

# **RURAL AFFAIRS COMMITTEE**

Tuesday 19 December 2000  
(*Afternoon*)

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## RURAL AFFAIRS COMMITTEE

37<sup>th</sup> 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:

Rhona Brankin (Deputy Minister for Rural Development)

Mr John Home Robertson (East Lothian) (Lab)

Mr Jamie McGrigor (Highlands and Islands) (Con)

Euan Robson (Roxburgh and Berwickshire) (LD)

### CLERK TO THE COMMITTEE

Richard Davies

### SENIOR ASSISTANT CLERK

Tracey Hawe

### ASSISTANT CLERK

Jake Thomas

### LOCATION

Committee Room 1



## Scottish Parliament

### Rural Affairs Committee

*Tuesday 19 December 2000*

*(Afternoon)*

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

**The Convener (Alex Johnstone):** We do not have a full turnout of members but, as far as I know, there are no apologies. I propose to make a start, as we are quorate.

I apologise to members for adding an extra item to the agenda at the last minute. The purpose of the amended agenda, which has been circulated, is to include an item on expenses claims for witnesses who gave oral evidence on the Protection of Wild Mammals (Scotland) Bill. I mention that item, which I have placed on the agenda as item 6, as I must seek the committee's approval to deal with it in private. Given the nature of the applications for expenses, it is appropriate to deal with that item in private. Does that meet with the committee's approval?

**Members** *indicated agreement.*

## Salmon Conservation (Scotland) Bill: Stage 2

**The Convener:** We move on to item 2. Members should have a copy of the groupings and the marshalled list of amendments. If everyone has those papers, I propose to start dealing with the bill from where we left off at our previous meeting.

### Section 1—Conservation of salmon and sea trout

**The Convener:** Amendment 8, in the name of the minister, is grouped with amendment 9, which is also in the name of the minister. I ask the minister to move amendment 8 and to speak to both amendments, following which I will invite contributions from members before I invite the minister to wind up.

**The Deputy Minister for Rural Development (Rhona Brankin):** The Executive's amendments 8 and 9 apply specifically to the sections that will be inserted into the Salmon Act 1986 as sections 10C(2) and 10C(3)(b). The effect of the amendments is to apply the whole of section 19 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 to offences against regulations made under the Salmon Conservation (Scotland) Bill. That means that, where a person has been found guilty of a breach of any regulation made under section 10A, any fish caught, any instrument used in catching it and any vehicle or boat used in committing the offence may be seized and a court may decide that they should be forfeited.

It is important that I emphasise that those provisions are entirely consistent with current legislation on salmon fishing offences. The amendments merely ensure that where a regulation made under section 10A has been breached, the courts have access to the range of penalties already available where a person has been convicted of an offence against the salmon fisheries legislation.

I move amendment 8.

**The Convener:** If no one else wishes to comment on the two amendments, and if the minister does not wish to make a winding-up contribution, I will put the questions.

*Amendment 8 agreed to.*

*Amendment 9 moved—[Rhona Brankin]—and agreed to.*

**The Convener:** Amendment 24, in the name of Alex Fergusson, is grouped with amendment 25, in the name of Mr Jamie McGrigor. Before asking

Mr Fergusson to speak to and move amendment 24, I should point out to members that, although his amendment does not technically pre-empt amendment 25, members may wish to consider them as alternatives.

**Alex Fergusson (South of Scotland) (Con):** Much of the evidence that the committee received on this bill demonstrated considerable concern over the lack of time limitation for any regulations that are empowered under the bill. My amendment demands a robust commitment to time limitation. I feel, as do many others, that there is a distinct lack of commitment in the bill to a time limitation on regulations. That is despite Rhona Brankin's commitment during the stage 1 debate in the chamber, when she said:

"Whether regulations controlling exploitation are made in response to an application or on the ministers' initiative, the intention is to make them time-limited."—[*Official Report*, 23 November 2000; Vol 9, c 337.]

Such a commitment is lacking in the bill.

Another strong piece of evidence that we received was to the effect that each river is an entity on its own. To my mind, changing conditions on individual rivers demand that all regulations should be subject to review—precisely because of the individuality of the rivers. Having a review does not mean scrapping effective regulations; it merely means monitoring their effectiveness. The minister referred to effective monitoring in her evidence to the Rural Affairs Committee on 7 November.

My amendment requests an annual review of regulations that are enforced under the bill. I hope that the committee will see that not simply as more work to be done but as an effective way of monitoring the regulations and keeping them alive. I believe that allowing for such reviews would strengthen the bill.

This is an enabling bill and therefore part of a larger picture. The Executive has suggested that annual reviews should not be burdensome but part of a continuing process to create effective measures for the conservation of salmon. That is what the bill is all about. I believe that my amendment underlines that process. I hope that the minister will look on it favourably.

Amendment 25, in the name of my colleague Jamie McGrigor, offers an alternative to my amendment. I think that we are both trying to achieve the same thing. I do not wish to comment in detail on Mr McGrigor's amendment because he will do so himself. The convener is right to suggest that the two amendments are alternatives. It would be a mockery if both were passed. What concerns me about Mr McGrigor's amendment is its either/or nature. I expect that he will comment on that. My amendment adds robustness to the bill—a robustness that, as many people have pointed

out, is badly needed.

I move amendment 24.

**Mr Jamie McGrigor (Highlands and Islands) (Con):** I must declare an interest in fisheries—the same interest that I have declared before. Is that good enough?

**The Convener:** You may wish to give us some brief details.

**Mr McGrigor:** I have an owning share in a fishing syndicate on the River Awe in Argyllshire. I am a member of the Atlantic Salmon Trust, chairman of the Loch Awe Improvement Association and a trustee of the Awe Fisheries Trust.

The purpose of my amendment is to ensure, and make it clear, that ministers have the power to make regulations that will remain in force for a period specified in the regulations, but without interfering with the power to make regulations without limit of time when that is thought to be appropriate. I am doing this because there is confusion and uncertainty about how the Salmon Conservation (Scotland) Bill provides that a regulation can be made for a limited period only.

At an earlier stage, it was suggested that imposing a time limit was covered by section 10D(2)(a):

"regulations may make . . . provision . . . in relation to . . . any time or season".

However, I understand that the considered view now is that those words relate only to the period of time—the months, weeks, days or hours—within each year during which the specified prohibition applies, for example, requiring catch and release before or after such-and-such a date.

None the less, I understand that the Executive has indicated that it will be possible to make time-limited regulations under section 10A, and that the authority for doing so comes from the Interpretation Act 1978, which provides that a power to make regulations includes, without any need for specific mention, the related power to revoke, amend or review such regulations. It is said that because ministers have powers to revoke a regulation, it can be inferred that they have a power to specify in the regulation that it will cease to have effect on such-and-such a date, for example, three years after it comes into force. That would be a form of revocation in advance.

I am nervous about that inference, unless there is ample, clear and authoritative precedent for relying upon it. This nervousness is reinforced by suggestions that, in the past, the Scottish Office implied that some regulations or orders could not be time limited from the outset. It was said that the way to limit them was to revoke them in due

course, whenever that was appropriate. That would not be enough for this bill.

The committee and the minister were all agreed that it was essential that regulations should be capable of being time limited from the outset. My amendment is intended to put the matter beyond doubt by expressly providing in section 10D(2) that regulations can be made for a specified period or without limit of time.

**The Convener:** We now have an opportunity for contributions from the floor.

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I am puzzled by the amendments that we are discussing, because they seem to be opposites. The problem that I have with Alex Fergusson's amendment is that it says:

"Scottish Ministers shall review those regulations not less than once a year during that period".

I am not sure that it is appropriate that an annual review take place.

I also am not sure about the intention behind Jamie McGrigor's amendment, despite what he said. I would like some clarification.

**The Convener:** Can you provide clarification, Jamie?

**Mr McGrigor:** Yes. Does Mr Rumbles wish examples of regulations that would not be time limited?

**Mr Rumbles:** Yes.

**Mr McGrigor:** Examples would be regulations for the collection of information by fishery boards, or the banning of the sale of rod-caught fish, which has been mentioned. We would not want to have to review those regulations every year or couple of years. The process would be too complicated.

**Mr Rumbles:** We cannot accept both amendments 24 and 25, can we?

14:15

**The Convener:** The reason that one amendment is not deemed to pre-empt the other is that they amend different parts of the bill. Technically, there is nothing to stop us approving both of them, although that would leave confusion, which would require to be tidied up later.

**Alex Fergusson:** I wish to answer Mike Rumbles's point. My amendment seeks to achieve an annual justification for the continuance of an order made under this bill. That adds robustness—pure and simple—to the bill. I hope that that is all the explanation that Mike requires. Had he been listening more closely to my arguments, he might not have had to ask his question.

**Mr Rumbles:** Alex Fergusson has still not

persuaded me.

**Mr McGrigor:** My point is that some regulations may appropriately be time limited, while others may not. If things kept having to be reviewed, the pressure of work would be enormous.

**Mr John Munro (Ross, Skye and Inverness West) (LD):** I get rather confused between amendments 24 and 25. I do not know what the end result would be if both were accepted.

**The Convener:** The end result would probably be a further amendment at stage 3.

**Mr Munro:** Mr Fergusson's suggestion is that we should have a review of the regulations at least once a year. That would be impossible, and would not give any credibility to the regulations, or to the bill, when it is approved. Most people would be of the opinion that it was possible to change the act, if this bill is passed, after it had been in force for a year. I do not think that that would do anything towards the bill's purpose, namely, salmon conservation.

I suggest that Mr McGrigor's amendment is not quite specific enough. It refers to

"time specified in the regulations".

That could be anything, but the amendment goes on to say

"or without limitation of time."

The two contradict each other. For that reason alone, I would not be happy to support amendment 25. If Mr McGrigor is suggesting that the regulations contained in the bill as introduced—and, eventually, as passed—would exist "without limitation of time", I would be happy to support that.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** On the time limits, it may be useful to point out that the committee, at paragraph 46 of its stage 1 report, considered the issue carefully. The conclusion reached by this committee was that we were

"pleased that the Executive has provided for such time limiting measures. However, we ask that they consider spelling out this provision more clearly on the face of the Bill in order to avoid confusion."

It would seem sensible to eliminate any possible source of confusion, simply from the point of view of efficacious legislative drafting. It does not seem that the provisions of section 10D(2)(a) are clear enough.

I am not certain whether the two amendments before us achieve that objective, although Jamie McGrigor's amendment postulates two clear alternatives: a time-limited or an open-ended regulation. I would be interested to hear what the minister has to say in response to the more

substantive elements. If there is a need to make every regulation time limited, that may lead to there being an unnecessary consultation process, which, as far as I understand, would be triggered by every review—that may not be entirely desirable or necessary.

**Dr Elaine Murray (Dumfries) (Lab):** I recall the concern voiced about time limitation; people in my constituency spoke to me about it. However, I do not recall the committee deciding that time limitation should be specified in the bill, as opposed to in the policy memorandum. Although there is a very strong case that some regulations should be time limited, Jamie McGrigor makes a good point that it is perhaps not necessary for every regulation to be time limited. As Fergus Ewing has pointed out, imposing time limits on every regulation might tie the Executive up in unnecessary consultation and bureaucracy.

Although it might be explained a little more clearly, the point behind Jamie McGrigor's amendment is actually covered in the bill, which deals with the possibility of both indefinite and time-limited regulations. We should also point out the fact that Parliament has the power to revoke any regulation, if necessary.

**Rhoda Grant (Highlands and Islands) (Lab):** I have several concerns about Alex Fergusson's amendment, because it says that the regulations should be reviewed

"not less than once a year".

Many of the district salmon fishery boards would be concerned about completing a review and sending it on to Scottish ministers to be lodged with the Parliament. I hope that district salmon fishery boards, and indeed Scottish ministers, will regularly review their policies; however, putting such a requirement into legislation would create a lot of bureaucracy for people working in the field.

**The Convener:** If there are no further contributions, I invite the minister to reply to the debate.

**Rhona Brankin:** Obviously the issue at stake is time limitation. Alex Fergusson's amendment seeks to ensure that the requirement for regulations to be time limited and subject to annual review is included in the bill, whereas Jamie McGrigor's amendment stipulates that the measures introduced by regulations should be for a specified time or have no time limit.

Although both amendments are well intentioned, Alex Fergusson's amendment would require all regulations to be time limited. That might be inappropriate in certain cases, for example, in relation to requirements to provide information. Section 10D(2)(a) already provides for time limitation if appropriate. Furthermore, any

regulation made under this bill—as with regulations made under any acts of the Scottish Parliament—may be revoked, amended or re-enacted. For that reason, Jamie McGrigor's amendment is simply unnecessary. It is clear that all regulations made under the bill may be time limited. However, it is up to the details of any proposed regulations to determine the optimum time for maintaining any conservation measures imposed by those regulations, and any such details will be subject to rigorous local consultation before the regulations are made.

As for reviews, I expect that applicants will be the first to keep a check on the effects of their own measures on conserving salmon stocks and sustaining their fisheries. As Rhoda Grant pointed out, they—not Scottish ministers—are surely best placed to know the right time for relaxing restrictions in the light of evidence that such measures are no longer required. We would assist in that process through the provision of scientific support to river managers from our scientists at the freshwater fisheries laboratory.

In the light of those comments, I trust that Alex Fergusson and Jamie McGrigor will feel able to withdraw their amendments.

**Alex Fergusson:** I thank committee members and the minister for their comments on an important part of the bill. I do not accept John Farquhar Munro's comment that my amendment would do nothing for the bill. The amendment will strengthen the bill by keeping the regulations alive and regularly at the top of the agenda. That must happen if this bill is to do anything about salmon conservation.

I am slightly disturbed by the minister's reassurances that regulations "may be" time limited. Although I appreciate that that is the wording in the bill, the phrase is not robust enough for such an important part of the legislation. However, I accept what the feeling of the committee is and, given the possibility of revisiting this question at stage 3, I seek leave to withdraw amendment 24.

*Amendment 24, by agreement, withdrawn.*

*Amendment 25 moved—[Mr McGrigor].*

**The Convener:** The question is, that amendment 25 be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Fergusson, Alex (South of Scotland) (Con)  
Johnstone, Alex (North-East Scotland) (Con)

**AGAINST**

Grant, Rhoda (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)



Munro, Mr John (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine)  
 (LD)

#### ABSTENTIONS

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)  
 Lochhead, Richard (North-East Scotland) (SNP)

**The Convener:** The result of the division is: For 2, Against 6, Abstentions 3.

*Amendment 25 disagreed to.*

**The Convener:** Amendment 26 is in the name of Jamie McGrigor.

**Mr McGrigor:** The view that was expressed by the minister at stage 1, that

“there is no intention to exercise the power in a way that would deprive anyone of property”,—[*Official Report, Rural Affairs Committee*, 7 November 2000; c. 1298.]

is wrong. Catch and release would deprive a person of property in the form of the fish that he has the exclusive right of catching and would diminish the heritable value of his fishing property. It should be borne in mind that fisheries are the means by which district salmon fishery boards are financed.

The view that was expressed by the rural affairs department, that the existence of the judicial review process means that the bill complies with the European convention on human rights, is astonishing. The validity of the bill does not depend on the way in which the Executive proposes to exercise the powers that are being sought, nor on the existence of a process that is designed to cure its invalidity.

Nevertheless, it may have to be accepted that the bill in its present form has been determined as valid in law until it is held to be invalid, as I believe it will be. If the proposed amendment is unacceptable for that reason, it should be justified on the ground that exercising any power that diminishes the value of a private heritable right in the public interest but without compensation is unfair.

An obvious example of such diminution is the introduction of catch and release to a time-share property, which has been bought by someone who then discovers that it is worth much less because of catch and release or some other measure. Of course any restriction that is designed to reduce the number of fish that are killed on a beat diminishes the value of the beat.

It would be wrong for a minister to make a regulation that provides for compensation if the bill does not specify that they have the power to do so. In England, the Water Resources Act 1991, which entitles the Government to confirm and

exercise certain specific powers to restrict fishing, contains provisions for compensation in respect of the exercise of certain of those powers. The Salmon Conservation (Scotland) Bill contains no such provisions.

I move amendment 26.

**Mr Rumbles:** If I heard Jamie McGrigor correctly—and I may not have done—he made the interesting claim that salmon are the property of the proprietors of beats. That is an amazing suggestion. The important distinction to draw is that the bill does not deprive anyone of property; it introduces power to make regulations in the interests of conserving salmon. Jamie McGrigor is completely wrong. I will not support his amendment. Nor, I hope, will other members.

14:30

**Dr Murray:** Like Mike Rumbles, I am puzzled by the reference to fish being private property, given that wild fish swim up from the ocean through a number of beats. Who knows whose property the fish are at any particular time? I find unusual the concept that these wild creatures are the property of those who have the right to catch them.

The purpose of the bill is the conservation of salmon stocks. In general, ministers will make regulations after applications by district salmon fishery boards, which represent the interests of people with heritable rights to fish. It is not as if the minister will impose on a fishery a requirement that has not been requested by the fishery board in the first instance.

**Fergus Ewing:** I have no hesitation in opposing amendment 26 for the following reasons.

First, neither the state nor the Government would deprive an owner of the right to fish. That decision would not be taken by the Government; it would be taken following an application submitted by a district salmon fishery board or, possibly, by others. The application is not made by the Government—it is made to the Government.

Secondly, the idea that fish belong to landowners is totally wrong. Castles and landed estates may belong to landowners, but the right to fish salmon is a heritable right under Scottish law, as the minister pointed out at our previous meeting, although trout fishing is not. Therefore, we are talking about the right to fish.

Thirdly, I find it frankly surprising that a Conservative should argue for compensation to be paid to some of the richest individuals in Scotland, when no compensation at all is paid to scallop fishermen, for example. Some scallop fishermen lost their livelihoods because of the incidence of amnesic shellfish poisoning. A further example is the potential loss of livelihood for those who fish in

the North sea and on the west coast, who will receive no compensation should their livelihoods be affected over the next 12 months, which may happen.

The idea that the Conservatives should argue that the wealthiest landowners in the country should receive compensation as a priority, while scallop and other ordinary fishermen who struggle to survive and avoid bankruptcy should not, is utterly preposterous and wholly unpersuasive.

For those reasons—and for others—I oppose the proposal in amendment 26.

**Mr Munro:** Mr McGrigor made an excellent case for the proprietors, although I do not subscribe to it. The bill does not suggest removing heritable property from the proprietors. It seems strangely anomalous for Mr McGrigor to argue that someone who returns a fish to the river, having caught it with a rod and line, is depriving the proprietor of the fishery of income or benefit. I do not accept that proposition at all.

For many years, proprietors who have had an interest in salmon fishing have made a handsome income from that benefit. I think of the Crown Estate, people who had barony titles to the foreshore and the estate proprietors around the coast who regularly rented the net fishings on the shore to different people. They took huge annual rents for that. Now those proprietors are telling us that we should protect their interest in the river fishings that they currently own. They are as guilty as anybody of depletion of the salmon stocks. I would be happy to support anything that we can do through the bill to ensure that the salmon fisheries, especially on our rivers, are protected and enhanced. Amendment 26 does not fill me with enthusiasm; I am strongly opposed to it.

**Richard Lochhead (North-East Scotland) (SNP):** Most of the points that I was going to make have been eloquently covered by others.

Jamie McGrigor's concentration on the position of time-share owners is most bizarre. In amendment 26, he mentions compensation

"in respect of any damage caused to any heritable interest",

such as the right to fish—which is a sport. Should rich time-share owners not be able to participate in their sport, Jamie McGrigor suggests that they should be compensated. That is outrageous, given that livelihoods are not at stake.

**Alex Fergusson:** I would like to dispel that impression to a degree. Jamie McGrigor's remarks have been taken out of context. The impression is being given that fishing rights belong to a small number of the landed gentry—whoever they might be.

I should have declared an interest at the start of

the debate, as I own a short section of river in south Ayrshire. It is unfishable; no fish were caught from it in the past season. The fishing rights on the upper reaches of that river, on which I used to live, mostly belong to a collection of small family farmers whose income—as the committee knows—is stretched to the n<sup>th</sup> degree. That income was supplemented, to a very small degree, by letting day tickets or by letting angling to the angling clubs. Those are the people whose incomes would be affected by the measures in the bill. Not all fishings belong to large and wealthy landowners. A considerable amount of it belongs to individuals who are not wealthy and who use that asset to supplement their income.

**Rhona Brankin:** The amendment is about compensation. Jamie McGrigor pursued the issue at stage 1. It has been a non-issue for everyone else, including the vast majority of those who responded to the consultation exercise. I am not sure why and in what circumstances, other than the one that he cited, Jamie McGrigor feels that compensation should be made payable.

For the avoidance of doubt, I will repeat that the bill does not deprive anyone of property. It merely introduces a power to make regulations in the interest of the conservation of salmon. Wild fish are not private property; they are a natural resource. Regulations cannot deprive anyone of property rights in wild salmon because no one has those rights. The bill provides power to make regulations that may control the use of the right to fish. Control of the use of property is permissible under paragraph 2 of article 1 of protocol 1 of the European convention on human rights.

In cases of control of use, there is no presumption in favour of compensation. In exercising the new power in a manner that controls the use of property, ministers must have regard to the balance of interest, including whether, in the absence of compensation, a fair balance is struck by any proposed measure.

The best illustration of that is to consider the compensation measures that are currently in place by voluntary means and by regulation. Under sections 6 and 8 of the Salmon Act 1986, district salmon fishery boards can apply to Scottish ministers to put in place regulations that restrict the type of baits or lures to be used or to alter the annual close times of a fishery. Those are essentially conservation measures and have been introduced to protect wild fish. No compensation is payable in such circumstances and I understand that no one has ever claimed that it should be.

The power to make regulations that will be introduced by the bill is also in the interest of salmon conservation. It could be argued that we are putting in place mechanisms that will ensure the future of the fish. If we protect the fish, the

proprietors will continue to have fisheries and therefore viable business interests; as I said last week, there can be no fisheries without fish.

I trust that Jamie McGrigor is reassured that the absence of compensation is one of the factors that we must take account of when we determine whether a fair balance has been struck between public interests 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 interest, including whether, in the absence of compensation, any proposed measure strikes the right balance. On that point, I hope that Jamie McGrigor will consider withdrawing his amendment.

**Mr McGrigor:** I certainly agree with Fergus Ewing about the scallop situation. Furthermore, I agree with Alex Fergusson's comment that fisheries are not all owned by rich time-share owners or landowners. Many farmers rely on them as a supplement to their dwindling incomes. Regulations on catch and release and bag limits can reduce the number of people who want to rent fishings. Indeed, in a good many places, that figure has been reduced by 50 per cent, which means that income falls by 50 per cent and there is no money to fund the fishery boards. That is why I have suggested compensation; I am not trying to fill the pockets of rich men. However, in light of what I have heard, I am quite prepared to withdraw the amendment.

*Amendment 26, by agreement, withdrawn.*

**The Convener:** I invite Jamie McGrigor to speak to and move amendment 27, which is in a group of its own.

**Mr McGrigor:** I will explain why I do not wish to move the amendment. I was hoping to argue that the regulations should be restricted to catch and release and bag limits. However, I received an e-mail today from someone conducting a fishery experiment on a river in the north-west. Apparently the success of my amendment might be detrimental to his experiment, which takes fish from a river system and puts them into tanks for hatchery purposes.

*Amendment 27 not moved.*

**The Convener:** We now come to amendment 28, in the name of Jamie McGrigor, which has been grouped with amendment 15. I should point out that if amendment 28 is agreed to, amendment 15 would be pre-empted and could not be called. I invite Jamie McGrigor to move amendment 28 and speak to amendment 15.

**Mr McGrigor:** I believe that Mike Rumbles will speak to amendment 15.

The only consultation document that appeared before the bill was introduced was a letter dated 5

June, titled "Conservation of Salmon and Sea Trout". The bill relates to that. If the consultation document is to be given effect, the power to make regulations or orders must be confined to cases of emergency. There has never previously been a proposal for the Executive to be given a general, unlimited power to introduce restrictions other than those for which a need has been assessed by the individual district salmon fishery boards in their respective catchment areas, or that are required in an emergency.

14:45

I am sure that every organisation and person with any experience of fishing in Scotland agrees that the Executive should not have such a general power. The Executive in England neither has that power nor seeks it. As far as I am aware, nowhere in the world is there a commercial or recreational activity based on the exercise of purely private rights that is subject to regulation by an executive in such general terms.

I move amendment 28.

**Mr Rumbles:** I urge members to reject amendment 28; if it is not rejected, amendment 15 falls. I would say this, but I believe amendment 15 to be far more reasonable than amendment 28. It is straightforward; simply put, it seeks assurances. Everybody is aware that a district salmon fishery board can apply for regulations from ministers, but so can anybody else. In cases where it is not a board that makes such an application, it would be common sense for the Executive to consult district boards, but I would like that to be specified in the bill. It is only right to have a specific requirement for ministers to consult the relevant district salmon fishery board if the application does not come from the board itself, to avoid a possible conflict. That is the wish of many district salmon fishery boards—the Association of Salmon Fishery Boards takes the same view.

Amendment 15 merely requires the Scottish Executive to do what it has already said it will do—but to put it in legislation. I think that it is perfectly reasonable.

**Dr Murray:** There are a number of problems with amendment 28. One is that it specifies that regulations can

"be made only . . . in an emergency."

We then have to determine the definition of an emergency.

The majority of the applications will be made by district salmon fishery boards or by people with an interest in fishing in the area. Jamie McGrigor is alluding to power on the part of ministers to force regulation on unwilling district salmon fishery boards. That is the wrong way round. Most

applications will be made by individuals. They will make their case, and the application will be required to undergo a process of consultation. Amendment 28 restricts the legislation unnecessarily, and runs contrary to some of its principles.

I want to clarify my understanding of the Salmon Act 1986, which the bill amends. My understanding is that any applicant seeking a regulatory order has a duty under the 1986 act to undergo a consultation process with a number of requirements—for example, to advertise in a local newspaper. As would be required of a district salmon fishery board, anybody else who was seeking a regulatory order would be forced to consult. I would have thought that, if someone else were making the application, the district salmon fishery board would, as a matter of course, be one of the consultees.

**Mr Duncan Hamilton (Highlands and Islands) (SNP):** I agree entirely with Elaine Murray about amendment 28. It is far too restrictive and runs contrary to what the bill is trying to achieve. I, too, am concerned about the definition of emergency. The amendment would lead to a great deal of confusion rather than clarity—which, I presume, is what amendments are meant to lead to.

Mike Rumbles said that amendment 15 is perfectly reasonable. That is true: it is almost impossible to disagree with the proposition that the district salmon fishery boards should be consulted. However, I struggle to imagine a situation in which they would not be consulted. It might be useful if Mike could describe when a district salmon fishery board would not be included. I would have thought that including the board in a consultation was obvious and necessary. In other words, I feel that amendment 15, although perfectly reasonable, is perhaps unnecessary.

**The Convener:** Do you wish to reply to that, Mr Rumbles?

**Mr Rumbles:** I will reply at the end.

**The Convener:** Jamie McGrigor will make the winding-up speech.

**Mr Rumbles:** My point is that there is no requirement for consultation in the regulations as they stand. District salmon fishery boards are worried that, although the present Executive has made it clear that it will consult, future Executives of whatever persuasion will be under no legal requirement to do so.

**Mr Hamilton:** I think that everyone accepts that that is true; but Mr Rumbles has not yet described a situation in which the fishery boards would not be included in consultation. Why is the amendment necessary? The moment we create an exclusive list—and it would be exactly that—we

run into the problem of who says it should contain only the bodies to which Mr Rumbles has referred. That could lead to the creation of a hierarchy, which would not necessarily be helpful. I take Mr Rumbles's point that it is crucial to consult the fishery boards, but I fail to see why a special dispensation must be written into the bill.

**Rhoda Grant:** Many of the points that I wanted to make have been made. I would add only that I do not think that amendment 15 is necessary, because new section 10A(4) covers it by saying:

“Scottish Ministers shall have regard to any representations made to them by any person having an interest in fishing”.

It would be difficult to argue that the fishery boards did not have an interest in fishing. I agree that they should be consulted, but I think that the point is covered in the bill.

**Fergus Ewing:** I support what Rhoda Grant and Elaine Murray have said. New section 10A(4) sets out a duty to consult

“any person having an interest in fishing”.

That must, by definition, include the district fishery boards. I most certainly agree with Mike Rumbles that the boards should be consulted, but I would find it extraordinary if Scottish ministers, even under the existing provisions of paragraph 3 of schedule 1 to the Salmon Act 1986, declined to consult the boards. Perhaps the minister will talk about that. I am not persuaded that such an amendment is necessary, although I support the spirit of it.

I would point out to Jamie McGrigor that, with an 85 per cent decline in salmon and trout stocks over the past 40 years, we are in an emergency. However, I agree with him on one point: I am not aware of any statutory definition of an emergency. One person's emergency could be another person's matter of routine.

**Rhona Brankin:** Jamie McGrigor has explained that amendment 28 is designed to allow ministers to make regulations in response to an emergency, as advocated in the report of the Scottish salmon strategy task force. However, in emergencies in which necessity or expediency has arisen, the amendment restricts ministers' ability to make regulations in the absence of an application.

Amendment 28 also removes the thorough consultation procedures that must precede the making of regulations in all other circumstances. Those are the very consultation procedures on which the bodies that represent anglers and the owners of fishing rights sought my assurance, asking that they remain in place. Perversely, the amendment would, in effect, sweep aside consultation, allowing ministers to act first and consult later. Some may see that as an attractive

option, but I believe that it would bring with it many problems.

Amendment 28 does not define what would constitute an emergency. It is also not clear who would judge that an emergency should be declared and on what criteria that judgment would be based. In fact, the amendment would give ministers an unfettered power to act as they wish, introducing democratic processes only after restrictions had been imposed. What would happen when such measures were deemed to have been inappropriate? Those whose interests had been affected would have every right to feel aggrieved. I cannot envisage circumstances in which ministers would need power of that nature. Unforeseen events, such as a landslide blocking a river channel, can be dealt with by boards under section 16 of the Salmon Act 1986.

The conservation measures introduced under the bill should be the product of careful proposals based on proper assessments of the best available scientific advice and of their likely socio-economic impact. Neither boards nor ministers should ever be taken unawares by events to the extent that they would need the drastic power that amendment 28 would introduce. However, as I explained to the committee during stage 1 consideration of the bill, it is essential that ministers should have the power to initiate measures when a board is not prepared to make an application.

To put things into perspective, I will give the committee an example. Out of 52 boards, only 18 have taken advantage of the Salmon Act 1986 to have regulations made on baits and lures. Several of the remaining 34 boards have voluntary bans in place, as part of a conservation code. The problem with that is that if one recalcitrant proprietor breaks the code, the efforts of all the others will be undermined. Many boards find it difficult to secure agreement to apply for restrictions. That is where ministers can step in.

Ministers also require a power for those parts of the country where no district salmon fishery boards have been formed, but where alternative fishery management structures exist. The River Clyde Fisheries Management Trust is a partnership of 17 angling clubs. If it wants to implement conservation measures, it will present its case to ministers. Why should it be denied access to what it needs to manage a fishery that is enjoyed by thousands of anglers in the central belt, just because it is not a district salmon fishery board?

Two further examples illustrate the need for ministers to have the power. In its response to the consultation, the Association of Salmon Fishery Boards asked that the bill include provision to ban the sale of rod-caught salmon. If we were forced to

rely on applications to make regulations, that would mean making 52 sets of regulations—and still parts of the country would not be covered.

The information provisions in the bill will require Scotland-wide regulations. We need a back-up power so that we can step in where salmon are under threat, as well as power to apply regulations throughout Scotland. Full consultation will be part of that process. The stages of consultation set out in schedule 1 of the Salmon Act 1986 will apply to the making of regulations under the bill.

In response to amendment 15, I would like to take some time to outline those stages. All those likely to be affected by proposed regulations must be consulted by ministers at an early stage. That is the case whether ministers receive an application, or whether they are themselves thinking of making regulations. Ministers can ask for the applicant to submit additional information, dismiss the application or proceed to the next phase.

The next phase requires the applicants or ministers to advertise the general effect of their proposals at least once in two successive weeks in a newspaper circulating in the district or districts to be affected. At any time, Scottish ministers may change the proposals or consider whether any changes require further consultation or further advertisement by the applicants. If no representations or objections are made or if any that have been made are withdrawn, Scottish ministers may make the regulations. If any representations or objections are not withdrawn, Scottish ministers may, after considering them, make the regulations, dismiss the application or cause a local inquiry to be held. Against that background, it is inconceivable that we would not consult a board if a regulation would affect it. I give my assurance on that point.

I reassure members that the ministers' power will be used very rarely. Nevertheless, that power is needed. I ask Jamie McGrigor and Mike Rumbles not to press their amendments. I understand what Mike Rumbles is saying and I know that concerns have been expressed to him.

If it is helpful, I will consider the matter with a view to introducing an amendment at stage 3. Technical deficiencies in amendment 15 mean that it should be rejected at this stage, but I will discuss the matter with a view to introducing an acceptable form of wording at stage 3. I hope that that reassures members. I ask members to reject both amendments.

15:00

**Mr McGrigor:** On the subject of emergencies, what worries me is new section 10A(3)(b). The consultation requirement is applied only by

existing section 10D(4). Replacing that will remove any reference to consultation for regulations that are made using the “otherwise” provision of new section 10A(3)(b). The effect of that is to restrict ministers’ use of the “otherwise” provision to emergencies only; but when there is an emergency, it gives them greater power to act immediately.

The minister asked what kind of emergency there could be. I can think of several scenarios: an outbreak of infectious salmon anaemia, an infestation of *Gyrodactylus salaris*, or a huge escape from a fish farm, in which thousands of farm fish were swimming about in the bay, threatening to swim up river and dilute the gene pool. In such cases, one would have to make decisions overnight without first consulting boards. Obviously, the minister would have to speak to boards at the time, but someone would have to be able to make a decision quickly. That is what amendment 28 seeks to achieve.

Amendment 28 also addresses the fact that the powers of the “otherwise” section are far too wide. The minister has said that those powers would be used only in an emergency. I take that on board. What worries me is how long she will be the minister and what will happen in 20 years’ time when there is another minister. Is there any guarantee of what that minister will say?

**Rhona Brankin:** I may still be the minister in 20 years’ time.

**Mr McGrigor:** I seek leave to withdraw the amendment, with the proviso that I may reintroduce it at stage 3.

**The Convener:** No one will stop you doing that.

*Amendment 28, by agreement, withdrawn.*

**Mr Rumbles:** In view of the fact that the minister has given a clear reassurance on the issue, and that she has said that it would be inconceivable that boards would not be consulted and that she will review the Executive’s position for stage 3, I will not move amendment 15.

*Amendment 15 not moved.*

**The Convener:** I invite Fergus Ewing to move amendment 16.

**Fergus Ewing:** Amendment 16 would establish a commission on salmon mortality, which would enable advice to be provided to Scottish ministers on causes of freshwater and marine salmon mortality. The amendment has been drafted in a way that does not prescribe who should serve on the commission; it deliberately states that

“Scottish ministers shall consult such persons or bodies as they think fit”

before appointing persons to the commission. That

does not restrict the Executive on the membership of the commission, but simply acknowledges the need for such a body.

On 7 November, the minister drew attention to the scale of the problem that we face in salmon conservation. She pointed out that, in 1960, 1,443 tonnes of wild salmon were caught in Scotland; last year, that figure was 198 tonnes, which is an 85 per cent decline. That is close to wipe-out. The figures for sea trout were smaller, but no less alarming—there has been a decline of nearly 90 per cent from 224 to 36 tonnes. For every 10 wild salmon and trout that were swimming in our rivers in 1960, there is now only one. Why?

This bill is called the Salmon Conservation (Scotland) Bill. At the previous meeting, the minister lodged an amendment that would have limited the scope of section 1—although not of the overall bill—in relation to measures dealing with freshwater conservation. The commission that I propose will apply to both freshwater and marine mortality. Members who are interested in that point will perhaps argue that there should be other measures to preserve conservation in the marine phase.

I am also aware that the minister has said that the Conservation of Seals Act 1970 and the Wildlife and Countryside Act 1981 contain measures to deal with the predation of seals and the control of birds through shooting, subject to the issuing of licences in tightly controlled circumstances. Although I have no quarrel with that, I have questions about how widely those powers have been exercised and whether they should be exercised more widely. Alex Fergusson commented on that in the recent general debate on fishing and expressed the view that he was making a brave speech. I do not know whether my speech is as brave as his, but it is sincerely meant. The scale of the problem that the minister identified is so severe—and the evidence so overwhelming that the existing measures at the marine phase are insufficient—that it is abundantly clear that some action must be taken.

My proposals might be criticised as being too timid, as I have suggested a committee—I call it a commission—of experts with suitable experience to bring together advice about all the threats to salmon and trout. At stage 1, we heard evidence from Mr Walter Davidson of the Salmon Net Fishing Association, who said 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.”

Jane Wright, of the Scottish Anglers National Association, referred to the problem of sea lice and said that her organisation regarded the lice as

"predating on salmon and sea trout stocks, particularly on the west coast of Scotland north of the Clyde".

She went on to say:

"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."

According to my arithmetic, that is around four times the population that the Government in the 1950s regarded as healthy and sustainable. What has changed since then?

Mr Jeremy Read of the Atlantic Salmon Trust stated:

"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."

Mr Colin Innes of the Salmon and Trout Association endorsed the comments that I have just read, but also raised

"the issue of the north-east drift-nets, which remain a problem for the east coast of Scotland."—[*Official Report, Rural Affairs Committee*, 7 November 2000; c 1267-68.]

I am mindful of the remarks made by the Deputy Minister for Rural Development on 23 November, during the stage 1 debate in the chamber, when she stated:

"Drift nets were banned in Scotland in 1962, and that ban remains in force."—[*Official Report*, 23 November 2000; Vol 9, c 335.]

There has been no ban in England for 38 years. That seems an awful long time for appropriate representations to be made to Whitehall—obviously not long enough.

Let me return to the witnesses' evidence at the meeting on 7 November. Robert Williamson of the Association of Salmon Fishery Boards said that the association was

"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."—[*Official Report, Rural Affairs Committee*, 7 November 2000; c 1269.]

I am sorry to have quoted at such length, convener, but this seems to be a particularly important issue, which we should not duck, even if—or because—it is controversial. Given that all our witnesses said that the bill was insufficient, we should, I think, accept their evidence and take action.

Paragraph 19 of the committee's stage 1 report recommends

"that the Executive continue to undertake further research into all other causes of salmon mortality"—

not just into freshwater-phase causes, but into all causes. If we draw a distinction between the

freshwater phase and the marine phase, we are balkanising the problem; we are making an artificial distinction between two categories of the problem. The two phases must be considered together or, as I believe is the buzzword these days, holistically. I am not certain what that word means, but it seems to be popular, so I add my support to it—which probably means that it will not be used again.

The case seems to be put beyond any shadow or whisker of a doubt by Andrew Wallace of the Association of Salmon Fishery Boards, who, in a letter to the Scottish Executive rural affairs department dated August 2000, stated:

"The Association believes that many of the major drivers of salmon stock abundance are in the marine phase of the species' life-cycle and that further Government resources need to be applied to resolving these problems . . . 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 than would application by DSFBs of the enhanced powers covered within this consultation paper".

It is highly significant that the words "far greater benefit" were the only words to be underlined for emphasis in the whole of Mr Wallace's submission.

Amendment 16 is a modest provision. It would require advice on all possible causes of mortality. It seems not to involve any cost implications to the Executive, other than the attendance of people at meetings and, perhaps, the commissioning of research—I note that, in the stage 1 debate in the chamber, there was an assurance of

"extensive and detailed research . . . being carried out."—[*Official Report*, 23 November 2000; Vol 9, c 356.]

I hope that the amendment finds favour with the minister. If it does not, I would like to know what the Executive will do about the problem.

I move amendment 16.

**Des McNulty (Clydebank and Milngavie)**  
**(Lab):** A good deal of research work needs to be done—and is being done—on issues associated with salmon mortality, including many of the factors that Fergus Ewing mentioned. However, given the comments that he and other SNP members have made on quangos, I am surprised that he should propose establishing another one.

It does not make sense to set up a commission on salmon mortality. It makes absolute sense to take forward a research programme to which this committee and other interested parties can have access, once its findings have been made known. We would also like to have an input into the decisions on what kind of research should be done. I hope that the minister will indicate to us how we can do that. This is one of the twigs of the bonfire that we can light now before things are set

in stone.

15:15

**Dr Murray:** We have received a considerable amount of evidence on reasons for salmon mortality. Those need to be taken seriously. As Des McNulty says, the research needs to be done. From what the minister was saying, I understood that a fair amount of scientific advice was available. I hope that that is acted on.

I did not think that the amendment was all that controversial. It was not as extreme as I would have expected from Fergus Ewing—perhaps Richard Lochhead exercised a moderating influence. However, seeking to introduce a section into a bill via an amendment is an irregular way of setting up a commission. A commission could be set up through primary legislation but, as has happened with other commissions of inquiry, ministers could establish one without resorting to legislation.

**Mr Rumbles:** With all due respect to Fergus Ewing, I have to say that he is off on a tangent again. This issue was raised at stage 1, and I have no doubt that it will be raised again at stage 3.

The bill deals with the conservation of salmon in the freshwater phase of their lives. As Fergus Ewing has pointed out, there is clear evidence that most mortality occurs when salmon are at sea. In our stage 1 report we indicated—in Richard Lochhead's words, I believe—that there was scientific evidence of a problem with seals and that legislation was already in place to deal with that. If there is such a problem, the Executive should consider using that legislation.

As Des McNulty has said, the amendment would create another quango. Frankly, that is crackers. I hope that the committee will not agree to the amendment. I have no doubt that it will resurface at stage 3, but I hope that it will not get anywhere then either.

**Richard Lochhead:** I have only a few brief comments, as Fergus Ewing has covered most of the issues.

I welcome the amendment. Mike Rumbles is right to say that the bill is about conservation, but surely the best way of conserving salmon stocks is to stop salmon dying. We must investigate the causes of mortality. The amendment would place the focus on that issue, which is the recurring theme of the evidence that we have taken on the bill.

The bill presents us with a unique opportunity to address the issue of salmon mortality. If we fail to make use of that opportunity, the issue will simply not be addressed—just as it has not been addressed in the past. Something tells me that it

will be a long time before this Parliament returns to legislation on the protection of salmon. We must not waste this opportunity. I urge the committee to be innovative and to support the amendment.

**Alex Fergusson:** I have a great deal of sympathy with the thinking behind the amendment. In the stage 1 debate, I said that one of the weaknesses of the bill was that it stops where the problems really start. That is still the case.

None the less, like Elaine Murray, I feel that the bill is not the right place to establish a body, regardless of whether it is a quango, to look into the problems of marine life; as Mike Rumbles said, the bill deals with freshwater life and the problems of the salmonid population.

However, I hope that the Executive will take away the strong message—with which I think the whole committee agrees—that there are huge problems beyond the limitations of the bill, which must be tackled if salmon are to be successfully conserved.

**Mr McGrigor:** I agree with some of what Fergus Ewing said. We have to examine the nature of the problems and deal with them. Seven west coast fisheries trusts have been set up to look into inland problems; if they were better financed, they could look into marine problems as well. It is lack of money that prevents more research from being done into problems in the marine environment. If anything comes out of this discussion, I hope that it is that more research must take place on the marine environment.

**Mr Hamilton:** I support the amendment. I am confused about the logic of the argument against it, which seems to be that, although everyone agrees that the research needs to be done and that fingers are crossed that it is being done, we do not know that it is being done and the measure that would ensure that it was done is to be resisted. I do not understand that position.

Everyone seems to accept that the research is crucial. Fergus Ewing quoted figures from the 1950s of Government assessments of the acceptable seal population. Those figures may no longer be relevant, but I would like to have the best information available on an on-going basis. The amendment seeks to tackle what everyone accepts is the root of the problem. If the Executive is not minded to accept the amendment, it is incumbent on it to tell us what research is being done and why enshrining research on salmon mortality in the bill would be such a retrograde step. I would have thought that the bill was the obvious place for such a measure.

Finally, I wish to reiterate the point that Fergus Ewing made at considerable length, quoting the various pieces of evidence that the committee has



heard. If we are going to go to the bother of taking evidence, and if one of the recommendations from the vast majority of people who gave evidence was that more research needed to be done—and that the research that was being done was not enough, because if it was enough we would not be in this position—it would be a sign of respect for, and a logical progression from, that evidence to accept that a commission on salmon mortality should flow from the bill. For those reasons, I support the amendment.

**The Convener:** If there are no other comments from members, I invite the minister to respond to the debate.

**Rhona Brankin:** The amendment seeks to establish a commission to advise Scottish ministers on causes of freshwater and marine fish mortality. It is not clear to me what benefit would be gained from establishing such a commission, as the tasks that it would be given are already being addressed. We receive advice on these issues from the Fisheries Research Services, both from the freshwater fisheries laboratory and the marine laboratory in Aberdeen. Close co-operation between our FRS scientists and locally based fisheries biologists has been established by the development of the Scottish fisheries co-ordination centre, which is based at the freshwater fisheries laboratory. That initiative has enabled the development of means to gather information, collected to common standards, from around Scotland.

Ministers already receive advice from the Natural Environment Research Council—NERC, which sounds terrible, although at least it is not NERD—which is the statutory adviser on the status of seal populations and their management. NERC convenes a special committee on seals, so there is already a committee that deals with seals. The committee comprises specialists from NERC's sea mammal research unit, based at St Andrews, and international scientific experts. Policy decisions on seal management are based on that independent scientific advice. That advice underpinned action that was taken in 1998. For example, when the year-round protection for common seals in Shetland was lifted, scientific advice showed that the population was self-sustaining once again, having been severely affected by phocine distemper in the 1980s.

There is no doubt that many of the problems that salmon face are in the sea. Some of those problems relate to predation by, for example, seals. However, as I reminded the committee on 7 November and again on 12 December—Fergus Ewing also alluded to this—legislation already exists to allow fishermen to control seals that are causing damage to their fisheries. It is up to district salmon fishery boards to take advantage of that

legislation. Only five or six boards apply for licences each year. The legislation is permissive and it is up to the boards to take advantage of it.

On the effects of predation by birds such as sawbill ducks and cormorants, specialist advice is received from the Fisheries Research Services and the Scottish Agricultural Science Agency. In November 1998, the freshwater fisheries laboratory and the Institute of Terrestrial Ecology jointly produced the report "Fish-eating birds and Salmonids in Scotland".

The remit of a Scottish commission would be too narrow. The effects of the problems facing salmon are not confined to Scotland; they are seen in all the salmon-producing countries around the north Atlantic. Our scientists already work in the international arena, sharing and developing knowledge with fellow experts from other countries that are affected by the decline of salmon. FRS scientists are active members of the working group on north Atlantic salmon of the International Council for the Exploration of the Sea, where assessments of mortality are made so that fishery advice can be given.

The advice from the ICES advisory committee on fisheries management on the management of the southern European salmon stock complex—that group includes our salmon—was that, for sea-winter salmon, particularly multi-sea-winter salmon, reductions in exploitation rates are required for as many stocks as possible. The committee also said that management should be based on local assessments of the status of river stocks. That is entirely consistent with what we are trying to achieve in the bill.

Oceanographers and marine biologists at the marine laboratory in Aberdeen are examining the implications for fish, including salmon, of changes in the north Atlantic and the North sea. They are not working alone; they are working in collaboration with scientists from many other countries. Research is under way.

The amendment proposes measures that are beyond the scope of the bill, on issues that are being addressed elsewhere. I hope that Mr Ewing will decide to withdraw amendment 16.

**Fergus Ewing:** I listened with care to the minister's reply. I was aware of most of the bodies to which she referred and I had a basic understanding of their roles and functions. There seem to be too many bodies performing too many different functions separately. This may be a case of stronger together and weaker apart. If those bodies are so effective, why have the solutions that they suggest not worked? It seems obvious that more action is necessary. The current powers are inadequate.

Given the lack of support for the amendment,

however, I will ask the committee to allow me to withdraw it.

*Amendment 16, by agreement, withdrawn.*

*Section 1, as amended, agreed to.*

### After section 1

15:30

**The Convener:** I call Fergus Ewing to speak to amendment 17, which is in his name.

**Fergus Ewing:** It is incumbent on me to apologise to other members for the fact that they are hearing from me again so soon—such is life.

The amendment appears fairly technical, and I suppose that it is. It would amend the Salmon Act 1986 so that a report that was prepared under that act would

“include the roll prepared by the clerk under section 11(9)(a)”

of the act and would

“be published or otherwise made available to the public by the board”.

I will explain what that means. The aim of the amendment is clear—to provide the public with the right to receive information about who owns the rights to fish salmon in Scotland. I know that the Executive's response to the question “Who owns Scotland?” is that the public are entitled to know the answer in relation to heritable rights in land. If the Executive accepts that principle and is prepared to promote a bill on the issue, there should be no distinction between one form of heritable right and another. I expect that the Executive will also wish to support the notion that the public have a right to know who owns the right to fish salmon.

The idea is not revolutionary. Until the Conservatives abolished sporting rights on salmon fishings—I believe that that happened in the late 1980s or early 1990s—a public document used to be entered in the valuation roll, showing who was liable to pay non-domestic rates and giving details of salmon fishing rights. The valuation roll is still maintained for other business properties, but it no longer contains details of the owners of the fishing rights. I am no expert on this, so I stand to be corrected, but I am aware of no public record that shows who owns those rights in Scotland.

I would have thought that the owners of those rights would have no more objection to the disclosure of their ownership than they have to the general issue of access. I believe that the Scottish Landowners Federation has shown a progressive and modern attitude to such issues under the chairmanship of its new convener, Robert Balfour. Therefore, I do not believe that the issue should

be controversial or contentious.

I may have transgressed with my draftsmanship, but perhaps that could be corrected. I ask the minister to say whether she supports the general principle behind the amendment. Any technical imperfections for which I am responsible could be corrected later.

I move amendment 17.

**Richard Lochhead:** I support the amendment. It relates to amendment 11, which I moved last week, on making the membership of fishery boards publicly available. In recent months, I have lodged a series of parliamentary questions on this issue. I am fascinated at the staggering amount of information on private fisheries that is not publicly available. We do not know who owns our fisheries. We do not know what is owned privately or publicly. We have a new Scottish Parliament, and it is in the interests of transparency and democracy that such information can be easily accessed by the people of Scotland, not least by those who may wish to know who owns their local fisheries. That is absolutely imperative.

We are talking about our national heritage. The bill was introduced because our national Government is taking an interest in our national heritage and is taking national powers to intervene to conserve salmon. A recurring theme in the debate over land that is taking place in the Scottish Parliament is transparency. The Executive has pledged to make available as much information as possible about the ownership of Scotland's land, because the issue involves the national heritage. I would be surprised if a Labour-dominated Scottish Executive were to oppose the amendment. I cannot for the life of me see why anyone should oppose it and I urge members to support it.

**Mr Rumbles:** I would like to know what Fergus Ewing thinks the amendment has to do with the conservation of salmon. To respond to Richard Lochhead's points, I entirely agree with the sentiment behind the amendment, but would it not be more appropriate for that to be included in the land reform legislation that is to be presented next year?

**Dr Murray:** I am certainly sympathetic to the sentiment of the amendment. It is quite appropriate that the names of owners of heritable titles should be publicly available, but I understood that they were already registered and publicly available. We all want to progress to wider legislation on freshwater fisheries, and I think that amendment 17 may be jumping forward into the next piece of legislation that we are anticipating, rather than concentrating on this fairly narrow piece of legislation.

As Mike Rumbles says, the bill that we are

considering makes a specific amendment to salmon legislation for the sake of conservation. Desirable as it might be to progress to the regulation of freshwater fisheries, it is not appropriate to do so in this bill.

**Alex Fergusson:** It might surprise Richard Lochhead and Fergus Ewing to hear that I have absolutely no objection to the provisions of the amendment. However, as with the previous amendment, I think that it is in the wrong place. I do not know of any riparian owner or proprietor of fishings who has any desire that the knowledge of his ownership should be less than fully public. I am afraid that I think Fergus Ewing's three amendments are simply in the wrong place here and, on that ground alone, I cannot support this amendment.

**Rhona Brankin:** You will be relieved to hear that I shall be very brief. I agree with the members who have said that the bill is not the place for this amendment. Amendment 17 has nothing to do with the conservation of salmon. Indeed, it is difficult to understand why Fergus Ewing lodged it. I trust that he will feel able to withdraw his amendment.

**Fergus Ewing:** Some pointed questions have been asked, so answers will be provided. What has my amendment got to do with the conservation of salmon? Well, around a quarter of the salmon fishing rivers in Scotland have no boards. Where there are no boards, surely the first thing that needs to be done to conserve salmon is to find out who the owners are. How is conservation possible, unless the owners are known? A public register showing who the owners are is something that would achieve that.

In response to comments that this is the wrong occasion, the wrong place and the wrong time, I am mindful of the remarks of Alec Douglas-Home when he argued against the devolution bill in 1979 saying, "Let's have a better bill." We all know how long that took to sort out. As Mr Lochhead pointed out, this is our chance to sort things out. Let us take this chance now. Let us not wait until the next window in our already crowded parliamentary timetable.

If members agree—Elaine Murray and Alex Fergusson were kind enough to mention their support for the principle behind the amendment, although the minister was not—surely this is the opportunity to sort things out. There seems to be a certain legislative reticence in the committee, which I think is slightly unfortunate. Be that as it may, given that I do not expect to obtain a majority if I push it to a vote, I seek leave to withdraw the amendment today.

**Dr Murray:** I seek clarification about the registration of heritable titles. That information is

publicly available through the register of sasines, is it not?

**Fergus Ewing:** Information is available in the register of sasines, but at massive cost and only after complicated searches. I know because I spent 20 rather boring years involved in an occupation for which I received remuneration. I would not advocate that register as a means of obtaining information about who owns Scotland, unless you want to rid yourself of all your worldly goods.

*Amendment 17, by agreement, withdrawn.*

*Section 2 agreed to.*

## After section 2

**The Convener:** Amendment 18 is in the name of Fergus Ewing and is grouped on its own. For variety, Richard Lochhead will speak to and move the amendment.

**Richard Lochhead:** This amendment, which I support, gives the option to local authorities to take up voluntarily places on salmon fishery boards, so that they can contribute towards salmon conservation. It seeks to amend schedule 2 of the Salmon Act 1986, on membership. The Government wants to reflect a national interest in the conservation of salmon—that is one of the reasons this bill has been drafted—and it is imperative that local authorities are able to reflect local interest in the conservation of salmon. This amendment proposes one way in which we can ensure that.

Paragraph 7.16 of the Nickson report, which was published by the Scottish salmon strategy task force in 1997, states:

"Salmon fisheries contribute significantly to the local economy in many areas of Scotland, both through the income generated directly and the economic activity associated with ancillary services and industries. On the other hand, large-scale urban and rural developments and specific projects such as road and river engineering works can, unless sensitively planned and executed, adversely affect both salmon habitat and fisheries."

Mike Rumbles will be champing at the bit to ask me what that has to do with the conservation of salmon. That paragraph from the Nickson report sums up why local authorities should have representatives on salmon fishery boards, in the interests of conserving salmon.

Should this amendment be agreed to, that option would be voluntary. Local authorities would not have to take up those places on the boards, but they would be made available should they wish to do so. Some district salmon fishery boards already have councillors on them, in recognition of the fact that they have a useful role to play. Tay District Salmon Fishery Board contains a representative from Perth and Kinross Council, as

the board recognises the valuable contribution to conservation that can be made by having that representative there.

For all those reasons, I urge the committee to pass this amendment in the interests of the conservation of salmon.

I move amendment 18.

**Dr Murray:** I thought that there had already been an amendment of the legislation to ensure that local authorities were represented on district salmon fishery boards.

**Rhona Brankin:** I shall seek clarification on that.

**The Convener:** Are there any other questions?

**Mr Rumbles:** Is Elaine Murray's point correct?

**Rhona Brankin:** I am sorry, but I did not hear it. I was speaking to my adviser.

**Dr Murray:** I was under the impression that there had been a recent amendment to the legislation to ensure that local authorities were represented on the district salmon fishery boards.

**Rhona Brankin:** That is not a requirement. However, some boards contain local authority representatives.

**Mr Rumbles:** Is Elaine Murray saying that this amendment is unnecessary for that reason?

**Dr Murray:** I would have thought that it was unnecessary if that was happening anyway.

**Richard Lochhead:** My understanding is that fishery boards have the option to appoint whomever they wish. This amendment addresses specifically the role of local authorities and recognises the contribution that they can and should make to fishery boards.

**Fergus Ewing:** Various aspects of the control and management of rivers in which salmon and sea trout can be caught are governed by planning law. Therefore, local authorities have a direct interest. Without mentioning individual cases, I am aware from my constituency that there have been disputes over certain planning issues. It would seem sensible, as Elaine Murray perhaps suggested, for local authorities to have a direct role, in the hope that that might avoid, or at least minimise, the possibility of disputes arising in the first place. I would not expect all local authorities to take up a place. It might be argued that if every local authority took up its rights, an unwieldy result might ensue in some cases. Of course, that objection would be purely technical and could be accommodated by further refinement.

15:45

**Mr Rumbles:** I do not like the idea of off-the-cuff

legislation. Richard Lochhead's response shows that he is not clear.

**Richard Lochhead:** I am perfectly clear. This issue has been addressed before. In 1997, the Nickson report recommended that fishery boards should have a local authority representative on them. The issue has been considered in great detail. Fishery boards are able to co-opt whomever they wish, but if they do not decide to do so, local authorities do not have the right to be represented. That is why this amendment has been introduced.

**Mr Rumbles:** I do not think that this is how we should deal with legislation. We do not have all the information. If Richard Lochhead feels so strongly about this, we should become more informed and, if necessary, discuss it at stage 3 in the chamber.

**Richard Lochhead:** If Mike Rumbles does not believe what I say, I can read out the relevant section of the Salmon Act 1986.

**Dr Murray:** The legislation has been amended since then.

**Mr Hamilton:** It would be good if the minister, with the help of her officials, could clarify the situation.

**Rhona Brankin:** Amendment 18 as drafted refers to paragraph 6 of schedule 2 of the Salmon Act 1986 as it appeared before it was varied by the District Salmon Fishery Boards Order 1999 (SI 1999, No 1111 (S 90)). The amendment cannot be considered as the words that it seeks to amend no longer exist in the schedule. Nevertheless, I will make one or two comments on the matter.

This is another amendment calling for a change in the composition of district salmon fishery boards. It has nothing to do with the direct purpose of the bill, which is the conservation of salmon to ensure a long-term future for the salmon fishery. As I said on 12 December, consultation on issues relating to the structure of the management bodies that are established to look after the salmon and freshwater fisheries resources in Scotland was undertaken in a separate exercise, "Protecting and Promoting Scotland's Freshwater Fish and Fisheries: a review".

I note Mr Ewing's concern about the membership of district salmon fishery boards. However, boards are not as exclusive as they may appear to be at first sight. Not all members are proprietors, as representatives of tenant netmen and of anglers may be co-opted. There is no longer any need for balance between those two groups. The 1999 order has freed up the composition of boards. Proprietors remain in the majority, but it is they who provide the funds.

The new arrangements for board composition have already resulted in amalgamations of a

number of districts to form larger, more viable units. Although that approach to improve management was recommended by the Scottish salmon strategy task force, it was difficult to implement before the 1999 order was made because of the restrictive board membership arrangements that were in place then.

During the consultation process that preceded the making of the order, the views of local authorities throughout Scotland on whether they should be represented on boards were sought. All 32 councils were consulted. Replies were received from 10, of which only one said that local authority representation on boards should be mandatory. As we have heard today, many boards invite representatives from local authorities and other bodies such as the Scottish Environment Protection Agency and Scottish Natural Heritage to their meetings as observers or to give specialist advice.

I hope that Mr Lochhead will feel able to withdraw the amendment.

**Richard Lochhead:** I welcome the minister's comments. The Nickson report established the link between conservation and local authority membership of district boards. The report proves that point, which I support.

I welcome the minister's clarification of the legislation, which highlights the complexity of salmon legislation in Scotland, to which the minister referred several times during the stage 1 debate, as did members of all the political parties. I expect that that complexity has led to confusion among several organisations, even people who sent in submissions on the bill.

The issue involves democratising Scotland's privately owned fisheries. I welcome the consensus in the committee today that local authorities should, in principle, have access to and representation on district salmon fishery boards. In that spirit, I shall withdraw the amendment, to allow us to revisit the issue at stage 3.

*Amendment 18, by agreement, withdrawn.*

*Section 3 agreed to.*

*Long title agreed to.*

**The Convener:** We have a long agenda, so we have no time for a break, ladies and gentlemen.

## Subordinate Legislation

**The Convener:** We move now to item 3 on the agenda, which is to consider the Prohibition of Fishing with Multiple Trawls (No 2) (Scotland) Order 2000 (SSI 2000/405) under the negative procedure. Members will be aware that the original order met significant discussion. The No 2 order is a redraft of the original instrument. Do any members have comments?

**Richard Lochhead:** Given that the measure puts conservation of fish stocks at the top of the agenda, the committee should welcome it. The committee will have to discuss that issue in future. For that reason, it is imperative that we receive many more such orders as soon as possible, given the outcomes of the fishery talks last week.

**The Convener:** As there are no further comments, is it fair to say that the committee wishes to make no recommendations in its report to Parliament?

**Members indicated agreement.**

## Petition

**The Convener:** Item 4 is the report from the reporters who were appointed to consider the issues raised by petition PE96, on sea cage fish farming. A copy of the written report that was submitted has been circulated.

The committee considered the petition on 26 September, when it agreed to appoint John Munro and Richard Lochhead as reporters to consider the issues raised and the mechanisms and terms of reference for any inquiry into the environmental impact of sea cage fish farming. The reporters, along with Nora Radcliffe and Robin Harper from the Transport and the Environment Committee, have now reported. I invite John and Richard to make comments on the paper.

**Mr Munro:** The group met on more than one occasion. Last week it decided to suggest to this committee that it approve the establishment of an independent inquiry into sea cage fish farming. I understand that the same recommendation will be made to the Transport and the Environment Committee.

The other option was for the inquiry to be conducted within the parliamentary committee system. The group decided against recommending that, on the grounds that such an inquiry would overload the committees—given the amount of work that they already have—and that committee budgets are already committed. The paper indicated that resources would be made available to fund an independent inquiry, should that option be approved.

**Richard Lochhead:** Careful consideration was given to this difficult issue, and all members of the group recognised that it needs to be investigated. As John Munro has outlined, we decided that an independent inquiry would be appropriate. Some members felt that bringing in outsiders to consider the issue would be a good way of depoliticising it. Others were worried about the resource implications and time scale of any parliamentary inquiry. Even if we agreed in the near future to hold an inquiry into this issue, we would not be able to initiate it for some time. That is a concern, given the urgency of the situation. The real debate is about the inquiry's terms of reference.

**Mr Rumbles:** I am happy with what I have heard and read. However, I have one concern. It is recommended that an independent inquiry be held and that its report be submitted to the Executive, but no time scale for that is given. Richard Lochhead has already pointed out that this is an important issue. Could we ask the Executive to set up an independent inquiry to report by a specific date?

**The Convener:** We have that option. There are a number of procedures that we must go through before we make our recommendation to the Executive.

**Rhoda Grant:** I agree with what Mike Rumbles is saying, but I would hate it if the inquiry was not carried out properly because we had put a time limit on its work. We should say that the matter is urgent and that we would like the inquiry to report as soon as possible, if possible not later than a certain date. However, to impose a deadline might restrict the work of the inquiry. We need to have a proper inquiry.

**Richard Lochhead:** It was not within the remit of the reporters to address the issue that Mike Rumbles and Rhoda Grant have raised. Our task was to set out the options that were available to both the Transport and the Environment Committee and this committee. The committees do not have to accept our recommendation.

**Alex Fergusson:** I congratulate the reporters on the report that they have presented to us, which is very good and detailed. I believe that the only viable option is option 3: to set up an independent inquiry. This committee does not have the time or the resources to do justice to an issue of this magnitude, which rules out option 2. Option 3 is the only option that we should consider. Along with members from other parties, I am happy to give my support to it. It would be nice to think that we could time-limit the inquiry, but this is a huge subject. I do not think that we would do the people who conduct the inquiry any favours by putting a time limit on it.

**Cathy Peattie (Falkirk East) (Lab):** I welcome the report. I agree with other members that the time scale is important. I suggest that we ask the Executive to present the committee with proposals and a time scale, to give us a sense of where the matter lies in the Executive's priorities.

**Mr Rumbles:** That is the key. I am happy with Cathy Peattie's suggestion. I am concerned that the matter should not be put at the bottom of a list of important issues that the Executive intends to address.

16:00

**The Convener:** Is the committee inclined to accept the recommendation of the reporters?

**Members indicated agreement.**

**The Convener:** The reporters must also report back to the Transport and the Environment Committee. We should not commit ourselves to anything until that committee has had time to accept the recommendation as well.

Assuming that the Transport and the

Environment Committee accepts the recommendation, we can look ahead tentatively. It is suggested that we put the matter on the agenda for the first Rural Affairs Committee meeting after the new year. We could invite members of the Transport and the Environment Committee to join us to discuss the issue. At that point we could decide on some of the more technical issues that have been raised today.

Do members agree to that suggestion?

**Members** *indicated agreement.*

**The Convener:** If the Transport and the Environment Committee disagrees with the principles that we have agreed to, we will have to discuss the matter again anyway.

**Richard Lochhead:** You congratulated the reporters, convener, but the reporters would like to thank Tom Edwards from the Scottish Parliament information centre and the clerk, Tracey Hawe. They did most of the work.

**The Convener:** Thank you.

**Mr McGrigor:** We have been discussing the Salmon Conservation (Scotland) Bill all afternoon. As the petition on sea cage fish farming is linked to that—it is seen as a possible source of marine mortality of salmon stocks—it is right that we push for an independent inquiry.

**The Convener:** Okay.

## Europe Familiarisation Scheme

**The Convener:** Item 5 relates to the proposed European Parliament study visit. We must decide whom to nominate to visit the European Parliament next spring. The aim of the exercise is to familiarise members with the legislative process and operation of the European Parliament. On 19 February there will be a briefing for the member who is chosen.

**Mr Rumbles:** It is important that we nominate someone who can make best use of the visit. In my view, that person is the convener.

**The Convener:** Are you suggesting that I desperately need to learn more about European legislation?

**Mr Rumbles:** Absolutely. I nominate the convener.

**Richard Lochhead:** I second that. The convener is quite a big guy and no one wants to fight over this.

**The Convener:** I am happy to go if that is what the committee wants, although I am willing to listen to a different view.

**Richard Lochhead:** Just take it.

**The Convener:** Is that agreed?

**Members** *indicated agreement.*

16:04

*Meeting continued in private until 16:30.*





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