

RURAL AFFAIRS COMMITTEE

Tuesday 7 November 2000
(*Afternoon*)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2000.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 7 November 2000

	Col.
COMMITTEE MEMBERSHIP	1261
DEPUTY CONVENER	1262
SALMON CONSERVATION (SCOTLAND) BILL: STAGE 1	1263
SUBORDINATE LEGISLATION	1310

RURAL AFFAIRS COMMITTEE

29th Meeting 2000, Session 1

CONVENER

*Alex Johnstone (North-East Scotland) (Con)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Alex Fergusson (South of Scotland) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*Mr Duncan Hamilton (Highlands and Islands) (SNP)

*Richard Lochhead (North-East Scotland) (SNP)

Des McNulty (Clydebank and Milngavie) (Lab)

*Mr John Munro (Ross, Skye and Inverness West) (LD)

*Dr Elaine Murray (Dumfries) (Lab)

*Cathy Peattie (Falkirk East) (Lab)

*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Jamie McGrigor (Highlands and Islands) (Con)

Euan Robson (Roxburgh and Berwickshire) (LD)

WITNESSES

Rhona Brankin (Deputy Minister for Rural Development)

David Cassidy (Scottish Executive Rural Affairs Department)

David Dunkley (Scottish Executive Rural Affairs Department)

Colin Innes (Salmon and Trout Association)

Walter Davidson (Salmon Net Fishing Association (Scotland))

Diane McLafferty (Scottish Executive Rural Affairs Department)

Jeremy Read (Atlantic Salmon Trust)

Robert Williamson (Association of Salmon Fishery Boards)

Jane Wright (Scottish Anglers National Association)

CLERK TO THE COMMITTEE

Richard Davies

SENIOR ASSISTANT CLERK

Tracey Haw e

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs Committee

Tuesday 7 November 2000

(Afternoon)

[THE CONVENER *opened the meeting at 14:02*]

The Convener (Alex Johnstone): Ladies and gentlemen, thank you for your attendance. We begin with one or two housekeeping matters. We have received no apologies for absence and we welcome two guests—Euan Robson and Jamie McGrigor. I hope that both members will feel free to contribute to today's discussions.

Committee Membership

The Convener: Our first duty is to deal with the membership of the committee. We have two changes to make. We have lost Alasdair Morgan and Irene McGugan. I pay tribute to them for their constructive and positive engagement in the work of this committee in its first year and a half. It is always a pity to lose members who make such a positive contribution. However, it is my pleasure to welcome to the committee Duncan Hamilton and Fergus Ewing, who replace the two members who have resigned from the committee. It is also my duty to invite them to make a statement in relation to the register of members' interests.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I have no such statement to make, convener.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am a member of the Confederation of Small Businesses, the Forum of Private Business and the Scottish Council for Development and Industry. I am also the owner of a business property in Glasgow.

The Convener: Thank you.

Deputy Convener

The Convener: The second item on today's agenda is necessitated by the resignation from the committee of Alasdair Morgan, who served as our deputy convener. It is necessary for us to appoint a replacement deputy convener today. By agreement, the deputy convener will be a member of the Scottish National Party. I invite nominations.

Mr Hamilton: Mindful of the comments that you made about the need for a constructive and consensual deputy convener, I nominate Fergus Ewing as the natural candidate to fill that position.

The Convener: Does the committee agree that Fergus Ewing should serve in the role of deputy convener?

Members indicated agreement.

Fergus Ewing was chosen as deputy convener.

The Convener: We have also lost Irene McGugan, who is one of the three reporters on the petrol price inquiry that is being undertaken in conjunction with the Enterprise and Lifelong Learning Committee. The reporters first reported back to us in February, when the committee asked them to continue to monitor the situation. Do members want to appoint a new reporter?

Fergus Ewing: Given that Irene McGugan is no longer a member of the committee, Duncan Hamilton might take her place as a reporter.

The Convener: Does that meet with the agreement of committee members?

Members indicated agreement.

The Convener: Irene McGugan and Alasdair Morgan were also involved in the inquiry into employment patterns. Does the committee agree that they should be given advance copies of the report, so that they can contribute to any final deliberations that take place?

Members indicated agreement

Salmon Conservation (Scotland) Bill: Stage 1

The Convener: Item 3 on the agenda is stage 1 consideration of the Salmon Conservation (Scotland) Bill. We have received the Subordinate Legislation Committee report on the bill. Committee members should all have copies of that report. As the bill consists mainly of new powers to make subordinate legislation, the report is of some interest to us.

Following correspondence with the Executive, the Subordinate Legislation Committee has approved the use of powers introduced in the bill. However, members may want to note the comments of that committee on page 2 of the report in relation to the Executive memorandums. Before we proceed to take evidence on the bill, does any member want to raise any points about the report?

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): In its report, the Subordinate Legislation Committee has identified two issues that we need to go into in a bit more depth when we interview the witnesses. On page 3 of the report, under the heading "New section 10A(3)", the committee notes that

"this would allow the Scottish ministers to decide to make regulations without an application having been made to them"

and that applications are very wide.

In paragraph 14, the committee notes its disquiet at the increasing tendency of the Executive to draft regulation-making powers that are, in the committee's view, over-wide and lacking in detail.

The first of the two issues that I am trying to highlight is the wide way in regulations may be made under new section 10A(3):

"The Scottish Ministers shall have power to make regulations . . .

(b) otherwise".

That is an extremely wide definition, as the Subordinate Legislation Committee has identified.

The second issue concerns conservation and organisations that can be involved in conservation and the management of rivers. We must ensure that a balance is struck. We should pursue those two main themes in detail.

Fergus Ewing: I served on the Subordinate Legislation Committee when this report was produced. The committee was concerned that the bill proceeds almost entirely by means of granting powers under which subordinate legislation can be made—a trend that began with the Education and Training (Scotland) Bill and has continued with the

Education (Graduate Endowment and Student Support) (Scotland) Bill. Increasingly, Government bills are becoming opaque and devoid of clear statements of principle. The Subordinate Legislation Committee is very concerned about that. I hope that we can pursue the issue with the minister in more detail.

In paragraph 32, the Subordinate Legislation Committee draws the attention of this committee

"to the indication given in the letter from the director of the Association of Salmon Fishery Boards that other action in relation to predators might be required as an alternative, or addition, to the powers in the Bill."

No doubt we will hear precisely what those other measures, which apparently we are not to debate when considering the bill, should have been.

Mr Hamilton: The report states of new section 10A(4):

"The Committee noted that, as drafted, the subsection would appear to allow any individual or group, claiming even the most general interest in the environment, to make representations to the Scottish Ministers to which the Scottish Ministers must have regard."

We must be clear about whether we want that, particularly given that in its explanatory note the Executive indicates that the groups mentioned would probably include Government agencies. The Executive claims that Government agencies will have equal status when it comes to access to decisions and lobbying. The committee may want to bear that in mind when it considers whether the legislation needs to be tightened up.

The Convener: If there are no further comments on the Subordinate Legislation Committee's report, we will take note of the issues that have been raised and ensure that they are covered in questions to witnesses.

I invite members to declare any interests that they may have in relation to the Salmon Conservation (Scotland) Bill.

Euan Robson (Roxburgh and Berwickshire) (LD): I declare that I am a River Tweed commissioner.

Alex Fergusson (South of Scotland) (Con): I declare that I am the riparian owner of a small stretch of water on the River Stinchar in Ayrshire.

Mr Jamie McGrigor (Highlands and Islands) (Con): I declare that I am the part owner of an owning syndicate on a river system, the River Awe. I am also a member of the council of the Atlantic Salmon Trust. I sit on the Awe Fishery Board and I am a trustee of the Awe Fisheries Trust.

The Convener: As there are no further declarations of interest, it is my pleasure to welcome our first group of witnesses. They are Mr

Robert Williamson OBE, the vice-president of the Association of Salmon Fishery Boards; Mr Colin Innes, the Scottish chairman of the Salmon and Trout Association; Mrs Jane Wright, president of the Scottish Anglers National Association; Mr Walter Davidson, chair of the Salmon Net Fishing Association (Scotland); and Mr Jeremy Read, director of the Atlantic Salmon Trust.

We have received written submissions from the organisations that I have listed. Today we have an opportunity directly to question representatives on those submissions and to raise additional issues.

Mr Rumbles: Who is the representative of the Association of Salmon Fishery Boards?

Robert Williamson (Association of Salmon Fishery Boards): I am.

Mr Rumbles: In future, could we have an indication of which organisations witnesses are representing?

The Convener: I take that point on board for future reference.

Mr Rumbles: I have read through in detail most of the written submissions that the committee has received, and it seems that the Association of Salmon Fishery Boards is concerned about the thrust of the bill, which is conservation. Nobody is upset about that; it is a very good thing. However, the association and many of the boards have made the point that, when stocks recover, a balance should be struck between conservation and management and that that balance should be reflected in the bill. Will you expand on that? Is my interpretation of your position correct?

14:15

Robert Williamson: That is right. We welcome the thrust of the bill. The bill is clearly necessary and we welcome the fact that time has been taken to introduce it. Our concern with the phrase

"regulations to assist conservation of salmon"

is, as you suggest, that it may be unduly restrictive. Elsewhere in legislation where such a phrase is used, it is directed towards the conservation, management, exploitation and protection of stocks, rather than just conservation.

In our view that has two effects. First, it may restrict the powers of ministers to alter regulations. For example, if a stock was to recover and ministers wanted to amend or revoke a regulation to allow some increased exploitation of stock—and if conservation is interpreted narrowly—it is difficult to see how such a situation would fall within the purpose of the legislation. It would be hard to argue that the purpose of something that will result in increasing the number of salmon that are caught is to conserve salmon.

That becomes a problem if one considers the use of the word "conserve" in other fisheries legislation. Other words are used in the Salmon Act 1986 and other salmon fisheries acts in relation to protecting and developing fisheries. The word "conserve" is never used on its own, except in the narrow sense, as in the Wildlife and Countryside Act 1981, where it is intended to conserve an animal that is at severe risk. There are places where the 1986 Act talks about protecting, developing and improving fisheries; however, in the next section, it talks about conserving a creature—the two ideas are contrasted. In the Scotland Act 1998, the same powers to make regulations are described as provisions for the

"conservation, management and exploitation of salmon".

The use of the word "conserve" on its own might mean that the bill and the regulations to conserve might be made independently of any consideration of the effect on the fisheries and the stock. That is another factor that ministers should be able to take into account when making regulations. In our view, the phrasing of the bill may not allow that.

Mr Rumbles: Would it be helpful if the Scottish Executive decided to include the phrase "salmon conservation and management" in the title of the bill and in new section 10A(4)? Would that recognise the essential importance of conservation as well as addressing your reservations?

Robert Williamson: Yes. It might not be necessary to change the title; some statutes have the word "conservation" in their titles but still refer in the body of the legislation to regulating fisheries and management. The shorthand in the title is perhaps all right; it is in the body of the bill where it would be sensible to use words similar to those used in the Scotland Act 1998—

"conservation, management and exploitation of salmon".

That covers salmon, salmon stocks and fisheries. I am not making drafting suggestions; I am suggesting the scope of what should be covered.

The Convener: I apologise for not mentioning earlier that other witnesses are welcome to comment in relation to a particular question or answer.

Fergus Ewing: I am sure that we all want to ensure that the necessary measures are taken to conserve salmon and trout. The SNP also wants ordinary members of the fishing communities in Scotland to have access to the pleasure of fishing. I want to hear the views of all the witnesses on what measures are necessary to conserve salmon and trout. Do they agree with the August 2000 letter from the Association of Salmon Fishery Boards, which says that, in some cases,

Government action such as sanctioning the reduction of the population of predators would deliver far greater benefit to the conservation of salmon and sea trout?

The Convener: Would Mr Williamson like to go first or last on that question?

Robert Williamson: I do not want to hog the limelight. Let others speak first—the committee has probably heard enough from me.

Walter Davidson (Salmon Net Fishing Association (Scotland)): The Salmon Net Fishing Association thinks that the provisions of the bill will largely be wasted unless measures are taken to protect salmon from predators, mostly in the marine phase or as salmon move towards the marine phase. We would also like more research to be undertaken at sea. Nowadays, virtually everyone agrees that the main problems confronting salmon occur in the marine phase.

Fergus Ewing: To which predators are you referring?

Walter Davidson: Mainly seals, but there are avian predators when smolts leave the river, including cormorants and ducks.

Jane Wright (Scottish Anglers National Association): I would like to draw the committee's attention to the problem of sea lice, which we regard as predating on salmon and sea trout stocks, particularly on the west coast of Scotland north of the Clyde. Of course, that is related to salmon farming.

Fergus Ewing: Are sea lice and salmon farming the only threat?

Jane Wright: No. I think that you are expecting us to say seals. There has obviously been a huge growth in the seal population. In the 1950s, a Government committee decided that 34,000 or 35,000 represented a healthy population of seals. The number of seals has now reached between 120,000 and 130,000. This is not an easy problem to address, because at the moment we appear to have no method of controlling seals other than shooting them, which is not very acceptable.

Fergus Ewing: Does your organisation support the proposal of the Scottish Fishermen's Federation that there should be a seal commission, just as there is a Deer Commission for Scotland?

Jane Wright: Yes.

Jeremy Read (Atlantic Salmon Trust): The Atlantic Salmon Trust believes that Scotland should take a full and active part in the collaborative international research that is being proposed on the problems that face salmon at sea. There may be a whole number of causes of the increase in marine mortality. We know some of

them, but there are others that we do not know. The more we find out about them, the more we will learn about their possible and probable effects and the measures that may need to be taken to deal with the reduction in stocks as a result of mortality at sea.

Fergus Ewing: Does that mean that you do not know on the basis of existing research what poses the threat?

Jeremy Read: There is a great deal that we do not know about the life of salmon once they leave the coast. We need to know more about their feeding habits, predators and the possible dangers from fishing, particularly in the near-surface zone in areas such as the north Norwegian sea. We need to know how climate change is affecting the food web. We need to know whether we can predict from changes in observed climatic conditions what the effect will be on the proportion of smolts that return as adults.

Colin Innes (Salmon and Trout Association): The context of the bill is important. Anglers have funded conservation measures such as the buy-out of nets in Scottish waters and have supported international buy-outs of quotas. They have also funded the better management of our fisheries in Scotland, which has been a feature of the past decade. Anglers have played their part in reducing exploitation, for example in relation to spring stocks—in 1994, 1 per cent of the catch were returned and now 28 per cent are. Those are all measures taken by anglers to support the conservation of the species.

I endorse the comments made by my colleagues but add the issue of the north-east drift-nets, which remain a problem for the east coast of Scotland. Given the present state of salmon stocks, there is no justification for that fishery or for other forms of interceptory netting in Scottish waters. We have seen a reduction in industrial fishing, with restrictions from the Humber up to Fraserburgh, but the issue continues to be a concern, particularly further north towards the migration routes of salmonid species.

Jeremy Read: Mr Innes mentions interceptory fishing for mixed stocks. The Atlantic Salmon Trust, in conjunction with the North Atlantic Salmon Fund, has proposed a means of ending such mixed-stock fisheries, with the funding of appropriate compensation being met in part by Government and in part by private interests.

The proposals were made initially to the review group that investigated salmon and freshwater fisheries in England and Wales. That group recommended that the measures should be supported and in particular that the closure of the north-east drift-net fishery should be accelerated. It also recommended that the reduction in licences

through a net limitation order should be accelerated and that the Government should contribute to the cost of the voluntary surrender of licences. We understand that ministers at Westminster are considering the recommendations and we hope that there will be a sympathetic response.

Robert Williamson: Mr Ewing is right to suggest that the Association of Salmon Fishery Boards is concerned about the reduced control of predators such as seals and goosanders over the past 15 or 20 years. Consideration of predators is as important as the reduction in exploitation by humans. He suggested that the bill will not cover that issue and, on the face of it, that seems right. However, it occurs to me that the wide nature of new section 10A(3), under which Scottish ministers may make regulations where they think it “expedient to do so for the conservation of salmon”,

could cover just about everything, including regulations to control predators or sea lice or fish farming on the west coast. I suspect that that was not the Scottish Executive’s intention, but that point could be added to the concern about how we cope with the concept of regulations to conserve salmon generally. The legislation needs to be more firmly defined.

Jane Wright: The policy of single species protection that Scottish Natural Heritage and the European Commission favour is not the way forward. We have better modelling processes now, which will enable us to manage habitats rather than single species. Both predators and prey should be managed and balanced. I do not think that, for instance, protection from goosanders, cormorants and other birds that predate heavily on juvenile fish populations is helped by the single species approach. We recognise that the Atlantic salmon is possibly a threatened species—it is certainly so in some rivers on the west coast. We must try to manage the whole habitat, and the species within it, in a balanced way.

14:30

The Convener: How do you think that the bill addresses that in the broader sense?

Jane Wright: I do not think that it does, because it is too narrow. It is part of a package of forward action that the committee and the Executive need to take in the management and enhancement of the salmon and sea trout populations. The bill is only a small part of what will be needed to maintain those populations and make an economically viable fishery.

Rhoda Grant (Highlands and Islands) (Lab): Before I ask my main question, I want to ask a supplementary to Mike Rumbles’s question on

whether the title of the bill should refer to management or conservation. Does Mr Williamson wish to see the powers of the bill extended once the problems that we face are overcome? If the salmon population increased, would Mr Williamson still want the measures in the bill to be available as tools in salmon management?

Robert Williamson: Those measures must be available. My concern is not the subject that is covered by the bill, but the way in which the use of the word “conservation” in the bill will be interpreted. In the bill, the conservation of salmon—which, of course, is necessary—needs to be considered in the context of the management of fisheries, rather than as a separate element. Conservation is necessary and must continue but, within the terms of the bill, conservation must allow for increased exploitation. I am sorry if that sounds complex—I have probably not expressed it well. My point concerns what “conservation of salmon” means in the bill.

Rhoda Grant: I will move on to the district salmon fishery boards, which will be given additional powers by the bill. My question is to all the witnesses. Do you feel that those are the best bodies to bring forward ideas for legislation under the bill?

Colin Innes: Since we made our representations to the committee, we have had a further meeting of our Scottish council, which formulates our policy, and which considered that matter. That council supports giving the salmon fishery boards the additional powers that are laid out in the bill and sees that as an important part of the boards’ remit in managing fisheries. It is certainly consistent with the other powers that the boards were given by the Salmon Act 1986.

Our council’s primary concern is the broad powers that the bill would give to ministers—that brings us back to our discussion of the general nature of the powers that are being given to ministers—as opposed to the specific remit that is given to boards. The boards also have clearly identifiable duties under the Salmon Act 1986, unlike Scottish ministers. This is an issue about setting out the basis for the use of powers. We feel comfortable about giving the boards the powers that are set out in the bill, given the statutory powers that they have under the Salmon Act 1986, but we want Scottish ministers’ powers to be further defined. That is the council’s primary concern.

Walter Davidson: The Salmon Net Fishing Association of Scotland thinks that the district board system has served salmon well. We are a bit wary of some of the proposals in the bill and we are glad that they are subject to approval by the Minister for Rural Development. We would particularly like the regulations to be time limited,

so that they can be reviewed fairly often. Our members are worried about their long-term interests.

Jane Wright: We all agree with our colleague from the Salmon Net Fishing Association for Scotland that time limitation in the bill is extremely important, although it is not clear enough. The bill should be drafted so that time limitation is included. Time limitation is only suggested by the present draft. Somebody talked about the bill being opaque. The part of the bill that suggests that there should be—as part of the process—time limitation for each application seemed pretty opaque to me.

On the proposal about the powers that should be vested in the district salmon fishery boards, anglers finance most of the boards' work, through fishing. From that point of view, unless the committee is considering nationalising angling—I do not think that the committee is suggesting that—we cannot envisage any other body being in a position to exercise those powers on behalf of anglers.

Given that the boards have greater powers to appoint anglers to the boards, there is no requirement to strike a balance between anglers and tenant netmen, as was the case under the Salmon Act 1986.

Jeremy Read: The Atlantic Salmon Trust has one suggestion to make on the implementation of measures. The point is on procedures, rather than on the measures themselves. I am not as familiar with the process of application and approval as Mr Williamson, who was the inspector of salmon fisheries for many years. However, I understand that, in every case, an application by a board for a measure to be approved and made by the minister will require advertisement of that measure and the seeking and acceptance of representations before the minister makes the measure. That procedure is provided for currently and will be provided for in the bill.

The recommendations that stemmed from the salmon strategy task force contained a proposal for an emergency procedure. The powers of ministers were mentioned in that proposal, which suggested that the minister should have the power to take emergency action in case of a particular problem or threat to salmon stocks or portions of salmon stocks.

We suggest that the bill should provide for such an emergency procedure. That would allow for a short, limited period—perhaps only two months—for a measure to be implemented without waiting for the delay that would normally and properly be incurred by advertisement and the requirement to seek additional views. Any such emergency measure would be time limited and subject to

review during its implementation—certainly before an extension was granted.

Robert Williamson: As a representative of the Association of Salmon Fishery Boards, the committee will not be surprised if I say that the district fishery boards are the appropriate organisations in which to vest those powers. They represent the owners of the fishing right and other interests. As Mr Innes said, the boards have various statutory powers and duties under the legislation. Through the rates that they levy on proprietors—the tax that they collect, as it were—they protect and seek to develop the fisheries and to police fisheries law.

The district fishery board can be considered to be the local body that is responsible, on a catchment-by-catchment basis, for protecting the salmon stocks in the district. From that point of view, in most cases—if not all—they are best able to decide which proposals should be applied for. If they are not, they ought to be. There is no doubt in my mind that district fishery boards are at the centre of salmon fishery management in Scotland—they and their equivalents have been at the centre since 1828.

Jane Wright: I draw the committee's attention to the fact that, although not every area has a board, most areas have representative organisations that could act as boards. Within the context of the bill, those organisations could make suggestions to the minister about the conservation of salmon stocks. They would not be able to apply in their own right—the minister would have to make such applications. However, the committee should give due consideration to what the organisations in those areas suggest regarding applications for conservation measures. Those organisations might include, for example, the Clyde Fisheries Management Trust and the Loch Lomond Angling Improvement Association, which are in important fishery areas that do not have boards. If salmon stocks are not sustained in such areas, they will be much more susceptible to decline in management than areas that have the buffer of boards. Anglers will vote with their feet and, if membership of such organisations dropped significantly, such areas would not be able to continue as they are. Additional help might be required to address that potential problem.

Robert Williamson: I said that boards represented proprietors. It might be useful for the committee to know that the boards also include representatives from Scottish Natural Heritage and the Scottish Environment Protection Agency and are statutorily obliged to include representatives of anglers and netmen. The membership of boards became wider after 1986 and has become even wider following more recent changes in the constitution of boards—a move that has been

welcomed by the boards and the association.

Walter Davidson: Netsmen also contribute to fishery boards and have done so for many years.

Mr McGrigor: Many of my questions have been answered.

The Scottish Anglers National Association's submission states:

"A valuable traditional harvest in Scotland for centuries would be lost."

I am aware that the catch-and-release system is a very good way of returning stocks to adequate levels. However, a perpetual catch-and-release policy will signal the end of netting. Will catch and release be in place from now on, or is it being used as a tool to return stocks to a level at which a traditional harvest can be taken?

Walter Davidson: I fail to see why catch and release should bring an end to traditional netting. Netsmen also practice catch and release on certain fish, especially in the latter part of the season.

I should point out that members of the Salmon Net Fishing Association have given up the first six weeks of their season, during which they do not now fish at all.

Mr McGrigor: Yes, I know.

Walter Davidson: We are not strictly in favour of catch and release—we think that it is better to leave the fish. There is no point in catching a fish, playing it on a big hook and then letting it get away for somebody else to do the same. Catch and release might have some good points, but we do not see a definite benefit.

14:45

Jane Wright: We have to think imaginatively about the matter. Catch and release is only one of several measures to conserve salmon stocks. The Dee (Aberdeen) Salmon Fishery Board has suggested measures that include bag limits, size limits, gender limits, effort limits and method limits. The bill will give the district boards many tools to allow them to manage stocks better.

Jeremy Read: I agree with Jane Wright. The Atlantic Salmon Trust has done quite a lot of work on catch and release. We have demonstrated the survival of spring fish right through the season to spawning. As a tool, catch and release would often apply only to particular components of stocks, as happens at the moment. Anglers are most vigorously encouraged to release early-running fish—which are the fish that are most threatened. With those fish, the advantage of practising catch and release is that it enables the fishery still to operate and be maintained while giving the maximum possible chance of a

spawning escapement to strengthen and restore that particular component of the stock.

Colin Innes: The only other point that I would like to make is that anglers have already voluntarily played a significant part in catch and release. Any blanket mandatory measures on catch and release might therefore be strongly opposed by anglers and might be counterproductive.

We have to recognise that some people's employment is dependent on fisheries and that those people are an important part of the process. On the drafting of the consultation provision, I am concerned about the part that deals with people whose interests have to be taken into account. New section 10A(4) talks about those who have

"an interest in fishing for or taking salmon, or in the environment."

Would a hotel that employed local people have a direct interest? It might not. Many people, who might not have a direct interest in fishing, may have opinions that would be relevant. I wonder whether it would be possible to broaden the range of people whose representations can be taken into account, given the potential impact that any measures might have on their jobs and housing.

Richard Lochhead (North-East Scotland) (SNP): On the ability of this bill to conserve salmon stocks in Scotland, it has been suggested that the word "management" should be put in the title of the bill, so that it would be called the "Salmon Conservation and Management (Scotland) Bill". That might flatter the bill, which is not extensive enough to cover conservation measures, never mind management measures. I would like to hear the witnesses' views on the overall management of Scotland's salmon fisheries. Is the Executive's approach the right one for conserving salmon stocks? The Nickson report came out in 1997. It is only now—in 2000—that we have a bill that contains a couple of proposals from that report and that bill will probably not get on to the statute book until 2001.

Given the witnesses' previous comments about other areas that must be tackled, such as marine mortality, the bill is clearly limited in what it can do for the conservation of salmon stocks. Is the bill the right way to approach salmon conservation, or is it far too limited? How can we reconcile it with the Government's freshwater fisheries review? That review might result in the creation of area fisheries councils—which has the support of, I believe, Angling for Change. It was also advocated in the Nickson report. However, the bill mentions salmon district fisheries boards. Is there any scope for their responsibilities and membership to be broadened? Could the whole management of freshwater fisheries be overhauled? Do the

proposals put the cart before the horse?

Robert Williamson: It is clearly a limited bill. However, in our view, it covers what is urgently required. We view the bill as being complementary to consideration of the wider factors. That consideration will take more time—it is more complex and will require a large bill.

Powers are needed now for regulations that will assist boards to do the job that statutes empower them to do. We are not asking that boards be given the powers to make the regulations—ministers will make them. Therefore, the bill is urgently required, but the reservations that we have expressed should be borne in mind. We hope that those reservations can be dealt with by amendments to the bill.

We commend the Executive for introducing the bill; the Association of Salmon Fishery Boards encourages the committee to make a positive report, urging that the bill be progressed, but without ignoring the various problems with the detail.

Jeremy Read: I agree absolutely with what Mr Williamson said. The Atlantic Salmon Trust considers the bill to be part of the mosaic. We welcomed the publication of "Protecting and Promoting Scotland's Freshwater Fish and Fisheries". We look forward with considerable interest to finding out how the various submissions will be handled.

We agree also about the urgency of the matters that have been addressed in the bill, including granting boards the power to manage more responsively and flexibly. The bill represents a step towards that, but there are many more steps to take.

Jane Wright: We should indeed consider "Protecting and Promoting Scotland's Freshwater Fish and Fisheries". The answers in that review that were offered by Angling for Change—a consortium of fisheries representative organisations—would allow the district boards to function broadly as they do at present, with a parallel structure for the management of other freshwater fish and fisheries. It is suggested that there could be an area management plan and area management committee, which would bring together the migratory and non-migratory sides of the management of fishing.

The present legislation is divisive and we must try to bring things together somehow. The bill will enhance the powers of boards, which would be fairly complementary to the process that was proposed in Angling for Change's response to "Protecting and Promoting Scotland's Freshwater Fish and Fisheries". I do not believe that it would be detrimental to proceed as we have suggested.

The organisation that I represent—the Scottish Anglers National Association—would oppose bringing together entirely the management of fisheries and freshwater, including non-migratory and migratory, fish in one umbrella organisation. The result would be an extended version of the district salmon fishery boards. We do not believe that the dominance of proprietors could be diluted to the extent that trout-fishing and other freshwater fish interests would be properly represented.

Colin Innes: The Salmon and Trout Association has decided to support the bill. We believe that its measures are appropriate, subject to the powers being slightly clarified, particularly Scottish ministers' powers. One of the difficulties is that some of the other population declines are not necessarily matters for legislation, but are matters of policy that must be worked out first.

There have been developments: we have received reports—the 1998 report, for example—on predation by fish-eating birds. That was a very helpful study that demonstrated that, in the north of Scotland, the primary diet of such birds was salmonid species. We are making advances, but the real question is about how quickly we can move forward. If measures on predation are introduced in the bill, that might provide an impetus for other measures to be taken. Otherwise, anglers will be disappointed that they are bearing the brunt of the conservation measures and that we are not doing much about the other problems.

We support the bill strongly, but we hope that it will be a starting point for the introduction of other measures. Otherwise, there will be considerable discontent.

Walter Davidson: Although the Salmon Net Fishing Association welcomes the bill, it feels that the bill does nothing to address the major problems for salmon—acid rain, fish farming on the west coast and marine mortality, as was previously mentioned. The Salmon Net Fishing Association has so far borne the brunt of conservation measures.

Richard Lochhead: I have one more brief question on the pecking order of the factors that cause decline in the numbers of salmon. Some factors must have more influence than others. Which factor, of all those that have been mentioned, causes most damage to salmon stocks? Is it the drift-net fishery off the north-east of England, or do you not know?

Walter Davidson: I would say that marine mortality causes most damage. We see plenty of evidence to support that when we are on the shore.

Colin Innes: The most threatened stocks in Scotland are in the north-west. We have continued

to strive for the regulation of fish farming to control sea lice. That would be our number one priority, because the stocks are most threatened in the north-west. Some of the decline on the east coast is down to the multi-factorial sea issue, but in the north-west, the stocks are in such a state that immediate action is required to control the situation. It is within Parliament's competence to take such action—it should be given priority.

Jane Wright: We can do certain things about the problems and we need to address those. I agree with Mr Innes that our first priority is salmon farming on the west coast. That should be addressed in the forthcoming inquiry. We expect the Rural Affairs Committee to put forward some suggestions to that effect. Perhaps there should be a moratorium on the expansion of salmon farming until the sea lice issue and other issues that are related to salmon farming can be addressed while farms are at their present size. We are not satisfied that those issues—for example, the sea lice issue—can be controlled while salmon farms are at the size that they are now. We do not think that there should be any allowance for farms to expand until they can demonstrate that those problems are under control.

Global warming is one of the main problems that people recognise. People ask what can be done about global warming. I have been told that global warming is affecting rainfall patterns in Scotland—we have all seen the difference. It is causing a washout of the redds, where salmon spawn: fewer eggs are reaching the fry stage because they are being washed out of the redds by flash flooding. Redds are being destroyed and large parts of our rivers are becoming silted because cobble is being washed out.

The larger issue concerns Government support for fisheries in Scotland. In other countries, Governments support fisheries to a large extent, whereas in Scotland we have not seen much of that kind of support. I would like focus grant schemes to be introduced. Those grants would be applicable by district boards with the agreement of riparian owners—that agreement would have to be demonstrated—to enable habitat enhancement. There is a problem with upper rivers—some riparian owners at the top of the rivers do not benefit from salmon fishing.

Those are the areas on which we need to concentrate as far as spawning is concerned. The people to whom I have referred have no interest in habitat enhancement. At the moment, agriculture grant schemes are available to them, but those schemes are not targeted at fishing. I would like the Government to make funds available to address the problem. That could possibly be done through Scottish Natural Heritage, which until very

recently has not done a great deal to conserve salmon stocks, neither has it shown much interest in them. That would benefit not only fishermen—if we could get wider riparian strips, that would allow access by people who like to walk along riverbanks. Benefit would not be restricted to salmon or to anglers. We must think more imaginatively about how to address the issue—Government must put some funding towards that.

15:00

Jeremy Read: If I heard Mr Lochhead's question correctly, he was asking which was the severest threat to salmon. Is that correct, or did I mishear the question?

Richard Lochhead: Yes. In your opinion, what is the biggest factor that is influencing salmon stocks?

Jeremy Read: From the answers that members have already heard, it will be clear to them that there are a number of factors, which are different in different locations. It is almost impossible to identify one specific problem. Salmon fisheries have to be managed on a catchment basis, to reflect the different scale of problems in different areas.

The answers that have been given have touched on a number of the problems and the things that need to be done. It is clear, certainly to the Atlantic Salmon Trust, that there are some factors about which we can do very little. Those include what is happening out at sea, particularly if it is climatically driven. Action must, therefore, be taken at all other stages of the salmon's life cycle to increase the production of juvenile fish, to improve the survival rates of juvenile fish going down to the sea as smolts, to improve their survival in the coastal areas—which may involve issues of water quality—and to improve their survival on returning to spawn.

A fair amount has been said about fish farms and their effect. There are encouraging signs in this area. I am sure that the committee will be aware of the work of the tripartite working group, which, under the chairmanship of the Scottish Executive, has been bringing together wild fishery interests and the salmon farming industry to seek collaborative solutions to the health problems of farmed and, in particular, wild fish on the west coast. The group has had a considerable amount of success, although it is only part of the solution. Area management agreements are being reached locally between wild fishery interests and fish farm site operators, and are designed to eradicate or reduce the number of sea lice that are capable of affecting smolts going down to the sea. We hope that the agreements will go further.

Area management agreements need to be

brought into an improved regulatory framework. However, it is to be welcomed that all three sides—the Government, the salmon farming industry and wild fishery interests—have come together. Both the Scottish Executive rural affairs department and the fish farming industry are to be congratulated on their involvement in this project.

The Convener: Mr Williamson, do you have anything to add?

Robert Williamson: I shall be brief, as the relevant points have been covered. As Mr Read suggested, there are different factors in different areas. They include sea mortality; on the west coast, salmon farming; for the Tweed and Tay, the Northumbrian drift-net fisheries; in places with large seal colonies, seals; and in the north, goosanders. Given that those things cannot be dealt with, or are not being dealt with in practice, it is necessary to have an increased range of tools available in districts to enable more complete regulation of the salmon fisheries.

Dr Elaine Murray (Dumfries) (Lab): I have a couple of questions about the bill. The proposed legislation does not distinguish between different salmonids. Do you think that will be a problem to any of your organisations? What is your view on the proposals for the Borders rivers, which are rather different?

Robert Williamson: The bill's drafters claim that its provisions will enable one to make a distinction between salmon and sea trout. However, like other things in the bill, that is not expressed directly—although one might think that it could be.

Section 10D(2)(b) states:

"Such regulations may make . . . different provision for different districts or different parts of a district, or for different parts of a river, or for different cases or classes of case."

It was explained to us that that covers different regulations for salmon and sea trout.

The Convener: It sounds like a free hand to me.

Robert Williamson: It is a very wide provision. It does not cover brown trout or other freshwater fish, other salmonids, but it was not the intention to cover that.

What was the other part of Dr Murray's question?

Dr Murray: The Borders rivers.

Robert Williamson: On the face of it, the proposals appear odd. A power in the Scotland Act 1998 allows for the regulation of salmon fisheries and freshwater fisheries in Borders rivers being covered by order in council because of the cross-border nature of the rivers—both the Tweed and the Esk run in both countries. We understand that the Executive's policy is that that is how those

fisheries will be regulated. There is a Borders river regulation already. However, it is stated in the bill that new section 10A applies to the Esk, and because this bill is being inserted in the Salmon Act 1986, it will apply to the Tweed—even the Tweed in England. No, sorry, it will not do so, because this bill can only apply in Scotland. It will apply to that part of the Tweed that is in Scotland and that part of the Esk that is in Scotland. That seems at odds with the provision that the Borders rivers should be managed all of a piece.

I understand that the Executive feels that it is necessary that ministers have powers to make regulations in the Scottish parts of those rivers, if for any reason regulations cannot be made through the other process. No doubt the ministers or representatives of the Executive will be able to say why that is so. I cannot answer that question.

Euan Robson: My understanding of the legislation is that it is supposed to apply to both parts of the Tweed. The principle is that there must be management of the whole river system. It would be difficult to do otherwise.

I have a general question on the regulations made under 10A(3)(a) and (3)(b), particularly 3(b). Presumably none of the witnesses believes that the regulatory power should be used for blanket or one-size-fits-all provision across Scotland, because most of the catchment areas have different circumstances. It would be helpful to hear if that is the case and if that is the intention of the bill.

Colin Innes: In the consultation paper it was intended that there should be blanket powers, as is the case in England and Wales. It is not an option that the Salmon and Trout Association favours. We are opposed to blanket orders; it should be done on a catchment basis, as the management of rivers is.

To pick up on the question about the important distinction between salmon and sea trout, section 10A(5) is possibly a limitation on the nature of the orders that can be made by ministers. If ministers have powers under other provisions, then it is those other provisions that would generally apply, apart from the specific provisions in section 10A(6). That is an important limitation, but it is a possible interpretation of the Salmon Act 1986 that all the other powers are only exercisable for salmon and sea trout and therefore, for example, a regulation to change the close season for sea trout only could be made under this measure. I do not think that was anticipated. That is a drafting point that concerns my association, because of the blanket nature of the power given to the Executive.

Jane Wright: SANA also opposes blanket powers because we feel that subsidiarity is very important and that local management must be

vested with the major powers so that it carries local opinion and support with it. A blanket order, as agreed in England and Wales, does not address the issue. The power in England bans the taking of fish before a date in early June, but those fish are then susceptible to predation by anglers. It is a very blunt tool. We have better ways of addressing the problem through the local fishery boards. We should concentrate the powers there to allow for maximum flexibility in management processes—flexibility is very important—so that anglers support what is put in place.

Jeremy Read: The only circumstances I envisage in which blanket powers are necessary is in connection with fish health or disease. There is provision in other legislation for appropriate action in such cases.

Robert Williamson: The Association of Salmon Fishery Boards agrees that regulations should be made on a district-by-district basis. That would not preclude having two or three similar districts in similar circumstances within the same regulation, but there should not be blanket orders covering the whole country.

I note that, on blanket measures, the Executive said:

“We have never been in the position to do that and I am not sure that we would want to, except in extremis.”—[*Official Report, Rural Affairs Committee*, 19 September 2000; c.1142.]

We understand that. That brings in a possibly different sort of measure taken in extremis, as recognised in the task force report. We think it should be done on a district-by-district basis, with possibly the exception of a regulation that might give powers to collect information on catch statistics, which is another point that is probably relevant.

The power to collect catch statistics, which I think was included in the consultation paper, and certainly was included in the evidence given to the committee, is seen as necessary to plug the gap, as district fishing boards do not have access to that sort of thing in the way that the department does. However, that has been covered by a general provision in new section 10A.

“(6) Without prejudice to the generality of the power conferred by subsection (3) above, regulations under this section may—

(a) require a proprietor to provide a district salmon fishery board with such information as it may request”.

That is an immensely wide power. The association would like to make it clear that we are not seeking such wide powers. We are seeking powers to collect information in relation to the salmon fisheries and in particular to the catch statistics. That is something that could be expressed directly in the bill. The bill could include

the words “district salmon fishery boards may collect information” or whatever, or could state that proprietors may be required to provide it. The information collecting provision should be more specific and clearer. It does not need to be a regulation of the same sort—or perhaps there should not be such a regulation.

15:15

Walter Davidson: The Salmon Net Fishing Association opposes the new section 10A(6)(a). It is far too open. We do not know why it has been drafted in that way. The section should be refined and the precise things that the fishery boards are allowed to do should be stated in that section. Currently, it gives the boards the power to do virtually anything.

Catch statistics tell us what has happened in the past. A far better stock measurement is juvenile stock density. That would indicate what will appear in the river in the future. That is a far better management method. It is up to the boards to put something in place to record that.

Mr Hamilton: I have two lines of argument that I want to explore. One picks up on what we have just heard about the statistical basis. The bill is incredibly wide—any person with any interest can make an application. It seems as though anyone who has ever seen a fish can make an application. Given that fact and the provision of section 10A(4) that

“In considering whether or not it is necessary or expedient to make regulations under subsection (3) above, the Scottish Ministers shall have regard to any representations made to them by any person having an interest in fishing”,

the question arises: if that representation is made and disputed, on what basis can it be resolved?

That comes back to the issue about information gathering that we have already touched on. Previously, it has been suggested to the committee that catch returns are fairly crude and that long-term monitoring is fairly patchy. What do you consider to be the most robust means of recognising whether the decision—we can argue whether it should be taken locally or nationally—is a good decision based on strong data?

My second question is not related to the first, but I would appreciate your thoughts on the matter. The evidence that we have received has two different drifts. The dispute—perhaps that is too strong a word; I should say contradiction—is whether lax legislation is a good or bad thing. No members of the committee, no one giving evidence nor even the Scottish Executive would dispute that the bill is wide—it is deliberately so. I want to read to you the explanation from the Executive as to why that is the case. In the Subordinate Legislation Committee’s report, the

Executive says:

"The Rural Affairs Department states that the Executive's ultimate aim, therefore, is for maximum flexibility to keep pace with future developments in fishing and conservation thinking and this, the department states, is a view that has overw helming support from fishery managers."

The point that I am trying to get at is not that the bill is wide, but that the Executive thinks that that is a good thing, although you seem to think that that is a bad thing. How would you help the committee to resolve that dilemma?

Robert Williamson: It is necessary that the bill is wide, but it still has to have limits; that is where the problem lies. The task force recommendations itemised the areas for which there was a need for regulations. A lengthy list would take up more space, but it would be more specific. The powers that ministers should have to act on their own initiative were circumscribed by there being powers for emergency measures to be taken in extremis. I am not sure of the wording, but that was the effect. The two recommendations were connected, although they were different.

I was on the task force and have some recollection of the process; as I understand it, the recommendations were designed to produce new tools that could be used in the management of fisheries without distorting the present relationship between boards and the central executive. It was felt that that worked reasonably well.

There is wideness in the power of ministers to make regulations at their own hand or otherwise, over as wide a range as district fishery boards can apply for regulations. What effect that has depends on how the word 'conservation' is interpreted or how the bill is amended. That has an effect on how the question is considered.

In general, the bill expresses matters in wider terms than we asked for. The part about catch statistics is a good example. We asked to be able to ask proprietors for catch statistics and we are told that we will be able to ask them for any information. That power is wider than Parliament might want it to be, and wider than we asked for it to be.

Mr Rumbles: I do not want the committee to be misled. I think that Duncan Hamilton is operating under a misunderstanding when he says that anyone who has seen a fish can make an application.

Mr Hamilton: That was an example of what people call humour.

Mr Rumbles: We are obviously not used to that on this committee.

Mr Hamilton: Clearly.

Mr Rumbles: It is important to be absolutely

clear about this. According to the 1986 act, any application must be made by the district salmon fishery board or, where there is no such board, by two proprietors of salmon fisheries in that district.

Mr Hamilton: To be absolutely clear, I asked about that because the Subordinate Legislation Committee brought up the fact that there was a wide remit and asked the Executive why that was the case. The Executive tended to the opinion that I have expressed, which was that, while the remit was wide, it was deliberately so. It said that it did not want to be accused of excluding anybody who had any interest from making a submission.

Mr Rumbles: We were in danger of being misled. It is important to be explicit and exact.

Mr Hamilton: Perhaps we can resolve this matter in the committee later.

Colin Innes: One of our members who is a proprietor of salmon fishings questioned the extent to which human rights issues might be invoked in relation to the measures. As the committee probably knows, salmon and sea trout fishings are a separate right in ownership and can be segregated away from the land. That means that, undoubtedly, they would be considered as a property in relation to the protection that is provided by article 1 of the first protocol of the European convention on human rights.

We want the measures to be a success. The last thing we would want would be for the first order to be challenged under human rights legislation. That reinforces the point that we want more certainty about when the powers can be exercised. If time limits were placed on the orders, the measures would clearly be seen as regulation of the property rather than as a form of expropriation, which, it could be argued, they could be seen as if no time limit was included. One of our members raised that concern with us, and I thought that it was appropriate to pass it on to the committee.

Jane Wright: Mr Hamilton raised a fundamental point about the bill: how does one decide when to apply for an order? Applications must be based on enough data. It is probably possible for fisheries biologists to produce such data in most board areas. The Association of West Coast Fisheries Trusts now covers the west coast, which until quite recently was a problem area for the production of data. Most large boards have biologists or are able to give data to a consultant biologist. If an order is the subject of a consultation process, one of the first problems will be that people will question what an application for an order is based on. It is probably not appropriate to put this in the bill, but it might be useful to say what data might be required in guidelines for people making applications.

Robert Williamson: I have a comment that I hope is relevant to what is being discussed; it

concerns applications that might be made by the Scottish ministers on their own initiative and relates to what Mr Innes said. To proof such a regulation, it is essential to do two things. First, there should be a statutory requirement that, before making a regulation, ministers should consult the relevant district salmon fishery boards. That would ensure that the local element was taken into account. At the moment, the bill says that ministers may consult whomever they think fit. Of course, ministers will say that they would consult, and no doubt they would, but it is proper that such consultation should be a statutory requirement.

The second thing that should be done relates to something that I noticed this morning in rereading a paper. The consultation document implied—it may even have stated—that where the ministers are making a regulation at their own hand, the regulation would be subject to approval or agreement by Parliament. We took that to mean that the regulation would be subject to an affirmative resolution in Parliament, but when the bill pitched up, it appeared that it would be by negative resolution. That is an important difference. If ministers are making a regulation that affects a private property resource, it is better than nothing that they should consult boards. It would be helpful if there were an affirmative resolution, which the consultation document led us to expect.

Jeremy Read: Robert Williamson has raised an important point, but I want to return to Mr Hamilton's first question on what the basis of a good decision would be in the event of there being a need to resolve conflicting views on a particular measure.

Mrs Wright has made most of the points that I wanted to make on the need for the best quality information on the state of stocks and on what affects those stocks. As Walter Davidson said, catch statistics are not the only data. In fact, in many cases, they can be a crude indication of the state of stocks. Juvenile and habitat surveys are important. The body of information is being developed continuously by the fisheries trusts on the west coast. A number of boards on the east coast employ their own biologists and have research trusts.

A strong feature of the Angling for Change proposals is the need to expand the whole network. It is particularly important for such data to be consistent and gathered across Scotland using the same bases. Even catch statistics make sense only if one knows how much fishing effort has gone on; only then can we make a better assessment of how those statistics reflect the actual stocks. In that context, the work of the Scottish Fisheries Co-ordination Centre, which was set up at the same time as the west coast

trusts began operating, is particularly important. The centre will need considerable and strong support to develop its work in producing consistent and coherent statistics that cover the whole of Scotland.

15:30

Colin Innes: I have some comments about when the powers might be exercised. Although the precautionary principle is increasingly being applied to environmental matters, recent Government pronouncements have shown that after the principle has been applied, considerable efforts have been made to find out the true situation to ensure that subsequent decisions are based on sound evidence, not on the precautionary principle. It is important that, where measures are taken, they are followed up immediately to examine the marine causes, instead of focusing on data collection in order to take action in freshwater areas where the problems are not as great.

Walter Davidson: With regard to new section 10A(6)(a) of the bill, the collection of data statistics should be defined. Will the requirement be for statistics to be collected weekly, monthly or annually, or will it be up to individual boards to decide that?

The Convener: If members have no further questions after John Farquhar Munro asks his, we can finish up with this group of witnesses.

Mr John Munro (Ross, Skye and Inverness West) (LD): I shall be brief, as Mr Hamilton has pre-empted my main question.

New section 10A(4) of the bill says:

"The Scottish Ministers will have regard to any representation made to them by any person having an interest in fishing . . . or in the environment."

As Mr Hamilton pointed out, many people have a special interest in different sections of the environment and might feel inclined to make representations to the minister that have little to do with the management or preservation of salmon stocks. Everyone—including committee members and the industry—should be aware of that.

I do not want to delay the witnesses or protract the meeting; however, we have heard today about the possible consequences of the decline in sea trout and salmon stocks over the past decade. I do not need to tell anyone here how that situation has developed. Different suggestions have been made about the true costs of, or reasons for, the decline. We have heard about predation in coastal waters and at sea, and overfishing. Others have suggested that fish farms have had an influence. No one has been able to refute those suggestions. What is your response to the view that the decline

in wild fish stocks might have nothing to do with those suggestions; and that it might be cyclical instead, which would mean that in a decade wild salmon and sea trout would return to coastal waters? I think that this year the committee heard some evidence that supported such a view.

Walter Davidson: As someone whose family has been salmon fishing for four generations, I think that, although the situation could be cyclical, there are still many other factors to consider. For example, no one knows what influence factors such as global warming have had. Salmon catches have always fluctuated; sometimes they have been high, sometimes very low. We cannot put our finger on any one factor.

Colin Innes: One point to make in that regard is that our expectation of the salmon stock is probably the lowest that it has been for hundreds of years. Salmon has been exploited as a food resource for hundreds of years. At present, we are probably exploiting it less than we have, yet we are trying to reduce that exploitation even further.

If you accept that the stock is cyclical and that there is nothing that can be done about it, you accept that none of the other factors is influencing the situation, which I do not think is necessarily the case. When people examine the cycles historically, they tend to examine one side of the equation—spring stocks reduce and the autumn run increases—whereas, in the past 10 to 15 years, there has been a decline in stocks that is more marked in the spring, but is general. We need to consider the reasons for that and why certain parts of Scotland have been more affected than others by the general decline. We need to examine the facts in the particular fishery to see what might be influencing the situation.

Jane Wright: I do not know of an instance of nature self-destructing, and I do not think that salmon and sea trout stocks would reach a level where those fish became extinct, as they have in seven or more rivers on the west coast. They might drop to a low level, but they would not become extinct without something affecting them that has not been part of the equation before. The cyclical idea worries me. Even if we were at the bottom of a cycle, I do not think that the stocks would have got so low without the influence of extraneous factors, for which we are, possibly, in part responsible. We must examine the factors that we can affect to see whether they make a difference.

Another thing that has not been mentioned is overfishing for prey species, particularly of sea trout's prey, in coastal waters. The herring fishery—herring is a large part of the sea trout's diet—has declined to such a huge degree in the past 30 years that that must be considered. The common fisheries policy is another huge thing. We

must consider the wider sphere and try to influence it to ensure reasonable management. It is all part of the same problem; we are over-exploiting various species and must now try to introduce some management to the whole scene.

Jeremy Read: As far as we can tell, there have been peaks and troughs over the centuries, but it looks as though the troughs are getting lower and lower and the peaks are not nearly as high. As has just been said, conditions have changed. At the moment, we are not able to harvest the large number of fish that it used to be possible to harvest. The situation seems to be worse than it has been and is deteriorating. If the current trough begins to pick up naturally, which it may—we hope that it will, but it may not—we need to be as ready as possible so that the stocks can take advantage of the improved conditions.

I repeat my earlier suggestion: it is all the more important that we do what we can to improve the situation—to ensure the production of wild fish, to ensure the survival of adequate numbers to spawn and maintain the stock, and to provide a margin for a viable fishery—and to continue to do so, so that we can take advantage of an upturn if one comes.

Robert Williamson: As has been said, there could be cycles—although it is far easier to fit cycles to past events than it is to describe cycles that will fit what happens—but we cannot be sure how the situation will develop. Whether or not stocks are cyclical, we need to have a better and wider range of tools to regulate the fisheries, whether they are at the bottom of a cycle, or in the middle or top of a cycle. There have been changes since the original laws were made; additions were made in 1986. We need additional tools whether the stocks are cyclical or not.

The Convener: Thank you very much. We will move to questions to the minister and officials. I take this opportunity to thank all the witnesses—Mr Davidson, Mr Innes, Mrs Wright, Mr Read and Mr Williamson—for their help. We will adjourn for a few seconds to allow the changeover of witnesses and to allow Mike Rumbles to stretch.

15:39

Meeting adjourned.

15:43

On resuming—

The Convener: It is now my pleasure to welcome the Deputy Minister for Rural Development, Rhona Brankin, who has come to discuss the Salmon Conservation (Scotland) Bill. In support of the minister, we welcome Diane McLafferty, the head of the salmon and freshwater

fisheries branch; David Dunkley, inspector of salmon and freshwater fisheries; Joy Dunn, of the same branch; and David Cassidy, solicitor. I understand that the Deputy Minister for Rural Development would like to address us, after which I shall invite questions from members of the committee.

15:45

The Deputy Minister for Rural Development (Rhona Brankin): Thanks very much, convener. It might be helpful if I give the committee a brief outline of why we felt it necessary to introduce the Salmon Conservation (Scotland) Bill.

In 1960, 1,443 tonnes of wild salmon was caught in Scotland. In 1970, the figure was 1,392 tonnes; in 1980, it was 1,134 tonnes; in 1990, the figure was 624 tonnes. Last year, it was 198 tonnes. In the same 40-year period, catches of sea trout declined from 224 to 36 tonnes.

The picture that those figures illustrate is depressing. The fact that netting effort declined by 83 per cent between 1975 and 1999 might at first glance appear to offer an explanation for the decline. Certainly, it is a factor. Normally, removing netting downstream should lead to an increase in catches by rod and line. That has not happened, and rod-and-line catches have remained fairly constant.

What is the problem? I have no reason to believe that anglers have become less proficient at their sport in the past 40 years. Given the advances in tackle, one might have expected the reverse. By the same token, one can discount any proposition that the fish have become smarter at avoiding the angler's hook. Fewer fish are being caught simply because there are fewer fish about.

The evidence of smolts going to sea shows that, by and large, numbers are bearing up; they are simply not returning in the same quantities as yesteryear. The phenomenon is not confined to Scotland: the same pattern is being repeated throughout the range of the Atlantic salmon. Between 1960 and 1998, catches declined from 1,676 tonnes to 149 tonnes in Canada, from 1,659 tonnes to 740 tonnes in Norway and from 1,100 tonnes to 131 tonnes in Russia. That others are sharing our experience provides little comfort, but it identifies a common denominator and a probable source of the problem—the marine environment.

Research into declines is being conducted internationally. Whatever the outcome of that, it is clear that we must take greater care of the fish that successfully return to our rivers to spawn. We cannot sit on our hands and rely on reports that, for example, this year's grilse runs are the best for years in some parts of the country, and hold out the prospect of better things to come. We need to

recognise the low level to which stocks have fallen and ensure that we have the powers to address that situation. That is what the Salmon Conservation (Scotland) Bill proposes to do.

I appreciate that the committee is aware of the review of freshwater fish and fisheries on which the rural affairs department and Scottish Natural Heritage have been working. The closing date for receipt of responses to that was extended to 31 August, and more than 250 responses have been received. Officials are analysing them and will report the outcome to me later this month. Once I have had an opportunity to study that information, I will make an announcement about the way forward. In the meantime, if anybody wishes to study the responses that were received, copies are available in the Scottish Parliament information centre. Copies of the analysis of responses will also be placed in SPICe once the exercise is complete.

I am conscious that district salmon fishery boards and others are rather nervous at the prospect of ministers exercising the powers that are outlined in the bill, and at how those powers might be used. It might be helpful to the committee if I briefly reiterate our policy. Our policy has always been to acknowledge that good fisheries management is best carried out at a local level by those who have in-depth knowledge and expertise. That has not changed. In fact, we expected that the Association of Salmon Fishery Boards and others would welcome the fact that ministers had powers to act in the event of a board choosing not to implement conservation measures where they were obviously necessary.

The committee may wish to know—we have heard about this already today—that a number of boards have adopted voluntary conservation measures. However, concerns have been expressed to the department that, where measures are purely voluntary, enforcement difficulties arise and the measures can be undermined. It has been suggested that ministers should have only emergency powers, but that immediately raises questions over how an emergency would be defined, by whom, and on what criteria. I believe that what has been outlined in the bill covers all eventualities. I hope that, by outlining our policy, I have reassured the committee and the DSFBs that there is nothing to fear.

I would like to pick up on some of the points that were raised at the start of the meeting—specifically the suggestion that proposed new section 10A(3)(b) has been vaguely drafted. The committee will know that that section relates to the extent of the powers of Scottish ministers under the bill. At present, ministers have no powers to act themselves; they are obliged to await

applications from DSFBs before making baits and lures regulations or orders to change annual close times. Under the current provisions in the Salmon Act 1986, applications can be made to ministers by the salmon fishery board for a particular district—or, where there is no such board, by two proprietors in the district.

The proposed new section 10A(3) provides that the Scottish ministers shall have power to make regulations on an application from the same bodies as are mentioned in the 1986 act, or “otherwise”. Using “otherwise” allows ministers to make regulations themselves, without application from DSFBs or from two proprietors. The main reason for that is that, as we have heard today, there are gaps in DSFB coverage. For example, in the Clyde area a management trust has been established which comprises angling clubs. New section 10A(3) would allow ministers to respond to a request from the Clyde trust to introduce conservation measures. Furthermore, there could be DSFBs that refuse to implement conservation measures or fail to secure consensus among board members about such measures, despite evidence that they are necessary. In such circumstances, ministers could impose measures.

It has been suggested that the bill’s scope is too narrow. The fact that there is no power to control predators such as seals has been mentioned—other legislation exists for that purpose. The Conservation of Seals Act 1970 allows for shooting. Licences to shoot fish-eating birds are issued under the Wildlife and Countryside Act 1981. I thought I should draw members’ attention to that.

It has been suggested that new section 10A(4) is too open-ended and would allow Government agencies to comment. We believe that it is perfectly legitimate for a wide range of bodies with an interest in the aquatic environment to make representations. We think that allowing that is to take a holistic approach. Holistic management is the way forward. Any proposals for regulations that are made by the minister will, of course, be subject to consultation.

I would like to touch on the discussion about the term conservation. Concern has been expressed that the use of that term may be detrimental to the ability to manage fisheries in the future. The bill inserts five new sections into the Salmon Act 1986, which is the main salmon fishery management legislation. Conservation is not divorced from management. The purpose of the bill is to enable fishery managers to manage fisheries better. The objective is to introduce measures, where necessary or expedient, for the conservation of salmon—for example, the restriction of exploitation for a limited period to allow salmon stocks in jeopardy to recover to a

point where there is again an exploitable surplus. This bill will ensure the contribution of wild salmon fisheries to the rural economy by strengthening the sustainable management of fisheries.

I will finish there. Obviously, I will be happy to answer questions.

The Convener: Thank you. We now have time for questions for the minister and her officials—but I cannot always start with you, Mike, can I? Okay, yours was the first finger raised.

Mr Rumbles: As our witnesses have said, this bill is urgently required; it is great that the Executive has introduced it. I was delighted, minister, to hear what you said about conservation. I feel that you got to the nub of the issue in explaining that the Executive’s policy is that conservation and management go hand in hand. However, it would be helpful if that were mentioned in the bill. Perhaps at stage 2 there could be an addition to emphasise the Executive’s continued commitment to management. What is in the bill should not be seen as a reinterpretation of the word conservation.

The Dee district salmon fishery board is at the forefront of conservation measures in Scotland. Its chairman has written to us all, saying:

“It is our concern that the Bill does not endanger the future of the fishery by superseding stock management with salmon conservation.”

That gets to the nub of what we have heard from almost everybody, so I was delighted with your statement. It would be more than helpful if “management” could be inserted in the bill, to ensure that there is not a problem. Would that be possible?

Rhona Brankin: That could be possible at stage 2.

Fergus Ewing: Minister, as you know, the Association of Salmon Fishery Boards, in its letter to SERAD in August 2000, stated that, as far as steps to promote conservation are concerned:

“In some cases Government action (e.g. sanction/action to reduce the population of predators) would deliver far greater benefit to the conservation of salmon and sea trout”.

The words “far greater benefit” are the only ones in that very long letter that are underlined. We have heard the minister state that there are legislative powers, under at least two statutes, under which action can be taken. Is the minister proposing that any action should be taken?

Rhona Brankin: It may be helpful to know more detail on that. As I have said, the Conservation of Seals Act 1970 allows for shooting.

Diane McLafferty (Scottish Executive Rural Affairs Department): Committee members will

appreciate that the shooting of seals is permissible for one species for nine months of the year and for the other species for 10 months of the year. The department, with the support of the salmon fishery boards, has been encouraging the boards to take advantage of what is, in effect, fairly permissive legislation. Provided someone has an appropriately licensed firearm, they can shoot seals and therefore deal at a local level with what are often termed rogue seals—the specialist seals that know it is in their best interests to linger in estuaries and wait for the salmon runs to arrive. Measures are available to allow local management of seal populations.

Fergus Ewing: I am grateful for that answer but, with respect minister, I asked not whether powers are available—we know they are—but whether the Government believes more action needs to be taken to address a problem that was identified by four out of the five witnesses today.

Rhona Brankin: We are looking at what the up-to-date research shows us about the impact of the seal population. That will be kept under review.

Fergus Ewing: Finally minister, on a different topic, we all recognise the value of rod fishing to Scotland. What is your estimate of the annual worth of rod fisheries to the Scottish economy?

Rhona Brankin: We can find that statistic for you.

16:00

Diane McLafferty: The Scottish salmon strategy task force report—the recommendations of which were mentioned earlier—uprated some surveys that had been conducted to estimate that the annual figure would be of the order of £70 million. However, we acknowledge that, working in conjunction with fishery managers, it is important to have a handle on the contribution to the economy. We are currently working on a more in-depth survey of the financial background to the wild fisheries sector.

Fergus Ewing: I am grateful to hear that, because my information is that the last valuation was conducted by the Centre for the Economics and Management of Aquatic Resources in Portsmouth, which gave a best estimate of the value of rod fisheries in Scotland of £255 million, which excluded the additional spend that anglers made in Scotland on various items—but that research is more than 10 years old. Should not we have an updated report to establish the worth of angling in Scotland? Perhaps we might then begin to appreciate its importance to Scotland.

Rhona Brankin: Absolutely. We will continue to work with the Association of Salmon Fishery Boards to maintain a full picture of the worth of the

sector.

Dr Murray: I will return to the bill, if I may. Minister, I want to ask you a question about the border and the fact that there could be a contradiction between the desire for management and the provisions of the Scotland Act 1988 (Border Rivers) Order 1999, particularly in the case of the River Esk, the environmental aspect of which is regulated from England. How do you see the various pieces of legislation working together?

Rhona Brankin: The powers in the bill cover the whole landmass of Scotland, including those parts of the catchment areas of the Rivers Tweed and Esk that lie in Scotland. Section 111 of the Scotland Act 1998 provides a mechanism whereby management measures, including those concerned with the conservation of salmon and sea trout, can be introduced by Her Majesty by order in council—as we heard earlier—to ensure that the whole catchment area is covered. Any such measures would be ratified by both Parliaments, so proprietors on the River Esk will be able to apply to Scottish ministers for regulations to be introduced for that river.

It is expected that any new management measures will be brought in using section 111 of the Scotland Act 1998. In fact, the River Tweed Council would be able to apply for regulations as well. Those who are eligible to apply for regulations under this bill are those who are eligible under section 6(4) of the Salmon Act 1986, which provides for the River Tweed Council to be regarded as a district salmon fishery board for the purposes of that act.

Diane McLafferty: The Scotland Act 1998 (Border Rivers) Order 1999, made under section 111 of the Scotland Act 1998, recognises that whole-river management is the name of the game and that it does not make sense to chop a river down the middle just because it straddles the border. We envisage river management measures being introduced under the section 111 provisions. However, the broad principle of the Salmon Conservation (Scotland) Bill, which is being scrutinised by the Scottish Parliament, should apply to the whole landmass of Scotland. While we cannot think of any situation at the moment where regulations would be made purely for the Scottish parts of the Tweed and Esk, it is not inconceivable that at some point in the future there may be a reason for doing so. The main mechanism would be via a section 111 order in council ratified by the Scottish Parliament and Westminster.

Mr Hamilton: I have a number of questions. First, I have a brief point that would be worth placing on the record. The response to the Subordinate Legislation Committee said that a range of agencies and individuals would have the

right to make representations and that they would be considered by the Executive when it makes any regulation. You said that at that point quasi-governmental bodies such as SNH or SEPA would have no greater impact on the decision-making process than other bodies. Given the controversial nature of some of those quasi-governmental bodies and the public disquiet about the roles that some of them have, it would be useful to have a reassurance that that equality of status will be at the forefront of your mind.

Rhona Brankin: It may depend on the particular issue at the time.

Mr Hamilton: "It may depend on the particular issue"?

Rhona Brankin: Yes.

Diane McLafferty: SNH or SEPA or other non-governmental organisations such as the National Farmers Union of Scotland, the RSPB or a range of others could perfectly legitimately make representations, but the outcome would depend on the issue at hand and the focus of their representation.

Mr Hamilton: Minister, if it helps, I have in mind the role of SNH and other bodies in, for example, the Lingerbay inquiry. SNH was seen to have a disproportionate impact because it is a governmental agency. If you are in any doubt about the sometimes controversial nature of these bodies, it would be worth your while visiting Islay, where you will find that there is an issue. I ask you to repeat what your department said to the Subordinate Legislation Committee: that the influence of the contribution from any source would rest on the relevance and quality of that representation.

Rhona Brankin: What matters is the relevance and quality of submissions. Making a good decision is the objective.

Mr Hamilton: My other question is on research. When you have to take a decision, you have to have regard to the best information available. What information is not currently available that you would like to be available, and what efforts are being made by the Scottish Executive to get it? Can you give us some idea of the additional funding that will be provided to plug the gaps that have been clearly identified today?

Rhona Brankin: A number of international collaborative research projects have been set up. Scottish and Norwegian research vessels have undertaken trips to find and catch salmon in the period shortly after they have started their life in the sea, to look at where they are, their growth rates and what they are feeding on. Also, the catches of vessels that fish for pelagic fish, such as mackerel, have been examined to investigate

the possibility of salmon being taken as bycatch. There has been collaborative research involving scientists from Scotland, Norway, the United States of America and Canada on the relationship between the climate and oceanographic change, and the growth and survival of salmon. That research is continuing. Those are examples.

Mr Hamilton: To be perfectly honest, that does not seem to cover some of the deficiencies that have been identified by the witnesses. If you do not have that information at your disposal at the moment, could you undertake to provide the committee with an exhaustive list of the research that is being undertaken?

Rhona Brankin: In addition to the international projects that are under way, the Fisheries Research Services freshwater laboratory is undertaking work with the district salmon fishery boards and fishery trusts to establish a clearer picture of salmon stock status. We are happy to give you information about that.

Mr Hamilton: You must recognise from today's evidence that some of the fears about the bill's impact could be alleviated if the various players in the industry genuinely felt that the decisions would be good. In a sense, what you have said suggests that although work is continuing, nothing specific is in place that will meet their demands. Perhaps you can give us more information.

Diane McLafferty: Under new section 10A(2), applicants must give

"a general description of the proposals"

for regulations. It is expected that any such general description would be based on sound scientific data and a projection of the effect that the regulations would have on stock preservation.

Mr Hamilton: With respect, that appears to make matters worse. There is dispute not only about the figures, but about the methodology for getting them, which is patchy across the country. If the responsibility is on the applicant, what testing of the methodology will take place?

Rhona Brankin: We want to be able to respond to local situations. This is an enabling bill. For example, we want local boards to be able to come to ministers with proposals based on what is happening in their area. It would be a question of continuing to collect statistics that give us broad information about what is affecting fish stocks. We also need to be able to gather statistics locally, which is where the district salmon fishery boards have an important role to play in monitoring the situation.

Mr Hamilton: Do you understand that, although that is their role, there is considerable disquiet that not enough is done, even now, at that level to find out the true picture? Although you say that it is up

to local boards to gather that information, it may be that that information is not accurate or that the methodology behind it is not uniform across the country. I suspect that we would have a great deal more confidence in the process if we felt that there was a national commitment and funding from the Executive for making available a better quality of data. Perhaps that is something that the department can consider.

Rhona Brankin: We are satisfied that new section 10A(6) would provide for that.

Diane McLafferty: The new requirement for proprietors to give information to district salmon fishery boards is a significant step forward in filling in some of the information gaps. That should allow district salmon fishery boards to base any application on a more sound scientific base than would be the case at the moment, when catch statistics are supplied directly by proprietors to the Scottish Executive, bypassing the district boards.

Euan Robson: I would like to make an observation about the River Tweed and ask a couple of questions. Section 111 of the Scotland Act 1998 concerns the process for introducing conservation measures on the Tweed. Would any regulations for the Tweed, made under the bill that we are now considering, not be implemented unless and until an order in council were obtained? As has already been said, it is extremely important that the whole catchment area is managed in one go. If that does not happen, it would make the situation almost impossible to manage, as a significant portion of the Tweed is in England.

The witnesses were quite clear about not wanting blanket provisions across Scotland. I assume that the Executive has no intention of introducing such provisions because of the different nature of each river catchment. Can you confirm that?

My final question concerns the ECHR. Is the bill ECHR compliant, particularly with regard to appeals against regulations? By what process would an appeal against the content of regulations be heard? Are you satisfied that the bill meets ECHR requirements?

16:15

Rhona Brankin: As far as the Border rivers are concerned, we have stated that section 111 of the Scotland Act 1998 would be used.

Although the bill will open up the option of blanket coverage, I reassure committee members that we would exercise those powers only in the most extreme circumstances.

As for ECHR compliance, I can confirm that the bill is indeed compliant. The bill does not deprive

anyone of property, nor does it control the use of property. It merely introduces a power to make regulations in the interests of salmon conservation. It is in the exercise of that power that the convention will have to be observed. The bill contains no provision for compensation, because there is no intention to exercise the power in a way that would deprive anyone of property, contrary to article 1 paragraph 1 of the first protocol. The exercise of the new power to control the use of property in the general interest—in this case, the conservation of salmon—is countenanced by article 1 paragraph 2 of that protocol.

In cases of control abuse, there is no presumption in favour of compensation. The absence of compensation is simply one of the factors that must be taken into account in determining whether a fair balance has been struck between the public interest and the rights of the individual. In exercising the new power in a manner that controls the use of property, ministers must have regard to the balance of interests, including whether, in the absence of compensation, a fair balance is struck by a proposed measure. We are satisfied that the bill is ECHR compliant.

David Cassidy (Scottish Executive Rural Affairs Department): The minister has assured members that the bill complies with article 1 under the first protocol. I think that Mr Robson was referring to article 6 compliance, and I can confirm that, in our view, the bill complies with article 6. In so far as procedures for making regulations interfere with anybody's civil rights, the judicial review process would be adequate to comply with the ECHR.

Euan Robson: Judicial review is quite expensive for those who have to participate in it. Is there an alternative, and perhaps less costly, method?

David Cassidy: Judicial review is the method that is available at present.

Mr McGrigor: In light of the fact that proprietors finance fishery boards, most of which currently pay for conservation measures, how does the Scottish Executive propose to finance fishery management if a fishery board, another body or the Scottish Executive adopted conservation measures through the bill that made it impossible for proprietors to let rod or net fisheries?

Diane McLafferty: On a point of clarification, did you ask whether the bill would introduce measures that made it impossible for proprietors to let fisheries?

Mr McGrigor: That might happen. If proprietors have no income, they will not be able to fund the board.

Diane McLafferty: I assume that you mean in such cases where fishing is stopped completely. However, that would be one of the more drastic steps.

Mr McGrigor: Catch and release, for example, might mean a large reduction in income and, if fishing were to be stopped completely, proprietors would receive no income.

Diane McLafferty: Any measures that are introduced will be subject to the statutory consultation procedures and people will have the opportunity to make representations and objections. If, in some extreme case, we had to operate at the end of the spectrum where fishing had to be drastically restricted or indeed could not be let—which is highly unlikely—such a step would be subject to strenuous objections that would have to be taken into account.

Mr McGrigor: I ask the question only because I know of beats on rivers where voluntary catch and release has already produced a 50 per cent drop in income.

Diane McLafferty: It is worth stating that although a body of opinion is still opposed to catch and release—

Mr McGrigor: I am not saying whether or not people should be opposed to catch and release; I am merely stating the facts of the matter.

Diane McLafferty: Nevertheless, for conservation and other reasons, catch and release should be actively promoted, which is what the department and other bodies are doing.

Mr McGrigor: With respect, that was not my question.

The Convener: Indeed. Could you perhaps make your question clear?

Mr McGrigor: How does the Scottish Executive propose to fund fishery management and conservation measures if there is no income from rod and line catchers?

Diane McLafferty: As the minister said, the bill's intention is that fisheries should not reach that point.

Mr McGrigor: So you are protecting the fisheries.

Diane McLafferty: We are hoping that measures will be introduced to allow managers to manage their fisheries better, which should ensure that they have a long-term future and will not find their income completely drying up because there are no fish left.

Rhona Brankin: The critical point is sustainability. In some cases, we might need to take powers in order to ensure longer-term

sustainability.

Mr McGrigor: I just wondered how the boards would be funded if there was no money coming in. Will the Scottish Executive consider methods of compensating netting proprietors who are compelled not to exercise hereditary netting rights?

Diane McLafferty: The bill does not provide for compensation. Any such proposals and their effects on different interests would be considered through statutory consultation procedures.

Mr McGrigor: Will the Scottish Executive make funds available to enable the effectiveness of conservation measures imposed under the bill to be monitored?

Rhona Brankin: Important research on that issue is being undertaken by the Fisheries Research Services.

Mr McGrigor: Right.

The Convener: Is that the end of your line of questioning?

Mr McGrigor: I have another couple of questions, if that is all right with you, convener.

The Convener: Well, other people want to come in.

Mr McGrigor: Anyone else who wants to come in on this subject can do so.

Does the Scottish Executive consider that there will be a need for full consultation to repeal conservation measures should they be deemed no longer necessary?

David Cassidy: The bill's powers make it possible that measures may be time limited at their inception. However, if a time-limited measure is considered no longer necessary before its time limit is reached, that would trigger the consultation processes outlined in schedule 1 to the bill. If the policy has to be revisited, we would be required to go through the consultation process again.

Mr McGrigor: I make that point only to find out whether any measure introduced by the bill could be unscrambled without too much bother.

Rhona Brankin: Absolutely.

Mr McGrigor: Finally, will the Scottish Executive provide support—especially financial support—for the preparation of conservation plans by fishery trusts and other organisations?

Rhona Brankin: The Fisheries Research Services works very closely with fishery trusts and will continue to gather evidence. However, there is no provision for compensation.

Diane McLafferty: The bill contains no provision for compensation in respect of producing the

supporting case for making the regulations.

Mr McGrigor: Can I sum up on that point, convener?

The Convener: We must move on and try to get in as many people as possible. You will have the opportunity to comment at the end of the meeting.

Mr McGrigor: Okay.

Rhoda Grant: Water bailiffs are employed by the DSFBs and can be used to police much of the act. Although their current role includes such policing, I have a difficulty in seeing how they could police the people employing them if conservation measures are part of their remit; I fear that a conflict might arise in that area.

Rhona Brankin: Such policing happens at the moment.

David Dunkley (Scottish Executive Rural Affairs Department): Bailiffs are effectively the policemen on the rivers and are often assisted by the police. Their role is to ensure that salmon fisheries legislation is enforced, irrespective of who is fishing. If someone is fishing illegally, they are fishing illegally, whether they are the owner of the fishery, a tenant or a poacher who should not be there at all.

Rhoda Grant: Do you not feel that there might be unfair treatment? For example, it would be difficult for someone to start legal proceedings against their employer.

David Dunkley: The situation is certainly no different from what is already the case. Under baits and lures regulations, the bailiff is already empowered to do something about someone fishing with equipment other than rod and line.

Rhona Brankin: Police officers will be empowered to enforce the new regulations in the same way as they can enforce current fisheries legislation.

Rhoda Grant: So if there were fears that the act was not being policed properly by water bailiffs, the police could step in and take on that role.

Rhona Brankin: Yes.

Richard Lochhead: I have two questions. First, when a body makes an application for an order, the chances are that the situation might be urgent and the body will want the order to come into force as soon as possible. Does the minister intend to apply a time limit to the period between an application for an order and its coming into force?

Rhona Brankin: People have 28 days to make representations. Given that we have said that consultation is central to any decision that is made about regulations, we will clearly want to consider those representations.

Richard Lochhead: Are the 28 days within which people can make representations the consultation period?

Rhona Brankin: Yes.

Richard Lochhead: What is the time scale for making the order law?

David Cassidy: The 28-day period referred to is provided for in the Salmon Act 1986. This bill picks up on the existing procedures. Representations are to be received within 28 days of the date of first publication of a notice of the proposed regulations.

16:30

Richard Lochhead: So after 28 days the order becomes law?

David Cassidy: No.

Richard Lochhead: When a body makes an application for an order, there will be a period of consultation. However, we want to get through the bureaucratic process as soon as possible so that the order can come into force.

David Cassidy: An order cannot come into force less than 28 days after the publication of a notice. An application must be received, additional information may have to be requested and notice of the proposed regulation must be published. There is then a period of 28 days within which persons may make representations. It is for ministers to consider the proposals in the light of those representations and to decide whether they have any objections to them. Time must be allowed for those things to happen.

Richard Lochhead: I accept that. Does the minister acknowledge that, given the nature of the bill, there may be a case for having a maximum time limit for the period between receipt of an application for an order and its being made? This is an emergency bill for conserving fish stocks, and an order may be made on the basis of observations of stocks in a particular river. Such an order should become law as soon as possible.

David Cassidy: One view might be that emergency provision is required.

Richard Lochhead: I am asking the minister for her view on this.

Rhona Brankin: It is difficult to make a hard-and-fast rule. Parliament might be in recess when an application for an order is received.

Dr Murray: Is that not the reason for these orders being negative rather than affirmative instruments?

Rhona Brankin: The orders would be negative instruments to be considered by the committee.

There would not have to be a debate in Parliament.

Dr Murray: Is there not an issue of the time scale? Affirmative instruments take longer to implement because with them certain periods of time are excluded that are not excluded in the case of negative instruments.

David Cassidy: The bill provides for a negative instrument. Clearly, that makes the procedure quicker than it would be if a debate had to be arranged.

Richard Lochhead: The minister may want to consider the issue that I have raised.

Rhona Brankin: Yes.

Richard Lochhead: Does a time limit apply to the provision that requires the proprietor to provide a district salmon fishery board with information that it requests? I understand that that provision is included in the bill because fishery boards were unable to obtain information from proprietors. They had to wait for information on catches to go to the Executive, which would then release it to the fishery boards. If proprietors do not have to provide boards with information within a specified period, boards could end up waiting a year for it.

Diane McLafferty: The question whether a time limit was deemed necessary would be dealt with in the regulations. It would be possible to write in such a limit.

Richard Lochhead: The minister may want to consider that.

Given that the evidence given by the previous witnesses indicated that many of the problems occur in the marine phase of the salmon's life cycle, what impact does the minister envisage the bill having on the conservation of salmon fish stocks? What action has the minister taken to address problems in the marine phase? The problems caused by drift-netters off the north-east coast of England, in particular, are a running sore with anglers and fishery boards. Since the Scottish Parliament was established, has the Executive made representations to the London Government in connection with drift-netters? Does it intend to take any further action in that regard? The minister can phone a friend or ask the audience.

Rhona Brankin: Sorry, Richard?

The Convener: You do not want to know, minister.

Rhona Brankin: As we have heard, over the past 20 years or so, the number of fish returning to our shores has declined significantly. The number of salmon entering rivers now is probably quite similar to the number 20 years ago, but that must be seen against the background of a huge reduction in the netting effort on the coast and in

the estuaries. If the number of fish returning continues to fall, we will reach a point at which the number of adult fish returning is insufficient to maintain production of juveniles. It makes sense to ensure that mechanisms are in place to deal with such a situation before it happens. We are taking a precautionary approach. We must not let a lack of adequate information prevent or postpone the introduction of rational conservation measures to ensure that the fisheries can be sustained in the longer term.

When it comes to the number of smolts that are being produced, not all salmon are equivalent. As we have heard, some stock components, particularly the early-running multi-sea-winter salmon, are under more threat than others. The bill allows for flexible application of measures that can help to ease the burden on particular stock components. They may, for example, apply only at certain times of year or to certain size groups. The emphasis is on being able to respond flexibly to local need.

I agree that, at a time of declining stocks, the continuation of the north-east of England drift-net fishery is a matter of concern. I welcome the phasing out of that fishery, particularly the steps that were taken last year to defer the opening of the season.

Richard Lochhead: Has the Executive made representations to London on the drift-net fishery, or does it intend to do that in the foreseeable future? Has it taken any other action in connection with the marine phase of the salmon's life cycle?

Rhona Brankin: I understand that we are in contact with the Ministry of Agriculture, Fisheries and Food on this issue. We will continue to raise it with the ministry.

Diane McLafferty: Last year, the Executive gave evidence to the Environment Agency, which is a matter of public record. Consideration was given to extending the drift-net fishing season at the back end, to compensate fishermen for what had been lost at the front end.

Richard Lochhead: Does our new minister intend to raise the issue of the drift-net fishery with the London Government again?

Rhona Brankin: We will be reviewing it with MAFF.

Mr Hamilton: We understand that the bill exists in isolation and that the context is more important, but when we ask questions about the context we do not feel that that has been taken into account or that anything is going to be done about it. Do you understand the frustration that members feel about that?

Rhona Brankin: Absolutely. Within the jurisdiction of the Scottish Parliament, we do what

we can. The bill must be seen in the context of the wider review of Scotland's freshwater fish and fisheries. We feel that the bill is needed to deal with a particular problem, which was described by some of the witnesses who gave evidence earlier.

Mr Hamilton: The same witnesses who wanted a range of other things to be done.

Richard Lochhead: Duncan Hamilton and I are trying to say that the evidence that was given by our witnesses indicated that the bill should be a small part of a much bigger package to address the decline in salmon stocks. What is happening on our rivers is only a small part of the problem. Threats to the marine phase of the salmon's life cycle seem to be a more important factor. What other measures do you plan to take in connection with international organisations and the drift-net fishery?

Rhona Brankin: This is a small part of a wider approach. The bill has had widespread support. The need for the bill has been recognised. We are conscious that we urgently need to do something to protect stocks. Of course, that has to be seen in the wider context of continuing to support and be part of international research into the marine environment. The measure had to be introduced at this point and will be important to the conservation of salmon stocks.

The Convener: I thank the minister and her officials for helping us with this matter today.

Item 5 on the agenda relates to conclusions on the Salmon Conservation (Scotland) Bill. In order to fit in with the timetable, we will have to see a draft report, which will be produced by Tracey Hawe, next week.

Rhoda Grant: Will we consider the draft report in private although we are conducting this part of today's meeting in public?

The Convener: Yes. We are not yet dealing with a draft report. Item 5 on the agenda is designed to enable committee members to make additional comments that they want the clerk to include in the draft report. We will be able to make further comments when we read the draft report and members might want to wait until then to make their comments.

I draw the attention of Euan Robson and Jamie McGrigor to the fact that they would not be able to attend a private session to consider a draft report. If they want to make comments for consideration for inclusion in the report, they should do so today.

Euan Robson: I want to make three points. What we heard about blanket provisions was important. They would be highly detrimental and I am sure that the committee will want to say a word or two about them. The committee might want to consider the fact that the bill makes it possible for

a blanket provision to be introduced. If there is no intention to introduce a blanket provision and there is no demand for the introduction of any blanket provision, why are ministers being given the power to do so? I pose the question rather than offer an answer.

The Convener: Do other members of the committee share those concerns?

Mr Munro: Yes.

Mr Rumbles: Yes.

Euan Robson: Another small but important point relates to the suggestion that the district salmon fishery boards do not employ bailiffs to enforce the legislation and that the bailiffs are employed by proprietors. However, that is not the case in a number of district salmon fishery boards. If there is any lack of clarity, it might be sensible to offer district salmon fishery boards the power to employ people for the purpose of enforcing the act. The Tweed commissioners employ a number of staff. I do not know whether that is because the cross-border situation caused the commissioners to be established under separate acts. However, if there is a gap, that should be flagged up for the Executive.

Perhaps a stage 2 amendment should place an extra duty on district salmon fishery boards in relation to habitat. A number of boards are working well in relation to habitat voluntarily, but, as one of the witnesses suggested, it might be useful for district salmon fishery boards to have a duty to encourage or facilitate habitat improvement along riverbanks in particular.

The Convener: Those comments are welcome.

Rhoda Grant: On the first point that Euan Robson made, I want to say that the situation in which I envisage blanket legislation working best would be when district salmon fishery boards wanted information from proprietors. It would save them having to use various pieces of legislation to extract information from various proprietors in various areas. That would be helpful as it would mean that the same sort of information was being gathered regardless of where the river or the fishery was. I would want Euan Robson's comments to be qualified to allow that to happen in certain circumstances.

16:45

Mr Hamilton: I would like to keep most of my comments to myself until I have had chance to reflect on today and read the *Official Report*. However, I would like to put down a marker on a few issues.

I remain unconvinced about where the bill is coming from. If there is a reason to bring in

legislation, the legislation should be focused on that reason. The bill suffers from a lack of focus, which undermines it.

I want to register a sense of frustration at the lack of action in the wider context. I believe that the ministerial team understands that the bill is one part of a bigger picture, but I do not believe that the bill is going forward in a climate in which much action will take place. The committee might want to comment on that.

I want to flag up a point about the decision-making process, in terms of both the equality of the representations received and the quality of the data and the methodology for making sure that the decisions are good decisions. The bill gives me no confidence that the information is as good as it could be.

Richard Lochhead: Like Duncan Hamilton, I want to wait until I have read the *Official Report* until I make much comment. I want to make two points, however. In the preamble to our stage 1 report, the committee must make it extremely clear that the bill must be the first step in a series of measures if it is to have any impact—it cannot work in isolation. Everyone accepts that the bill is an emergency bill, and that should be reflected in the bill in relation to time limits that are imposed on the stages of the process.

Fergus Ewing: I will talk about technical matters to assist the clerks in preparing the draft report. The witnesses made a number of specific technical points that I do not want to be overlooked.

Mr Davidson referred to technical flaws relating to new section 10A(6)(a). Mr Williamson stated that the district salmon fishery boards were being given wider powers than they had asked for. That is surprising and should be commented on in the report. The final technical point relates to the fact that witnesses were assured that the affirmative procedure would be used but, in fact, the negative procedure will be used.

The minister read out depressing figures on the decline in salmon catches since 1960. My arithmetic leads me to believe that catches now are 15 per cent of what they were 40 years ago. That is appalling and disastrous. However, we got a sense that, with regard to diagnosis and research, we were in a position of almost total inertia. It would be useful to find out what is going on in relation to that, how much more research is required and who is going to pay for it.

The minister referred to international research, but I am sure that she would not suggest that the UK and Scotland would not play a part. However, I would like to know what part the UK is playing and what part Scotland is playing. What is the population of grey seals and common seals in

relation to the years that the minister talked about? What about avian predation, which Mr Davidson referred to?

My point is relevant because members have accepted that we are trying to deal with conservation as a whole. Therefore, it would be completely wrong to ignore admitted problems—frankly, if we were to do so, we would be acting like an ostrich that buries its head in the sand, leaving it with only one orifice through which it can communicate.

We must also set in context the value of angling, as that might lend a sense of importance to the bill. Some members are interested in angling, as are thousands of people out there. How much is angling worth to Scotland? I hope that we will not be denied those figures simply because they show the same depressing decline as fish catches show.

I hope that my comments have been helpful and constructive.

Mr Rumbles: I whole-heartedly agree with Fergus Ewing that it is important to be constructive. I make that point for the benefit of the clerks, because I would hate to think that the last three contributions reflect the views of all members of the committee.

The committee is impressed by the fact that the Executive introduced the bill urgently. We must highlight the fact that the people who gave us evidence said that the bill was urgently required. I am sure that the committee will welcome the bill as a positive measure, albeit as a first step towards sorting out the industry's problems.

Richard Lochhead: To follow Mike Rumbles's constructive comments, it is worth mentioning in the same paragraph as Mike's suggestion that the bill has been introduced as a result of international pressure.

The Convener: Do members have further comments to make?

Mr McGrigor: Did you say that I would not be allowed to come to the next meeting of the Rural Affairs Committee?

The Convener: You will be allowed to come to the next meeting. I meant that we will consider the draft report in private. Therefore, if you have comments that you wish to be included in the report, you should make them at the appropriate time.

Mr McGrigor: In that case, may I make some brief comments now?

The Convener: Yes, if they are brief.

Mr McGrigor: It is important that we push for local, flexible management, which is what the

Nickson task force report was all about. The time limitation is also very important.

It is also extremely important that the minister, or the Executive, explain exactly what is meant by the phrase “or otherwise” in new section 10A(3). We must have a detailed explanation of what the Executive has in mind.

The Convener: Given Jamie McGrigor’s comments, is the committee content for a draft report to be pulled together and for the committee to consider that report in private at next week’s meeting?

Dr Murray: Could the clerks e-mail that report to us in advance of the meeting, so that we can consider its contents?

The Convener: Yes.

Mr Rumbles: Could I make a request about the agenda? Our agendas are extremely heavy and I know that we have a heavy work load, but we should try to do justice to each agenda item—I am thinking of our consideration of the draft report.

I note that our next agenda item is a report on the closure of the Islay creamery. We have spent three hours discussing an important issue, and the Islay creamery is also an important issue. I want to query the amount of work that is being included in our agendas and to make a plea for a shortened agenda when we are discussing such important issues.

The Convener: Are we content to defer further discussion of the Salmon Conservation (Scotland) Bill until we have received the draft report?

Members indicated agreement.

Subordinate Legislation

The Convener: We move briskly to item 6 on the agenda, on subordinate legislation. The agenda refers to the Specified Risk Material Order Amendment (Scotland) Regulations 2000 SSI 2000/344 and the Specified Risk Material Amendment (Scotland) Regulations 2000 SSI 2000/345. The Rural Affairs Committee has been designated as secondary committee for these regulations, on which we are asked to pass our comments to the Health and Community Care Committee.

Do members have any comments or concerns in relation to the regulations? Are we content to intimate to the Health and Community Care Committee that we have no comments to make on the regulations?

Members indicated agreement.

The Convener: We now move to item 7 on the agenda, which is the Islay creamery report, copies of which have been circulated to members.

At this stage, we will move into private session.

16:53

Meeting continued in private until 16:58.

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 would like a copy of the bound volume should also give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the bound volume should mark them clearly in the daily edition, and send it to the Official Report, Parliamentary Headquarters, George IV Bridge, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 15 November 2000

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £500

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies: £70

Standing orders will be accepted at the Document Supply Centre.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriol Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office 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
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers