposals made by SNH and the JNCC. The total number of designated sites should not be incrementally increased through community designation.

I am unsure whether Liam McArthur's amendments 196 and 219 would actually achieve the same aim, making my amendment 203 redundant. If so, I note that his amendments are more specific than mine and probably better formulated, and I would be happy not to move my amendment. I will support amendments 196 and 219 in any case.

**Alasdair Morgan:** Members will know that I am agin bureaucracy in all its shapes and forms, despite frequently voting yet more bureaucracy into existence. Unless I misunderstand them, Liam McArthur's amendments would create even more than the bill already provides for. I do not see that his proposals confer benefits commensurate with that extra bureaucracy.

**Richard Lochhead:** Amendments 219 and 196 would introduce a new step in the process: a register of candidate sites, to be maintained by SNH.

I am doubtful that the amendments would add anything of value to the process of designating MPAs. Indeed, they risk creating confusion and additional bureaucracy, as Alasdair Morgan has just said.

People are likely to ask what a candidate site is and whether it is the same as an MPA. We would need to decide the right time to badge a location

as a candidate site, and whether that would be when we planned to do a survey of that location or when we got the results of the survey. I am not sure that a new category of candidate site would be helpful to the process. A requirement to develop, maintain and publish a register of candidate sites would also impose new financial burdens on SNH and divert resources from the task in hand, which is the designation and development of an MPA network.

I assure Liam McArthur that we will work closely with stakeholders in identifying MPA proposals. Stakeholders should therefore be clear about which sites are under consideration. For those reasons, I urge the committee to resist amendments 196 and 219.

Amendment 198 seeks to give SNH the leading role in stipulating the objectives for nature conservation MPAs. However, it has always been the intention that Marine Scotland would lead the designation process, including setting the objectives that carry ministerial authority. SNH will, of course, have a significant role in advising on designations. I see no value in amendment 198 and urge the committee to resist it.

Finally, I turn to amendment 203. This is an interesting amendment, but I cannot see the value that it would add. Indeed, I find it difficult to envisage any circumstance in which ministers would designate an MPA without taking advice. The proposed MPA designation powers lie with ministers. I believe that that is where the discretion should lie in relation to the number of sites. I assure Elaine Murray that ministers will take account of SNH's advice and that Marine Scotland will work with SNH in identifying MPA proposals. I ask her not to move amendment 203.

**Liam McArthur:** I turn first to the concerns that Alasdair Morgan and the minister expressed about additional bureaucracy and costs. At our meeting last week, there was pretty unanimous support for the notion of pre-consultation. I think that we all accept that that is incredibly valuable, particularly when the public and others with an interest are trying to grapple with a new piece of legislation that puts new requirements on them.

Transparency is better served when we are as up front as we can be. We are talking about another stage in the process—the development of a register. In this case, the ends justify the means. We all support freedom of information, which is neither a cheap process nor one without a degree of bureaucracy. That said, none of us would want to row backwards from where we are on FOI. In the interests of transparency and public involvement, I press amendment 196.

**The Deputy Convener:** The question is, that amendment 196 be agreed to. Are we agreed?

**Members: No.**

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

**For**

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

**AGAINST**

Morgan, Alasdair (South of Scotland) (SNP)  
Scott, John (Ayr) (Con)  
White, Sandra (Glasgow) (SNP)  
Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 4, Abstentions 0. I exercise my casting vote against the amendment.

*Amendment 196 disagreed to.*

**The Deputy Convener:** The next group is on nature conservation MPAs: criteria for designation. Amendment 197, in my name, is grouped with amendments 200 and 202.

Given our international commitments under the Convention for the Protection of the Marine Environment of the North-East Atlantic—the world summit on sustainable development and marine strategy framework directive commitments—it is vital that MPAs are designated as part of a network of sites. Protection of marine fauna and flora habitats and ecosystems can be achieved not through the designation of standalone sites, but by an ecologically coherent network of sites that are designated on the basis of the best available science. If we are to ensure that MPAs are designated in this manner, it is vital that Scottish ministers publish guidance in which they detail the scientific criteria for the designation of MPAs and how such MPAs constitute a network.

I move amendment 197.

**Peter Peacock:** I am concerned that the wording of the bill could lead to MPAs being designated in key sites for renewable energy development without climate change being a consideration in the designation process. Ministers have declared through their policy memorandum that they have adopted a policy of presumption of use within MPAs. Under section 83, upon designation of a nature conservation MPA there is the automatic creation of an offence to damage the key features of the MPA. Under section 72, upon designation, a public authority may not grant authorisation for an act within an MPA unless the person who applies satisfies the authority that there is no significant risk of that act hindering the achievement of the conservation objectives. If the person cannot satisfy the authority that there is no significant risk, they will have to meet a number of tests, which are almost exactly the same as those found in the regulations on Natura 2000 sites.

The experience of the renewables industry wishing to develop in or near Natura 2000 sites is that regulators ask for an extremely high burden of proof that there is no risk of damaging European sites. That is proper and understandable. If the same approach is taken to MPAs under the bill, the likelihood of people being able to develop wind, wave or tidal resources within MPAs may be lower than is the declared policy intention of ministers.

It should be possible for climate change considerations to be weighed in the balance when the factors leading to potential designation of MPAs are being considered. Allowing ministers to consider the climate change implications of designating MPAs can help to ensure that the expansion of the MPA network that we all seek and desire is compatible with our allowing for appropriate offshore renewables to make their crucial contribution to our climate change targets. That is an important issue for the renewables industry in particular and for our national interest, too.

I will listen to what the minister says before I decide whether to move amendment 200. I am interested to hear whether he believes that he will be able to consider these issues in the current designation process without the amendment. I am also conscious that there are subsequent amendments, which we have yet to debate, about social and economic considerations, which might affect the approach that I take at stage 3.

**Elaine Murray:** There is a clear policy intention in the bill that nature conservation MPAs should be designated according to science. The committee welcomed that approach in its stage 1 report. However, section 59(6) is not consistent with that approach and appears to be inconsistent with section 59(5), which sets out the circumstances under which social or economic designations may be considered. Section 59(6) would appear potentially to allow delegates to exercise functions in relation to a marine national plan to prevent the creation of an MPA for a nationally important marine feature for reasons that are unrelated to scientific criteria for designation. I am interested to hear the cabinet secretary's interpretation of my concerns about that. If they are justifiable, amendment 202 would seek to rectify the anomaly.

**Bill Wilson:** I understand where Peter Peacock is coming from but, having read the renewable energies briefings, I was left slightly alarmed that they seemed to completely subordinate the importance of the environment to the concept of building renewable energies resources. I am concerned that if amendment 200 is agreed to, we might find ourselves in a situation whereby even if an area is particularly important or unique, we will

be under heavy pressure to allow developments within it, regardless of the damage. I am not entirely comfortable with amendment 200. Of course, I think that protecting the sea and nature can help to mitigate climate change. I am not saying that the amendment is incompatible with that, but I am concerned that very important areas could end up being damaged because the amendment puts too much emphasis on development.

**Liam McArthur:** I am sure that Peter Peacock will pick up Bill Wilson's comments, but my reading of amendment 200 is that Scottish ministers may have regard to the extent to which designating an area will contribute to the mitigation of climate change. Whatever Scottish Renewables has said in its briefing—which perhaps overegged the pudding—the way in which Peter Peacock's amendment is phrased should allay Bill Wilson's fears about the subordination of the importance of the environment.

10:45

**Richard Lochhead:** I welcome amendment 197. I informed the committee previously that my officials are preparing guidelines on the selection of MPAs. I am happy for that guidance to be published when it is completed, so we are comfortable with the amendment.

Amendment 200 is well intentioned, but the Climate Change (Scotland) Act 2009—which Parliament recently enacted—provides the appropriate mechanisms for mitigating climate change. As the committee knows, the bill provides a planning framework for our seas and a process for establishing objectives for the marine environment. That is the appropriate level at which to engage with climate change issues in the marine environment.

In response to Peter Peacock, I emphasise that ministers will have a range of powers. The designation process is flexible enough to ensure that, should a good case be made for major renewable energy developments in areas that have been designated, ministers can take that into account. Without knowing the circumstances of each case, we cannot always say that one factor will pre-empt other factors. However, the designation process is flexible—ministers will have the power to de-designate as well as to designate, for instance—so I hope that that gives the member comfort. Given that, I hope that Peter Peacock will not move amendment 200.

Amendment 202 provides that ministers must have regard to the provisions in subsections (4) and (5) of section 59 when acting under section 59(6). I do not see what the amendment would add to the bill, so I urge the committee to resist it. I

reassure Elaine Murray that subsections (4) and (5) will apply and I hope that she is content with that.

**Karen Gillon (Clydesdale) (Lab):** I am interested in why the minister resists a cross-cutting provision on climate change in the bill. We are well aware of the 2009 act but, given joined-up government and the priority to deal with climate change, it is slightly irresponsible not to put the provision in the bill.

**Richard Lochhead:** Karen Gillon will recall that we debated that issue in relation to several amendments last week. The committee agreed that the obligations were already on the Government as a result of the 2009 act. The same consideration applies to some amendments that we are discussing today. The more amendments that are agreed to that repeat existing obligations, the more the bill suggests that one issue pre-empts another. Under the 2009 act, ministers already have a general obligation, which I mentioned in response to several amendments last week, so we see no need for amendment 200.

**The Deputy Convener:** I thank the minister for his remarks about amendment 197 and other members' amendments.

*Amendment 197 agreed to.*

*Amendment 198 not moved.*

**The Deputy Convener:** The next group is on nature conservation MPAs: establishment of network. Amendment 199, in the name of Elaine Murray, is grouped with amendments 109, 222 and 171 to 173.

**Elaine Murray:** Amendment 199 is based on the approach that the Nature Conservation (Scotland) Act 2004 adopts for sites of special scientific interest. The amendment would ensure that a site's potential contribution to an ecologically coherent network was considered during the site's designation process.

I am happy to commend Bill Wilson's amendment 109, which goes into great detail and reflects the committee's recommendation of a duty to establish a network of sites. Amendment 199 refers to

“a network of conservation sites”,

which amendment 109 would create.

Section 71 places a duty on public authorities to exercise their functions in the manner that is considered best to further the stated conservation objectives of a nature MPA. Given the importance to the health of the Scottish marine environment of having an ecologically coherent network of MPAs, which the committee noted at stage 1, amendment 222 proposes the inclusion of a duty to ensure that no functions of a public authority can have a

negative impact on the integrity of the network as a whole.

**Alasdair Morgan:** I am concerned that amendment 199 not only inserts words into section 59 but deletes the existing wording that says that

“conserving marine flora or fauna”

is also to be interpreted as

“conserving the diversity of such flora and fauna”.

Why are you deleting that?

**Elaine Murray:** I will finish what I was saying and address that when I have been able to have a better look at the wording.

That is consistent with the approach that is taken in the Nature Conservation (Scotland) Act 2004, which includes a duty on public bodies to maintain or enhance the representative nature of any series of sites of special scientific interest to which an SSSI notification contributes. Amendment 199 also refers to the network of conservation sites that would be created by amendment 109.

In response to Alasdair Morgan's question, I point out that amendment 199 must be considered in conjunction with Bill Wilson's amendment 109.

I move amendment 199.

**Bill Wilson:** There is a lot of evidence linking better marine health and economic productivity. The committee agrees that we cannot have an effective economic use of our environment if we do not ensure that its biodiversity is enhanced and preserved and that we maintain a high-quality ecosystem. Under the Convention for the Protection of the Marine Environment of the North-East Atlantic, the resolutions of the world summit on sustainable development and the marine strategy framework directive, it is an obligation on us to create an ecologically coherent and representative network of MPAs. We probably also all agree that we cannot protect marine flora and fauna ecosystems through having standalone sites. The sea is interconnected—fish and other animals move around. Simply saying that we are protecting a site and ignoring wherever else the organisms go is not liable to be effective. Therefore, the idea of a network is essential. As has been noted, it is also one of the committee's own recommendations.

I am interested in Elaine Murray's amendments 199 and 222; therefore, I will be interested in the cabinet secretary's comments on those amendments.

**Peter Peacock:** I lend my support to amendment 109, which adequately captures what was debated in the committee and agreed

unanimously—that we require a coherent network of such sites and that there should be no dubiety about the fact that they must be designated. The selection of individual sites would be a matter for discretion, but there was no disputing the fact that there should be a coherent network.

Bill Wilson's drafting has revealed an entirely new skill of which I was previously unaware. Given the detail and precision of the drafting, I would be astonished if the Government did not accept amendment 109 in its entirety.

**Bill Wilson:** Like the cabinet secretary, I do not see into the future.

**Liam McArthur:** Bill Wilson has betrayed something of that sad, lonely existence to which I referred earlier.

What Peter Peacock said about amendment 200 squares with the duty that would be placed on ministers by amendment 109. As other members have said, that amendment reflects the committee's view at stage 1.

Amendment 199 is helpful in providing a bit more clarity and purpose in relation to the effect of MPAs.

**Elaine Murray:** I was interrupted in full flow, but I have now had the time to look at Bill Wilson's amendment 109. Subsection (9) of amendment 109 replicates the part of section 59 that would be deleted by my amendment 199; therefore, if both amendments were agreed to, that wording would remain in the bill.

**Richard Lochhead:** I welcome and support Bill Wilson's amendment 109, which is supported by Peter Peacock and Elaine Murray. Like many on the committee, I am astonished by the supreme quality of the drafting before us—who could resist supporting such a high-quality amendment?

Scottish ministers are committed by international agreements, such as the Convention on Biological Diversity and OSPAR, to develop MPA networks. A duty in the bill to have an MPA network will help deliver on those commitments.

Amendments 171 to 173 are technical amendments as a consequence of amendment 109. They tidy up the drafting in the bill.

I support the principle behind amendment 222 because it is in line with our intention to create an MPA network. However, the amendment is not ideally situated in section 71(2) and, if Elaine Murray will withdraw it, I will lodge something similar at stage 3.

Amendment 199 would not add anything of consequence to the bill and it would delete the existing provisions of section 59(4), which remain useful. That was the issue spotted by Alasdair

Morgan. I ask Elaine Murray not to move amendment 199.

**Elaine Murray:** Perhaps I did not make myself clear in my earlier intervention. Concerns have been expressed about the part of section 59 that would be deleted by my amendment 199, but the wording would be reintroduced by Bill Wilson's amendment 109 and would therefore not be lost from the bill. I make that quite clear. I will press amendment 199.

I note what the cabinet secretary says about amendment 222 not being appropriately situated; I take his word for it and will not move that amendment. I look forward to an improved amendment being lodged at stage 3.

**The Deputy Convener:** The question is, that amendment 199 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

#### AGAINST

Morgan, Alasdair (South of Scotland) (SNP)  
Scott, John (Ayr) (Con)  
White, Sandra (Glasgow) (SNP)

#### ABSTENTIONS

Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 3, Abstentions 1.

*Amendment 199 agreed to.*

**Peter Peacock:** I want to reflect on what the cabinet secretary said so I will not move amendment 200, but I will probably lodge an amendment at stage 3. I hope that the cabinet secretary and his officials will consider that.

*Amendment 200 not moved.*

**The Deputy Convener:** The next group is on designation of marine protected areas: economic and social considerations. Amendment 179, in the name of Karen Gillon, is grouped with amendments 201 and 204 to 207. If amendment 179 is agreed to, amendment 201 will be pre-empted.

**Karen Gillon:** The purpose of amendment 179 and the other amendments in the group is to give some protection and reassurance to fragile coastal communities. During our stage 1 deliberations, the committee acknowledged that a balance had to be struck in designation and its impact on those who are affected.

Amendment 179 says that ministers may take regard of representations based on economic or social grounds. Stuart McMillan's amendments go further and say that ministers must have regard to those representations. I am attracted to those amendments and await the views of other committee members.

As members are aware from the discussions that took place at the weekend, fishermen face particularly difficult circumstances in the coming year. I do not want the bill to do anything that might make that situation more difficult. The provisions in this group of amendments would provide reassurance and allow representatives to make an economic case. They would also allow affected communities to make a social case. I hope that members will be sympathetic to getting the balance right for those in our coastal communities who are affected by decisions on marine planning.

I move amendment 179.

11:00

**Stuart McMillan (West of Scotland) (SNP):** Following on from what Karen Gillon said, the amendments in the group, particularly amendment 201, seek to clarify the language that is used as well as to strengthen the purpose of Scottish ministers' actions to ensure that they consider social and economic issues.

I ought to say that I lodged the amendments on behalf of the Scottish boating alliance.

**Bill Wilson:** I am extremely concerned by the amendments. The idea behind them is to consider social and economic factors and it seems as though the amendments, particularly those in the name of Stuart McMillan, would alter the balance of the bill and could mean that there would be a veto for economic interests over the science. That would change the fundamental nature of the bill and I am strongly opposed to the amendments.

**Liam McArthur:** I am reassured that someone who was not on the committee during stage 1 has so eloquently expressed what a number of us felt in our consideration of the evidence. Karen Gillon has articulated my concerns, and Stuart McMillan's amendments probably address those concerns better than amendment 179. I will certainly support them.

**Richard Lochhead:** Amendments 179 and 201 would allow for, or require, the consideration of social and economic factors at the time of designating a marine protected area. That is not appropriate, for the reasons that Bill Wilson has just expressed. If the science indicates that something is worth designating, we should designate it. How we subsequently choose to

manage the site is a different issue, and it is in that management decision that consideration of social and economic factors should properly lie. Consensus has been established around the science-driven approach and I do not wish to see that consensus undermined by the amendments.

Although an MPA designation will make it an offence to damage the key features of a site, it will not impose formal restrictions on any marine activity. Any formal restrictions on marine activities will be achieved through management measures such as marine conservation orders. In using management measures, we can take account of socioeconomic factors. For those reasons, I urge the committee to resist amendments 179 and 201.

I turn to amendments 204, 205 and 206. The purpose of a demonstration and research marine protected area is the demonstration of sustainable methods of marine management or exploitation, or research into such matters. There is a range of possible reasons for the designation of such MPAs and it would be inappropriate for the designation to focus on socioeconomic factors to the exclusion of other considerations. As with conservation MPAs, we can take account of socioeconomic factors in the management of research and demonstration sites. I therefore ask Stuart McMillan not to move amendment 206.

Amendment 207 seeks to place a duty on ministers to have regard to any social and economic consequences of designating a historic MPA. Designation of historic MPAs will be driven by the criterion of national importance. That has been the sole legal criterion for scheduling iconic terrestrial monuments such as Skara Brae in Orkney, and so it should be for the Scapa Flow wrecks of the German high seas fleet and other iconic marine monuments.

If the committee would find it helpful, I would be happy to forward ministers' provisional guidance on determining the criterion of national importance, which gives more detail. However, I ask Stuart McMillan not to move his amendments in the group.

**Karen Gillon:** I am interested to note that the minister has given up so easily on our fishing communities and on putting them into the bill. Amendment 179 simply says that ministers should have regard to social and economic consequences. That is entirely proportionate, and it is the right thing to do. It gives balance to any decisions that we might make and the impact that they will have on the people who live around our coastal communities and depend on them for their livelihoods. We cannot sit on the sidelines and carp at Europe if we are not prepared to take social and economic consequences into consideration in our decisions. I will, therefore, press amendment 179.

**The Deputy Convener:** Unusually, I will allow the cabinet secretary to respond.

**Richard Lochhead:** Thank you for allowing me to come back in.

**Karen Gillon:** You cannot take the cabinet secretary last.

**The Deputy Convener:** I am told that the matter is at my discretion. I will take the cabinet secretary.

**Richard Lochhead:** I clarify for the member that the consensus struck with both environmental and fisheries interests was that designation criteria should be science driven and management measures should take into account social and economic issues.

**Karen Gillon:** Amendment 179 was given to me by the Scottish Fishermen's Federation and responds to its concerns. If the consensus to which the cabinet secretary refers existed, the federation would not see the amendment as necessary. It is a proportionate amendment, which I will press.

**The Deputy Convener:** The question is, that amendment 179 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

#### AGAINST

Morgan, Alasdair (South of Scotland) (SNP)  
White, Sandra (Glasgow) (SNP)  
Wilson, Bill (West of Scotland) (SNP)

#### ABSTENTIONS

Scott, John (Ayr) (Con)

**The Deputy Convener:** The result of the division is: For 4, Against 3, Abstentions 1.

*Amendment 179 agreed to.*

**The Deputy Convener:** Amendment 201 is pre-empted.

*Amendment 202 moved—[Elaine Murray].*

**The Deputy Convener:** The question is, that amendment 202 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

**AGAINST**

Morgan, Alasdair (South of Scotland) (SNP)

Scott, John (Ayr) (Con)

White, Sandra (Glasgow) (SNP)

Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 4, Abstentions 0. I use my casting vote against the amendment.

*Amendment 202 disagreed to.*

*Amendment 203 not moved.*

*Section 59, as amended, agreed to.*

*Section 60 agreed to.*

**Section 61—Demonstration and Research MPAs: additional requirements relating to designation**

**The Deputy Convener:** Amendment 204, in the name of Stuart McMillan, has already been debated.

**Stuart McMillan:** In light of the cabinet secretary's comments, I will not move the amendment.

*Amendment 204 not moved.*

*Amendment 205 not moved.*

**The Deputy Convener:** Amendment 206, in the name of Stuart McMillan, has already been debated.

**Stuart McMillan:** I will not move the amendment, for the same reason as before.

*Amendment 206 not moved.*

*Section 61 agreed to.*

*Section 62 agreed to.*

**Section 63—Historic MPAs: additional requirements etc**

**The Deputy Convener:** The next group is on historic MPAs: marine historic assets. Amendment 66, in the name of the cabinet secretary, is grouped with amendment 66A.

**Richard Lochhead:** I will speak to amendments 66 and 66A, which address the important matter of the evidence base that is required to designate an historic MPA. Following discussions with the Scottish Fishermen's Federation, amendment 66 strengthens the test, but amendment 66A goes too far.

For example, the provisions in amendment 66A would compromise Scotland's ability to protect important historic wrecks for which evidence is buried under the sea bed. Such wrecks can be targeted for commercial gain without regard to our cultural heritage. In such cases, we might need to be able to designate on the basis of the scrutiny of

sonar data. Absolute certainty would require excavation and that cannot always be delivered. I reassure the committee that we will designate historic MPAs on the basis of the very best evidence available. I am happy to forward to the committee our provisional Scottish historic environment policy for the designation and management of historic MPAs, which sets that out clearly.

I move amendment 66.

**Karen Gillon:** I will not move amendment 66A, because the minister has addressed my concerns.

*Amendment 66A not moved.*

*Amendment 66 agreed to.*

**The Convener:** Amendment 207, in the name of Stuart McMillan, was debated with amendment 179.

**Stuart McMillan:** I will not move amendment 207, but I am keen to receive a copy of the documentation that the cabinet secretary mentioned. Depending on what that says, I might return to the issue at stage 3.

*Amendment 207 not moved.*

*Section 63, as amended, agreed to.*

**After section 63**

*Amendment 208 not moved.*

*Section 64 agreed to.*

**Section 65—Publicity and consultation etc before designation**

**The Deputy Convener:** The next group is on marine protected areas: publicity and consultation before designation. Amendment 180, in the name of Peter Peacock, is grouped with amendments 210 and 181.

**Peter Peacock:** Amendments 180 and 181 are designed to strengthen the provisions for notification and consultation prior to designation, and to help ensure that key interests have the opportunity to have their representations heard on proposals that are clear.

Last week, the committee agreed an amendment that set out pre-application consultation procedures for certain classes of licensable marine activity, and that was a useful way to ensure that all the parties that might be affected by a licensing decision are consulted fully prior to a formal application being made. Amendments 180 and 181 would put detail into the bill to ensure that the Scottish Government fully consults on its proposals to make designation orders. Amendment 180 would do that through a well-recognised timescale for consultation, and



amendment 181 would do it by requiring that a plan or chart identified the boundaries of any proposed designated area. I do not believe that amendment 180 would restrict the ability of ministers to deal with urgent designations, because they are dealt with elsewhere in the bill.

I look forward to hearing what the minister says about that, and I hope that he will support the principles, if not the detail, at this stage.

I move amendment 180.

**Stuart McMillan:** Amendment 210 seeks to expand the list of consultees and to include local authorities.

**Richard Lochhead:** I will speak first to amendment 180. The issue is more complicated than it first appears. In the majority of cases, the Scottish Government will publish its intent to make a designation order a minimum of 12 weeks before the order is intended to be made. However, occasionally it might be necessary to move more quickly than that—for example, to reduce the risk of removal of artefacts from a proposed historic MPA during a defined consultation window. In such cases, we could use the urgent designation powers, but I wish to use urgent powers only in cases that are truly urgent. Nonetheless, I can see the principle behind the amendments and I am happy to consider the issue further before stage 3. In the meantime, I urge Peter Peacock to withdraw amendment 180.

Amendment 210 would require that any person or body specified by the Scottish ministers in an order under section 20(4) as a consultee in respect of marine licensing should also be consulted in respect of MPA designation. MPA designation and marine licensing are different processes, but given that the list under section 20(4) will be limited to national bodies I am happy to accept amendment 210.

11:15

On amendment 181, it is not feasible that consultation under section 65 would ever take place without reference to a plan or chart. However, to require every notice under section 65(1) to contain a plan or chart would be problematical. Notices are likely to be placed in national newspapers, as well as in other places, and including a plan could be expensive. It might be more cost effective and useful if a notice in a newspaper were to direct readers to where a plan could be found—whether that was on the internet or elsewhere. I ask the committee not to support amendment 181.

**Peter Peacock:** The cabinet secretary said that he would consider amendment 180 and come

back with a better approach. In light of that, I am happy not to press amendment 180.

*Amendment 180, by agreement, withdrawn.*

**The Deputy Convener:** The next group is on designation of MPAs: relationship with local planning processes. Amendment 209, in the name of Liam McArthur, is grouped with amendments 211, 224 and 234.

**Liam McArthur:** Section 65(1) provides that before making a designation order on an MPA, the Scottish ministers must

“(a) publish notice of their proposal to make the order,”

and

“(b) consult such persons as they consider are likely to be interested in or affected by the making of the order.”

That is helpful as far as it goes, but there is concern among local authorities, including Orkney Islands Council, that the detail is a little vague. The purpose of the amendments in this group is to safeguard local authorities' interests in the MPA designation process and to ensure that there is read-across with the Town and Country Planning (Scotland) Act 1997, when that is appropriate. From what the minister said last week I realise that he is not naturally predisposed to such read-across, but I hope that he will look favourably on amendments that are entirely in keeping with the spirit of his Government's historic concordat.

I move amendment 209.

**Richard Lochhead:** I am happy to reassure Liam McArthur that it would be our intention to consult Orkney Islands Council or any other council if its area was adjacent to the proposed boundaries of an MPA. I have no objection to amendment 209.

On amendment 234, we would want to provide a copy of a draft marine conservation order to the relevant planning authority, where the order included an area of land. I have no objection to amendment 234.

Amendment 224 would pick out particular terrestrial planning functions and include them in the functions that are referred to in section 71(1). The approach is neither necessary nor appropriate. Section 71(1) lists functions in general terms. Functions that are mentioned in amendment 224 that fall within that generality will, of course, be covered, so there is no need to mention them specifically. The wording of amendment 224 suggests that the functions would be caught by section 71(1) even when their exercise would not be capable of significantly affecting an MPA.

Amendment 211 would place a duty on ministers to have regard to the local development plan

before designating an MPA, if any part of the MPA would be land. I fear that the amendment goes further than is intended. It would require ministers to have regard to the local development plan when the proposal included only marine features that are below high water, for example, a feature that is located in the intertidal area. Provisions in the bill govern the relationship between marine plans and terrestrial plans. Those provisions are sufficient. Furthermore, I am concerned that amendment 211 would import socioeconomic considerations into the process of designating an MPA.

For those reasons, I urge the committee to resist amendments 224 and 211.

**Liam McArthur:** I note the historic concordat between the cabinet secretary and me in relation to amendments 209 and 234. I will reflect on what he said about amendment 211 and perhaps revisit the issue at stage 3. I note his concerns about amendment 224, which I will not move.

*Amendment 209 agreed to.*

*Amendment 210 moved—[Stuart McMillan]—and agreed to.*

*Amendments 211 and 181 not moved.*

*Section 65, as amended, agreed to.*

**The Deputy Convener:** I propose that we have a two-minute coffee break—[*Interruption.*] All right then, five minutes.

11:20

*Meeting suspended.*

11:28

*On resuming—*

### **Section 66—Publicity in relation to designation orders**

**The Deputy Convener:** The next group is on marine protected areas: publicity in relation to designation orders. Amendment 67, in the name of the cabinet secretary, is grouped with amendments 212 and 68 to 70.

**Richard Lochhead:** Amendments 67 to 70 will ensure that an appropriate level of publicity is given to any MPA designation order that is made by the Scottish ministers. The bill as drafted requires ministers to send a copy of every designation order to any person whom they consider likely to be interested in or affected by the order. The committee will appreciate that that could be a large number of people. Sending a copy of the order to all of them could entail considerable use of resources. The amendments require the Scottish ministers to publish the order in a way that is most likely to bring it to the

attention of any persons who are likely to be affected by it. They also require ministers to give an address at which a copy of the order may be inspected.

Amendment 212 requires ministers to send copies of a designation order on the day that the order is laid in Parliament to persons whom they consider to be interested in or affected by the order. Under present drafting, a designation order will not be laid in Parliament, but I appreciate that Liam McArthur has lodged an amendment—to be debated later, rather than as part of this group—to make that happen. Requiring orders to be sent to interested persons would add unnecessary costs and create an unnecessary level of extra bureaucracy. For that reason, I ask the committee to resist amendment 212.

I move amendment 67.

**Liam McArthur:** Like the cabinet secretary's amendment, my amendment 212 is intended to improve transparency and to provide those with an interest in designation orders with greater opportunity to engage directly in the process. Under the bill as drafted, an urgent MPA designation order is subject to no prior publicity. A renewables developer, for example, could commit an offence under section 83 or section 84 without ever knowing that an MPA was in place. Amendment 212 attempts to address that potential difficulty by requiring all relevant parties to be notified immediately when an order is made.

However, I accept what the cabinet secretary has said. Amendment 67 and the consequential amendments go a considerable way towards tackling the issue. I understand that there are on-going discussions with stakeholders about publication via a web portal, which would be helpful. On that basis, I reassure the cabinet secretary that fellow committee members need not resist my amendment, as I will not move it.

11:30

**Richard Lochhead:** I thank Liam McArthur for his constructive response. In the interests of brevity, I have no further comments.

*Amendment 67 agreed to.*

*Amendment 212 not moved.*

*Amendments 68 to 70 moved—[Richard Lochhead]—and agreed to.*

*Section 66, as amended, agreed to.*

### **Section 67—Urgent designation**

**The Deputy Convener:** The next group is on marine protected areas: urgent designation. Amendment 213, in the name of Robin Harper, is grouped with amendments 214, 182, 215 and 216.

Members should note that amendments 182 and 215 are direct alternatives; if members agree to amendment 182 and then to amendment 215, the latter decision will stand.

**Robin Harper:** The bill as drafted allows ministers to designate an MPA, where there is an urgent need to protect an area or marine historic asset, without publishing their proposals or carrying out a consultation. There is no direction on what constitutes an urgent need. Orders can remain in place for up to two years without any public consultation, and there is no limit on the number of times that the same site can be redesignated.

My amendments are designed to rectify what we consider to be major flaws in section 67. It is essential that there is provision to introduce urgent designations, but after designation ministers must review whether that is appropriate. The amendments reduce the length of time that a designation can remain in place without public consultation from two years to six months and close the loophole on redesignation by not allowing it until the public consultation procedures have been followed. Changes to section 67(1) establish under what circumstances an urgent order would be required by stating there must be an "imminent risk of harm" to the features for which the area is proposed to be designated.

The amendments are supported by Scottish Renewables, which has concerns about how section 67 as drafted will affect investor uncertainty. The amendment attempts to balance the need for urgent protection on conservation grounds with the concerns of the renewables industry and the need to give communities that may be affected by designations an opportunity to participate in the decision-making process.

I am tempted to reflect a little on the Aarhus convention, but I limit myself to asking the cabinet secretary to indicate in his response whether he is prepared to give me a note on the relationship between the bill and articles 7 and 8 of the convention. Regardless of that, I encourage him to accept my amendments and to balance the need for conservation, the desire to have Scotland at the forefront of the marine renewables industry and the interests of local communities.

I move amendment 213.

**Elaine Murray:** I accept that designations of the sort that we are discussing will be made only at times of urgency. It might therefore not be possible to consult everybody who might be affected. I have listened to Robin Harper, and I will be interested to hear the cabinet secretary's response.

My amendment 182 suggests a maximum designation period of 12 months, rather than two

years. Twelve months is considered to be adequate for the case to be made for normal designation of an MPA and, under section 77, the relevant marine conservation order may last for only 12 months, so the discretion to designate an urgent MPA for up to two years appears to be anomalous. My amendment therefore restricts the lifetime of an urgent designation to 12 months. Robin Harper suggests that the period should be further reduced to six months, but that might prove too short, and it would not be coherent with other designations in the bill.

**Bill Wilson:** I have concerns about Robin Harper's amendment 214. In the case of marine historic sites, the exact location might not be precisely known. We might know that it lies in a certain area, but without knowing the exact place. If the precise location is not known, will it not be difficult to prove an imminent risk? We might know that the development is nearby, and we might believe that there is a possibility of risk, but we might not be able to prove an imminent risk. I am concerned that amendment 214 is excessively restrictive and might result in the damaging of marine historic sites.

**Liam McArthur:** I hear what Bill Wilson said. Marine renewable energy developers, in particular, wrestle with the issue of risk on a daily basis. I am pleased to see Robin Harper's amendments 215 and 216, which allow urgent action to be taken by ministers as and when necessary, but define more tightly the duration of the urgent designation and the terms of its renewal. Amendment 216 provides a greater commitment to transparency, to which I have alluded before. I will be interested to hear the minister's comments on the concerns that Bill Wilson raised, which are germane to the debate.

**Richard Lochhead:** Amendments 213 to 216 place constraints on our use of the urgent MPA designation powers. The bill allows for urgent MPA designations to remain in place for up to two years, which allows time for research and other work to take place. Marine research is costly and time consuming. It can require considerable mobilisation of resources and it is, above all, dependent on the weather. I emphasise that the period is not two years, but up to two years. That is a realistic period in which to carry out the necessary research. If the work can be done in less time, then we will either confirm the designation or not.

If we moved from an urgent MPA to a designated, permanent MPA, the normal consultation process would take place. We would decide as quickly as possible whether to propose a site for designation and that would, of course, include public consultation.

Urgent MPA designations will only be used in cases where there is a demonstrable need to give

the area immediate protection. They will not be used as a matter of course.

I am happy to write to Robin Harper and the committee about the Aarhus convention and how it relates to and impacts on the bill, if the member and the committee would find that helpful.

Amendment 182 seeks to shorten the time for which an urgent MPA designation order may stay in place. I ask that it be resisted for the reasons that I gave for resisting amendments 213 to 216.

The Marine and Coastal Access Act 2009 allows a similar urgent designation of MPAs in the Scottish offshore zone. The relevant orders may last for two years, and it is important that ministers' powers within and without the limit of 12 nautical miles are consistent.

I urge the committee to resist the amendments in this group. If the committee will find it helpful, I am willing to consider the transparency of the process and the way in which consultation relates to the process for urgent MPAs—withstanding my support for the two-year limits and consistency between the offshore area and the area within 12 nautical miles. If the amendments are not agreed to, I will reflect upon any further moves that I could make in this regard.

**Robin Harper:** The minister mentioned the length of time required for completing marine research. I point out that ministers would not be making an urgent designation unless some marine research had already taken place and produced enough evidence to suggest that there should be an urgent designation. I am therefore not sure that Bill Wilson's argument holds up as strongly as might appear to be the case. Two years seems a long time to be required for the assembling of further evidence. That said, I would be happy to meet everybody halfway. I propose not moving amendment 215 and encouraging members to vote for Elaine Murray's amendment 182 to substitute 12 months for 2 years.

**The Deputy Convener:** The question is, that amendment 213 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Gillon, Karen (Clydesdale) (Lab)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

#### AGAINST

Morgan, Alasdair (South of Scotland) (SNP)  
Scott, John (Ayr) (Con)  
White, Sandra (Glasgow) (SNP)  
Wilson, Bill (West of Scotland) (SNP)

#### ABSTENTIONS

McArthur, Liam (Orkney) (LD)

**The Deputy Convener:** The result of the division is: For 3, Against 4, Abstentions 1.

*Amendment 213 disagreed to.*

*Amendment 214 not moved.*

**The Deputy Convener:** Amendment 182 is in the name of Elaine Murray.

**Elaine Murray:** In light of what the cabinet secretary said about the offshore issue, I will not move amendment 182. I may return to the matter at a later date.

*Amendment 182 not moved.*

**The Deputy Convener:** Amendment 215 is in the name of Robin Harper.

**Robin Harper:** I do not plan to move amendment 215, but I would like to move amendment 182.

**The Deputy Convener:** I am afraid that the opportunity to move amendment 182 has passed.

**Robin Harper:** But you did not call for a vote, convener.

**The Deputy Convener:** No. Amendment 182 was not moved, so I am afraid that you have missed the opportunity. We are debating amendment 215, in your name.

*Amendment 215 moved—[Robin Harper].*

**The Deputy Convener:** The question is, that amendment 215 be agreed to. Are we agreed?

**Members:** No.

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

#### AGAINST

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Morgan, Alasdair (South of Scotland) (SNP)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)  
Scott, John (Ayr) (Con)  
White, Sandra (Glasgow) (SNP)  
Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 0, Against 8, Abstentions 0.

*Amendment 215 disagreed to.*

*Amendment 216 moved—[Robin Harper].*

**The Deputy Convener:** The question is, that amendment 216 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

**AGAINST**

Morgan, Alasdair (South of Scotland) (SNP)

Scott, John (Ayr) (Con)

White, Sandra (Glasgow) (SNP)

Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 4, Abstentions 0. I exercise my casting vote against the amendment.

*Amendment 216 disagreed to.*

*Section 67 agreed to.*

**Section 68—Representations and hearing in relation to proposed designation order**

**The Deputy Convener:** The next group is on marine protected areas: representations and hearing in relation to proposed designation order. Amendment 217, in the name of Liam McArthur, is grouped with amendment 218.

11:45

**Liam McArthur:** I will speak to both amendments in the group. I acknowledge the cabinet secretary's comments on amendments 180 and 181, in the name of Peter Peacock. Notwithstanding our support for MPAs, we must acknowledge their potential to restrict current and future activity in the marine environment. Although such restrictions may be justified and entirely necessary, we should take care to ensure that they are not put in place without enabling those affected—potentially quite seriously—to be notified and properly consulted.

The bill as drafted allows situations to arise in which marine developers have spent many millions of pounds on planning and/or constructing a site only to have an urgent MPA designation placed on that site or an area adjacent to it. That would probably limit the activities that were possible on the site and could halt development altogether for up to two years and, possibly, longer. As a result, section 68 adds unlimited risk to potential development and would lead to serious investor uncertainty. To minimise that risk, developers that are likely to be affected by an urgent designation should, at the very least, be given an opportunity to submit evidence on their project to the Scottish ministers.

I acknowledge the cabinet secretary's comments in response to earlier amendments. However, amendment 217 would allow the Scottish Government to take swift decisions on urgent matters of conservation priority, while limiting investor uncertainty to a degree. The amendment complies with obligations under article 8 of the now famous Aarhus convention, which relates to transparency, fairness and providing

“an opportunity to comment, directly or through representative consultative bodies.”

I move amendment 217.

**Peter Peacock:** I sympathise completely with Liam McArthur's position, but I cannot see how making provision for written representations is consistent with urgent designation. Almost by definition, the ability to make a written representation requires notification and time to do that. I would be grateful if the member would address that issue when he sums up, before I decide how to vote on the amendment.

**Elaine Murray:** I have similar concerns about the time that the procedure would take and how that would be weighed against the urgency of the situation and the need to make a designation. If there had to be a hearing, how long would that procedure take? How quickly would ministers be able to make decisions in what could be situations of considerable urgency?

**Richard Lochhead:** As the committee has heard, amendments 217 and 218 would require ministers to provide an opportunity for written or oral representations to be made in advance of urgent designation powers being exercised. Urgent designation orders are designed for use in emergency situations where delay could threaten an historic asset or conservation feature. Hopefully, such circumstances will never arise, but we must make provision for them in case they do. I am all for consultation, but adding further consultation in advance of urgent designation places at risk the assets that we are seeking to protect. As we have mentioned, there are provisions in the bill that require consultation if urgent designations are to be made permanent. For those reasons I urge the committee to resist the amendments.

**Liam McArthur:** I note the concerns that Peter Peacock, Elaine Murray and the cabinet secretary have expressed; I have heard those concerns expressed by others. I acknowledge that the amendments provide for an additional layer of bureaucracy that Alasdair Morgan, who did not speak to the amendments, would abhor. The time available would constrain and determine the nature of the written or oral representations that were made. However, I acknowledge the circumstances in which urgent designations are made. If the minister is willing to reflect on concerns in the marine renewables sector about how urgent designations might impact on what it is doing, I will withdraw my amendment and reflect on the matter at stage 3.

*Amendment 217, by agreement, withdrawn.*

*Amendment 218 not moved.*

*Section 68 agreed to.*

### After section 68

*Amendment 109 moved—[Bill Wilson]—and agreed to.*

### Section 69—Advice etc by Scottish Natural Heritage as regards Nature Conservation MPAs and Demonstration and Research MPAs

*Amendment 219 moved—[Liam McArthur].*

**The Deputy Convener:** The question is, that amendment 219 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

#### AGAINST

Morgan, Alasdair (South of Scotland) (SNP)  
Scott, John (Ayr) (Con)  
White, Sandra (Glasgow) (SNP)  
Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 4, Abstentions 0. I exercise my casting vote against the amendment.

*Amendment 219 disagreed to.*

**The Deputy Convener:** The next group is on marine protected areas: SNH advice. Amendment 183, in the name of Elaine Murray, is the only amendment in the group.

**Elaine Murray:** Amendment 183 is straightforward. It seeks to replace the word “may” with “must”. It seeks to place SNH under a duty to give advice and guidance on all matters that could cause damage or affect protected features or processes, instead of responding to a request from a public authority. It would ensure that expert advice and opinion is always used to inform decisions relating to the planning and management of MPAs. The management of a site must be appropriate to the requirements of the feature under protection and any operations that might cause deterioration of the feature under protection or significant disturbance of a species for which the site has been designated must be identified at an early stage. The amendment is consistent with the approach adopted by the Nature Conservation (Scotland) Act 2004 for SSSIs.

I move amendment 183.

**Richard Lochhead:** I am grateful to Elaine Murray for lodging amendment 183 because it recognises the important role of Scottish Natural Heritage. The Scottish Government also recognises the value of SNH’s advice.

Substituting “must” for “may” in section 69(1) leaves it unclear exactly what the obligation on SNH would be. Would it be required to give advice separately in relation to each and every MPA? That is certainly a possible reading if the change were made. We should leave SNH some discretion so that it can provide advice in a clear and effective way. That could involve, for example, providing advice on a group of MPAs.

It might not always be necessary for SNH to provide advice to public authorities on all matters that relate to an MPA. For example, some MPAs could be in areas of low or little activity. Therefore, I ask the member to consider lodging a different amendment or, if she presses it, I urge the committee to resist amendment 183.

**Elaine Murray:** I listened to what the cabinet secretary said. I am not inclined to press the amendment, but I will give the matter further consideration.

*Amendment 183, by agreement, withdrawn.*

*Section 69 agreed to.*

*Section 70 agreed to.*

### Section 71—Duties of public authorities in relation to marine protected areas etc

**The Deputy Convener:** The next group is on marine protected areas: duties of public authorities. Amendment 184, in the name of Robin Harper, is grouped with amendments 71, 185, 72 to 74, 186 and 228.

**Robin Harper:** Amendment 184 is a probing amendment to clarify the meaning of “other than insignificantly” and “significantly”.

Sections 71 and 72 describe how public bodies should carry out their functions and make decisions that may impact on an MPA. The sections make constant reference to actions “other than insignificantly” or “significantly” affecting the protected features or stated purpose of an MPA or hindering the achievement of the stated conservation objectives or stated purpose of an MPA. However, it is not clear where the “significant” threshold lies. Importantly—and I think that this affects everybody concerned—it is in no way assured that public bodies would have the appropriate expertise to make such a judgment call.

Like Scottish Environment LINK, I believe that the references in sections 71 and 72 to “other than insignificantly” and “significantly” should be removed. Instead, the advice of SNH should be sought and followed. At the very least, I invite the cabinet secretary to put on record what constitutes an insignificant and a significant effect.

I move amendment 184.

**Richard Lochhead:** Under amendments 184 and 185, in exercising any function that is capable of affecting an MPA, public authorities would have to report to Scottish ministers. The purpose of the bill is to ensure that only significant impacts are caught and reported to Scottish ministers and, if necessary, SNH. I see no reason to require public bodies to report insignificant impacts on MPAs to Scottish ministers. For that reason, I urge the committee to resist the amendments.

Amendments 71 to 74 clarify the circumstances in which a public authority must inform Scottish ministers and, if appropriate, SNH where any of its functions could hinder the objectives or purpose of an MPA. Procedures are inserted for authorities not to go ahead with the exercise of a function without first giving ministers and SNH a chance to comment.

The effect of amendment 228 would be to weaken the duty to compensate for damage to an MPA. A developer receiving authorisation for an activity that might hinder the achievement of the objectives of an MPA would simply have to satisfy ministers and the authority in question that “reasonable efforts” had been made to take compensatory measures. The present text requires the developer to show that they will undertake the measures or make arrangements for them to be undertaken. I do not wish to weaken the duty. Doing so would put at risk the environmental gains that an MPA will deliver. We cannot accept that outcome.

If Peter Peacock has another objective, I am happy to reconsider it at stage 3, but I ask him not to move amendment 228.

**Peter Peacock:** I hear what the cabinet secretary is saying about amendment 228. The amendment was designed to account for a situation in which the applicant is not in a position to ensure that measures of equivalent environmental benefit can be achieved. It is intended to address the very practical consideration that areas of the sea may not be under the applicant’s control, as could arise when the applicant has to lease another area of sea bed from the Crown Estate. Under the amendment, ministers would still be required to be satisfied that

“all reasonable efforts to secure the implementation of measures of environmental benefit”

had been made to compensate adequately for damage. That might involve the applicant securing appropriate compensatory measures, but it would not assume that the applicant would be able to undertake, or make arrangements for the undertaking of, all aspects of the measures.

The key issue is the complexity of applying compensatory measures in the open-access nature of the marine environment. A developer

who leases an area of sea bed from the Crown Estate does not have the right to control activities in the sea above the area of leased sea bed. The only way in which those activities can be controlled—and compensation can therefore be implemented—is by the Scottish Government designating an MPA under the legislation along with the necessary marine conservation orders.

The wording in amendment 228 may not be perfect, but my intention was to highlight this very practical issue. If my understanding is correct that the cabinet secretary said that he will look at the practicalities of the issue before stage 3, I am happy to accept that assurance and not to move amendment 228.

**Richard Lochhead:** It may give comfort to Peter Peacock if I say that ministers will, of course, be able to agree that something is impractical. For example I think that we all accept that it would be impractical for any company or operator to undertake the restoration of a coral reef, which could take thousands of years.

12:00

**The Deputy Convener:** My apologies to Bill Wilson, who also wanted to speak in the debate. I call him now.

**Bill Wilson:** With regard to amendment 184, I agree with the cabinet secretary that local authorities should not have to report every incident or action. That would be rather onerous. However, I also agree with Robin Harper that it is important to get some clarity on what “insignificantly” means. I would appreciate the cabinet secretary’s comments on that.

**The Deputy Convener:** I have got myself into this mess; I invite the cabinet secretary to respond to Bill Wilson’s point now.

**Richard Lochhead:** Clearly, the intention is to ensure that guidance is available for defining what is and is not insignificant. There will be clarification through guidance.

**The Deputy Convener:** I hope that everyone is happy. Does Robin Harper wish to press amendment 184?

**Robin Harper:** I am cautiously prepared to accept the minister’s commitment to issuing guidance.

*Amendment 184, by agreement, withdrawn.*

*Amendments 220 and 221 not moved.*

*Amendment 222 moved—[Elaine Murray].*

**The Deputy Convener:** The question is, that amendment 222 be agreed to. Are we all agreed?

**Members:** No.

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

**FOR**

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)

**AGAINST**

Morgan, Alasdair (South of Scotland) (SNP)  
Scott, John (Ayr) (Con)  
White, Sandra (Glasgow) (SNP)

**ABSTENTIONS**

Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 3, Abstentions 1.

*Amendment 222 agreed to.*

*Amendment 71 moved—[Richard Lochhead]—and agreed to.*

*Amendment 185 not moved.*

*Amendments 72 and 73 moved—[Richard Lochhead]—and agreed to.*

*Amendment 223 not moved.*

*Amendment 74 moved—[Richard Lochhead]—and agreed to.*

*Amendment 224 not moved.*

*Section 71, as amended, agreed to.*

**Section 72—Duties of public authorities in relation to certain decisions**

*Amendments 186 and 225 to 228 not moved.*

*Section 72 agreed to.*

*Section 73 agreed to.*

**Section 74—Marine conservation orders**

*Amendment 229 not moved.*

**The Deputy Convener:** The next group is on marine conservation orders: general considerations and example provisions. Amendment 187, in the name of Liam McArthur, is grouped with amendments 230, 231, 188 and 233.

**Liam McArthur:** Amendment 187 is a small amendment but one that I dare say will attract controversy among committee members. Its purpose is to address the concern that the bill extends the power to apply MCOs too widely. There is an argument that, when orders are required in an area that is not designated, protection should be sought under the appropriate legislation. Amendment 187 therefore seeks to restrict the effect of an MCO to a contemporaneously or previously designated MPA. However, before I decide whether to press

the amendment, I will be interested to hear the cabinet secretary's views.

Although I appreciate the policy intention behind the proposed change in Elaine Murray's amendment 231, I think that it runs the risk of adding too much rigidity to the system—perhaps even going so far as to reduce the extent to which spatial planning can take place in the marine environment. That concern has been expressed by both the marine renewables industry and Scottish Environment LINK. I look forward to hearing her comments on the amendment.

Likewise, I look forward to hearing Robin Harper's comments on his amendments in the group as well as the cabinet secretary's responses. Amendment 230 attempts to provide consistency with the UK bill, which may well have merit. However, I am less persuaded by amendments 188 and 233 and wait to hear the evidence of the problem that Robin Harper seeks to address.

I move amendment 187.

**Robin Harper:** The cabinet secretary has made it clear time and again that the bill is not about fisheries management, yet, if the bill is to have anything at all to do with nature conservation, it cannot ignore the problems—historical and current—that we face from certain fishing practices. Amendment 230 seeks to ensure that the powers in the Inshore Fishing (Scotland) Act 1984 can—and, where appropriate, will—be used to exclude fishing activities that are likely to damage the protected features of an MPA. At the very least, I am looking for the cabinet secretary to make it clear, on the record, that the powers in the 1984 act can—and, where appropriate, will—be used to control certain fishing activities that have the potential to damage the protected features of an MPA.

During scrutiny of the Westminster bill, a similar commitment was recently given by Huw Irranca-Davies in a letter to Joan Edwards, the chair of Wildlife and Countryside Link. That letter is available in the House of Commons library. It makes it clear that both nature conservation and inshore fisheries and conservation authorities byelaws in England and Wales can be used to prevent or limit activities that may occur in a marine conservation zone. IFCA's are under a duty to ensure that the conservation objectives of an MCZ in their district are furthered, and Mr Irranca-Davies states that the making of byelaws is one way in which to achieve that. Where IFCA's fail to perform their duty, they may be subject to legal proceedings.

It is totally unrealistic to think that, in some circumstances, for some sites or parts of sites, there will be no need to control fishing. I therefore



urge the cabinet secretary to accept the amendment or, at the very least, to place on record a commitment to ensure that the powers under the Inshore Fishing (Scotland) Act 1984 will be used where that is appropriate.

**Elaine Murray:** In relation to amendment 231, Liam McArthur has referred to the concerns of Scottish Environment LINK and Scottish Renewables, but it was the Scottish Fishermen's Federation that raised concerns with me on the issue.

Although it is understood that MPAs that are designated for nature conservation reasons or to preserve historic assets may necessarily interfere with the legitimate uses of the sea, that is not necessarily the case for demonstration or research MPAs, for which there will be more choice of location. Those MPAs could, and probably would, be located in areas where the legitimate use of the sea is already restricted. It seems unreasonable for the fishing industry and others to be forced out of fishing grounds solely for the purposes of demonstration or research that could be undertaken elsewhere. Amendment 231 would ensure that public rights of navigation and fishing remained unaffected by the designation of demonstration or research MPAs. Earlier, we considered amendments 204 to 206, in the name of Stuart McMillan, which would have achieved a similar aim, had they been moved and agreed to. I will be interested to hear the cabinet secretary's response.

**Richard Lochhead:** Amendment 187 would mean that a marine conservation order could control damaging activities only within a designated marine protected area. However, sometimes an activity that is taking place outside an MPA may be damaging to the MPA. The amendment would remove the ability to control such an activity.

I turn to amendments 230 and 188. I will try to clarify for the committee the relationship between the powers under the bill and those under the Inshore Fishing (Scotland) Act 1984. The intention is to use the provisions of the 1984 act, where necessary, to control inshore fisheries to prevent damage to MPAs. I can give Robin Harper the assurance that he requires—we will use inshore fisheries legislation as one of the management tools for MPAs. That is one of the available options; in some situations, it may be the best management tool to use to restrict activities in MPAs. Robin Harper seeks consistency with the Marine and Coastal Access Act 2009. However, the 2009 act does not make provision for conservation orders, so we cannot provide such consistency; the two pieces of legislation are fundamentally different in one or two areas. I see no reason to require reference to the 1984 act in

marine conservation orders and no value in reproducing the provisions of fisheries legislation in other legislation. I hope that my comments have clarified the position.

I listened closely to Elaine Murray, but I am not entirely clear about the purpose of amendment 231. Marine conservation orders are intended to be used to regulate activities that are not regulated in other ways. They are intended to regulate in a specific part of the sea an activity that would normally be a legitimate use of the sea, but only to the extent necessary to protect an MPA. Amendment 231 would render the marine conservation order power toothless, make it impossible to deliver a higher level of protection to those marine protected areas that require it and undermine our stewardship of Scotland's seas before we even begin. Restriction of activities may be required in some circumstances even where a demonstration and testing MPA has been put in place—that is part and parcel of all MPAs. I do not think that Elaine Murray wants to render it impossible for us to put in place the protection that we seek, as would be the case if amendment 231 were agreed to.

Amendment 233 seeks to make vessels display identification. Boats are already required to display identification as a matter of standard sea-going practice, so we do not see what value the amendment would add to the bill.

For the reasons that I have given, I ask the members concerned to consider withdrawing or not moving the amendments in this group and I ask the committee to resist them.

**Liam McArthur:** Given what the cabinet secretary has said, I will not press amendment 187. I recognise the concerns of the fishing industry, to which Elaine Murray referred when speaking in support of amendment 231, but I agree with the cabinet secretary's comments on the impact that the amendment would have. Although there may be a degree of discretion in respect of demonstration and research MPAs, I suspect that historic MPAs will be fixed in particular locations, depending on the sites that they are seeking to protect. Similarly, the cabinet secretary has confirmed my view that amendments 188 and 233, in the name of Robin Harper, are superfluous because they are covered by existing requirements.

*Amendment 187, by agreement, withdrawn.*

12:15

**Robin Harper:** Having listened to the minister's assurances on the Inshore Fishing (Scotland) Act 1984, I am content not to move amendment 230.

*Amendments 230 and 231 not moved.*

*Section 74 agreed to.*

**Section 75—Example provisions for marine conservation orders**

*Amendment 188 moved—[Robin Harper].*

**The Deputy Convener:** The question is, that amendment 188 be agreed to. Are we agreed?

**Members:** No.

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

**AGAINST**

Gillon, Karen (Clydesdale) (Lab)  
McArthur, Liam (Orkney) (LD)  
Morgan, Alasdair (South of Scotland) (SNP)  
Murray, Elaine (Dumfries) (Lab)  
Peacock, Peter (Highlands and Islands) (Lab)  
Scott, John (Ayr) (Con)  
White, Sandra (Glasgow) (SNP)  
Wilson, Bill (West of Scotland) (SNP)

**The Deputy Convener:** The result of the division is: For 0, Against 8, Abstentions 0.

*Amendment 188 disagreed to.*

*Amendments 232 and 233 not moved.*

*Section 75 agreed to.*

**Section 76—Procedure for marine conservation orders**

*Amendment 234 moved—[Liam McArthur]—and agreed to.*

*Section 76, as amended, agreed to.*

*Section 77 agreed to.*

**The Deputy Convener:** It is now 12.17, so we will stop at this point and move to other items on the agenda. That ends consideration of the Marine (Scotland) Bill for today. We will continue stage 2 consideration of the bill next week, when the target will be to reach the end of the bill. The deadline for lodging amendments with the clerks is noon on Thursday 26 November, which is a day earlier than usual—I hope that members all note that—because of the St Andrew's day holiday on Friday. I thank the cabinet secretary and his officials for attending. That concludes the public part of today's meeting. I thank the press and public for attending.

12:18

*Meeting continued in private until 13:44.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

The deadline for corrections to this edition is:

**Monday 7 December 2009**

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Published in Edinburgh by RR Donnelley and available from:

#### **Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

#### **Blackwell's Bookshops:**

243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

And through other good booksellers

#### **Blackwell's Scottish Parliament Documentation**

**Helpline** may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

#### **Telephone orders and inquiries**

**0131 622 8283 or  
0131 622 8258**

#### **Fax orders**

**0131 557 8149**

#### **E-mail orders, Subscriptions and standing orders**

**[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)**

#### **Scottish Parliament**

**All documents are available on the Scottish Parliament website at:**

**[www.scottish.parliament.co.uk](http://www.scottish.parliament.co.uk)**

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille; large print or audio), please contact:

#### **Public Information Service**

The Scottish Parliament  
Edinburgh EH99 1SP

**Telephone: 0131 348 5000**

**Fòn: 0131 348 5395 (Gàidhlig)**

**Textphone users** may contact us on  
**0800 092 7100**

We also welcome calls using the RNID  
Typetalk service.

**Fax: 0131 348 5601**

**E-mail: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)**

We welcome written correspondence in any language.